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1. ——— Suit against an idol—Description of defendant—Amendment of plaint—Limitation—Practice. Inasmuch as an idol is a juristic person capable of holding property, a suit respecting property in which an idol is interested is properly brought or defended in the name of the idol, although *ex necessitate rei* the proceedings in the suit must be carried on by some person who represents the idol, usually the manager of the temple in which the idol is installed. *Thakur Raghubathji Maharaj v. Shah Lal Chand*, I. L. R. 19 All. 330, overruled. *Jodhi Rai v. Basdeo Prasad* (1911) . . . I. L. R. 33 All. 735

————— Property dedicated to an idol—Decree against manager—Execution alone—Purchase by defendant—Suit by succeeding manager to recover possession—Defendant's possession adverse to the idol. The plaintiff, a manager of a temple, brought a suit in the year 1908 to recover possession of certain endowed property in the possession of the defendant. The defence was that the property was purchased at a Court sale in 1870 in execution of a decree against the then manager and that the defendant's possession was adverse to the idol. Held, dismissing the suit, that the defendant's possession was adverse to the idol. *Dattagiri v. Dattatraya*, I. L. R. 27 Bom. 363, referred to. *Pandurang Balaji v. Dnyanu* (1911)

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————— Abwab—Suit for arrears of rent—Consideration for grant of pawns—Stipulation in lababat to pay sum as mamuli for the idol Iswar Thakur—Recovery of—Rents Act (Ben. X of 1859), s. 10—Regulation VIII of 1793, ss. 62, 64—Regulation V of 1812, s. 3. In a suit

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to recover Rs. 3,330-4-0 as arrears of *pains* rent the defendants pleaded that Rs. 15 had been claimed in excess and that this sum was in the nature of an *obrah* and not recoverable. The *kabul* *pat* on which this sum was based provided that an annual rent of Rs. 3,310-4-0 should be paid by 1st monthly instalments. In a subsequent clause it stipulated that in the month of *Bhadra* every year a further sum of Rs. 15 should be paid as *mamul* for the *Isa* *Thakur* by the lessor a house and then went on to state that if the lessee failed to pay the said sum of Rs. 15 amicably the lessor should deduct the same from the money remitted by the lessee as rent or sue for the amount along with or separately from the arrears of rent, and the lessee would not take objection thereto. *Held* that the sum of Rs. 15 was not intended by the parties to be part of the consideration for the use and occupation of the land or as part of the rent. It did not form part of the rent nor was it treated as part of the rent and was not recoverable. *Held* also, that s. 3 of Regulation V of 1819 referred only to the amount which was by the contract fixed as the rent payable to the landlord. *Per* SANDERSON C J. The rule which has been followed in this Court is that each case must depend upon the proper construction of the contract before the Court and if upon a fair interpretation of the contract it can be seen that a particular sum is specified in the contract or agreed to be paid as the lawful consideration for the use and occupation of the land or if it is really part of the rent although not described as such, the landlord can recover it. *Per* CHATTERJEE J. It is only the rent and not any other sum though not indefinite and though agreed upon to be paid in the written engagement which can be recovered. In determining whether an item does or does not form part of the rent the fact that it has been separately stated to be paid separately from the rent and also the fact that it is not included in the instalments of rent have an important bearing on the question. *Ex* *adm* *Lal Gupta v. Meharaj Das* 21 C W N 108 explained *BIJAY PRAGHA TRIPATHY v. KRISHNA BEHARI BISWAS* (1917) I L R 45 Calc 259

ILLEGAL COMPOSITION

— of non compoundable offence—

See UNDER INFLUENCE.

I L R 4th Calc 286

ILLEGAL CONSIDERATION

Contract—apprehension of prosecution for non compoundable offence Where the consideration for an agreement is a promise not to prosecute for an offence which is not compoundable the agreement is not enforceable by law but this limitation of freedom of contract should only be enforced where it is quite clear that the consideration for the agreement was such an illegal promise. When an agreement has been come to on a mere threat to prosecute or on an apprehension that prosecution would take place, such threat or apprehension is not sufficient to vitiate the agreement. The distinction between the motive for coming to an agreement and the actual consideration for the agreement must be carefully kept in view and the care must be particularly exercised in a case where there is a civil liability already existing which is discharged or remitted by the agreement. *SCINDIA DAS v. MANGAL CHAND* 2 Pat. L. J. 630

ILLEGAL OR IMMORAL DEBTS

See HINDU LAW—ALIENATION

I L R 40 Calc 288

See HINDU LAW—DEBT

See HINDU LAW—JOINT FAMILY

ILLEGALITY

See CRIMINAL PROCEDURE CODE

as. 233-236 239 I L R 32 All 219

as. 234-235-237 I L R 32 All 57

ILLEGITIMATE CHILDREN

See HINDU LAW

See MAHOMEDAN LAW

— Maintenance of—

See CUSTOM

I L R 2 Lah 243

— right of—

See HINDU LAW—INHERITANCE

I L R 38 Mad 1144

ILLEGITIMATE SON

See HINDU LAW—INHERITANCE

I L R 40 Bom 369

I L R 43 Calc 643

See HINDU LAW—MARRIAGE

I L R 2 Lah 207

See HINDU LAW—PARTITION

I L R 34 Mad 277

— gift to—

See HINDU LAW

I L R 39 Mad 1029

— of a Sudra—

See HINDU LAW—SUCCESSION

I L R 39 Mad. 136

I L R 33 Mad. 386

Held that under the Bengal School of Law an illegitimate son of a Sudra is entitled to a share of the inheritance provided his mother was in continuous and exclusive keeping of his father. *PAJANI NATI DAS AND OTHERS v. NITAI CHANDRA DE AND ANOTHER* 25 C W N 433.

ILLICIT SALE

See OBTAIN

I L R 37 Calc 581

ILLNESS

See DISMISSAL FOR DEFAULT

14 C W N 573

ILLUSORY WAKEF—

See MAHOMEDAN LAW—ENDOWMENT

I L R 47 Calc 866

ILLUSTRATIONS TO STATUTES

See EVIDENCE

I L R 43 I A 258

IMAGE.

See HINDU LAW—ENDOWMENT

— destruction of—

See HINDU LAW—ENDOWMENT

I L R. 41 Calc 67

IMITATION

See TRADE MARK I L R 35 Bom 425

IMMORAL CUSTOM.

— of caste—

See HINDU LAW—MARRIAGE.

I. L. R. 39 Bom. 538

IMMORAL OR ILLEGAL DEBT.

See HINDU LAW—ALIENATION

I. L. R. 40 Calc. 238

See HINDU LAW—DEBT.

I. L. R. 39 Calc. 862

See HINDU LAW—JOINT FAMILY.

IMMORAL PROPOSAL.

See LURKING HOUSE TRESPASS.

I. L. R. 44 Calc. 358

IMMOVEABLE PROPERTY.See CHOTA NAGPUR ENCUMBERED ESTATES
ACT, APPLICATION OF.

I. L. R. 46 Calc. 1

See CRIMINAL PROCEDURE CODE, s. 517

18 C. W. N. 1146

See LIMITATION ACT, 1908, SCH. I, ARTS.
142 AND 144 . . . 2 Pat. L. J. 289

See SALE . . . I. L. R. 43 Calc. 790

See SALE OF IMMOVEABLE PROPERTY.

— english mortgage of—

See ADMINISTRATION.

I. L. R. 45 Calc. 653

— restoration of—

See CRIMINAL PROCEDURE CODE, 1898,
s. 522 . . . I. L. R. 39 Calc. 1050

— restoration of, to judgment debtor—

See LIMITATION ACT, 1908, SCH. I, ARTS.
185, 181 . . . I. L. R. 38 All. 339

— sale of—

See SPECIFIC PERFORMANCE.

I. L. R. 35 Bom. 110

See CIVIL PROCEDURE CODE (ACT V OF
1908), O. XXI, r. 83.

I. L. R. 38 Mad. 775

— suit for—

See MESSE PROFITS.

I. L. R. 39 Calc. 220

Sale of, in Court-auction—Fraud, sale vitiated by— *Fendee benamidar of purchaser—Suit to cancel sale—Who can sue—Contract Act, ss. 231 and 232.* Where a sale of property is vitiated by fraud on the part of the vendor, the person who bought the property at Court-auction though only a benamidar can maintain an action to cancel the sale. *Pether Perumal Chetty v. Mandyarararao, I. L. R. 35 Calc. 551*, distinguished. A benami transaction does not vest any title to immovable property, the subject of such transaction, in the benamidar, and therefore such a person cannot maintain a suit which is based on title, namely a suit in ejectment. But where an agent of an undisclosed principal enters into a contract for the purchase of land and the land is conveyed to him in pursuance of the contract he acquires rights and liabilities under the contract (see ss. 231 and 232, Contract Act, IX of 1872) and can sue in respect thereof. *DATTA*

IMMOVEABLE PROPERTY—contdVENKATA SUBBANARAYANA JAGAPATHIRAJU v.
GOLUGURI BAPIRAJU (1910)

I. L. R. 34 Mad. 143

Order regarding possession of, following acquittal in case under ss. 447 and 426 of the Penal Code, propriety of. The accused were tried for offences under ss. 447 and 426, Indian Penal Code, for having cut and removed some bamboos from a bamboo clump alleged by the complainant to be his. The trying Magistrate acquitted the accused but directed that the complainant was to retain possession of the bamboo clump until ousted by the Civil Court. The High Court set aside the order so far as it contained the direction about the bamboo clump. *RADHA KANTA GUIN v. KABIR GUIN (1916)*

20 C. W. N. 1302

IMPARTIBLE ESTATE.See CIVIL PROCEDURE CODE, 1892, ss.
13, 462 . . . I. L. R. 36 Bom. 53

See HINDU LAW—IMPARTIBLE ESTATE.

See HINDU LAW—INHERITANCE

I. L. R. 34 All. 65

I. L. R. 42 Calc. 1179

See HINDU LAW—MAINTENANCE.

I. L. R. 39 Mad. 396

See HINDU LAW—SUCCESSION

I. L. R. 31 All. 79

I. L. R. 44 Mad. 1

I. L. R. 43 All. 228

See KUTUMBA, STATE OF

I. L. R. 39 Calc. 711

See OLD ESTATES ACT (I OF 1909), ss.
2, 3, 8, 10, 22

I. L. R. 35 All. 391

See SUCCESSION CERTIFICATE

I. L. R. 33 Calc. 182

Impartible property—Transfer, whether subject to right of maintenance. A transfer of impartible property is not subject to rights of maintenance claimed by younger members of the family of the transferor unless a family custom to that effect is established. *Tilakur Debendra Nath Shah Deo v. Deendrasa Singh (1915)* . . . 3 Pat. L. J. 643

Alienation beyond alienor's life time, validity of—Custom of inalienability, effect of—Regulation XXI of 1592. In the absence of proof of a special custom of inalienability, the zamindar of an impartible zamini has power to alienate the zamini for a legitimate family or other necessary purpose beyond his life time. The estate held by him is not analogous to that of an estate as it originally stood upon the Statute de Donis [Statute of Westminster II (1285) 13 Edw. 1, c. 1]. The law relating to estates held in impartible zamindari remains the same. Where the subject of a court sale was stated to be "the right, title and interest" of the zamindar there is no presumption that what was intended to be sold was merely the life interest of the zamindar in the zamini. *AVALAPPA NAIKKA v. MURUGAPPA CHETTIAR (1913)* . . . I. L. R. 36 Mad. 325

Coparcenary in, if exists. An impartible zamindari is the creature of custom, and it is of its essence that it be coparcenary

IMPARTIBLE ESTATE—contd

in it does not assist **RAJKUMAR BABU BISHEUN PRASAD NARAYAN SINGH v MAHARANI JANAKI KORN** 24 C W N 837

IMPERFECT GIFT—

*Shares in limited Company—transferable by entry in the books of the Company—Transfer deed executed by donor and made over to donee—Transfer not registered in the books of the Company during donor's lifetime. A executed a voluntary document called a transfer deed purporting to transfer five shares of which he was the registered holder in the Bengal Timber Trading Company Limited to his wife and gave possession thereof to her with the intention that from that time she was to be the owner of the shares. These shares were transferable only by entry in the books of the Company but no such transfer was ever made in the lifetime of A. A lived for about two years after the execution of the deed during which period the dividends on the shares were received by A and sometimes made over by him to his wife and sometimes retained by him with her permission or implied consent. Held that the gift having been intended to take effect by way of transfer the Court will not hold the intended transfer to operate as a declaration of trust. *Held* further that the disposition of the shares failed as being an imperfect voluntary gift. *Miley v Lord 4 DeG F & J 764* and *Richards v Delbrige L R 15 Eq 11* followed. **AMARENDRA KRISHNA DUTT v MONIMONARY DEBI** (1911) I L R 48 Calc 886*

IMPERFECT PARTITION

See **PARTITION**

I L R 46 Calc 236
I L R 47 Calc 354

See **PRIESTHOOD**

I L R 42 All 477

IMPORT

See **EXCISEABLE ARTICLES**

I L R 39 Calc 1053

See **COCAINE**

I L R 41 Calc 537

IMPOSSIBLE CONDITION

See **WILL**

I L R 48 Calc 1100

IMPOSSIBILITY OF PERFORMANCE

See **CONTRACT ACT** (IX of 1872) s 56
60 I L R 40 Bom 529

See **SALE OF GOODS**

I L R 45 Calc 28

IMPOTENCY

See **DIVORCE**

I L R 48 Calc 283

IMPRISONMENTS

See **CRIMINAL PROCEDURE CODE** ss 110
AND 123 I L R 42 All 583

without first ordering attachment—

See **CIVIL PROCEDURE CODE** (ACT V
OF 1908) O XIII R 1 (r) AND O
XXIX, R. 3 CL (3)

I L R 39 Mad 907

IMPROVEMENTS

See **DISTRICT LAND**

I L R 41 Calc 104, 164

IMPROVEMENTS—contd

See **COURT SALE** I L R 36 Mad 194

See **HINDU WIDOW**

I L R 40 Calc 555

See **LANDLORD AND TENANT**

I L R 38 Mad 710

See **MADRAS ESTATES LANDS ACT** (MAD I
OF 1908) ss 3 (7) 6

I L R 37 Mad 1

See **MALABAR TENANTS IMPROVEMENTS
ACT 1900—**

ss 3 AND 5 I L R 38 Mad. 954

ss 5 6, 9 TO 18

I L R 36 Mad 410

See **MORTGAGOR AND MORTGAGEE**

I L R 43 Bom 69

See **PARTITION**

15 C W N 375

— compensation for—

See **SPECIFIC PERFORMANCE**

I L R 41 Calc 852

**IMPROVEMENT ACT, BOMBAY (BOM IV
OF 1898)**

See **BOMBAY IMPROVEMENT ACT**

IMPROVEMENT TRUSTEES

See **BOMBAY CITY MUNICIPALITY ACT**,
1888 s 47 301

I L R 45 I A 233

IMPUTATION OF CRIMINAL OFFENCE

See **LIBEL**

I L R 37 Calc 760

INADEQUACY OF PRICE

See **SALE FOR AREARARS OF REVENUE**

I L R 42 Calc 897

INADVERTENCE

See **REFUND OF COURT FEE**

I L R 40 Calc 365

INALIENABILITY

See **LIMITATION ACT** (XV OF 1877),
SCH. II, ART 91

I L R 38 Mad 321

INAM

See **BOMBAY LAND REVENUE ACT 1879—**
ss. 82 216 AND 17

I L R 44 Bom 586

I L R 45 Bom 1280

s 202

I L R 45 Bom 894

See **BOMBAY REVENUE JURISDICTION ACT**,
1876 s 12 I L R 45 Bom 483

See **CHARITABLE INAMS**

I L R 43 Mad 939

See **CIVIL PROCEDURE CODE**, 1882 s 424,
I L R 35 Bom 382

See **ESTATES LAND ACT** (MAD I OF 1908)—
ss 3 (2) (3) I L R 40 Mad 389

ss 3 (2) AND 8 I L R 40 Mad 664

See **HEREDITARY OFFICES ACT** (BOMBAY
ACT III OF 1874 AS AMENDED BY
BOM ACT V OF 1886),

s 2. I L R 43 Bom 323

INAM—*contd*

- s 15 . . . I. L. R. 44 Bom. 237
 See MADRAS REGULATION (XXV of 1802),
 s. 4 . . . I. L. R. 38 Mad. 620
 See PERSONAL INAM
 See REGISTRATION ACT (XVI of 1908),
 s 17 . . . I. L. R. 41 Egm. 510
 See SANAD . . . I. L. R. 36 Bom. 639
 See SARANJAM . . . I. L. R. 34 Bom. 329
 See SARANJANDAR
 I. L. R. 45 Bom. 694
 See SERVICE INAM—

— distinction between resumption
 and enfranchisement of—

- See CHARITABLE INAMS
 I. L. R. 40 Mad. 939
 — entry in Register—

- See HINDU LAW—RELIGIOUS ENDOWMENT
 24 C. W. N. 249

— exemption for Land Revenue in re-
 turn for services as Patel—

- See BOMBAY LAND REVENUE CODE, s
 202 . . . I. L. R. 45 Bom. 894

— duties of Inam authorities—

- See LANDLORD AND TENANT
 I. L. R. 33 Mad. 155

— grant of—

- See CIVIL COURTS I. L. R. 39 Mad. 21
 See LAND REVENUE IN MADRAS
 L. R. 46 I. A. 123

— grant of, previous to British Rule—

- See ESTATES LAND ACT (MAD I OF 1908),
 s. 3 (3) (d) . . . I. L. R. 41 Mad. 1012

— right of Government to resume—

- See MADRAS REGULATION, XXV of 1802,
 s 3 . . . I. L. R. 44 Mad. 694

— whether land held on Political
 Tenure

- See BOMBAY REVENUE JURISDICTION ACT
 1878
 I. L. R. 45 Bom. 464

— service—

- See MADRAS PROPRIETARY ESTATES VIL-
 LAGE SERVICE ACT (II OF 1894), ss
 5, AND 10, CL. (2)
 I. L. R. 39 Mad. 330

— settlement—

- See LANDLORD AND TENANT
 I. L. R. 38 Mad. 155

— Grant by a Naoab in

1798 for building mosque etc.—Public Trust—
 Confirmation of inam by British Government, sub-
 ject to performance of duties—Resumption of inam
 —Levy of full assessment—Ryotwari patta issued
 to grantees—Title of grantees—Lords, whether
 freed from trust and made private property of trust-
 ees—Indian Trusts Act (II of 1852), s 33—Prin-
 ciple of s 33—Applicability of, to public trusts
 —Civil Procedure Code (V of 1908), s 92—Heredi-
 tary trustee, removal of—Misconduct of pre-
 decessor, whether a disability for trusteeship of des-
 cendant. An inam, granted by the Nawab of

INAM—*contd*

the Carnatic in 1798 for the building and upkeep
 of a mosque, was confirmed by the British Govern-
 ment in 1861 subject to the performance of the
 duties by the grantees, and, on account of non
 performance of duties and misappropriation of
 the income by the grantees, was resumed by the
 Government, full assessment being levied on the
 lands and a ryotwari patta issued to the grantees
 in 1893. On a suit being instituted for removal
 of the defendants who were descendants of the
 grantees from trusteeship and for a scheme of
 management under s 92, Civil Procedure Code,
 the latter pleaded that there was no public trust
 and that the lands had become the private pro-
 perty of the grantees by the resumption and re-
 grant to them in 1893. *Held* (in the Letters
 Patent Appeal), that the inam was a grant of
 the land in trust for a mosque, and did not cease
 to be such by its being made resumable by Govern-
 ment for non performance of duties by the trust-
 ees, that the resumption of the inam by levy
 of full assessment on the lands and issue of ryot-
 wari patta to the trustees in 1893, did not free
 the lands from the trust and make them the private
 property of the trustees, and that even if the
 lands were resumed and re-granted to the
 trustees in their individual capacity on full assess-
 ment, they were bound to hold the lands so granted
 for the benefit of the trust, under the principle
 contained in s 88 of the Indian Trusts Act. *Held*,
 in the Appeal (*Per WALLIS, C J*), that the inam
 comprised both the lands and the assessment due
 thereon, that when Government resumes an
 inam by imposing full assessment and does nothing
 more and does not expressly resume the lands
 as well, the ownership is unaffected and if it was
 subject to any charitable trust it still continues
 subject to it, and that it was unnecessary and
 improper to impose a permanent disability to
 fill the office of trustees on the defendants and
 their descendants on account of the misconduct
 of the defendants or their predecessors. (*Per*
SPENCER, J) *contra* that in cases of resumption
 of charitable inams, when they consist of the
 land as well as the assessment, it is within the
 discretion of the Government to grant it on full
 assessment and issue ryotwari patta to the former
 trustee or to a person unconnected with the trust,
 in the former case as much as in the latter, the land
 becomes the private property of the grantee,
 freed from the trust, that the inam in this case
 must be taken to have been of the assessment
 only, that being the presumption raised by Govern-
 ment in dealing with grants more than sixty
 years old, and by resumption of the inam and
 levy of full assessment the trust was at an end,
 and that the suit grant was not for a public trust
 of the kind to which s 92, Civil Procedure Code,
 was applicable. *MUHAMMAD ISHUF SAHIB v*
MOULVI ABDUL SATRUH SAHIB (1918)

I. L. R. 42 Mad. 161

— Resumption of.—Grant
 by Naoab for a mosque, services therein and
 feeding the poor.—Confirmation by British Govern-
 ment.—Misappropriation by trustees.—Alienation by
 trustees on mortgage and on long lease.—Performance
 of services on lower scale.—Mosque kept in good
 repair.—Power of Government to resume inam.—
 Terms of confirmation, construction of.—Suit by
 trustee against Secretary of State.—Suit for declara-
 tion and possession.—Limitation Act (IX of 1908).
 Art 14 or 14a, applicability of. An inam, g

INAM—cont'd

by the Nawab of the Carnatic in 1773 for the upkeep of a mosque, the performance of services and ceremonies therein and the feeding of travellers and the poor was confirmed, by the British Government, permanently so long as the service was performed. Owing to persistent misappropriation of the income by the grantee's successors and alienations by some of them of two of the villages, included in the inam, one on a usufructuary mortgage in 1893 for thirty years and the other on a long lease of twelve years in 1894 for purposes not binding on the charity, the Government resumed the inam in 1903 and ordered the assessment to its general revenues. It appeared however that the mosque was maintained in good repair, services and ceremonies were regularly performed there though on a smaller scale. The present trustee disputing the power of the Government to resume the inam sued in 1913 the Secretary of State for India in Council for a declaration that the resumption was invalid and for recovery of possession of the inam villages, the latter contended that the resumption was valid and that the suit was in any event barred by limitation under Art. 14 of the Limitation Act. *Held*, (i) that, as the charity did not fail altogether, the performance of the charity was not wholly discontinued and the alienations (mortgage and lease) did not permanently deprive the charity of the use of the property, the Government was not authorized, under the terms of the grant, to resume the inam in the circumstances of this case; and (ii) that the resumption being a nullity and the suit being one for possession, it was not barred by limitation, as Art. 141 and not Art. 14 of the Limitation Act applied to the case. On a reasonable construction of the words of the grant, any default in the performance of services of however minor a character would not entitle the Government to resume the grant but what was contemplated was that if the charity failed altogether or substantially as through the disappearance of the mosque or of persons who would resort to the institution for prayers, etc. or if the charity was entirely discontinued, then the Government would be entitled to resume the grant. *SECRETARY OF STATE FOR INDIA v. GULAM MAHMOOD KHAN SANI* (1919) I L R 42 Mad 873

INAM—cont'd

vator's share in the produce of land held by him, as distinguished from the landlord's share of the produce received by him as rent, sometimes designated 'malvaram'. Where it was alleged that the documents under which tenants held land under temporary tenures were not willingly executed by them or their predecessors or with knowledge of their provisions *Held*, that the allegations amounted to saying that the landlord had by fraud and the exercise of undue influence procured the execution by the tenants of the agreements of tenancy under which the latter held the land occupied by them allegations which in the absence of any evidence to suggest that there was any foundation of truth for them, must be dismissed from consideration as unfounded. *ANDESCHILLI SRIYATHARAYANA v. ACHUTHA PORAYANA* (1918) 23 C. W. N. 273

Shrotriyaam—Conveyance of Minerals—Enfranchisement, effect of—Royalties on quarried stone—Mad Act VIII of 1869 A village was granted as a shrotriyaam inam in A.D. 1730 by the Nawab of the Carnatic. The grant the terms of which appeared from a translation produced from a Government register, provided that its purpose was that the grantee having appropriated to his own use the produce of the seasons each year, might pay for the prosperity of the Empire, and that he should pay a fixed yearly sum to the arkar. The inam was enfranchised in 1864, there being given to the inamdar title-deeds which purported to convert the tenure into a permanent freehold upon payment of a quit-rent. After the enfranchisement the Madras Government requiring stones acquired part of the village from the shrotriyaamlars under the Land Acquisition Act. In or about 1900 the Madras Government imposed and levied upon the shrotriyaamlars royalties in respect of stone which they had quarried in the village. *Held* (1) that upon the true construction of the grant the full right to the quarries and minerals did not pass to the grantee, (2) that terms of the grant being in evidence neither the inam title-deeds nor the land acquisition proceedings were evidence as to its effect (3) that having regard to Madras Act VIII of 1869, the inam title-deeds could not vest in the inamdlars a subject matter not vested in them by the grant, (4) that consequently the Government was entitled to impose royalties on stone quarried in the village. An inam grant may be no more than an assignment of revenue and even where it is or includes a grant of land, what interest in the land passed must depend on the language of the instrument and the circumstances of the case. *THE SECRETARY OF STATE FOR INDIA IN COUNCIL v. SRINIVASA CHARIAR* (1921) I L R 40 Mad 288

I L R. 41 Mad. 431

Presumption of Law—Whether grant is of both malvaram and kudivaram Although their Lordships of the Privy Council do not expressly lay down, in *Suryanarayana v. Padayana* (1918) I L R 41, Mai 1912 (PC) and *Venkata Sastrulu v. Sotharamulu* (1920) I L R 43, Mai 166 (PC) that there is a presumption in law that in inam grants both the malvaram and kudivaram are included such an initial presumption is deducible from the grounds on which these judgments are based. *MURTHY GOVINDAN v. PRADEEP* (1921) I L R. 41 Mad. 593

Instrument not presumed as of Government revenue only—Reg. XVI of 1902—Estate, meaning of—Madras Rent Recovery Act (Mal. I of 1908) s. 3 (2), (1)—Kudivaram and malvaram meaning of—Allegation by tenant of fraud and undue influence not substantiated by evidence There is no presumption of law that the grant of an inam (in the absence of the inam grant under which it was held) was of the Royal share of the revenues only. In respect of an inam grant of 1773, the grant itself could not be produced but it was recorded in Mr Oake's Inam Register kept under a 15 of Reg. XXVI of 1802. *Held*, that this was conclusive evidence that the grant was not only of the revenue but of the soil of the village, and was not an estate within s. 3, sub s. 2 (d) of the Madras Estates Land Act (I of 1908 Mal.) A grant of a village by or on behalf of the Crown under the British rule is in law to be presumed to be subject to such rights of occupancy, if any, as the cultivators at the time of the grant may have had. *Kudivaram* literally signifies a culti-

INAM—contd

Karnam service lands
—Enfranchisement—Inam title-deed—Confirmation in last holder—Nature of title The karnam of a village in Madras occupies his office not by hereditary or family right but as a personal appointee, although the appointment is primarily made of a suitable person who is a member of a particular family. When karnam service lands have been enfranchised, a quit rent being imposed in lieu of the service, and an inam title-deed is granted confirming the lands to the holder of the office, his representatives and assigns, the lands are his separate property, and are not subject to any claim to partition by other members of the family. *Venkatu v Rama* (1885) 1 L R 8 Mad 249 (F B) approved; *Gunnayya v Kamalachi Ayyar* (1903) 1 L R 26 Mad 339 and *Pingala Lalshimipathi v. Bommaraddipalli Chalamayya* (1907) 1 L R 30 Mad 431 (F B), disapproved. *VEY KATA JAGANNADHA v VEENABHADRAYYA* (1921) 1 L R 44 Mad. 643

INAM COMMISSIONER.

See INAM . 1 L R. 40 Mad. 268

See LANDLORD AND TENANT

1 L R. 38 Mad. 155

See REVENUE JURISDICTION ACT (BOM)

s. 4 . 1 L R. 34 Bom. 232

1 L R. 44 Bom. 120

1 L R. 44 Bom. 130

INAMDAR.

See ADVERSE POSSESSION

1 L R. 45 Bom. 638

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879)—

ss. 3 AND 217 1 L R. 34 Bom. 686

s. 217 . 1 L R. 44 Bom. 110

s. 3 . 1 L R. 45 Bom. 61

ss 76 AND 88 1 L R. 45 Bom. 893

See KARNAM INAMDAR

1 L R. 42 Bom. 112

See LAND REVENUE CODE (BOM ACT V OF 1879), s. 3

1 L R. 43 Bom 77

See MADRAS ESTATES LAND ACT (I OF 1908), s. 8 (EXCEP)

1 L R 38 Mad 608, 891

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH II, ART 13

1 L R 39 Bom. 131

See REVENUE JURISDICTION ACT (X OF 1876)—

s. 4 . 1 L R. 44 Bom. 120 and 130

and Zamindar—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 8, ETC 1 L R. 38 Mad. 603

and Ryot—

See MADRAS ESTATES LAND ACT (I OF 1908) 1 L R. 38 Mad 33

Right to levy mamul dues—

See BOMBAY LAND REVENUE ACT, 1879, ss 216 and 217

1 L R 45 Bom. 1263

INAMDAR—contd

1. *Jodi payable to Government—Right of Government to a first charge—Assignment of jodi by Government—Right of assignee to a charge—Assignment of jodi to a zamindar or mittadar under permanent sanad—Right of zamindar or mittadar to a charge* Jodi payable by an inamdar to the Government, where it has not been assigned, is recoverable by the Government as revenue and is a first charge on the interest of the inamdar. A zamindar or mittadar, who under his sanad has a right to collect jodi payable by an inamdar to the Government, has no charge for arrears of jodi on the interest of the inamdar. *PER WALLIS, C J*—Where the Government assigned its revenue to an inamdar, the latter did not acquire a charge upon the land but was left to recover rent from the occupiers under the Madras Rent Recovery Act (VIII of 1863). *PER SESHAGIRI AYYAR, J* If the Government assigned the right to collect jodi or other revenue as such, the assignee would have a first charge he would be entitled to the security which the Government had although he might not be entitled to all the statutory remedies which the assignor had. *CASE LAW ON THE SUBJECT REVIEWED SUBBARAYA GOVINDAN v RANGANADA MUDALIAR* (1916) 1 L R. 40 Mad. 93

2. *Suit to recover assessment from tenant—Tenant's liability to pay customary rent—Jodi—Limitation Act (IX of 1908), Sch I Art 131—Recurring right—Limitation—Demand and refusal* Lands situated in Inam villages not being in the actual possession of Inamdars themselves and falling under the calculation of Government Jodi are liable in turn to pay customary rent assuming that there has been no survey and assessment or contractual rent agreed upon to the Inamdars who are directly liable to Government for the Jodi. The payment of assessment is a recurring right falling within the contemplation and language of Art 131 of the first Schedule of the Limitation Act (IX of 1908). In order that such a recurring right should be time barred, it is necessary for the defendant to show that there has been a definite demand and refusal. Mere omission on the part of the person having such right to exercise it will not start a period of adverse possession under the Article. *GANESH VINAYAK v SITABAI* (1916) 1 L R. 41 Bom 159

INAM LAND.

See LANDLORD AND TENANT

1 L R. 38 Mad 155

See LAND REVENUE CODE (BOM ACT V OF 1879), ss 3 (11), 217

1 L R 34 Bom. 686

acquisition of—

See RIGHT OF SUIT.

1 L R. 36 Mad 373

Regulation XVI of 1827—Bombay Act VI of 1833, s. 2—Summary Settlement Act (Bom Act II of 1863), s. 12—Hereditary Offices Act (Bom Act III of 1874)—Civil Procedure Code (Act I of 1908) ss 11 and 15—Service inam land—Summary settlement—Alienation—Will—Probate—Decision of Probate Court not to be destroyed by adjudication in a regular suit—Res judicata The title of the family of Navalgund Desai came into existence in the time of the Bijapur Monarchs in

INAM LAND—contd

the 17th century. The Desai was the chief revenue officer of the district under both the Mahomedan rule and the Maratha rule which followed it. The services of the Desai as revenue officer were not made use of during the British rule and he was informed in 1843 by the Collector under the provisions of s. 2 of Bom Act XI of 1843 that his services as a revenue officer would not be required of him. As the result of inquiry regarding claims to inam lands, the Desai for the time being was offered the option of continuing his service by payment of an annual sum in the nature of a quit rent for the lands which he held up to that time on a service tenure or by occasional payments in the nature of fines both which classes of payments were styled *Nazarana*. In the year 1862 the Government passed a Resolution No. 455 sanctioning the treatment of the Navalund Desai's *potjee* (allowance) as a personal holding continuable to the holder on the terms of the summary settlement and the Desai consequently accepted the settlement on the terms that the commutation payment should be in the nature of an annual *Nazarana* or quit rent. Lingappa Sar Desai, the last male member of the Desai family, made a will prohibiting his widow from making an adoption and bequeathing the whole of his property to charity. The will was propounded for probate in the District Court of Belgaum and was duly admitted to probate and the grant of the probate was confirmed by the High Court in appeal. The widow of Lingappa made an adoption and she and the adopted son brought the present suit for a declaration that the testator have no power to make a will and to alienate the property which being service inam was inalienable. *Held* that the settlement of the Navalund Desai of the year 1862 was a settlement valid and binding upon Government that under the settlement the Desai was no longer liable to render any service in respect of the lands held by him and they were therefore no longer held upon service tenure and that the possession of lands as service lands for 200 years in the absence of any evidence as to family custom could not impress them with the character of inalienability. *Held* further that where service has been commuted for a quit rent if the donee's descendants should continue to pay the rent the tenure would be altered from service to rent, that in the case of service land, which in practice at all events was not usually alienated, it would be difficult to establish a family custom which should have any effect, as distinct from the ordinary incidents of a service tenure and evidence that land had remained in a family for a long period of years and had descended by the rule of primogeniture where it was service land would be more consistent with the fact of its having been held for service than with the theory of any special family custom and that when service had come to an end the last holder if he had no sons or co-sharers could put an end to a tenure based upon family customs, and that the lands might be treated as the property of an ordinary Hindu land owner subject to the payment of the agreed quit rent to Government and in the absence of co-parceners the owner could dispose of the lands by will. *Held* further that under s. 11 of the Code of Civil Procedure it was not open to the Court after the decision of the District Court granting probate of the will to try the question of the authority of the widow

INAM LAND—contd

to adopt, which question was bound up with the question of the revocation of the will in the present suit, inasmuch as the issue decided by the Probate Court had conclusively determined between the parties the question of whether or not the testator had revoked his will before death and whether the statement that he had given authority to his widow to adopt expressed his wishes at the time of his death, and inasmuch as the District Court which had tried the probate case was a Court competent to have tried the present case. *BRENDON & SUNDARAI* (1913)

I L R 33 Bom 272

INCAPACITY

to make a will—

See *HINDU LAW—MIRON*

I L R 38 Mad 169

INCESTUOUS ADULTERY

condonation of—

See *DIVORCE*. I. L. R. 39 Calc 395**INCIDENTS OF TENANCY**See *OCCUPANCY PACT*

I L R 46 Calc 160

INCITEMENT TO MURDER AND ACTS OF VIOLENCESee *PRINTING PRESS FORFEITURE OF*

I L R 33 Calc 202

INCOME

attachment of—

See *GUJARATH TALUKDARS ACT (BOM ACT VI OF 1858) s. 31*

I L R. 35 Bom 97

INCOME-TAXSee *COMPANY*. I L R 42 Bom. 579See *REFERENCE*.

I L R 43 Calc 766

See *ROYALTY*. I L R 38 Calc 372

Illegal levy of—

See *MUNICIPAL ELECTION*

I L R 33 Calc 501

on income of a club—

See *INCOME TAX ACT 1918, s. 35 & 8 AND 51*. I. L. R. 2 Lah 109

Executor's liability to income tax—Suit maintainable if for declaration of non liability to tax—Collect's jurisdiction of to assess income tax—Income Tax Act (11 of 1886)—Contract Act (IX of 1872), s. 72. Income accruing to an executor under the will of a testator is income as defined in s. 2 cl. (5) of the Income Tax Act 1886 and is liable to be taxed under the Act. It is the Collector's duty to determine what persons are chargeable in respect of sources of income other than salaries and pensions profits of companies and interest on securities. A suit brought by an executor of an estate for a declaration that as executor he was not liable to pay income tax in respect of any income of the estate and that the Collector in realising the same paid

INCOME-TAX—contd.

to him, acted without jurisdiction, and for a decree for the amount so paid with interest, does not lie. Payment of income tax by the executor of an estate, under protest, on the ground that as executor no tax was payable by him, may be regarded as paid under coercion within the meaning of s 72 of the Contract Act, *Kanahya Lal v National Bank of India, Ltd* 1 L R 40 Cal 598, L R 40 I A 56, referred to *FORBES & SECRETARY OF STATE FOR INDIA* (1914) . . . I. L. R. 42 Cal. 151

Agricultural Income—Tea gardens. In a reference under s 51, as to whether income from a tea garden where tea was grown and made ready for market by mechanical process was assessable *Held*, that the income was to be apportioned and so much of it as was obtained by the manufacturing process was assessable. *Kibing Valley Tea Company Limited v Secretary of State* . . . I. L. R. 48 Cal. 161

INCOME-TAX ACT (II OF 1886).

See CERTIORARI I. L. R. 36 Mad. 72

See INCOME TAX I. L. R. 42 Cal. 151

s. 3 (5).

See INCOME TAX I. L. R. 42 Cal. 151

ss 4, 11, 12, 49, Sch. II, Part II—

See COMPANY I. L. R. 42 Bom 579

ss 14 and 16

See INCOME TAX I. L. R. 42 Cal. 151

ss 14 and 50—A Collector has power after first assessment to make a fresh assessment if the circumstance of the case require it *REYANSTODAPPA v SECRETARY OF STATE FOR INDIA* (1919) . . . I. L. R. 44 Bom 234

Part IV, Sch. II, s. 3, cl. (5)—Annuity in Mysore Province—Annuitant resident in British India—Remittance by agent to her in British India—"Income," meaning of—Income, if taxable in British India Where a person was enjoying an annuity in Mysore Province, instalments of which were remitted by her agent to her while she was resident in British India, the remittances were "income" under Part IV of Sch II of the Income Tax Act, and these sums were "received in British India" within the definition contained in s 3, cl. (5), of the Act and therefore taxable *NARASAMMAL v THE SECRETARY OF STATE FOR INDIA* (1915) . . . I. L. R. 39 Mad. 885

INCOME-TAX ACT (VII OF 1918).

s. 2—Salami paid to a Landlord for wasteland and abandoned holdings is exempt from assessment but that paid for recognition of a transfer of a holding from one tenant to another is liable to be taxed *MAHARAJA BIKEND VARISHORE MASIKYA BAHADUR v SECRETARY OF STATE FOR INDIA* . . . 25 C. W. N. 81

s. 3—Money lending firm—Interest accruing due but not received in the year of account—Whether taxable under section 9 On a reference under s 51 of the Indian Income tax Act, 1918 *Held* by the majority of the Court—Interest which accrues due to a money lending firm in the year of account is not assessable under s. 9 as profits of the business unless it is received or realized in the year of account What will amount to receipt or realization considered by

INCOME-TAX ACT (VII OF 1918)—contd

NANIER AND KRISHNAN, J. J. Per SADASIVA AYYAR, J.—Such interest would be taxable, though not realized, if it came so completely under their control that by an act of their will they could receive it in cash without greater trouble than is involved in drawing money from their bankers. *SECRETARY TO THE BOARD OF REVENUE, INCOME-TAX, MADRAS v ARUNACHALAM CHETTIAR* (1921) . . . I. L. R. 44 Mad. 65

ss 3, 5, 8, 51—Income of the United Service Club of Simla, a registered Company—Whether liable to income tax *Held*, that the income of the United Service Club of Simla, a Company registered under the Indian Companies Act, is not liable to be assessed to income tax under the Indian Income Tax Act except in respect of its house property *The New York Life Insurance Company v Styles* (L R 14 4p Cases 331) and *The Carlisle and Silloth Golf Club v Smith* (3 K B 75) followed. *THE UNITED SERVICE CLUB, SIMLA v THE CROWN* . . . I L R 2 Lah 109

ss 3(1), 17(1) and 51—Income accruing arising or being received in British India—Company registered and business controlled in British India—Manufacture carried on outside British India—Reference—Costs Under section 3 Sub section of the Income Tax Act (VII of 1918) the profits of a Company which are made from manufacture carried on beyond British India cannot be said to accrue or arise in British India on account of the Head Office being in Bombay and because the Directors control the business in Bombay Nor would the mere fact of the entries in respect thereof being made in the accounts of the Company kept in Bombay entitled the Collector to treat the profits as having been received in British India within the meaning of section 3 (1) of the Act The cost of a reference under section 31 of the Income Tax Act 1918, made at the instance of the Chief Revenue Authority of Bombay within the local limits of the Original Jurisdiction should be taxed on the Original Side *ALRAGABAD MILLS LIMITED, IN RE* I. L. R. 45 Bom. 128

ss. 3, 33(1)—Non resident foreigner having business connexion in British India—Assessability to income tax in British India A person who is not a resident in British India, but to whom income arises or accrues through business connexions in British India is assessable to income tax under sections 3 and 33 (1) of the Indian Income tax Act (VII of 1918) whether he is a British subject or a foreigner The provision in the latter section that such income shall be taxable in the name of the agent of any such person does not mean that it is not chargeable unless assessed in the name of an agent *CHIEF COMMISSIONER OF INCOME TAX v BHANUPRA BHANJAN AND COMPANY* (1921) . . . I L R 41 Mad. 773

ss. 3 and 9—Proprietor resident in British India—Business outside British India and not carried on from British India—Income not remitted to British India, whether taxable under the Act of—Reference under s 51—Right to begin A resident in British India owning a money lending business carried on for him outside British India by agents resident there who merely keeps himself

INCOME-TAX ACT (VII OF 1918)—contd

acquainted with the progress of the business and occasionally issues general instructions is not liable to be taxed under the Act where the income from such business is not remitted to British India. On a reference by the Board of Revenue under s. 51 of the Income tax Act the assessee and not the Board has the right to begin. **BOARD OF REVENUE MADRAS v. RAMANADHAN CHETTI** (1930)

I L R. 43 Mad 75

ss 4 and 2—"Agricultural Income"

—Application under s. 51—Right to begin. In a reference by the Revenue Authorities under the Indian Income tax Act (VII of 1918) s. 31, sub s. (1) on a question whether the income from a tea garden where tea was grown and made ready for the market by mechanical process was assessable *Held*, that the income was to be apportioned and so much of it as was obtained by the manufacturing process was assessable. **Commissioners of Inland Revenue v. Ransom**, [1918] 2 A. B. 709, and **Commissioner of Inland Revenue v. Mazze** [1919] 1 A. B. 647, followed. *Held*, also that the counsel for the company was to begin. **Marquis of Chandos v. Inland Revenue Commissioners** 6 Arch 461 followed. **HILLING VALLEY TEA COMPANY LTD v. SECRETARY OF STATE FOR INDIA** (1920)

I L R. 43 Cal 161

—ss 5, 9 and 11—Income derived from the rent and Royalties of Collieries does not come within income derived from business within the meaning of s. 5 (iv) but within income from other sources of sub s. (vi) and in assessing such a income tax the amount paid in respect of Road Cess should not be deducted. *In the matter of the RASA JYOTI PRASAD SINGH DEO OF HASEPUR*

6 Pat L. J. 62

—ss 8, 9, and 11—Income tax—Allowance of property assessable—Allowance in respect of annual value of business premises owned by firm—House property. *Held* by KNOX and GOKUL PRASAD J. J., (Pillay, J., dissenting) that as Act No VII of 1918 (the Indian Income tax Act) now stands the allowance on account of the annual value of business premises owned and occupied by a firm is not liable to assessment at all. **PER PILLAY J.** See *quere* whether such business premises would fall within the purview of section 8 of Act No VII of 1918 as being house property. *In the matter of A JOHN AND COMPANY*

I L R. 43 AU 139

—s 9 cl. 2, sub-cl. (ix)—Joint Stock Company—Increase of capital—Issue of new shares—Commission paid to underwriters whether allowable deduction—Assessment. Where a joint stock company increases its capital by the issue of new shares for which it pays commission to the underwriters of the shares the amount of the commission so paid cannot be allowed as an item of expenditure under section 9 clause 2, sub-clause (ix) of the Indian Income Tax Act (VII of 1918). **TATA IRON AND STEEL COMPANY LIMITED, IN RE**

I L R. 45 Bom 1306

—ss 24, 29 (d), 40 and 41—Failure to produce accounts—Prosecution under s. 39 (d)—Penal assessment—Tory of whether a bar to prosecution—Bar under s. 21 proviso 2 whether applicable. Section 24, proviso 2, of the Indian Income tax Act, does not bar the prosecution of

INCOME-TAX ACT (VII OF 1918)—contd

an accused for an offence under s. 39 (d) of the Act for failure to produce accounts when penal assessment had been levied on him under s. 24, in consequence of his making a false return of his income. **KING EMPEROR : HOOGANALLY & CO** (1930)

I L R 43 Mad 498

—ss 31, 33, and 34—Assessment to super tax as agent of principal non resident in British India—Agent who is—Agent if must be in receipt of income on behalf of principal. The applicant Company was assessed to super tax as agent for six share holders in the Company all of whom were non residents of British India in regard to the dividends payable to them by the Company. *Held per* WOODROFFE and GREAVES J. J. That ss 31 and 34 of the Indian Income tax Act are to be read together, the latter section merely defining who may be included as an agent under s. 31. That being so the agent must be in receipt of income within the terms of s. 31 and the Company was not in receipt of income on behalf of the share holders within the meaning of s. 31. That even if the two sections be read disjointly the Company was not in the circumstances of the case an agent within the terms of the Act. That in this view no question as to the propriety of assessment to super tax as agent arose. **THE IMPERIAL TOBACCO COMPANY OF INDIA LIMITED v. THE SECRETARY OF STATE**

28 C W N. 745

—s 43—Rule framed by Government of Madras under s. 43 (2)—Company incorporated in England with branches in India and elsewhere—Total profits—Whether income tax and excess profits duty payable in England and income tax payable elsewhere to be excluded. Rule 2 framed by the Government of Madras under s. 43 (2) (c) of the Income tax Act provides that the profits of the Indian Branch of a foreign company may be assumed for income tax purposes to bear the same proportion to the total profits of the company as its receipts bear to the total receipts. A company incorporated in England with branches in India and elsewhere cannot in calculating the total profits for the purposes of this rule claim deduction of the excess profits duty and the income tax payable by it in England and elsewhere. **CHIEF COMMISSIONER OF INCOME TAX MADRAS v. THE EASTERN EXTENSION AFRICALASIA AND CHINA TELEGRAPH CO. LTD** (1931)

I L R. 44 Mad 439

S 51—

Sec 4

I L R. 43 Cal 160

See EXCESS PROFITS DUTY ACT 1919—

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I L R. 43 Bom 1064

s 6

I L R. 45 Bom 881

—Held that interest which accrues due to a money lending firm in the year of account is not assessable under s. 9 as profits of business unless received or realized in the year of account. **Secretary of State v. Arundhan Chettiar**

I L R. 44 Mad 65

—ss 51 (1) 52, 108 (2) of the Government of India Act 5 and 6 George V., Chapter 61—s. 45 (A) of the Specific Relief Act (1 of 1877)—English decisions on English Income tax Act guides to interpret Indian Income tax Act. Where a person who was assessed to income tax appealed to the Board of Revenue and the Board while dismissing the appeal refused to refer the

INCOME-TAX ACT (VII OF 1918)—*contd*

matter to the High Court under s 51 of the Income-tax Act, though requested to do so, *Held*, that s. 106 (2) of the Government of India Act and s. 52 of the Income tax Act prohibited the High Court from entertaining any application under s. 45 in the nature of a mandamus for the purpose of compelling the Revenue Board to refer the matter to the High Court under s. 51 of the Income tax Act, *Spooner v Juddow* (1870) 4 W L 4, 353, followed. Issuing an order under s 45 of the Specific Relief Act in the nature of a mandamus is an exercise of "original jurisdiction" within s 106 (2) of the Government of India Act. An application under s 45 of the Specific Relief Act against the Board is a "proceeding" within s 52 of the Income tax Act. *In re Onward Building Society*, [1897] 2 Q B, 463, applied. "Anything done" in s 52 includes "anything omitted to be done" *Joliffe v Wallasey Local Board* (1873) L R 9 C P, 62, followed. English decisions are not decisions of "Foreign Courts" and as the Income-tax Act of India generally follows the lines of the English Income tax Act, the decisions of English Courts on the latter Act are the best guides to the interpretation of the Indian Act. The meaning of "unnecessary" in s. 51 of the Income tax Act considered. **CHIEF COMMISSIONER OF INCOME TAX v NORTH ANANTAPUR GOLD MINES, LIMITED** (1921) I. L. R. 44 Mad. 718

INCOME-TAX COLLECTOR.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 195, CLS (b) AND (c)
I. L. R. 38 Bom. 642

INCORPORATED COMPANY

See COMPANY

See SALE. I. L. R. 43 Calc. 780

INCORPOREAL RIGHTS

See EASEMENTS.

Incorporeal rights, enjoyment of for less than the statutory period—Person in such enjoyment entitled to protection against trespassers. It is well settled law that a trespasser, in enjoyment of land for less than the statutory period, is entitled to be maintained in possession against all persons except the true owner. The same principle is applicable to incorporeal rights, such as rights to light and water-courses. A person in enjoyment of a water course for less than 20 years is entitled to protection in such enjoyment against persons who have no right to such water-course. **KONDAPA PAJAM NAIDU v DEVARAKONDA SURYANARAYAN** (1910)
I. L. R. 34 Mad 173

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INCRIMINATING ARTICLES.

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See FALSE EVIDENCE.

I. L. R. 37 Calc 878

INCUMBRANCE.

See BENGAL TENANCY ACT, s. 80
14 C. W. N. 229

See HOMESTEAD LAND
I. L. R. 42 Calc. 638

See LANDLORD AND TENANT
I. L. R. 39 Calc. 138
I. L. R. 45 Calc. 758

See MORTGAGE. I. L. R. 38 Calc. 923

See SALE FOR ARREARS OF REVENUE
14 C. W. N. 677
I. L. R. 43 Calc. 779

— avoidance of—

See REVENUE SALE
I. L. R. 37 Calc. 559

— by non-occupancy raiyat—

See LANDLORD AND TENANT
I. L. R. 37 Calc. 709

Putni Tenure—Customary right to cut and appropriate trees, whether an incumbrance—Putni Regulation (VIII of 1819), s 11—Right of an auction purchaser at a sale held under the Putni Regulation to avoid such incumbrance—Bond fide engagement made by the defaulting proprietor with resident and hereditary cultivators, effect of. A customary right to cut and appropriate trees is an incumbrance within the meaning of s. 11 of Regulation VIII of 1819. A purchaser of a putni taluq at a sale held under Regulation VIII of 1819 is not entitled to hold the property free from a customary right or a right recognised by usage which has grown up during the subsistence of the putni, and under which occupancy raiyats are entitled to appropriate and convert to their own use such trees as they have the right to cut down, inasmuch as he is not entitled to cancel a bond fide engagement made by the defaulting proprietor with the resident and hereditary cultivators. **PRADYOTE KUMAR TAGORE v GOPT KRISHNA MANDAL** (1910) I. L. R. 37 Calc. 322

Absolute sale—Unregistered purchaser of portion of putni tenure, interest of, whether an incumbrance—Bengal Tenancy Act (VIII of 1885), ss. 161, 167—Civil Procedure Code (Act V of 1908), s. 93. *Per JENKINS C. J., and N. R. CHATTERJEE J. (McLICK, J. dissenting).* The interest of an unregistered purchaser of a portion of a putni tenure is not an "incumbrance" within the meaning of s. 161 of the Bengal Tenancy Act. **Chandra Sakis v Kalla Kishore Chatterjee**, I. L. R. 21 Calc. 251, distinguished. A purchaser of a tenure at a sale held in execution of a rent decree is not therefore required to annul such an interest (i.e., of an unregistered purchaser of a portion of a putni) under the provisions of s. 167 in order to get a clear title. **ABDEL RAHMAN CHOWDHURY v AHMADAB FAHMAN** (1913) I. L. R. 43 Calc. 858

INCURABILITY.

See HINDU LAW—INHERITANCE.
I. L. R. 38 Mad. 250

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See CONTRACT ACT s. 121
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3 Pat. L. J. 396
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I L R 35 All 68

Suit to recover money payable under an indemnity bond—Decree passed against plaintiff but money not actually paid—Suit maintainable. It is not necessary that before a suit on an indemnity bond can be filed the plaintiff should have already been compelled to make the payment in respect of which he is seeking to be indemnified. It is sufficient that a decree has been passed against him for such payment. *British Union and National Insurance Co v Rawson*, [1916] 2 Ch. D 476 and *Tota Das v Babu Ganesh Prasad* (unreported) Civil Revision No 79 of 1909 decided on Jan ary 31st 1910 referred to *CHITRAJIT LALL v NARAINI* (1910) I L R 41 All 395

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I L R 39 Cal 933

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I L R 46 I A 272

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3 Pat L J 581

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I L R 37 Cal 467

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3 Pat L J 581

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INDIAN INSOLVENCY ACT 1848 (11 & 12 VICT, c 21)

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I L R 1 Lah 511

Custody of—Mother parting with child under agreement not to take it back it loses her right to custody—Circumstances in which restoration will be refused. It is well settled that a mother cannot be deprived of her natural right of absolute control over her own child by any agreement by which she makes over

INFANT—*contd.*

the child to another to be brought up as the latter's own, even though she might have definitely stipulated never to claim back the child. But there may be circumstances in a particular case which would render it undesirable in the interests of the infant that she would resume her rights when she has once made over the child to another and associations or expectations have been created on the part of the infant. The mother of a posthumous boy made him over when two or three months old to her sister to be brought up as her own, in order that she might go and have herself trained as a nurse and be thereby in a position to bring up her children of whom there were four others who were placed in various charitable institutions. When the boy whom the aunt was bringing up as her own child and for whom she had much affection was 7½ years old, the mother, being now in a position to maintain and bring up the child, asked for the custody of the child. *Held*—That in the circumstances of the case, the child should be restored to the mother. *PATRY FEMELINE PETERSON v. EARNEST HENRY SHAVE* 24 C. W. N. 711

INFERENCE.

— from facts which are not evidence—

See EVIDENCE ACT (I OF 1872), s. 38
I. L. R. 42 Bom. 352

— of Law—

See RENT. I. L. R. 38 Calc. 278

INFORMANT.

See FALSE INFORMATION TO POLICE.
I. L. R. 46 Calc. 807

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 850

INFORMATION.

Criminal Procedure Code, s. 250—"Information," meaning of—
Compensation—Order if can be made against servant for information given on behalf of master—
Information subsequent to the original complaint
The question whether a servant can be held responsible under s. 250, Criminal Procedure Code, for an information lodged on behalf of his master, is a question of fact and depends on the question whether the servant is merely the mouthpiece of the master and is merely giving expression to his master's accusation, or whether he joins personally in the accusation himself. In the former case no order of compensation should be made against the servants under s. 250, Criminal Procedure Code. "Information" referred to in s. 250, Criminal Procedure Code, need not necessarily be the information on which the case is instituted. Where a person making a complaint against an accused person subsequently gives information leading to the accusation of others in the case, he may be dealt with under s. 250, Criminal Procedure Code, in respect of his subsequent information. The words "from information received" in s. 157, Criminal Procedure Code, refers to the information given in s. 154, Criminal Procedure Code. *JAGDAMI PARNHAD KHOU v. MAHADKO HANDEO* (1909)
1 C. W. N. 328

INFRINGEMENT.

See JUDGMENT. I. L. R. 46 Calc. 978

See SEARCH WARRANT.
I. L. R. 47 Calc. 164

— of rules—

See MUNICIPAL ELECTION.
I. L. R. 47 Calc. 524

— of Trade-mark—

See TRADE MARK.
I. L. R. 37 All. 204 and 446
I. L. R. 38 Calc. 110

INHERENT JURISDICTION.

See CIVIL PROCEDURE CODE 1908, s. 151
AND O. XLII, r. 19

I. L. R. 45 Bom. 648

See HIGH COURT, JURISDICTION OF

See REMAND. I. L. R. 44 Calc. 929

INHERENT POWER.

See APPEAL. I. L. R. 42 Calc. 433

See CIVIL PROCEDURE CODE, 1908—
s. 144 I. L. R. 35 Bom. 255

s. 141 and 151 I. L. R. 1 Lah. 339

O I, r. 8 I. L. R. 1 Lah. 582

O I, r. 10 I. L. R. 35 Bom. 393

O IX, rr. 8 and 9, s. 151.
I. L. R. 41 All. 426

See DECREE, AMENDMENT OF
I. L. R. 39 Calc. 265

See EXECUTION OF DECREE.
14 C. W. N. 836

See HIGH COURT, POWER OF

See PRACTICE. I. L. R. 34 Bom. 408

See STAY OF EXECUTION.
I. L. R. 40 Calc. 955

— criminal Court to release attachment—

See CRIMINAL PROCEDURE CODE, 1908, ss. 145 and 146. I. L. R. 1 Lah. 451

— to amend decree—

See PRACTICE. I. L. R. 37 Calc. 649

— to restore application for execution dismissed for default—

See CIVIL PROCEDURE CODE 1908, s. 141
AND 151 I. L. R. 2 Lah. 66

INHERITANCE.

See ALIYASANTANA LAW.
I. L. R. 39 Mad. 12

See BENGAL LAW.
I. L. R. 41 Calc. 887
I. L. R. 44 Calc. 379

See CUSTOM. I. L. R. 39 Calc. 418
I. L. R. 44 Calc. 749
I. L. R. 45 Calc. 450

See HINDU LAW—INHERITANCE.

See HINDU LAW—STRIDHAY.
I. L. R. 40 Calc. 82
[I. L. R. 43 Calc. 64]

INHERITANCE—*contd*See *MANU MADAN LAW*—INHERITANCESee *OCCUPANCY HOLDING*

I L R 42 Cal 254

— by mortgagor of decree for sale on prior mortgage—

See *MORTGAGE* I L R 37 All 309

— right of women to—

See *CIVIL PROCEDURE CODE* (ACT V OF 1908) O XXIII s. 3

I L R 38 Mad 830

— *Sudra* ascetic right of to—See *HINDU LAW*—ADOPTION

I L R 40 Mad 846

INJUNCTION

See *ARBITRATION* 23 C W N 811See *CIVIL PROCEDURE CODE* (ACT V OF 1908)—

s. 9 I L R 32 All 527

s. 11 I L R 36 Bom 283

s. 80 I L R 37 Bom 246

s. 115 I L R 40 Bom 83

O XXXVIII s. 5

I L R 37 All 423

O XXXIX s. 1

I L R 35 All 425

I L R 33 All 79

I L R 42 All 134

I L R 43 All 383

1 Pat L J 560

O XXXIX s. 2

I L R 38 Bom 381

O XL s. 1 I L R 36 All 19

See *CONSEQUENTIAL RELIEF PRAYER FOR*

I L R 29 Cal 704

See *CONTRACT ACT* (IX OF 1872) s. 30

I L R 42 Bom 676

See *DECREE FOR INJUNCTION*See *EASEMENTS* I L R 36 Mad 11

I L R 44 Bom 486

See *HINDU LAW* I L R 44 Bom 406See *HINDU LAW*—MARRIAGE.

I L R 38 All 520

See *INSOLVENCY PROCEEDINGS*.

3 Pat L J 456

See *JURISDICTION*

I L R 48 Cal 582

See *LANDLORD AND TENANT*

I L R 35 All 292

See *LIMITATION ACT* (XV OF 1877) SCH

II ART 18 I L R 34 All 436

See *LIMITATION ACT* (IV OF 1908)—

SCH I ARTS 170 144

I L R 42 Bom 333

SCH I ART 181

I L R 42 All 564

See *MADRAS IRRIGATION CESS ACT*

I L R 34 Mad 366

See *MPC* 19 C W N 887See *MUNICIPAL COUNCIL*.

I L R 38 Mad. 6

INJUNCTION—*contd*See *LEGAL CODE* (ACT XLI OF 1900)—

s. 150 s. 3 Pat L J 106

s. 168 I L R 39 Mad 543

See *PERPETUAL INJUNCTION*See *PRAGWAL* I L R 43 All 20See *PUBLIC ROAD RIGHT TO USE*.

I L R 34 Bom 571

See *REGISTRATION*

I L R 45 Bom 170

See *RESTITUTION OF CONJUGAL RIGHT*

I L R 44 Bom 434

See *TEMPORARY INJUNCTION*See *TORT* I L R 43 Bom 164See *TRADE MARK*.

I L R 35 Bom 425

I L R 37 Cal 204

See *TRADE NAME*

I L R 40 Cal 570

s. 1 s. 1 I L R 45 Bom 236

— against person wrongfully collecting

rent—

See *CIVIL PROCEDURE CODE* 1904 s. 10.

I L R 2 Lab 262

— and declaration—

See *DECLARATION ETC*

I L R 38 Mad 972

— Court fees payable—

See *COURT FEES ACT* 184 s. 1

I L R 45 Bom 567

— interlocutory disobedience of—

See *CIVIL PROCEDURE CODE* (ACT V OF

1908) O XLIII, s. 1 (i) AND O

XXIX s. 1 cl. (3).

I L R 39 Mad 907

— notice whether necessary—

See *PRESIDENCY TOWNS INSOLVENCY ACT*

III OF 1909 s. 34.

I L R 44 Bom 555

— order for an account is not—

See *PENAL CODE* s. 186, 193.

3 Pat L J 106

— prayer for—

See *COURT FEE* I L R 40 Cal 245

— relief by—

See *NEUMAN* I L R 40 Bom 401

— suit for—

See *MAMLATDARS COURTS ACT* (BOM.

ACT II OF 1906) s. 3

I L R 37 Bom 595

See *PRESIDENCY TOWNS INSOLVENCY ACT*.

1909 ss 34 AND 52

I L R 44 Bom 555

See *TRADE NAME INFRINGEMENT OF*

I L R 41 Bom 49

— tree branches projecting—

See *EASEMENT* I L R 44 Bom 605

1 ———— Restraint on execution of a

decree obtained in a previous suit—*Agst*the plaintiff—*Specific Rel of Act* (I of 1877), ss

INJUNCTION—*contd*

54, 56 (e) Where the defendant has not invaded, or threatened to invade the plaintiff's right to, or enjoyment of, any property, and there is no apprehension of a multiplicity of judicial proceedings to which the plaintiff need be subjected for the purpose of establishing or safeguarding his rights or for preventing the acquisition of rights of the defendant—*Held* that s 56 of the Specific Relief Act constitutes a manifest bar in the way of the plaintiff's suit for a declaration that the defendant had no title to lands in suit, and for perpetual injunction restraining the defendant from taking possession of the lands by executing his decree. *Dhuranidhar Sen v Agri Bank I L R 4 Cal 390* followed in principle *Appu v Raman, I L R 14 Mad 425*, not followed *KARNADHAR HALDER v HARIBRASAD ROY CHALDHURI* (1910) **I L R 37 Cal 731**

2 ——— Cases where injunction might be granted—*Plaintiff out of possession*—*Prima facie claim to the disputed property*—*Irreparable injury* Where the plaintiff is out of possession and claims possession the Court will refuse to interfere by grant of injunction against the defendant in possession under a claim of right, but where the threatened injury will be irreparable an injunction will lie at the instance of a complainant out of possession. No injunction should be granted in a case where there is no foundation for any suggestion that the defendants are about to commit an act in the nature of waste. Where the plaintiff has another adequate remedy and where if an injunction were granted it would be of the vaguest description, no injunction ought to be granted in such cases. *KESHO PRASAD SINGH v SARVIBASH PRASAD SINGH* (1911)

I L R 38 Cal 701

3 ——— Jurisdiction—*Restraint of proceedings in subordinate Court outside the jurisdiction of High Court*—*Injunction in personam* The High Court can restrain proceedings in a Court outside its jurisdiction only if the party sought to be restrained is within its jurisdiction and it is not sufficient that the party should have property within the jurisdiction. *Pilean Iron Works v Bishambhar Prasad I L R 36 Cal 233* followed. *The Carron Iron Co v MacLaren 5 H L C 416*, referred to. *Mungle Chand v Gopal Ram, I L R 31 Cal 101*, not followed. *JUMSA DASS v HARCHARAN DASS* (1910)

I L R 38 Cal 405

4 ——— Suit against Secretary of State for India—*Injunction, suit for—Civil Procedure Code (Act XIV of 1882) s 424—Notice—Inam—Revemption* The plaintiff an inamdar of a village was called upon by the Collector to hand over the management of the village to Government officials on the ground that in the events that had happened the inam had become resumable by Government. The plaintiff thereupon, without giving the notice required by s 424 of the Civil Procedure Code (Act XIV of 1882) filed a suit against the Secretary of State for India in Council for a declaration that he was entitled to hold the village inam and for a permanent injunction restraining the defendant from resumming the village. *Held* that the suit was bad in absence of notice required by s 424 of the Civil Procedure Code (Act XIV of 1882). The term 'act' used in s 474 of the Civil Procedure Code of 1882 relates only to the public officers, not to the Secretary of

INJUNCTION—*contd*

State. The expression 'no suit shall be instituted against the Secretary of State in Council' is wide enough to include suits for every kind, whether for injunction or otherwise. *Per HEATON, J*—Where there is a serious injury so imminent that it can only be prevented by an immediate injunction, a Court will not be debarred from entertaining the suit and issuing the injunction though the section requires previous notice, if it is owing to the immediate need of the injunction that the plaintiff has come to the Court for relief before giving the required notice. *Flower v Local Board of Law Leyton 5 Ch D 347*, followed. SECRETARY OF STATE v GAJANAN KRISHNARAO (1911) **I L R 35 Bom 362**

5 ——— Temporary—*Order by Revenue Court, suit for setting aside—Competency of Civil Court to grant injunction*—*Temporary injunction if may be granted when perpetual injunction not sought for—Civil Procedure Code (Act I of 1908), O XXXIX, r 2—Bengal Tenancy Act (VIII of 1885), s 70* Although a decree may have been passed by a Revenue Court, when it is under execution in a Civil Court, proceedings may be stayed by the Civil Court if a suit has been brought for a declaration that the decree was obtained by fraud or was made without jurisdiction and for a perpetual injunction, to restrain the decree holder from executing the decree. In granting a temporary injunction, the Court acts in aid of the legal right so that the property may be preserved in *status quo*. Where the plaintiffs sued for a declaration that a certain order by the Revenue Court was without jurisdiction, but did not ask for a perpetual injunction it was not competent to them to ask for a temporary injunction during the pendency of the suit. *JITLAL SINGH v HAMALSWARI PRASAD* (1912) **18 C W N 92**

6 ——— Wrongfully obtained—*Suit for damages if lies—Limitation* No suit lies for damages against a defendant for maliciously and without reasonable and probable cause obtaining a perpetual injunction which has been subsequently dissolved on appeal. A temporary injunction granted in such a suit is *ipso facto* dissolved by the Court a decree granting a perpetual injunction. In a suit for damages in respect of the temporary injunction, limitation would therefore run from the date when the temporary injunction was dissolved by the decree granting perpetual injunction. *Per FLETCHER J* Nothing in the Limitation Act can give a party a right of suit, unless such right exists independent of the Limitation Act. *And Kumar Shaha v Gour Sunkar, 13 W R 305* is questionable authority in so far as it decides that a plaintiff can maintain a suit for damages against a defendant for maliciously and without probable cause obtaining an interlocutory injunction. An allegation by the plaintiff that the defendants were actuated by malice and that their suit for perpetual injunction ultimately proved unsuccessful when the decree of the High Court in their favour was set aside by His Majesty in Council was not a sufficient allegation of want of reasonable and probable cause. Want of probable cause is not to be inferred because of mere evidence of malice. *Turner v Ambler, 10 Q B 252*, referred to. *Per RICHARDSON, J* s 95, Civil Procedure Code seems to contemplate the possibility of a suit being brought to recover compensation in respect of a temporary injunction applied for on insufficient

INJUNCTION—contd

grounds or in a suit instituted without reasonable or probable cause. It is at least doubtful whether such a suit is maintainable in the absence of an undertaking to pay compensation. A party is not liable in damages for procuring an erroneous decree. *Dharma Varma v. Sreenivasulu Dasari* 25 B R 410 referred to. *Mohini Mohan Misra v. Surenina Narayan Singh* (1914)

I L R 42 Cal 630
18 C W N 1189

8 ——— Temporary *status quo* maintenance of—Indian High Courts Act (24 and 25 Act, 1908) s 15—Jurisdiction of the High Court to interfere. The plaintiffs were some of superior landlords of the disputed property which consisted of two plots of land and claimed to have been in direct possession of about one-third of the property. The defendants who were in occupation of the remainder being alleged to have obtained a permanent lease from some of the co-sharers of the plaintiffs commenced to dig the foundations for an extension of their factory house. The plaintiffs sued for partition and applied for a temporary injunction. The defendants notwithstanding notice of the application for injunction expelled the erection of the building. It appeared that on partition the plaintiffs could not conveniently be allowed any share of one of the plots but must be limited to an allotment out of the other plot. *Held* that there was a substantial question in controversy between the parties and pending its determination the *status quo* should be maintained to the necessary extent. That it was desirable that the plot a share of which only could be allotted to the plaintiff on partition should be retained in *status quo* so that the Court might be free to grant such relief as it might think proper and an injunction should be granted restraining the defendants from building on this plot for a period of one month during which the partition suit was to be tried out. That it was open to the High Court to give the necessary directions under a 15 of the Indian High Courts Act and in a case of this description it was essential that the High Court should interfere to prevent what might otherwise place one of the litigating parties in an unfairly advantageous position and thus turn out in the end to be the cause of an irretrievable injustice to the other. *Pranaya Kumar Roy v. Baranagore Jute Factory Co* (1914) 19 C W N 442

9 ——— Temporary injunction in mandatory form—Power of Indian Courts to grant under O XXXIX r 2 Civil Procedure Code (Act 1 of 1908) Courts in India can under O XXXIX, r 2 Civil Procedure Code issue temporary injunctions in a mandatory form. *Imail v. Shambur Rahman*, I L R 41 Cal 436 and *Champery Bhimsji & Co v. Jaman Flour Mills & Co* 26 Bom L R 566 referred to. The view of *BRAMAN, J.* in *Ramlal Kaur v. Pirabhai Amrithani*, I L R 23 Bom 381 not followed. *Kandawami v. Subramanya* (1917)

I L R 41 Mad 208

10 ——— Mandatory and prohibitory injunctions—Decree for injunction—Mode of enforcement—Execution—Civil Procedure Code (Act V of 1908), s 47, O XXI r 32 cl (1) (5)—Limitation Act (IX of 1908) Sch I Arts 181 182 Where in a suit for declaration of title to land the plaintiff contended that the defendant

INJUNCTION—contd

by raising a wall had disobeyed a permanent injunction embodied in a decree dated September 1893 and prayed for the demolition of the wall so far as it was above the height limited by the aforesaid injunction—*Held* that the remedy lay by way of execution under O XXI, r 32, and the enforcement of an injunction being a question relating to the execution, discharge or satisfaction of the decree by which it was awarded a separate suit was prohibited under s 47 of the Civil Procedure Code 1908. *Colonial Landowners v. His Honor the Judge of the High Court of Madras* 243 India Decs 243 (1908) 11 B 33 Cal 306, *Jamsetji Bhanji v. Harji Inayat* 11 B 32 Bom 181, referred to. *See* *Harji Inayat v. J. O. XXI, r 31 cl (1) and (5)* clearly applied to injunctions both mandatory and prohibitory. The expression the act required to be done in cl (5) means what had to be done to enforce the injunction. *Ramji Inayat Meherji v. Amarnath Roy Chowdhury* (1916) I L R 45 Cal 103

11 ——— Jurisdiction of single Judge of a High Court to issue *status quo* decrees—Power of High Court to punish for contempt a person who is a party before it but does not reside within its jurisdiction Civil Procedure Code 1908 O XXXIX r 2—Rules of Court of the 15th January 1908 rr 1 and 4 *Held* (1) that a Judge of the High Court sitting singly has jurisdiction to issue an injunction to a party before the Court restraining such party from alienating his property subject to certain conditions (2) that when such an injunction has been ordered in open Court in the presence of counsel for both parties it may be presumed that the Court's order was communicated to the party affected thereby and it is not sufficient excuse for disobedience thereto that a formal notice of the injunction has not been served upon him personally (3) that the High Court has power to punish disobedience to such an injunction whether under O XXXIX r 2 of the Code of Civil Procedure or by virtue of its inherent jurisdiction to punish contempts of its own orders and this power where the order in question has been passed against a party to a proceeding before it is not confined to persons living within the limits of its territorial jurisdiction. *Mangle Chand v. Gopal Ram* I L R 34 Cal 191 and *Valcon Iron Works v. Bhambar Prasad* I L R 36 Cal 231 referred to. *See* *Prasad Singh v. The Benares Bank Ltd*

I L R 42 All 98

12 ——— Arbitration proceedings—Declaratory suit—Contract the subject matter of the arbitration denied—Competency of the Court to grant injunction—Question of competency raised for the first time on appeal—Specific Relief Act (1 of 1877) ss 52, 53, 54 and 55 The Court of Appeal cannot avoid the decision of a pure question of law which does not depend on the determination of a question of fact and which goes to the root of the matter and raises the question whether the Court was competent to grant the injunction sought for by the plaintiffs. *See* *Akshai Nandoo v. Subramanya Sastri* I L R 11 Mad 26 L R 14 I A 169 and *Connecticut Fire Insurance Company v. Aarongh* [1892] 4 C 473, referred to. Where there is a breach of an existing legal right, which is vested in the applicants, the breach thereof may be restrained

INJUNCTION—contd.

by injunction *Imperial Gas Light and Coke Company v Broadbent*, 7 H. L. C. 609, referred to. In a suit for declaration that a certain contract entered into between the plaintiffs and the defendants was not binding on the plaintiffs, inasmuch as they did not enter into such a contract, and that they were accordingly entitled to an injunction to restrain arbitration. *Held*, that no injunction could be claimed under s. 54 of the Specific Relief Act. *Held*, also, that the injunction claimed should not be granted in view of the provision of cl. (2) of s. 56, which laid down that an injunction could not be granted when equally efficacious relief could certainly be obtained by any other usual mode of proceeding (except in case of breach of trust). *Held*, also, that if the plaintiffs' case that they did not enter into the alleged contract were well founded, the arbitration proceedings before the Bengal Chamber of Commerce, even if they resulted in an award, could only terminate in an award which would be a nullity and could not possibly affect the rights of the plaintiffs, if the arbitrators made an award in favour of the defendants (which *case* was *undoubtedly*, the plaintiffs would have ample opportunity to protect themselves by an appropriate proceeding. *Held*, also, that ss. 54 and 56 must be read together as supplementing each other, and it would be an erroneous construction of the statute to hold that the right to an injunction should be determined independently of the provision of ss. 54 and 56 by reference to the terms of s. 53. *RAM KISSAN JOYDOYAL v POORAN MULL* (1920). I. L. R. 47 Cal. 733

13. ———— **Device—Right as sole importer and seller—Misrepresentation, effect of—Cycles sold as being made by a Company not in existence, whether amounts to misrepresentation—Injunction whether could be granted when there was misrepresentation.** The Plaintiff (Respondent) who was the agent of the Veloce Limited of Birmingham, for the sale of the Veloce Cycles, arranged with them for the manufacture and sale in India of a cheap quality cycle and the name or transfer of "Warrior Cycle" was adopted. Letters were circulated by the plaintiff in India about December 1910, containing Warrior specification and were issued in the name of Warrior Cycle Company, Birmingham, and described the Plaintiff as their agent in India. There was no warrior Cycle Company, Birmingham, but the name was adopted by the Veloce, Limited to keep the two qualities separate. In December 1910 the Plaintiff also ordered the supply of "Warrior Cycle" with the same Warrior Transfer and specification from the Victoria Motor Cycle Company, Limited, Glasgow, and these arrived in July 1911. In September 1911 the Plaintiff's agency with the Veloce Limited came to an end and the sole agency was placed with Leretius & Co. New lists were prepared upon which the Defendants (Appellants) were described as import agents. In October 1911, Veloce Limited registered in England the word "Warrior" as a trade mark in connection with cycles. The Plaintiff claimed the exclusive use in India of the Warrior Transfer as being one employed by him and understood by the dealers and purchasers as indicating importation and sale by himself and asked for an injunction restraining the Defendants from passing off cycles, not imported by the plaintiff with the same transfer on them, for delivery of

INJUNCTION—contd.

cycles in their custody and for other reliefs. *Held*—That the plaintiff had failed to prove that he was the owner of the mark or transfer or that he had a right to use the same alone in India. *Held* also—That as there was no Warrior Cycle Company in Birmingham, there was a material misrepresentation on the part of the Plaintiff and so he was not entitled to the relief asked for. *SEN AND PANDIT v E S OAKES* 24 C. W. N. 155

14. ———— **For stay of suit—On the ground of suit relating to same matter in foreign Court—Principle regulating such injunction—Suit in Calcutta by Plaintiff and suit by the Defendant against Plaintiff about same subject matter in a foreign Court—Plaintiff's application for injunction and principle regulating it.** The very sound principle laid down in *Hyman v Helm*, 24 Ch. D. 531 (1885) and *Vardapulo v Vardapulo*, 25 T. L. R. 518 (1909), viz., that a Defendant in a pending suit here should not be restrained from commencing and prosecuting proceedings in a foreign Court to enforce rights which he acquired within the jurisdiction of the foreign Court against the Plaintiff under the law of that foreign country, should not be impaired. In an application for an injunction to restrain the Defendant in a pending suit from prosecuting an action in a foreign Court about the same subject matter, it is an essential condition that it should be applied for very promptly and that it should not be applied for after a considerable amount of time and trouble has been expended in the foreign suit. *TICUM CHAND SALTOKERCHAND v SALTOKERCHAND SINGHER* 24 C. W. N. 735

15. ———— **To restrain defendant from officiating as priest—In certain houses, main sanctity of Where, in a suit between priests for enforcement of a partition both of the family jagnas and of the family birt, the court granted the plaintiff an injunction restraining the defendants from trespassing on certain areas within which the plaintiffs were by the terms of the partition deed entitled to sole control over the jagnas, held, that neither the injunction, nor an order directing the ascertainment of the defendants' earnings from the specified area during the three years prior to the suit, could be maintained.** *LUTAN PANDEY v PRAYAG PANDEY* (1918). 4 Pat. L. J. 53

INJUNCTION IN PERSONAM.

See INJUNCTION I. L. R. 38 Cal. 405

INJURED PERSON.

See SPECIFIC RELIEF ACT (I of 1877) s. 45 I. L. R. 40 Mad 125

INJURY.

See CRIMINAL PROCEDURE CODE, ss. 345, AND 439 I. L. R. 37 All 419

See TRADE NAME I. L. R. 40 Cal. 570

irreparable—

See INJUNCTION I. L. R. 38 Cal. 791

to health—

See DIVORCE I. L. R. 39 Cal. 395

See NUISANCE I. L. R. 38 Cal. 296

INJURY—contd

to house—

See PROBATIONARY ORDER

I L R 38 Cal 878

IN PARI DELICTO

See LIMITATION SETTLEMENT ACT (BOM ACT I OF 1880) ss. 9, 10

I L R 39 Bom. 709

INQUIRY

See CRIMINAL PROCEDURE CODE ss 107 AND 117

I L R 37 All 80

See MAGISTRATE TRANSFER OF

I L R 37 Cal 812

by District Magistrate—

See CRIMINAL TRIALS

I L R 47 Cal 843

delegation of—

See SURETY I L R 46 Cal 1024

order passed without—

See LIMITATION ACT (IV OF 1908), s 47, Art 47

I L R 38 Mad. 432

INQUISITION

See LUNACY I L R 48 Cal. 677

INSANITY

See CRIMINAL PROCEDURE CODE—

ss 14 15 154 161 ETC

3 Pat. L J 291

ss 464 AND 465 I L R 42 All 137

See HINDU LAW—MARRIAGE.

I L R 33 Cal 700

INSOLVENCY

See BANKRUPTCY

See CIVIL PROCEDURE CODE 1882 Ch XX c 331

14 C W N 143

I L R 35 All. 402

See CIVIL PROCEDURE CODE 1908 (I) XXII, s. 10

I L R 39 Bom 568

See CONTRACT ACT s. 247

I L R 42 All 515

See COSTS I L R 46 Cal. 158

See EXECUTION OF DECREE

I L R 41 Cal 50

See FORFEITURE I L R 39 Cal 1048

See INDIAN INSOLVENCY ACT

See INSOLVENCY

See LIMITATION ACT (XV OF 1877) SCH II, ART 179

I L R 39 Bom 20

See LIMITATION ACT 1908 s. 19

I L R 35 Bom 583

See MITOR I L R 42 Cal. 225

See OFFICIAL RECEIVER.

I L R 46 Cal 887

See PRESIDENCY TOWNS INSOLVENCY ACT) 1909—

See PROVINCIAL INSOLVENCY ACT (III) OF 1907—

See RECEIVER I L R 40 Cal. 878

INSOLVENCY—contd

See TRANSFER OF PROPERTY ACT 1842 s 75

I L R 42 All 335

of Hindu in Singapore —

See BANKRUPTCY I L R 40 Mad 581

of partner —

See MITOR I L R 42 Cal 225

of purchaser—

See SALE OF GOODS

I L R 40 Cal 523

Rules (Calcutta)—

See INSOLVENCY I L R 47 Cal 721

transfer of petition for—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1907) s. 101

I L R 35 Mad 472

1. ——— Ad interim protection—*Provincial Insolvency Act (III of 1907) s 4 sub-s. 1 cl (2) 47 48 16 (8), 15 14—High Court of may grant interim protect n and appoint receiver pend ng appeal—Inherent jurisdiction and civil Procedure Code (Act I of 1908) s 151 Where an appeal has been preferred against an order refusing the appellant's application to be declared an insolvent the High Court has power in the exercise of its inherent jurisdiction as a Court of appeal, to make an ad interim order for protection of the appellant and for the appointment of a receiver of his assets during the pendency of the appeal. *Panchanan Sinha v Drunk Nath Roy 31 I J 29 Hickam Chand Dutt v Kamalchand Singh 30 C L J 67* relied on. As there appeared to be substantial points in controversy in the case which required consideration on the High Court granted ad interim protection pend ng appeal to the appellant and also appointed a receiver of his assets. *ANAND KARAN v BASIRUDIN AHMED (1910) 14 C W N 586**

2. ——— Punjab Laws Act (IV of 1872) s 27—*Order of Insolvent Estates Court at Amritsar declaring debtors insolvent and appointing a Receiver—Subsequent order of High Court, Bombay under II and Ist bet (Under Insolvency Act) declaring some debtors insolvent and vesting the r property in Official Assignee Bombay. By the provisions of the Punjab Laws Act (IV of 1872) as to the property in the Punjab of debtors who have by an order under the Act been declared insolvent the Court is entrusted (by s 27) with merely administrative powers with regard to it and no transfer of the property takes place. Held, therefore by the Judicial Committee (reversing the decision of the Chief Court) that where such an order had been made by the Insolvent Estates Court at Amritsar in respect of certain debtors carrying on business at (amongst other places) Amritsar and Bombay and a Receiver of the r property had been appointed by the Court a subsequent order of the High Court of Bombay in its Insolvency Jurisdiction made under the Indian Insolvency Act II (and Ist bet. c 21) declaring the same debtors insolvent and vesting the r property in the Official Assignee of Bombay had the effect, notwithstanding that it was of later date than the order of the Punjab Court of vesting all the property of the debtors including that in the Punjab, in the Official Assignee of Bombay. The High Court had rightly held that the Insolvent debtor sections of the Civil Procedure Code (Act*

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XIV of 1881) were not applicable to the case. **OFFICIAL ASSIGNEE, BOMBAY, v REGISTRAR, SMALL CAUSE COURT, AMRITSAR (1910)**

I L R. 37 Calc. 418

3. ———— **Insolvency in foreign jurisdiction—Effect of in other jurisdictions—Discharge of debts—Burden of proof** Insolvency does not of itself operate as a discharge of debts in all jurisdictions. In the absence of authority that insolvency does so operate in a particular jurisdiction the Court is not entitled to assume in favour of a defendant that the debt is discharged by his insolvency in that jurisdiction. **RANGASWAMI PADAYACHI v NARAYANASWAMI PADAYACHI (1910)** . . . I L R. 34 Mad. 247

4. ———— **Adjudication in England—Trustee in Bankruptcy—Petition to the Indian Court to act in aid of, and to be auxiliary to, the English Court—Examination of witness—Jurisdiction—Bankruptcy, Act, 1883 (46 and 47 Viet c 52) ss 27, 118—Presidency Towns Insolvency Act (111 of 1909), s 126** The firm of L. King & Co. carrying on business in London as well as in Calcutta was adjudicated bankrupt in England, and a Trustee in Bankruptcy of the property of the firm was appointed by the English Court. On an application of the Trustee in Bankruptcy to that Court, it was ordered that the High Court of Judicature in Bengal be requested to act in aid of and to be auxiliary to it. The Trustee in Bankruptcy, thereupon, petitioned the High Court in Bengal presenting the order of the English Court and seeking the assistance of the High Court in aid about the said insolvency. He obtained an order that the High Court of Judicature in Bengal and its officers do act in aid and be auxiliary to the High Court of Justice in England and, further, that James, the Manager in Calcutta of the firm of L. King & Co., do personally attend before this Court to be examined before it. Upon James appearing on the date fixed for his examination and objecting that he ought not to be examined, because the order ought not to have been made—*Held*, that to get the jurisdiction to examine James as a witness, there must be a request from the English Court asking this Court to act in aid, and a letter of request from the one Court to the other ought to have been sent, and that the order of the English Court presented by the Trustee in Bankruptcy was not sufficient to give this Court jurisdiction. *In re L. King & Co., Bankrupts (1911)* . . . I L R. 38 Calc. 542

5. ———— **Banker and customer—Money held by banker in suspense account—Fiduciary relationship.** Certain monies were held by A & Co., bankers, in suspense on the claimant's account. Pending negotiations as to its investment the bankers failed—*Held*, per MILLER, J. and MENON, JJ. (ABDUL RAHIM, J. dissenting), that the money was not held in a fiduciary capacity and the relationship of banker and customer existed between the parties. *Per MILLER, J.*—When a man pays money into a bank, whether he is a customer or not the presumption in the absence of other evidence will be that he pays the money in to be held by the banker as bankers ordinarily hold the moneys of their customers. *Official Assignee v. Smith, 1 L. P. 32 Mad 68*, followed. *Per ABDUL RAHIM, J.*—Money held by a banker to a suspense account does not amount to payment to the bank. *Commercial Bank of Australia*

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v Official Assignee of the Estate of Wilson & Co., [1933] A C 181, followed. **OFFICIAL ASSIGNEE OF MADRAS v MILAPPARANAOVAR SANKAJANA SAKAYA NIDHI (1910)** I L R. 34 Mad 125

6. ———— **Insolvency in Presidency Towns—Appeal under the Letters Patent, s 15—Indian Insolvency Act, 11 & 12 Viet, Ch 21—High Court Act, 24 & 25 Viet, Ch 104—Banker and customer, relationship of—Fiduciary capacity, money held in.** A further appeal lies under s 15 of the Letters Patent from the judgment of two Judges of the High Court who differ in opinion in an appeal from the Commissioner in Insolvency. Under s 11 of the High Court Act, 24 & 25 Viet, Ch. 104, the Indian Insolvency Act, s 73, is not applicable to the High Court, it being inconsistent with s 15 of the Letters Patent. A customer instructed his banker to purchase a Government Promissory note with money standing to his credit with the banker. Before doing so the banker failed. On a motion by the customer to have his amount paid in full—*Held*, per MILLER, J.—A mere direction by a customer to a banker to apply money at credit of the former's account in a particular way does not alter the relationship between banker and customer. *Per MENON J.* (dissenting from his judgment in the same case reported in *1 L. R. 33 Mad at p. 146*). The bare undertaking of the banker to purchase a note could not have the effect of transferring the ownership of the sum of money necessary for the purchase from the banker to the customer. **OFFICIAL ASSIGNEE OF MADRAS v LUPPIAN (1910)**

I L R. 34 Mad 121

7. ———— **Effect of adjudication order—Property situate at Delhi attached by order of District Court of Delhi—Title of Official Assignee—Presidency Towns Insolvency Act (111 of 1909) ss 17, 126—Auxiliary and—Provincial Insolvency Act (111 of 1907), s 59** Under s 17 of the Presidency Towns Insolvency Act on the making of an order of adjudication by this Court the property of the insolvent situate in every part of British India vests in the Official Assignee of Bengal. *Official Assignee, Bombay v Populstar, Small Cause Court, Amritsar, 1 L. R. 37 Calc 418, 1 L. R. 37 I & 86*, followed. Where prior to the order of adjudication by this Court, certain properties at Delhi belonging to the insolvent, were attached under degrees of the District Court of Delhi and the subsequent application of the Official Assignee of Bengal for realisation of the insolvent's assets so attached was refused by the District Judge, and the properties were thereafter sold in execution and the sale proceeds brought into the District Court an order was made under s 120 of the Presidency Towns Insolvency Act requesting the District Judge of Delhi to act in aid under s 50 of the Provincial Insolvency Act. *In re JEWANDAS JHAWAR (1912)*

I L R. 40 Calc. 78

8. ———— **Title of official Assignee—Attachment under Mortgage decree and order for sale of mortgaged property—Execution order under s 2 of Insolvency Act (11 & 12 Viet, c 21) effect of—Sale after waiting order—Sale by Official Assignee to plaintiff—Title of purchaser from Official Assignee as against judgment creditor purchasing at sale in execution of his own decree—Notice.** An attachment in execution of a money-decree on a mortgage of land, followed by an order

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for sale of the interest of the judgment debtor does not create any charge on the land. *Sarkis v Bunkho Bux*, 1 N W P 172, referred to. An attachment prevents and avoids any private alienation, but does not invalidate an alienation by operation of law such as is effected by a vesting order under the Indian Insolvency Act (11 & 12 Vict., c. 21); and an order for sale though it binds the parties does not confer title. Previous to the 8th September 1904 a colliery leased to the judgment debtors was attached under a mortgage decree by the respondents (judgment-creditors), and an order for sale on 5th September was made but at the request of the judgment-debtors the sale was postponed until the 10th. On 8th September the judgment-debtors filed their petition in the Insolvency Court in Calcutta and the usual vesting order was made on the same day. On 12th September the execution proceedings were stayed. After issue of notice, on the application of the respondents, to the Official Assignee to show cause why he should not be substituted in the place of the judgment debtors, the Subordinate Judge on 10th January 1905, finding that the notice had been duly served, made the order for substitution and fixed the sale for 6th March 1905, on which day the property was sold, and purchased by the respondents who in June were put into possession. Meanwhile on 23rd May 1905 the Official Assignee with leave from the Insolvency Court in March 1905 sold the property to a purchaser, who on 24th June 1905 sold it to the plaintiffs by whom on 16th July 1905 the present suit was brought for possession of the colliery. *Held* (reversing the decision of the High Court) that the notice calling on the Official Assignee to show cause why he should not be substituted for the judgment-debtors was not a proper notice under s. 248 of the Civil Procedure Code, 1882. A notice under that section should have called on him to show cause why the decree should not be executed against him. But assuming the notice to have been duly served (which was denied) the sale was altogether irregular and inoperative. The property having vested in the Official Assignee it was wrong to allow the sale to proceed at all. The judgment-creditors had no charge on the land, and the Court could not properly give them such a charge at the expense of the other creditors of the insolvents. In the second place, no proper steps had been taken to bring the Official Assignee before the Court and obtain an order binding on him and accordingly he was not bound by anything which had been done. In the third place, the judgment-debtors had, at the time of the sale, no right, title or interest which could be sold or vested in a purchaser, and consequently the respondents acquired no title to the property. *Malkarjua v Narkari*, 1 L. R. 25 Bom 337, 1 L. R. 27 I. A. 216, distinguished. No proper notice was served under s. 248 of the Civil Procedure Code, and the respondents had full notice, and were responsible for the irregularities of the procedure adopted. *Raghu Nath Das v Sordar Das Khatri* (1914)

I L. R. 42 Calc 72

9. ——— Interim Receiver—Insolvent's money, attachment of, before the adjudication order—Provincial Insolvency Act (111 of 1907), s. 13, cl. (2), s. 16, cl. (6), s. 34, cl. (1)—Bankruptcy Act of 1883 (46 & 47 Vict., c. 52) s. 40. An interim receiver is appointed for the protection of the

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estate of the debtor for the benefit of the entire body of creditors. *Ex parte Fox*, L. R. 17 Q. B. D. 4, referred to. Cl. (1) of s. 34 of the Provincial Insolvency Act restricts the operation of s. 16, cl. (6) thereof. A creditor, who had attached a sum of money due to the insolvent before his estate vested in the receiver appointed after the adjudication order, is entitled to apply it exclusively in satisfaction of his debt. *Mahnu Sardar v Khitish Chandra Baverjee* (1914)

I L. R. 42 Calc 289

10. ——— Practice—Presidency Towns Insolvency Act (111 of 1907) s. 36 (4), (5), whether applicable to contentious matters. S. 30 (4) and (5) of the Presidency Towns Insolvency Act, 1909, is intended to provide a summary procedure for ordering payment of debts due, and delivery of property belonging to an insolvent, where there is no dispute. It is not intended for contentious matters or for following property the subject of fraudulent preference or dishonest concealment. *In re J. M. Lucas and Another* (1914)

I L. R. 42 Calc 109

11. ——— Infant—Whether can be adjudicated an insolvent—An infant cannot be adjudicated an insolvent under any circumstances. *Ex parte Jones*, L. R. 18 Ch. D. 103 followed. *Sital Prasad and Others, Re* (1910)

I L. R. 43 Calc 1157

12. ——— Security for costs—Appeal—Jurisdiction—Presidency Towns Insolvency Act (111 of 1907) s. 8 (2) (b) Civil Procedure Code (Act 1 of 1908), ss. 117, 151 and O. XLI, r. 10—Practice. On an application to the Court of Appeal for security for costs in an appeal from an order of a Judge in insolvency—*Held*, that the Court has jurisdiction to entertain the application under s. 117 and O. XLI, r. 10 of the Code of Civil Procedure read with s. 8 (2) (b) of the Presidency Towns Insolvency Act. *Sesha Ayyar v Jagannathan Lal*, 1 L. R. 27 Mad. 121, not followed. *Lakshmiya Dasi v Rakesh Das* (1913)

I L. R. 43 Calc 243

13. ——— Application to wrong Court—Limitation Act (IX of 1908), s. 11, inapplicability of, to insolvency proceedings—Appeal, notice of only to interested parties. S. 14 of the Limitation Act does not apply to proceedings under the Provincial Insolvency Act. Hence an application filed in a wrong Court to declare a debtor an insolvent and represented to a right Court can be said to be presented only on the date of its representation and if on such date of its representation the application is not maintainable for any reason such as that the act of fraudulent preference, as in this case, having occurred more than three months before the date of representation, it is liable to be rejected. In an appeal by a creditor in insolvency proceedings, it is sufficient if notice is given of the appeal only to the parties directly affected by the order of the lower Court, and not to all creditors who may have any remote or possible interest in the result of the appeal. *Trasi Deva Rao v Parameshwaraya* (1914)

I L. R. 39 Mad 74

14. ——— Debtor presenting his own petition—Application for discharge—Abuse of process of Court—Jurisdiction to annul adjudication—Presidency Towns Insolvency Act (111 of 1907), ss. 14, 15, 21, 35—Rules of the Insolvency

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Act, 1909, s 112 (a) Where debtors were adjudicated insolvents and an order for annulment of that adjudication was made, and the debtors subsequently presented their petition to be again adjudicated insolvents on the same material and in respect of the same debt and the same creditors as in their prior application for adjudication *Held*, that the subsequent application to be adjudged insolvents was an abuse of the process of the Court and that the Court had jurisdiction to annul the latter adjudication in insolvency *Ex parte Painter*, [1895] 1 Q B 85, *In re Bettie*, [1901] 2 K B 32, *In re Hancock*, [1901] 1 A B 535, *In re Archer*, 20 T L R 390, *Sannuruddin v Kadumoyi Das*, 12 C L J 445, *Ponnamma Chetti v Narayamma Chetti*, 25 Mad L J 515, *Trilok Nath v Badri Das* 1 L R 36 All 250, *Re Aranyayal Sakhayath Moodliar*, 1 L P 21 Bom 297, and *Uday Chand Maity v Ram Kumar Khara* 12 C L J, 400, referred to **MALCHAND v GOPAL CHANDRA GHOSAL** (1916)

I. L. R 44 Cal 899

15 ——— Order of administration—Attachment by creditor prior to order—Sale after order—Rights of attaching creditor—Presidency Towns Insolvency Act (III of 1909), s 53 (1) 108, 109 S 53 (1) of the Presidency Towns Insolvency Act does not apply to an administration of the insolvent estate of a deceased person under ss 108 and 109 of the Act. But as an attachment in this country only prevents alienation and does not confer any title or create any charge or lien on the attached property such as attaches in England upon seizure under a writ of *fi fa*, a creditor who has attached property in execution of a decree has no rights therein prior to sale and, upon the making of an administration order before the property is sold, the property vests in the Official Assignee, and the attaching creditor is relegated to the same position as the other creditors and the sale proceeds are distributable rateably *Pearock v Madan Gopal*, 1 L R 29 Cal 428, *Raghunath Das v Sunder Das Khatri*, 1 L R 42 Cal 72 L R 41 I A 251, followed *Hasbuck v Clark*, [1898] 2 Q B 23, [1899] 1 Q B 699, *Johnson v Pickering*, [1908] 1 A B 1, *In re Clark*, [1893] 1 Ch 336, *Ex parte Williams* *In re Davies* 7 Ch 314, *Slater v Pinder* 6 Exch 236, 7 Exch 95, considered *Re PREM LAL DHAR* (1917)

I. L. R. 44 Cal 1016

16 ——— Presidency Towns Insolvency Act, 1909, s. 36—Whether applications under may be made ex parte—S 112, rules framed thereunder—Pr 17, 18, 19 and 30 According to the rules framed by the Calcutta High Court under s 112 of the Presidency Towns Insolvency Act, applications under s 36 may be, and are intended to be, made ex parte. **KISSORY MOHAN ROY**, *In re* (1916)

I. L. R. 44 Cal 236

17. ——— Presidency Towns Insolvency Act, 1909, ss 33 to 37, 43—Examination of persons under s 36—Application for examination, what should contain—Order, if may be made after insolvent's discharge—Prospect of litigation with Official Assignee, no ground for refusing order. An application for examination of a person under s 36 of the Presidency Towns Insolvency Act should state shortly the nature of the information likely to be given by the person sought to be examined and the dealings or properties of the insolvent to which such information will relate.

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The Court can, in a proper case, even after the discharge of the insolvent, make an order for the examination of a person under s 36. There is nothing in the Insolvency Act to limit the powers of the Court under that section to the period before the insolvent's discharge, though, having regard to s 43, it may be that the provisions of s 36 will not be applicable to the insolvent himself after his discharge. An order for examination under s 36 should not be refused merely because litigation may ultimately ensue between the Official Assignee and the person sought to be examined *Pe HARIPADA RAKSHIT Ex parte BRINDISI DASSEE* (1916) 1 L. R. 44 Cal 374

18. ——— Provincial Insolvency Act, 1907, ss. 5, 6, 15 and 16—Petition by debtor—Debtor's right to order of adjudication where all the requirements of the Act have been fulfilled—Dismissal of petition as 'an abuse of process of Court' a matter to be dealt with on application for discharge On an application under the Provincial Insolvency Act (III of 1907) by a debtor to be declared an insolvent where all the conditions specified in the Act have admittedly been satisfied, he is entitled to an order of adjudication. This does not depend on the discretion of the Court, but is a statutory right of which he cannot be deprived by the Court on the ground that his petition is 'an abuse of the process of the Court'. To this effect there is a current of authority in India that the stage at which to visit with its due consequences any misconduct of a debtor is when his application for discharge comes before the Court, and not on the initial proceeding. **CHITRAPAT SINGH DUCAR v KHARAG SINGH LACHMIRAM** (1916)

I L R 44 Cal 535

19 ——— Adjudication, date of taking effect of—Creditors, claims of—Provincial Insolvency Act (III of 1907), ss 16 (6), 36 The provisions of s 36 of the Provincial Insolvency Act are to be read with s 16 (6) of that Act. An order of adjudication relates back to, and takes effect from, the date of the presentation of the petition for the purpose of making the properties of the insolvent liable to the claims of the creditors. **RAHUL CHANDRA FINEATT v SUDHINDRA NATH BOSE** (1910)

I L R 46 Cal 891

20 ——— Annulment of insolvency—Suit by receivers commenced before annulment—Suit maintainable after annulment *Held*, that a suit brought by the receivers in insolvency with the object of ascertaining the factum and extent of indebtedness of the defendants to the insolvents did not necessarily abate on the insolvency being annulled but might be carried on by the receivers themselves, if not by the receivers. **MANVU LAL v NALIN KUMAR MILKERRI** (1918)

I L R. 41 All 200

21. ——— Position of mortgagee of insolvent—Whether mortgagee entitled to receive interest at contractual rate up to date of payment A mortgagee from a person adjudicated an insolvent under the Provincial Insolvency Act, 1907, is entitled, as a secured creditor, to receive out of the proceeds of the sale of the mortgaged property his principal, interest and costs, and he is entitled to interest up to the date of payment. **JOGAT KISHORE v PANKAJ CHANDRA** (1919)

I. L. R. 41 All 431

22 ——— Rights of judgment-creditor—Of insolvent as against the receiver in respect

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of execution of his decrees before and after adjudication. In 1914 one B P attached in execution of his own decree a decree held by his judgment debtors against other parties. In the same year a petition in insolvency was filed against the judgment debtors and in 1915 an *interim* receiver was appointed. The judgment debtors deposited the amount due under the attached decree in Court to the credit of P P, who proceeded to draw out a considerable part of it. After this the judgment debtors were declared insolvents and subsequently to the adjudication B P assigned his rights under the attached decree to one M S Heli that the receiver had no right to recover the money realized by B P prior to the adjudication but in respect of any balance of the decretal money remaining due after the date of the adjudication the assignee might prove his claim as against the insolvents. The assignee would however be bound to account for any part of the decretal money which he might have realized after the adjudication. *Sri Chand v Murari Lal* I L R 31 All 623 and *Dambar Singh v Munawar Ali Khan* I L R 40 All 82 referred to *MUHAMMAD SHARIF v RADHA MOHAN* (1918) I L R 41 All. 274

23 Jurisdiction—Order by Registrar in Insolvency appeal from—*Lamisai v Reference under Sec 11 s 13 of Act III of 1909*—Validity of mortgage question of—Consent of parties—Presidency Towns Insolvency Act (III of 1909) s 6 101 Sec 11 s 13—*The Calcutta Insolvency Act 1910 v 5* The period of limitation prescribed by s. 101 of the Presidency Towns Insolvency Act (III of 1909) for an appeal from an order made by the Registrar in Insolvency shall be computed not as from the date when the findings of the Registrar are signed or filed but as from the date when the report is signed by the Registrar and the matter is thereby completed. Upon application by certain persons claiming to be mortgagees of an insolvent's estate an order was made by the Court directing them to prove the mortgage before the Registrar in Insolvency under s. 13 of the second schedule of the Presidency Towns Insolvency Act (III of 1909) *Held*, that under such reference to him the Registrar had no jurisdiction to deal with the question of the validity or otherwise of the mortgage, even with the consent of the parties before him so as to affect the interest of infants adversely by his deeds on *LALBHAI SHAH In re* (1920) I L R 47 Cal 721

24 Procedure and Practice—Contempt—Verbal order by the Official Assignee to attend—Dissatisfaction of order—Motion to commit—Voice of application—Service of affidavits—Irregularity—Waiver—Presidency Towns Insolvency Act (III of 1909), s 33 (1) (c) (e) and (f) —Insolvency Rules Nos 26 and 37 Having regard to the terms of s. 33 (2) (e) of the Presidency Towns Insolvency Act there is no need for the Official Assignee to apply to the Court for an order for the insolvent's attendance nor any need for the Court's order to be in writing to be served personally on the insolvent and to contain a notice that unless the insolvent complied with it he would be committed for contempt. An order given by the Official Assignee to attend his office in pursuance of s. 33 (2) (e) of the Presidency Towns Insolvency Act need not necessarily be in writing. If an order is given by him verbally

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it is valid and there is a duty upon the insolvent to comply therewith. Non compliance with such order will render the insolvent liable to be punished for contempt of Court. There is no express provision that affidavits in support of the application for contempt should be served at the same time as the notice of application. *Per CURRIE*. In future, if the Official Assignee intends to apply for a committal order for contempt of Court he will be well advised to put his order into writing and have it served on the persons intended to be proceeded against, with a notice that if the order is not complied with proceedings for contempt will be taken. Further, it is eminently desirable from all points of view that the procedure laid down by the Rules should be strictly complied with. *BYRAMULL BAKKA v THE OFFICIAL ASSIGNEE OF BENGAL* (1919)

I L R 47 Cal 56

25 Appeal by a creditor—Receiver made party—Respondent—*Appeal of incompetent because other creditors not made parties* In an appeal by one of the creditors against an order overruling his contention that he was in the position of a secured creditor the Appellant joined as party Respondent the Receiver. Two of the creditors appeared by leave to support the order appealed against, but other creditors who did not appear to contest the Appellant's case in the lower Court were not made parties to the appeal. *Held*—That the appeal was competent and it was not necessary to make the last mentioned creditors parties to it. *THE EAST INDIA CIGARETTE MANUFACTURING CO. LD v AWANDA M HAN BASAK* 24 C W N 401

26 Person who claims title to property attached by the Insolvency Court as belonging to the insolvent—whether competent to bring a regular suit to establish his rights after the Insolvency Court has rejected his application to have the property released—*Provincial Insolvency Act III of 1907—Punjab Laws Act, IV of 1972* *Held*, that the plaintiffs who claimed title to certain property attached by the Insolvency Court as belonging to an insolvent were competent to bring a regular suit to establish their rights and that the order of the Insolvency Court rejecting their application for the removal of the attachment was no bar to such suit whether the case was governed by the provisions of the Provincial Insolvency Act or of the Punjab Laws Act. *Duni Chand v Muhammad Hussain* (22 P R 1917) *Agindul Chavital v Official Assignee* (I L R 35 Bom 473) *Barlow v Cockrane* (2 Beag L R O C 56) *Satja Kumar v Manager, Bankers Bank Ltd* (22 Cal. W N 700) and *Ishad Hussain v Gopal Nath* (I L R 41 All 378) referred to *Abdul Latheef v Official Assignee of Madras* (I L R 49 Mad 1173) *Official Assignee of Madras v Mangayara, Acurasa* (17 Indian Cases 293), and *Pita Ram v Jykar Singh* (I L R 39 All 626), dissented from. *RAM PYARA v BHAWA MAL* I L R 2 Lah 147

27 Member of an agricultural tribe—Whether Insolvency Court can proceed against the land of the insolvent by making a temporary alienation without the intervention of the Collector—*Provincial Insolvency Act III of 1907, s 16 (2) (a) and 21 (2)—Punjab Alienation of Land Act XIII of 1900, s 16—Civil Procedure Code, Act V of 1908, ss 60, 63 and 72* *Held*,

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that an Insolvency Court is competent to proceed against the land of an insolvent, who is a member of an agricultural tribe and effect a temporary alienation, and it is not necessary that the receiver or the Court should proceed through the Collector *Bador Din v Bura Mal* (4 P. R 1903), referred to, also Punjab Alienation of Land Act, s 16 and Provincial Insolvency Act, ss. 16 (2) (a) and 21. Provisions which trench on the usual jurisdiction of a Civil Court to execute its decrees or orders must be strictly construed *Sardarna Datar Kaur v Ram Rattan* (1 L. R. 1 Lahore 192), (F. B.), followed *Held*, also, that a Court or receiver proceeding under the Insolvency Act should proceed as far as possible on the same lines as a Court acting in execution of a decree—vide s 21 (2) of the Provincial Insolvency Act—and that consequently a farm or mortgage made of the insolvent's land should not be for a term exceeding 20 years and should be automatically redeemed by the profits, the debt being in either case extinguished *MAJJI v GIRDHARI LAL*

I. L. R. 2 Lah. 78

23. —Whether sons of deceased insolvent have locus standi—In insolvency proceedings—Provincial Insolvency Act (III of 1907), ss. 24, 27, 47. On general principle as well as on the express provisions in s. 24 (3) read with the further provisions in s. 47 of the Provincial Insolvency Act, it is incumbent on the Court to permit the representatives of the insolvent to appear at the enquiry held, with a view to framing the schedule under s. 24 of the Act. *Queris*: Whether the representatives of the insolvent have locus standi to submit a proposal for composition? *SRIPAT SINGH AND ANOTHER v PRODIPAT KIMAR TAGORE* (1920).

I. L. R. 48 Calc. 87

29. —Application for examination of witness—Presidency Towns Insolvency Act (III of 1909), s. 36—Appeal—Under the rules of the High Court an application for examination of a witness under s. 36 of the Presidency Towns Insolvency Act (III of 1909) should be made *ex parte* *In re KISHORE MOHAN ROY*, 20 C. W. N. 1135, referred to *ALBERT FELIX SELDANA, Re SURESH LAL KARNANI v THE OFFICIAL ASSIGNEE* (1921).

I. L. R. 48 Calc. 1089

INSOLVENCY ACT (11 & 12 VICT., c. 21).

See INDIAN INSOLVENCY ACT

See INSOLVENCY I. L. R. 42 Calc. 72

See PRESIDENCY TOWNS INSOLVENCY ACT 1909, s. 6

I. L. R. 37 Bom. 464

s. 7—

See INSOLVENCY, I. L. R. 42 Calc. 72

ss. 7, 27, 49—Salary earned by insolvent after vesting order and before discharge, vests in Official Assignee, who however must get an order under s. 27. The earnings of an insolvent, including salary, after his insolvency and before his discharge vest in the Official Assignee under s. 7 of the Insolvency Act. The effect of s. 27 of the Act is not to cut down the operation of s. 7 but to require the Official Assignee before obtaining payment of any salary due to insolvent to obtain an Order of Court as to the amount necessary for the maintenance of the insolvent. A judgment creditor of the insolvent who is aware of the insolvency and whose judgment debt is included in the schedule cannot attach such salary without the giving Official Assignee an oppor-

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ss. 7, 27, 49—contd.

tunity of obtaining an order under s. 27. The insolvent debtor has the right to object to such attachment as it is open to him to show that property attached as his belongs to another *RANGANATHA RAO v ANANDA CHAMAR* (1010) I. L. R. 34 Mad. 183

s. 24—

See IRUSTER

I. L. R. 35 Mad. 712

s. 39—Set off—Right of set off exists against Official Assignee in respect of bills discounted before and dishonoured after insolvency. Under ss. 39 and 40 of the Indian Insolvency Act, anything can be set off in India which can be set off in England under the Bankruptcy law in force for the time being. Mutual credits, which may be set off, include credits which have a natural tendency to terminate in debt and not merely credits which must terminate in debts. Claims in respect of bills discounted for the insolvent before insolvency and dishonoured by the makers after insolvency, can be set off under s. 39 of the Indian Insolvency Act. *Miller v National Bank of India*, 1 L. R. 19 Cal. 149, dissenting from *Young v Bank of Bengal*, 1 Moo. I. A. 57, referred to and explained *Abager v Currie*, 2 M. A. W. 751, followed. *In the matter of CANTON & Co.* (1909).

I. L. R. 33 Mad. 53

ss. 39, 40—'Mutual credits'—Relate to date of vesting order—Presidency Small Cause Courts Act, s. 69—Money deposited as security under section does not become the property of the decree-holder—Right to set off claims for unliquidated damages. Money deposited in Court under s. 69 of the Small Cause Courts Act does not become the property of the decree holder. Before the date of the vesting order an insolvent had obtained two decrees against a debtor. In the case of one of the decrees the debtor applied for a reference under s. 69 of the Presidency Small Cause Courts Act and the amount deposited by him remained in Court on the date of the vesting order. The High Court declining to express an opinion on the reference, the decree became absolute and the money was paid to the Official Assignee. Before the date of the vesting order the debtor had brought a suit against the insolvent, and a decree was passed therein against the insolvent after the vesting order. *Held*, that the debtor was entitled under s. 39 of the Insolvency Act to set off against the amount of the two decrees obtained against him the amount due by the insolvent under the decree obtained by the debtor. The decree in respect of which the deposit was made remained unsatisfied in law on the date of the vesting order and was an item of credit within the meaning of s. 39 on such date. The subsequent payment to the Official Assignee did not deprive the debtor of his right of set off. *Per KRISHNASWAMY AYYAR*, J.—Claims for unliquidated damages cannot be the subject of set off as mutual credits under s. 39 of the Indian Insolvency Act. Such claims are however mutual dealings within s. 38 of the English Acts of 1869 and 1883 and can form the subject of set off under s. 40 of the Indian Insolvency Act which makes the provisions of the subsequent English Acts applicable to the proof of claims under the Indian Insolvency Act. *CHANDALVARAYA MUDALI v THE OFFICIAL ASSIGNEE OF MADRAS* (1910).

I. L. R. 33 Mad. 467

INSOLVENCY ACT—contd

s 73—Person aggrieved.—Who is—Official Assignee, right of, to appeal as person aggrieved—Adversary relationship—Effect of Demand by creditor in creating fiduciary relationship between him and debtor A 'person aggrieved', within the meaning of s. 73 of the Indian Insolvency Act, is a person against whom a decision has been pronounced which has wrongly refused him something which he had a right to demand. Where a debtor whose claim to be paid in full was rejected by the Official Assignee moved the Insolvency Court making the Official Assignee a party and obtained an order directing payment in full, the Official Assignee is a person aggrieved within the meaning of s. 73 of the Act and is entitled to appeal against such order. *Ex parte Subbottam in re Subbottam, 14 Ch D 458* 465, referred to. *In re Lamb & Co* [1894] 2 Q B 505 referred to. The Official Assignee, in refusing the creditor's claim does not act judicially and the notice of motion to Court cannot be considered as an appeal against a judicial or quasi-judicial proceeding of the Assignee. Where a person pays money into a Bank without giving any directions, the money becomes the property of the Bank and the relation between the Bank and the person paying is that of debtor and creditor. *Per MURDO J*—Where the person paying money without any directions makes a proper demand for payment after the money has become payable, the debtor is bound to remit at once such money to the creditor, and the debtor thereafter holds such money in a fiduciary capacity just as if the creditor had received payment and deposited it with directions to remit. *Per ABDUL RAHIM, J*—It is not competent to a creditor by making a demand upon his debtor, to convert the latter into a trustee in respect of the amount due. Such a change in the relationship can be brought about only by the debtor agreeing to accept the altered position and by his doing something towards effectuating the trust. **OFFICIAL ASSIGNEE OF MADRAS v RAMACHANDRA IYER** (1909)

I L R. 23 Mad 134

s 86—Judgment entered up under the above section—Insolvent absent. After due notice being served by the Official Assignee an insolvent failed to appear at the hearing. Judgment was entered up against the insolvent under s. 86 of the Indian Insolvency Act. *In re BALCHAND SUBBANA* (1913)

19 C. W. N. 433

INSOLVENCY ACT (III OF 1903)See **PRESIDENCY TOWNS INSOLVENCY ACT****INSOLVENCY COURT**See **CIVIL PROCEDURE CODE** (1908), s. 11. I L R. 39 All 626

sanction of—

See **PRESIDENCY TOWNS INSOLVENCY ACT** (III of 1903) ss 17, 103 and 104. I L R. 35 Bom 63**INSOLVENCY PROCEEDINGS**See **CRIMINAL PROCEDURE CODE** (ACT V OF 1898) s. 193 (b) (c)

I L R. 37 Mad 107

Attachment before judgment of sums due to debtor—Order directing payment

INSOLVENCY PROCEEDINGS—contd.

to decree holder—Injunction restraining payment, validity of—**PROVINCIAL INSOLVENCY ACT** (III of 1907), ss 34 35 and 47—Assets realized—**Code of Civil Procedure** (Act I of 1908), s. 151 and I XXXIX, r 1—Injunction A instituted a suit against B in August, 1916, and on 25th September, 1916 attached, in anticipation of judgment, a certain sum of money in the hands of the District Board which was due to B. On the 12th April, 1917, B filed an insolvency petition before the District Judge. On the 2nd June 1917, A got his decree, and on the 6th the executing Court issued a precept to the District Board to pay to the decree holder the amount in deposit at the credit of B. On the 17th B made an application to the District Judge, asking for an injunction directing the District Board to stop payment. The injunction was issued. *Held*, (1) that the District Judge had no power to issue an injunction upon the District Board as the District Board was not a party before him. (2) That the District Judge had no power to issue an injunction on A as it did not appear that the conditions enumerated in O XXXIX, r 1 of the Code of Civil Procedure, 1908 existed. (3) That the facts of the case did not indicate that justice equity and good conscience required that the decree holder who instituted his suit before the insolvency petition was filed, should be kept out of his money. (4) That the case was not affected by ss. 34 and 35 of the Provincial Insolvency Act, 1907 as there had been no adjudication of insolvency and no receiver had been appointed. (5) That from the 2nd June the amount in dispute became the decree holder's money, and the District Board were merely trustees on his behalf. (6) That in this case the assets were realized within the meaning of s. 34 of the Provincial Insolvency Act, 1907. **RAM SUNDARAI v RAM DATTAN RAM** (1918)

3 Pat. L. J. 456

Order disallowing a claim to goods seized by the Official Assignee after adjunction—Suit to set aside the order, maintainability of. No suit lies to set aside an order made by the Insolvency Court dismissing on the merits a claim to goods seized by the Official Assignee after adjudication. Followed in *The Official Assignee of Madras v Mangayarkarasi Ammal* I L R. 40, Mad 1173. **ABDUL LATHEEF v THE OFFICIAL ASSIGNEE OF MADRAS** (1912)

I L R. 40 Mad 1173

Whether sons of deceased insolvent have locus standi in insolvency proceedings—**PROVINCIAL INSOLVENCY ACT** (III of 1907) ss 24 27, 47. On general principle as well as on the express provisions in s. 24 (3) read with the further provisions in s. 47 of the Provincial Insolvency Act it is incumbent on the Court to permit the representatives of the insolvent to appear at the enquiry held, with a view to framing the schedule under s. 24 of the Act. *Quere* Whether the representatives of the insolvent have locus standi to submit a proposal for composition? **SRIPAT SINGH AND ANOTHER v PRADYAT KUMAR TAGORE** (1922)

I L R. 48 Cal 37

INSOLVENCY RULES.

rule 37—(Bom).

See **PRESIDENCY TOWNS INSOLVENCY ACT** (III of 1903), ss 6, 27, 36 and 121.

I L R. 37 Bom. 464

INSOLVENCY RULES—*concl'd***—Rule 5 (Calc.)—**

See **INSOLVENCY** . I. L. R. 47 Calc. 721

INSOLVENT.

See **ARBITRATION**

I. L. R. 47 Calc. 555

See **CIVIL PROCEDURE CODE 1882, CH. XX, s 351—** I. L. R. 35 All. 402

See **CIVIL PROCEDURE CODE, 1908, ss 2 AND 50** I. L. R. 44 Bom. 895

See **INSOLVENCY**

See **INSOLVENCY ACTS.**

See **PRESIDENCY TOWNS INSOLVENCY ACT, 1909—**

ss 7, 80 . I. L. R. 35 Bom. 473

ss 15 AND 21(2)

I. L. R. 38 Bom. 200

s. 17 . . I. L. R. 38 Bom. 359

s 18 (J) . I. L. R. 41 Bom. 312

ss 38 AND 52 I. L. R. 44 Bom. 555

See **PROVINCIAL INSOLVENCY ACT (III OF 1907)—**

ss. 16 AND 22. I. L. R. 39 All. 204

ss. 18, 36 AND 47

I. L. R. 37 All. 65

s 36 . . I. L. R. 39 All. 95

I. L. R. 36 All. 549

s. 43 . . I. L. R. 44 Bom. 673

ss. 43 AND 46 I. L. R. 1 Lah. 213

ss. 54 AND 55 I. L. R. 43 All. 427

s. 69 . . I. L. R. 43 All. 406

criminal proceedings against—

See **PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), ss 17, 103 AND 104**

I. L. R. 35 Bom. 63

execution of fictitious sale-deed by—

See **PROVINCIAL INSOLVENCY ACT (III OF 1907), s 18.** I. L. R. 39 All. 633

1. **Insolvent, undischarged, suit by—Security for costs—Cause of action accruing after the order of adjudication—The amount claimed in excess of the debts proveable in insolvency—Intervention of the Official Assignee—Nominal plaintiff—Civil Procedure Code (Act V of 1908), s 151** An undischarged insolvent brought an action for the recovery of a sum due in respect of brokerage from the defendant and earned by him subsequent to his adjudication, the amount claimed being in excess of the amount of his debts proveable in insolvency. The defendant applied for an order that the plaintiff be directed to give security for the costs of the suit. *Held*, that the plaintiff was not a nominal plaintiff suing merely for the benefit of the Official Assignee and so no order for security for costs should be made. That the application is not covered by any provision in the Code of Civil Procedure, but that Code is not exhaustive and it must be dealt with under the general law. That it is well settled in English law that a cause of action which accrues to a bankrupt subsequent to the adjudication in

INSOLVENT—*cont'd*

respect of after acquired property, remains vested in him and does not vest in his Trustees in Bankruptcy and that he is the proper plaintiff to sue in respect thereof and that anything recovered by him remains in the bankrupt until the Trustee intervenes and the same principles are applicable in this country. That it is also well settled that a plaintiff will not be compelled to give security for costs merely because he is a pauper or a bankrupt. **MURRAY & EAST BENGAL MAHAJAN FLUTILLA CO., LD. (1918)** . . . 22 C. W. N. 1018

2. **Deposition—Evidence—Admissibility—Presidency Towns Insolvency Act (III of 1909), s 36** Deposition of an insolvent examined under s 36 of the Presidency Towns Insolvency Act (III of 1909), is admissible as evidence against him in a criminal charge. *Reg v. Erdheini (1896)*, 2 Q B 260, *Reg v. Widdop*, L. R. 2 C C R 3, *Reg v. Scott*, 25 L. J. (M C) 123, *Reg v. Sken*, 28 L. J. (M C) 97, *Reg v. Robinson*, L. R. 1 C C R 80, *Ex parte Hall*, in re Cooper, 19 Ch D 530, referred to **JOSEPH PERRY, In re (1919)** I. L. R. 46 Calc. 994

3. **Insolvent acquiring property after vesting order but before his final discharge—Insolvent can alienate property bona fide and for value, before intervention of Official Assignee** The property, movable or immovable, acquired by an insolvent after the adjudication order but before his final discharge, can be transferred by him provided the transaction is bona fide and for value and is completed before the intervention of the Official Assignee. *Cohen v. Mitchell*, 25 Q B 262, followed. **ALIMAHMAD ABDUL HUSSEIN v VADILAL DEVCHAND (1919)**

I. L. R. 43 Bom. 890

4. **Charge for preventing production of books—Notice—Presidency Towns Insolvency Act (III of 1909), ss 103, 104—Intent, finding as to—Evidence.** In a charge framed under s. 103 of the Presidency Towns Insolvency Act (III of 1909), for preventing production of books, there were some verbal differences between the notice and the charge. *Held*, that the accused could not be prejudiced by such trivial difference. *Held*, also, that removing a document is a mode of preventing its production under s. 103 of the Presidency Towns Insolvency Act. At the trial on such charge deposition of the insolvent taken under s. 36 of the Presidency Towns Insolvency Act was adduced as evidence for the prosecution. *Held*, that such evidence was admissible under s. 17 of the Evidence Act (I of 1872). **LEWIS v Official Assignee, A O No 29 A of 1914, and R. v Ingham**, 29 L. J. N S 19, distinguished. **JOSEPH PERRY v THE OFFICIAL ASSIGNEE OF CALCUTTA (1919)** . . . I. L. R. 47 Calc. 254

5. **Presidency Towns Insolvency Act (III of 1909)—Discharge granted by the Insolvency Court in Bombay—Opposing creditor filing suit against insolvent after discharge, in foreign Court—Foreign Court decreeing claim of opposing creditor—Insolvent applying to Court granting discharge to restrain opposing creditor from proceeding with his suit or executing the decree—Jurisdiction of the Insolvency Court to restrain proceedings in foreign Court—Order of discharge of Insolvency Court in Bombay not binding on foreign Courts in the absence of reciprocity—Insolvent Court will not restrain opposing creditor from taking proceed.**

INSOLVENT—*contd.*

sue in a foreign State if the Official Assignee is unable to recover insolvent's property in that State—Equitable Jurisdiction to act in personam—Practice. On 27th November, 1918 the appellant applied for insolvency in Bombay under the Presidency Towns Insolvency Act, 1909. The respondent was one of the opposing creditors, and his debt mentioned in the schedule was in respect of costs awarded to him by the High Court in a suit filed against him by the appellant. On 1st October 1918, the insolvency proceedings terminated and the appellant was granted his discharge. Thereafter, the respondent sued the appellant for the amount of his debt in the Court of Sirohi State and obtained a decree for Rs. 2,844-4-0. The appellant, thereupon, took out a rule in the Insolvency Court at Bombay calling upon the respondent to show cause why he should not be restrained from proceeding in the suit filed against the appellant in the Sirohi Court and from executing the decree in the said suit. The respondent contended that the appellant had property in the Sirohi State which the State refused to hand over to the Official Assignee in Bombay and that under s. 45 of the Presidency Towns Insolvency Act the Court had no jurisdiction to restrain the respondent from taking proceedings in the Sirohi State to recover his debt from the insolvent's property. The Trial Court discharged the rule on the respondent undertaking not to arrest the insolvent personally and to give notice to other creditors mentioned in the schedule of any property or money received in execution of the decree to enable them to claim rateable distribution. On appeal, *ad id*, confirming the order of the trial Court, (1) that though an order of discharge granted by the Insolvency Court in Bombay would be recognised by all Courts in the British Empire, still there would be no obligation on Courts outside British India to recognise the order of discharge as a complete release from debts mentioned in the order, (2) that if the appellant insolvent has assets in the Sirohi State which the Official Assignee was unable to get hold of, the respondent ought not to be restrained from taking proceedings in that State to recover his debt from any property of the insolvent situated in that State. Equitable jurisdiction of the Court to restrain a party before it from proceeding in an action in a foreign Court, discussed. *Per MACLEOD, C. J.*—It would be contrary to all ideas of equity that a party trading and incurring debts in Bombay and having property in foreign territory which the Official Assignee could not get hold of, should be able to completely get rid of all his liabilities as regards his creditors in the British India, and then proceed to enjoy his property outside British India, free from all those liabilities. *Tenckhoff v. Lohmischand Manelchand* (1919), 41 Bom. 272 and *Carson Iron Company v. Molesworth* (1935), 5 H. L. C. 415, referred to. **LAKSHMINARAYAN v. POOTANCHAND PITAMBHER** (1920)

1 L. R. 45 Bom. 550

Creditor causing seizure of property as that of an insolvent—Suit by real owner for damages—Liability of creditor. Where property is taken possession of as the property of an insolvent by the receiver in insolvency acting under orders of the court, and loss is caused thereby to the real owner of the property, it is not the receiver who is liable in respect of such loss, but the person at whose instance the court

INSOLVENT—*contd.*

directed the receiver to take possession of the property. **Abdul Rahim v. Sital Prasad, I. L. R. 41 All. 658**, followed, **BINDA PRASAD v. RAM CHANDAR, I. L. R. 43 All. 432**

INSOLVENT PLAINTIFF.

See Costa, I. L. R. 46 Calo. 156

INSPECTION OF DOCUMENTS.

See CIVIL PROCEDURE CODE (V OF 1908)

O XI, R. 14 14 C. W. N. 147

See DISCOVERY, I. L. R. 38 Calo. 428

See BOLTTON'S LIEV. FOR CONTR.

I L. R. 35 Bom. 332

— made of—

See SUMMONS TO PRODUCE DOCUMENTS.

I. L. R. 47 Calo. 647

INSTALMENT.

See CIVIL PROCEDURE CODE (1909)

O XXIV, I L. R. 38 Bom. 32

See DEKKHAN AGRICULTURISTS' RELIEF

ACT (XVII OF 1879), s. 15B.

I. L. R. 35 Bom. 190 310

See LIMITATION ACT (IX OF 1908)

ART. I, ART. 75 I L. R. 35 All. 435

I. L. R. 41 All. 104

ART. 13, I. L. R. 43 All. 671

— default in payment of—

See CIVIL PROCEDURE CODE (ACT V OF

1908), s. 43 I. L. R. 39 Bom. 258

— payment by—

See DEKKHAN AGRICULTURISTS' RELIEF

ACT (XVII OF 1879), s. 15B

I. L. R. 40 Bom. 492

— power to grant—

See DEKKHAN AGRICULTURISTS' RELIEF

ACT (XVII OF 1879), s. 20

I. L. R. 37 Bom. 488

Contract—Default in payment of instalments—Waiver—Effect of the waiver. The plaintiff agreed to sell certain lands to the defendants for Rs. 1,000 in 1901 and put the latter in possession thereof the same day. The material stipulations in the contract were as follows:—(i) that the purchase money should be paid annually by instalments of Rs. 100 each on a certain day fixed in the contract, (ii) that in case of default in the payment of the first instalment on the due date, the plaintiff should be entitled to recover it as rent and sue for possession of the lands, (iii) that, in case of default in the payment of any three or four subsequent instalments on the due dates the plaintiff should be entitled to recover possession of the lands and claim the unpaid instalments as rent, and (iv) that on payment of all the instalments the title to the lands should be treated as having passed to the respondent by sale, but that in the meanwhile the plaintiff should continue owner thereof. In 1903, the plaintiff filed the present suit to recover possession of the lands, alleging default in the payment of the instalments which became due in 1904, 1905 and 1906. The lower Courts dismissed the suit on the

INSTALMENT—contd.

ground that the plaintiff had waived the payment of the first two instalments, and probably the third also. On appeal:—*Held*, confirming the decree, that as to the first three instalments the plaintiff dealt with the defendant in such a way as to show that he did not insist on payment on the dates fixed in the contract, that, therefore, after that course of conduct, he was not warranted in law in enforcing payment according to the strict terms of the contract without previous intimation to the defendant to that effect. *Cornwall v Henson*, [1900] 2 Ch 298, followed.

CHHAGAN v SUKA VALAD BARKU (1911)
I. L. R. 35 Bom. 511

INSTALMENT BOND.

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, r. 14

I. L. R. 44 Bom. 981

See DECREE . I. L. R. 44 Bom. 840

See INTEREST . I. L. R. 44 Bom. 775

See LIMITATION . I. L. R. 38 Mad. 374

See LIMITATION ACT (IX of 1908),
s. 75 I. L. R. 36 Mad. 66

SCH I, ART 74

SCH I, ART 132 . I. L. R. 37 All. 400
I. L. R. 43 All. 596

Consent not to sue on failure to pay instalment, if would amount to waiver—Limitation Act (IX of 1908), Sch. I, Art 75
Waiver is consent to dispense with or forego something to which a person is entitled. Where it was proved that demand was made in three successive years in respect of three instalments due upon an instalment bond, but the plaintiff consented not to sue for the whole amount as he was entitled to do under the bond for default on the first two occasions but refused to consent on the third: *Held*, that this amounted to a waiver of the payment of the two earlier instalments. When the instalment bond was executed on the 6th of November 1908 and provided payment of Rs. 10,000 by annual instalments of Rs. 400, commencing from the 30th of September 1909, and further that in case of default the whole amount payable on the bond was to fall due and the plaintiff waived the payment of the first two instalments as aforesaid and filed a suit for the recovery of the whole amount on the 12th of November 1914. *Held*, that this suit was not barred by limitation and it was decreed for Rs. 9,200. *RAM CHUDDER BANEA v. RAWATMULL* (1915)

[19 C. W. N. 1172]

INSTALMENT DECREE.

See CIVIL PROCEDURE CODE (1908), O. XXI, r. 2; O. XXIV, rr. 4, 5.

I. L. R. 39 All. 532

See DECREE . I. L. R. 42 Bom. 728

Penalty clause—Failure to pay two instalments making the whole decree payable at once—First instalment not paid on due date, but paid up before the second one fell due—Second instalment not paid on due date—Penalty clause not becoming operative. A decree payable by instalments provided that the instalments were

INSTALMENT DECREE—contd.

to be paid on certain fixed dates; and that on failure to pay any two instalments at the period fixed, the whole amount of the decree remaining unsatisfied was to be paid up at once. The first instalment was not paid on the date fixed, but was paid some time afterwards and before the second instalment fell due. On failure to pay the second instalment on the due date, the decree holder applied for execution of the whole amount of the decree which remained unsatisfied. *Held*, dismissing the application, that the real intention of the parties was that before the penalty could be enforced two instalments must be in arrears together, whereas in the present case only one instalment was in arrears. *SUBBAYA VENKAPPA v SUBBAYA* (1915)
I. L. R. 42 Bom. 304

INSTIGATION.

See ABETMENT OF AN ABETMENT

I. L. R. 46 Calc. 607

INSTRUCTIONS TO COUNSEL.

See BARRISTER . I. L. R. 44 Calc. 741

See COUNSEL . I. L. R. 47 Calc. 828

Charges of misconduct by Counsel—Reasonable grounds—Privilege against Court—Disciplinary action against Counsel. The Court is entitled to ask counsel, who, during the conduct of a case makes charges of misconduct, whether he makes the charges on instructions, and, if so, on whose. It is not sufficient to plead instructions. Counsel have responsibility in the matter, and are not justified in making serious charges of fraud and crime unless they are personally satisfied that there are reasonable grounds for putting them forward. Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent. There is no privilege as against the Court. The latter cannot use them as evidence in the case, and for the purpose of the trial would have to treat them as confidential, but they could be called for then and there and be used after the trial for determining whether disciplinary action should be taken against counsel by the Full Court. *WESTON AND OTHERS v PEARY MOHAN DASS* (1912)

I. L. R. 40 Calc. 893

INSTRUMENT.

See ATTESTATION OF INSTRUMENT

I. L. R. 37 All. 350

INSTRUMENTS OF GAMING.

See BOMBAY PREVENTION OF GAMBLING ACT (BOM. IV of 1887), s. 3

I. L. R. 40 Bom. 263

See COTTON-GAMBLING

I. L. R. 39 Calc. 963

See PUBLIC GAMBLING ACT, 1867, ss. 3 AND 10 . I. L. R. 42 All. 470

INSTRUMENT OF TITLE.

See RAILWAY RECEIPT

I. L. R. 40 Bom. 630

INSURABLE INTEREST.

See INSURANCE . I. L. R. 36 Bom. 484

INSURANCE.

See CONTRACT ACT (IX OF 1872), s. 28

I. L. R. 33 Bom 344

See JUTE . . . I. L. R. 44 Calc. 98

See LIFE INSURANCE.

See LIFE INSURANCE COMPANY

See MARRIED WOMEN'S PROPERTY ACT

(III OF 1874), s. 6.

I. L. R. 37 Mad 483

See SALE OF GOODS

I. L. R. 40 Bom. 11

See TRANSFER OF PROPERTY ACT (IV OF

1882, AS AMENDED BY ACT II OF 1900).

s. 130 . . . I. L. R. 37 Bom. 138

Marine Insurance—Insurable interest of agent in goods of principal—Effect of a Mahajan's "Majur"—Local custom taken enforced—Duties and rights of insurer and policy holder in case of total loss. The plaintiffs, as commission agents, shipped certain goods on behalf of constituents on board the ship "*Ali Madut*" in the year 1899. The plaintiffs were instructed by their principals to insure these goods, and accordingly by a policy dated February 7th, 1899 the plaintiffs insured the goods, with the defendants, subject, as stated in the policy, to the custom of the port of Cutch Mandvi. The ship "*Ali Madut*" was wrecked off the coast of German East Africa and the wreck and the remains of the cargo was sold by the local authorities and the proceeds handed over to the owner of the vessel. The plaintiffs sued the defendants to recover Rs. 3,500 as the value of the goods. The defendants, besides certain other objections to the plaint, objected that the plaintiffs as agents had no insurable interest in the goods, that by the custom of the port of Cutch Mandvi the claim of the plaintiffs could not be established without the production of a Mahajan's "*Majur*," and that the defendants were in any event entitled to credit for the sale proceeds of the wreck and cargo. *Held*, that an agent who has authority from his principals, express, implied or ratified, can effect insurances on the goods of his principals, that the custom of the port of Cutch Mandvi must be construed in a reasonable manner and that under it a Mahajan's "*Majur*" could not be required in the case of total loss, that the policy holder's duty was only to give intimation of total loss, at the earliest possible opportunity, to the insurer, and that it was for the insurer to protect his interest and to recover whatever was left as the net balance of the sale proceeds of the cargo. *Rameshwar Bhogilal v. Kamesing Mohanlal*, 1 Bom H C 229, referred to. *KANTI DWARKADAS v. HARIDAS PURUSHOTAM* (1911)

I. L. R. 38 Bom 484

Policy of Marine insurance—Perils of the sea—Wear and tear not included within the words. Where a boat was insured against the perils of the sea, and it was proved that it sank in fair weather and smooth water without any assignable cause and where it was not proved that the bottom plates had sprung a leak in consequence of the alleged bumping of the boat and where also there was some evidence of the boat having been deliberately scuttled, which, if not accepted would lead to the inference that the bottom plates had corroded in consequence of age and ordinary wear and tear. *Held* that the case was not covered by the terms of the policy.

INSURANCE—contd

The term "perils of the sea" refers only to fortuitous accidents or casualties of the sea. The words do not cover every loss of which the sea is the immediate cause and so wear and tear do not come within the meaning of those words. There must be some casualty, something which could not be foreseen as one of the necessary accidents of adventure. The "*Xantho*", L R 12 A C 593, 599, followed. *Anderson v. Morice*, 10 Com. Pleas 53, *Blackburn v. The Liverpool and Brazil River Plate Steam Navigation Co* [1902] 1 K B 299, distinguished. *W. STEWART v. THE NEW ZEALAND INSURANCE CO., LD* (1912)

16 C W. N. 891

Fire—Damage by fire—Possession of Insurance Company and their acts after fire is extinguished—Damage to machinery of mill by water used to extinguish fire—Omission to protect or clean machinery—Arbitration—Evidence taken by arbitrators alleged to be outside scope of reference—Petition to Court to revoke submission—Arbitration Act (IX OF 1896), s. 10. The provisions in virtue of which, under the conditions of a policy, an Insurance Company takes and holds possession of premises damaged by a fire, are for the purpose of enabling it to minimise the damage. As it has to bear the loss it is, more than anyone directly interested in doing everything for the best, not as a duty to the insured, but in its own interest. Its powers are of the nature of a privilege to do that which is most for its own benefit under the circumstances so as to reduce the loss. After a fire in October 1906 at the Victory Mills, Bombay, which then belonged to the appellant, he sent in his claim to the respondents, who took possession of the premises under powers reserved to them in that behalf in the policy, and retained possession for a considerable period for salvage purposes. The assessment of the damages was disputed and the matter was in accordance with the terms of the policy referred to arbitration in the course of which the appellant tendered evidence to prove that the machinery was seriously damaged not only by the actual fire, but owing to the water used to extinguish the fire being allowed to remain on it, the injury in that way being progressive. The evidence was objected to on the ground that damage so caused to the machinery did not come within the loss insured against in the policy, but that the liability for damage to the property ceased when the fire was extinguished. The arbitrators admitted the evidence, whereupon the respondents petitioned the High Court to revoke the submission to arbitration on the ground that the arbitrators had exceeded their jurisdiction in admitting evidence, which would only relate to damage from some tortious act of the respondents which was outside the reference to arbitration. The Judge of the High Court, before whom the matter came, made no order on the petition being of opinion that the arbitrators had decided nothing by admitting the evidence, and that there was no reason to interfere with their action. The respondents appealed and the appeal was allowed, the appellate Bench of the High Court expressing in its decree an opinion that the jurisdiction of the arbitrators extended only to the dispute relating to loss and damage from fire under the policy, and not to the question of any loss or damage alleged to have arisen from the neglect of the respondents to take care of the machinery after the fire had been extinguished, and the respondents to have

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entered into possession of the premises. *Held* (reversing the decision of the Appellate High Court and restoring that of the Original Court), that the finding that the loss was to be estimated from the condition of the machinery at the time the fire was extinguished, was erroneous. There was no question of tort on the part of the respondents. They may have thought it was not worthwhile to spend money in drying the machinery, but right or wrong they unquestionably had full power to take the course which in fact they did take. But having taken possession of the premises and done what in their opinion was wisest to minimise the damage, they could not say that the actual damage done was not the natural and direct consequence of the fire. **ARMEDSHOF HAMBROV & BOMBAY FIRE AND MARINE INSURANCE COMPANY . . . I. L. R. 37 Bom. 183**

Warning that premises would be set on fire—Insurance in consequence of warning—Duty of assured to disclose facts affecting risk and premium—Defective declaration under O XXX, r 2, Civil Procedure Code, its effect It is the duty of a person who receives information or warning that his premises will be set on fire, in consequence of which he insures his premises, to disclose to the insurer the information so received. If he fails to do so, the insurer is discharged from liability. *Greet v. Citizens Insurance Co., Tupper's R., (U C) 598, C A*, followed. *Kelly v. Hoche luga Fire Insurance Co., 24 L. Can. Jur. 298*, distinguished. Every circumstance which would influence or be likely to influence the judgment of a prudent insurer in fixing the premium and in determining whether he will take the risk or not, should be disclosed. There is a duty to disclose to the insurer all facts which bear upon their being a possibility of a fire greater than usual, and which might indicate the motive of the assured in effecting the insurance. There is no obligation on an assured to disclose matters already known to the insurer. A suit need not be dismissed for incomplete disclosure of the names of partners, according to the provisions of O XXX, r 2, Civil Procedure Code. It is a defect which may be allowed to be corrected. *Abraham & Co v. Dunlop Pneumatic Tyre Co., [1905] 1 K B 46*, referred to. *Imperial Pressing Co v. British Crown Assurance Corporation, Ltd (1913) . I. L. R. 41 Cal. 581*

Liability of Company for further loss *Per CHANDAVARKAR, J.*—The loss or damage by fire which is insured against in a policy of insurance, cannot include loss caused by deterioration of the property insured consequent on neglect (if any) of the Insurance Companies to take care of it if they have taken possession. A loss so caused is not an inevitable or direct consequence of the mischief by fire. It is only where mischief arises from fire (in fire insurance cases) and from perils of the sea (in marine insurance cases) and the natural and almost inevitable consequence of that mischief is to create further mischievous results that underwriters become responsible for the further mischief so incurred. *Montoya v. London Assurance Company, 6 Er 457, 458*, referred to. *Per BATCHELOR, J.*—The loss insured against is limited to the loss by fire (which includes the loss by water in extinguishing the fire) and cannot conveniently embrace all possible damages, however remote, which could by ingenuity be traced up to some connection with the fire as the ultimate cause *visz quis non*. It is im-

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possible to hold that damages arising from the alleged negligence of Insurance Companies while in possession are properly claimable in pursuance of the contract of insurance, for whereas this contract refers only to loss by fire, those damages would arise from an origin totally different and wholly distinct and separable from the fire, namely, a neglect of some duty imposed on the companies after the loss by fire or water had become an accomplished fact. **ATLAS ASSURANCE COMPANY, LIMITED, v. ARMEDSHOF HAMBROV (1908)**

I L R 34 Bom. 1

INSURANCE COMPANY.

See TRADE NAME **I. L. R. 40 Cal. 570**

INSURANCE POLICY.

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See CAUSE OF ACTION
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See CONSTRUCTION OF DOCUMENT
I. L. R. 37 Mad. 480

See FORFEITURE **I. L. R. 41 Cal. 406**

See FRAUDULENT PREFERENCE
I L R. 43 Cal. 640

See HIGH COURT **I L R 34 Bom. 378**

See LURKING HOUSE TRESPASS.
I. L. R. 44 Cal. 358

See PENAL CODE ACT (XLV OF 1860), s. 269 . . . I. L. R. 40 All. 84

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I — Civil Procedure Code (Act V of 1908), s 144—Decree—Interest award of—Discretion of Court—Land Acquisition Act (1 of 1894)—Court determining the amount of compensation—Payment of the amount to claimant—Subsequent reduction in amount on appeal—Interest over the excess—Inherent powers of the Court A sum of money by way of compensation awarded under the Land Acquisition Act (1 of 1894) and paid into Court was taken out by the claimant. Subsequently on appeal, the High Court reduced the amount of compensation payable to him, but made no order as to interest. Government then applied to recover from the claimant interest over the excess drawn by the claimant from the Court Held, that the interest claimed should be awarded, inasmuch as the claimant had had the benefit of the money belonging to Government in excess of that to which the High Court held him to be entitled, and the benefit was represented not only by the excess wrongly taken by the claimant from the District Court but also the amount of interest which the excess carried. *Mookond Lal Pal v. Mahomed Sami Meah*, I L R 14 Calc 484, 486, *Mahomed Sami Vanan v. Sakharam Ramchandra*, I L R 3 Bom 4^o referred to. COLLECTOR OF AHMEDABAD : LALJI MULJI (1911)

I L R 35 Bom. 255

—Interest, right to claim, till payment or legal tender—Tender or agreement to waive tender must be of an ascertained sum—Valid tender must be unconditional. At common law, where interest is payable by the terms of a contract it runs ordinarily up to the date of payment. A valid tender must be an unconditional offer to pay a specific and ascertained sum. An offer to pay such amount as may be found due on a settlement of accounts if the payee would execute an indemnity bond in accordance with law is not a valid tender. There can not be a tender or an agreement to waive tender of an unascertained sum. *Guruda Peddi v. Gudi Janakiswaru Garu* I Mal H O P 124, distinguished. *Jandurang Krishnaji and another v. Dadabhai Vastuji* I L R 26 Bom 613, distinguished. IAL BACHA SAHIB v. ANNOT NARAYANASWAMI MUDALIYAR (1910) . . . I L R 34 Mad. 320

—Usufructuary mortgage—Interest not stipulated for—Charge in the nature of mortgage must be in writing and registered. Where no interest is stipulated for in a mortgage bond, no interest is recoverable. A charge in the nature of mortgage, whether for principal or interest, must be expressed in writing and registered, and cannot be raised by implication. *Kuttiamma v. Madhava Menon*, 11 Mad L J 186 followed. *Imdad Hasan v. Endri Prasad*, I L R 20 All 491, distinguished. MAJIBUL ALI v. ALI AHMAD (1913) . . . I L R. 40 Calc 514

—Arrears of rent—Rate of interest—Evidence of admissible, to explain liability. Where a document recites that interest is to be paid by the tenant upon rent in arrears at the rate of one anna per rupee but does not ex-

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pressly state whether interest at this rate is payable monthly or annually, evidence is not admissible to show what was really intended. *Monmtha Nath Choudhury v. Nabin Chandra Sanyal*, 14 C B N 1100, discussed. *Mahomed Sumsooddeen v. Moonsee Abdul Haq* (1864) W R 379, not followed. Evidence to construe the terms of a contract is not inadmissible in certain cases. *PRATAP CHANDRA SHAHA v. MAHOMMED ALI SARKAR* (1913) . . . I L R 41 Calc 342

—Contract Act (IX of 1872) ss 16 74—Undue influence, presumption of—Penalty—Excessive and usurious interest—Duty of the Court. Where there is ample security, the exaction of excessive and usurious interest in itself raises a presumption of undue influence which it requires very little evidence to substantiate. The attempt to conceal the real rate of interest, by describing it as one pie in the rupee per mensem or as in the present case R 5 per mensem is evidence of an intention to get the better of the debtor. The law lays down that there must be a footing of complete equality between debtor and creditor and they must be, so to speak, at arms length to make a bargain, which is in itself harsh and unconscionable enforceable at law. *Carringtons, Ltd v. Smith*, [1906] 1 K B 79, *In re a Debtor* [1903] 1 K B 706, referred to. Where there is ample security, an excessive rate of interest has been held to be any thing over ten per cent. Where there is no security, no rate of interest can be considered excessive. There can be no standard rate on personal loans, and where the parties are reasonably on terms of equality a Judge cannot do better than adopt what they themselves have agreed on though, of course when that is not the case he has to judge what is reasonable, as best he can and under all the circumstances. Where the contract is for a temporary accommodation the stipulation that interest is to run at R 5 a month is one which necessitates the payment of interest not at 60 per cent per annum but at R 5 in each month and a stipulation that in default of 12 months instalments of interest, compound interest would begin to run, is in the nature of a penalty. However technical this may be it is the duty of the Courts in India to enforce the letter of the law against obviously harsh and unconscionable bargains of this nature. The exploitation of the necessities, of the careless and inexperienced, is a trade to be extirpated in the interest of the whole community as contrary to individual morality as well as to public policy. *Swtha Krishna Iyer v. Sankaralingam Pillai* I L R. 36 Mad 229, *Samuel v. Debold* [1906] A C 461, *Asemulu Naidu v. Arulavolu Ammal* I L R 36 Mad 631, referred to. *ABDUL MAJEED v. KINRODE CHANDRA PAL* (1914) . . . I L R 42 Calc 690

—Stipulation in mortgage bond for interest at 75 per cent. per annum whether penalty—Liquidated damages—Undue influence—Unconscionable bargain—Contract Act (IX of 1872) ss 16 74 illus. (f) as amended by Act VI of 1899 s 4 (1)—Act XXVIII of 1905 s 2. Per MOOREHEAD, J. (DEACON, J., agreeing to as to penalty). Notwithstanding the small group of cases where a restricted view was taken of the authority of the Court to relieve against a penalty, the rule has turned back, and the more modern cases repudiate the doctrine that any rate of interest, however exorbitant, cannot be deemed

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penal. *Motay v Sheikh Hassan*, 6 Bom. H. C. 8, Patil v Govind, 10 Bom. H. C. 382, followed. *Aryas Baji v Agar Ali*, 1 L. R. 13 Cal. 209, *Gokul Chand v Khaja Ali* (1899) Pw. Rec. 32, *Sankaranarayana Fadhyar v Sankaranarayana Ayyar*, 1 L. R. 23 Mad. 343 *Chinnu v Pedda*, 1 L. R. 28 Mad. 445, *Periaswami v Subramanian*, 11 Mad. L. J. 116, not followed. This principle is fairly deducible from the modern decisions that the Court is competent to grant relief whenever the rate of interest appears to the Court to be penal. *Miyana Putari v Abdul Judder* 10 C. W. N 1020, *Velchand v Flagg* 1 L. R. 36 Bom. 164, 14 Bom. L. R. 18, *Ganapathi v Sundara*, 22 Mad. L. J. 354, *Muthukrishna v Sankaranayagam*, 1 L. R. 36 Mad. 229 followed. Although s. 74 of the Contract Act was originally framed to deal with the doctrine of penalty and liquidated damages as understood in the law of England it is in its present form comprehensive enough to include the type of cases before the Court, because it covers all cases where the contract contains any stipulation by way of penalty. It is obvious that each case must be treated on its own circumstances. The test is, was the agreement to pay damages for the breach of contract unconscionable and extra vagant, such as no Court ought to allow to be entered into. *Webster v Bosanquet* (1912) A. C. 394, referred to. "You are to consider whether it is extravagant, exorbitant, or unconscionable at the time when the stipulation is made—that is to say in regard to any possible amount of damages which may be conceived to have been within the contemplation of the parties when they made the contract." *Clydebank Engineering Co. v Don Jose Carlaneda*, [1905] A. C. 6, referred to. A stipulation for merely accelerating payment of the whole debt in default of payment of one or more instalments is not, by itself, by way of penalty. *Ex parte Burden*, 16 Ch. D. 675, *Sterne v Beck*, 1 DeG. J. & S. 595, *Wollingsford v Mutual Society* 5 App. Cas. 685 referred to. But when the entire sum which the creditor had agreed to receive in instalments without interest is not only repayable in one sum, but is also made to carry interest at an unusual rate, the Court may, in view of all the circumstances of the case, regard the stipulation for payment of interest at an exorbitant rate as penalty. When (on an account originally made up very largely of interest at an exorbitant rate) the stipulation was made in the mortgage bond (no interest being payable up to due date) that upon default of payment of one or two instalments not only would the whole balance due become forthwith payable, but would carry interest at the rate of 75 per cent. per annum: *Held*, that the covenant for payment of interest at this rate was a penalty, i.e., it did not represent the damages which the creditors were likely to suffer by reason of the default of the debtors, but was rather intended as an effective means to secure punctual performance of the contract. *Per Moore J.*, *J. Where the lender makes it clear that the creditors were in a position to take advantage of the embarrassment of their debtors and the bargain they made was unconscionable, there is a concurrence of the two elements which must combine to attract the operation of a 16 of the Contract Act.* *Datta v Mung Shree Goh*, 1 L. R. 38 Cal. 808, 1 L. R. 33 I. A. 135 *Amarulal Nanda v Arulakshi Ammal*, 1 L. R. 36 Mad. 335, followed. *KRAGHAM DAS v RANAJANKAR DAS PRAMANTH* (1914) 1 L. R. 42 Cal. 652

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Power of Court to grant relief, where interest unconscionable—Creditor, when his improper act or omission delays payment of debt. Where delay in the payment of the principal debt is caused by some improper act or omission of the creditors, the accrual of interest will be suspended during such period as the debtor is so prevented. *Edwards v Warden*, 1 App. Cas. 281, *Merry v Ryves*, 1 Eden. J., *Marlborough v Strong*, 4 Broten, P. C. 539, *Cameron v Smith*, 2 B. & Ald. 305, *Bann v Dalziel* Moo. & M. 228, *Anderson v Arrowsmith*, 2 P. & D. 408, *Leving v Stone*, 2 Man. & Ry. 561, *Moo & M* 229, *London, Chatham and Dover Railway Company v South Eastern Railway*, [1891] 1 Ch. 120, and *Webster v British Empire Mutual Life Assurance Co.*, 15 Ch. D. 159 referred to. A Court is competent to grant relief where the rate of interest appears to the Court to be of a penal character that is, so unconscionable and extra vagant that no Court should allow it. *Ahogaram Das v Ramankar Das* 1 L. R. 42 Cal. 652, *Abdul Mojed v Khurde Chandra Pahl*, 1 L. R. 42 Cal. 680, *Bouwang v Banga Behari Sen*, 22 C. L. J. 311, 20 C. W. N. 493, referred to. *GOPESWAR SAHA v, JADAV CHANDRA CHANDRA* (1915) . . . 1 L. R. 43 Cal. 632

Interest not contracted for and not recoverable under the Interest Act (XXXII of 1839) allowed as damages. *KHETRO MOHAN PONDAR v NISHI KUMAR SAHA* (1917)

22 C. W. N. 488

Compound Interest—Court's power to give relief when money lender not shown to have taken undue advantage of his position. It is difficult for a Court of Justice to give relief on grounds of simply hardship in the absence of any evidence to show that the money lender had unduly taken advantage of his position even when the transaction appeared to be undoubtedly improvident. The opinion of the Chief Court affirming that of the Divisional Judge that the plaintiff in a redemption suit was bound by the mortgagor's contract to pay compound interest at 25 per cent. per annum was upheld. *ANIL KHAH v DURI CHAKU* (1918) 23 C. W. N. 130

Bond—Consideration—Interest in advance added to principal—Total amount made payable by instalments—Scheme of the bond providing in effect for progressive increase in the rate of interest—Transaction 'substantially unfair' within the meaning of the Usurious Loans Act (X of 1918) s. 3 (1)—Jurisdiction of Court to consider the transaction in an ex parte suit. On the 7th September 1918, the defendant executed a bond for Rs. 8,400 in favour of the plaintiff, a professional money lender. The consideration of the bond was a cash advance of Rs. 6,000 by the plaintiff and Rs. 3,400 interest thereon which was calculated in advance for thirty four months at the rate of 2 per cent. per annum. The 'cash' amount of Rs. 8,400 was made payable under the bond in thirty four instalments. The first three instalments had been recovered by the plaintiff by a suit instituted in the Court of Small Causes, Bombay. The defendant having made default in respect of the next six instalments from January to June 1919, the plaintiff sued to recover Rs. 1,500 the amount due under the same. The defendant did not appear. *Held* (1) that though the suit was ex parte, the Court had under s. 3 (1) of the Usu-

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rious Loans Act, 1918, jurisdiction to consider the merits of the transaction between the parties; (2) that inasmuch as the scheme of the bond was that the interest on the whole sum of Rs. 5,000 should be continued to be paid though the principal was being progressively discharged by instalments, the interest charged in the bond was "excessive" and the transaction "substantially unfair" within the meaning of s. 3 (1) (a) and (b) of the Usurious Loans Act, 1918; (3) that the plaintiff was not entitled to claim interest on sums which he actually received and which accordingly went towards part-satisfaction of the principal amount. *Samuel v. Newbold*, [1906] A. C. 461, referred to. *KERING RITCHARD & Co v. BAXLEY* (1919)

I. L. R. 44 Bom. 775

Mortgage—Hard and unconscionable bargain—Court when should reduce stipulated interest. In a suit on a mortgage executed by a Hindu lady which provided for interest at 15 per cent. with quarterly rests the trial Court allowed interest at 12 per cent. up to date of suit only. *Held*—That unless it can be shown that undue advantage had been taken the Court ought not to come to the conclusion that the transaction was hard and unconscionable. In appeal the High Court allowed interest at the contract rate up to the date fixed for payment and thereafter at 6 per cent. *BEJOY KUMAR ADDY v. SATISH CHANDRA GHOSH* . 24 C. W. N. 444

Bengal Tenancy Act (VIII of 1885)

s. 67—*Kabulyat*, rate of interest mentioned in—Purchaser at auction sale, liability of, to pay interest—Interest whether penal and unconscionable. The purchaser of a raiyati holding at fixed rates in execution of his own mortgage decree buys it subject to the terms and conditions of the subsisting lease of which he had notice and is liable to pay interest at the rate and pay rent in accordance with the instalments provided for in the *kabulyat*. *Lal Gopal Dutt Chowdhury v. Manmatha Lal Dutt Chowdhury*, 1 L. R. 32 Cal. 258, followed. *Alum v. Satish Chandra Chaturdhuri*, 1 L. R. 24 Cal. 37, distinguished. In the absence of evidence that any undue advantage was taken by the landlord of his position, the rate of interest mentioned in the contract cannot be interfered with. *Upendra Lal Gupta v. Akheraj Bibi*, 21 C. W. N. 108, not followed. *Lala Balla Mal v. Akad Shah*, 23 C. W. N. 233, *Atiz Khan v. Dhun Chand*, 23 C. W. N. 130, and *Bejoy Kumar Addy v. Satish Chandra Ghosh*, 24 C. W. N. 444, referred to. *BRUT NATH CHATTERJEE v. RAMA NATH NASIR* (1920) . I. L. R. 48 Cal. 93

INTEREST ACT (XXXII OF 1839).

Debt payable in kind—Interest allowable. A debt which is specially expressed as payable in certain fixed measures of grain and payable at a specified time is a debt certain within the meaning of Act XXXII of 1839 and interest is allowable on the same. *Juggomohan Ghoss v. Manekchand*, 7 Moo. J. A. 263, referred to. *Narayan v. Nagappa*, 12 Bom. L. R., 331, dissented from. *GOVINDA NATH v. CHERAL* (1913) . I. L. R. 38 Mad. 464

Award of interest, as damages, apart from the Act. The Interest Act (XXXII of 1839) is not exhaustive of all cases where interest is allowable. The Act while specifically allowing interest in all cases of "debts or

INTEREST ACT (XXXII OF 1839)—contd

sums certain payable at a certain time or otherwise" saves by its proviso other cases in which it is legally allowable. Where the suit was for a sum of money which would be payable to the plaintiff (a Muhammadan lady) as for her share on taking accounts of the business which was carried on by her father while he was alive and which was continued by her brothers, the defendant, after his death, wherein the amount due to the plaintiff was utilized by her brothers. *Held*, (i) that the proviso in the Interest Act applied to the case, and (ii) that 6 per cent. interest was payable as damages on the amount due to the plaintiff. *Miller v. Burloe*, L. P. 3 P. C. C. 733, and *Hurro Persaud Roy v. Shama Persaud Roy*, 1 L. R. 3 Cal. 654, followed. *Kamalammal v. Peernamra Laxmi Routhen*, 1 L. R. 20 Mad. 481, *Subramania Aiyar v. Subramania Aiyar and others*, 1 L. R. 31 Mad. 259, and *Kalyan Das v. Magbul Ahmad*, 1 L. R. 40 All. 497, distinguished. *ABDUL RAFFER ROWTHEN v. HAMIDA BEVI AMMAL* (1919) . I. L. R. 42 Mad. 681

A Principal is not entitled to interest on moneys detained by an agent on his behalf in the absence of a contract to his contrary. *LALMAN v. CHRISTANAN*

I. L. R. 41 All. 254

INTEREST POST DIEM.

See MORTGAGE . I. L. R. 35 All. 534

INTERFERENCE.

— by High Court—

See PRACTICE . I. L. R. 40 Bom. 220

INTERIM ORDERS.

See PRESIDENT OF TOWNS INSOLVENCY ACT (III OF 1909), s. 25.

I. L. R. 35 Bom. 47

INTERIM RECEIVER.

See INSOLVENCY . I. L. R. 42 Cal. 289

INTERLOCUTORY INJUNCTION.

— breach of—

See EASEMENT . I. L. R. 39 Cal. 59

INTERLOCUTORY ORDER.

See CIVIL PROCEDURE CODE, 1908—

s. 47 . I. L. R. 34 All. 530

ss. 104 and 115.

s. 109 . I. L. R. 42 All. 174, 176

s. 115 . 15 C. W. N. 682, 848

I. L. R. 34 All. 592

I. L. R. 44 Bom. 619

5 Pat. L. J. 550, 400

O XI, s. 14 . 14 C. W. N. 147

O XX, s. 18 . I. L. R. 35 All. 159

O XXXII, s. 7 . 15 C. W. N. 353

See JURISDICTION I. L. R. 42 Cal. 926

See LAND ACQUISITION.

I. L. R. 38 Cal. 230

INTER MARRIAGE.

See HINDU LAW—MARRIAGE

I. L. R. 48 Cal. 926

— According to law and custom prevalent in Bengal a marriage between a Kayastha

INTER MARRIAGE—*contd*

and a Tante both belonging to sub-division of the Sudra caste is valid in the absence of any special custom rendering such marriage invalid
Bawanath Das Ghosh v Sreemati Saranbala Das and others
 25 C. W. N. 639

INTERNATIONAL LAW.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 86 I. L. R. 39 Mad. 635

See JURISDICTION I. L. R. 39 Mad. 661

INTERNMENT.

— object of—

See ALIEN ENEMY, SUIT AGAINST
 I L. R. 43 Cal. 1140

— order for—

See HABEAS CORPUS
 I. L. R. 41 Cal. 459

INTERPLEADER.

— An interpleader suit with a prayer for declaration of the titles of the several sets of defendants in the disputed land by the tenant against the landlords in whose favour he has executed separate *Kabulyats* is not maintainable
Shelley Bowyerjee v Rai Chandra Datta
 I. L. R. 37 Cal. 532
 14 C. W. N. 784

INTERPRETATION.

See INTERPRETATION OF STATUTES

— principle of—

See LIMITATION ACT IX OF 1909

See I. ART 182
 I L. R. 39 Mad. 923

See REVAND. I. L. R. 41 Cal. 108

INTERPRETATION OF STATUTES.

See BENGAL TENANCY ACT 1885 s 11.
 25 C. W. N. 9

See COMPANY I. L. R. 43 Mad. 550

See CONSTRUCTION OF STATUTES

See CRIMINAL PROCEDURE CODE, s 11
 3 Pat. L. J. 291
 5 Pat. L. J. 321

See LAND ACQUISITION
 I. L. R. 44 Cal. 219

See RAILWAYS ACT, 1890, s 75
 I L. R. 42 All. 78

See NON OCCUPANCY RAIYAT
 I. L. R. 44 Cal. 287

See NON OCCUPANCY RIGHT
 3. Pat. L. J. 1.

See PRESS ACT, 1910, s. 4.
 I. L. R. 42 All. 233

4 Pat. L. J. 174

— Rules, effect of—

See REMAND. I. L. R. 41 Cal. 108

— Heading of chapter may be looked at—

See NON OCCUPANCY RIGHT
 I. L. R. 44 Cal. 287

— Illustrations cannot control the plain meaning—

See NON OCCUPANCY. 14 C. W. N. 414

INTERPRETATION OF STATUTES—*contd*

— PROVISION—

See PRESS ACT, 1910, s. 3.
 I. L. R. 39. Mad. 1164

See LAND IMPROVEMENT ACT, 1883
 I. L. R. 41 Mad. 691.

— The word "and" may be read as "or" when necessary to carry out the obvious intention of the legislature.
KUNHALOON PUTHA VENTEL KATAPPA v PASKUM PUSI-SERI KALAPPA
 I L. R. 40 Mad 594

— When a particular section of an Act which has received judicial construction has been reenacted it must be treated as a legislation recognition of that construction.
JOONDRA CHANDRA POY v SHANDAS
 I L. R. 36 Cal. 543

INTERROGATORIES

See DISCOVERY I. L. R. 41 Cal. 6

— Admissibility of interrogatories—Inadmissibility of certain questions as interrogatories though admissible in cross-examination—Interrogatories obviously designed to assist in fishing up a case—Defence of wagering—Inadmissibility of interrogatories by the party raising defence of wagering as to the general business transactions of the opponent apart from the particular transactions in suit. The mere fact that questions would be admissible in cross-examination of a witness, does not make them good as interrogatories. Interrogatories must not be exhibited unreasonably or vexatiously, nor be prolix, oppressive, unnecessary or scandalous. Nor should interrogatories be allowed which are sought to be administered obviously for the purpose of fishing out a case. The Court will, in cases where the defence of wagering is set up, refuse to allow the party setting up this defence to interrogate his opponent generally as to his business transactions apart from the particular transactions in suit, on the ground that it is manifestly unfair to compel a man to disclose his general dealings on the chance that thereby his opponent may discover something that will support his case.
BRAGWANDAS PARASHAM v BURJOMI RUTTOYJI (1912) I L. R. 37 Bom. 347

— Method of administration—Disclosure of assets by affidavit in probate proceedings, now obtained—Civil Procedure Code (Act 1 of 1908), O XI, r 2—Probate and Administration Act (1 of 1881), s 55 O XI of the present Code of Civil Procedure applies to proceedings in probate (vide s 55 of the Probate and Administration Act) Under that Order there are only two methods of discovery, one by interrogatories and the other by an order directing discovery of documents in the possession of power of the other side. An affidavit of assets actually received can, therefore, be obtained in probate proceedings by interrogatories only. Under r 2 of O XI in India as in England, the Judge has not any power to settle interrogatories, but he can only decide what should be administered. The *dicta* in English cases with regard to the more extensive powers of Courts in matters of probate, seem to imply that the strictest relevancy may not be required in interrogatories therein.
AVILABALA DAS v. RAJENDRANATH DALAL (1915)

I. L. R. 43 Cal. 309

INTESTACY.*See JEWISH LAW.*

I. L. R. 38 Calc. 708

INUNDATED LANDS.*See CUSTOM* . I. L. R. 45 Calc. 475**INVENTIONS AND DESIGNS ACT (V OF 1888)**

— s 29—*Suit for infringement of patent—Defence that invention was not new—“New combination of old materials”* The plaintiffs patented a process of manufacturing *banalochan* (a medicinal preparation made by calcining portions of the bamboo plant) of which the essential features were the treatment of the substance at a red heat with sulphuric acid inside a closed crucible or retort made entirely of earthenware. The advantages claimed were (a) no iron or other metal being used in the composition of the crucible there was no danger of any deleterious action on the part of the fumes of the acid upon the metal aforesaid, (b) the retort or crucible was entirely closed from the time when the acid was added until the process of calcination was complete, so that no deleterious fumes escaped into the air, and the result was that the substance prepared was both purer and cheaper than that prepared in the old iron pans. *Held*, that the process was a new combination of admittedly old materials and as such was a good subject matter for a patent. *Harrison v The Anderson Foundry Company, L R 1 A C 571, Brunton v Hawkes, 4 Barn & Ald 511, and Plumpton v Spiller, L R 6 Ch D 412, referred to LAKH-PAT RAI v SRI KISHAN DAS (1918)*

I. L. R. 41 All 68

INVENTORY.*See ADMINISTRATION*

L R 40 I. A. 236

See COURT FEES AMENDMENT ACT (XI OF 1899), s 19 II

I. L. R. 41 Calc. 556

— preparation of—

See CIVIL PROCEDURE CODE 1908, O XXXIX, R. 7 . 15 C. W. N. 353**INVESTIGATION.***See FRAUD* . I. L. R. 38 Calc. 938*See VALUATION OF SUI*

I. L. R. 43 Calc. 225

IRREGULARITY.*See AUCTION PURCHASER*

I. L. R. 38 Calc. 622

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXIII, s 1

I. L. R. 37 Bom. 682

See CRIMINAL PROCEDURE CODE,

ss 145, 522 . I. L. R. 37 All 654

ss 250 537 . I. L. R. 36 All 122

ss 439, 422, 423.

I. L. R. 39 Mad 505

See DECREE . I. L. R. 38 Calc 125*See DEMOLITION OF BUILDING*

I. L. R. 37 Calc. 585

See JURISDICTION OF CRIMINAL COURT.

I. L. R. 40 Calc. 360

IRREGULARITY—contd.*See RECEIVER* . 14 C. W. N. 560*See SALE FOR ARREARS OF REVENUE*

I. L. R. 37 Calc. 407

I. L. R. 42 Calc. 765

See SALE IN EXECUTION OF DECREE.

I. L. R. 39 Calc. 26

See WITHDRAWAL OF SUIT

I. L. R. 41 Calc. 632

— Trial by confronting parties to a suit and relying on allegation between them—*Decision of suit on statements by parties when confronted in the witness box after the case heard and judgment reserved—Propriety of such procedure—De novo trial ordered by High Court* Where in a Small Cause Court suit the Judge, after the close of the evidence and arguments, and having reserved judgment, sent for the parties and ordered them to argue with each other in his presence about the merits of their respective cases, which they did, and he decided the suit upon the evidence and also the statements made by them when confronted in the witness box in the above manner, and which statements were not recorded.—*Held*, that the procedure adopted by the Judge was very irregular, and a *de novo* trial of the suit was ordered. *ARYMUDDIN BEWA v ASIMUDDIN FRAMATIK* 25 C. W. N. 593

IRRELEVANT EVIDENCE.*See EVIDENCE ACT, 1872, s. 5.*

5 Pat L. J. 410

IRRIGATION.*See EASEMENT* . 15 C. W. N. 259**IRRIGATION BY PERCOLATION.***See MADRAS IRRIGATION CESS ACT (VII OF 1856), s 1 (b)*

I. L. R. 40 Mad 58

IRRIGATION ACT (BOM. VII OF 1879).

— *District Municipal Act (Bom Act III of 1901), s 58—Drainage cut—Drainage channel—Neglect of proper repairs by local bodies—Flow of water across the road into plaintiff's field—Damage—Liability of local bodies—Non feissance—Neglect of highways* Where drainage water passing along a certain drainage cut owing to some default instead of flowing along the assigned channel flowed across the road into the plaintiff's field and caused damage to the plaintiffs and the damage was found to be due, not to the authorized drainage work but to the neglect of the drainage channel which the Municipality was bound to repair.—*Held*, that the Municipality was liable to the plaintiff's in damages. *PER CURIAM*—The exemption from liability of local bodies on the ground of non feissance is confined to neglect of highways and does not apply to drainage works carried out by the local bodies for their convenience, which they are bound to maintain in a proper state of repairs so that they shall not be a nuisance to the neighbouring owners. *Borough of Bathurst v Macpherson, L R 4 App. Cas 256, Municipality of Picton v Geldert, [1893] A C 524, referred to DHOLKA TOWN MUNICIPALITY v PATEL DESAI BHAI (1913)*

I. L. R. 38 Bom. 116

IRRIGATION CESS ACT (MAD. VII OF 1865).*See* MADRAS IRRIGATION CESS ACT

Conditions necessary to entitle Government to levy water-cess—Extent of right to water—Engagement by land-holder with Government. In this case the decision in *Prasad Row v The Secretary of State for India*, 1 L. R. 40 Mad 886, was followed, on the admission of the respondent that the rights of the parties were governed by it. *AMBALAVANA PANDARA SAMMAHDI v THE SECRETARY OF STATE FOR INDIA* (1917)

I L R 40 Mad. 809

s. 1 (b).—*Opinion of Collector that irrigation is beneficial, not a judicial one, reversible by Courts—'Irrigation by percolation covers' irrigation by subsoil water.* Construing s. 1 (b) of the Madras Irrigation Cess Act (VII of 1865), the Full Bench held—(a) that it is not obligatory on the Collector to certify under s. 1 (b) of the Act that the irrigation is beneficial, and (b) that the words "irrigation by percolation" mean not only irrigation by means of water flowing on the surface of the land irrigated, but cover also cases where subsoil water is taken by the roots of trees. *Held*, also, that the opinion of the Collector that the irrigation in any particular case is beneficial to the land is not a judicial one capable of being revised by a Civil Court. *Secretary of State for India v Srami Narathencanar*, 1 L. R. 34 Mad 21, approved. *THE SECRETARY OF STATE FOR INDIA v MANADEVIA SASTHIGAL* (1916)

I. L. R. 40 Mad 58

s. 1, provs. 1 and 2.—*As amended by Madras Act V of 1900—Right of Government to levy cess for irrigation purposes—Landholders settled at Permanent Settlement—Sanads, construction of—Cultivation extended and crop grown not customary at date of sanad—Engagement by zamindar with Government—Right to flowing water—Madras Land Encroachment Act, III of 1905.* The appellants sought to recover from the Secretary of State for India, the respondent, sums of money paid under protest in respect of water cesses levied by the Government of India under Madras Act VII of 1865 (as amended by Madras Act V of 1900), the portions applicable to the case being s. 1 and provs. 1 and 2. The lands in suit were contiguous to the river Vamsadhara, and sometime prior to the Permanent Settlement extensive works had been carried out to supply the district with water from the river, and the water was distributed throughout the district by means of branch channels and subsidiary channels ending in many instances in village tanks and reservoirs. The Government carved out of the land four zamindars on each of which they assessed a permanent revenue or jumma, and had them put up to public auction, and each purchaser received a sanad. These sanads did not mention any water rights. They contained (*inter alia*) agreements by the zamindars to encourage their ryots to improve and extend the cultivation of the land. Subject to his observing the conditions of the sanad, each zamindar was authorized to hold the zamindars in perpetuity for himself and his heirs. One of the four zamindars (Ullam) was purchased by the appellant's predecessors in title at a sale for arrears of revenue and the other three were brought at various times by the Government. The sluices of only one of the channels were on the appellant's lands, but he used for irrigation purposes water from the river through all the four channels. *Held*, that the

IRRIGATION CESS ACT (MAD. VII OF 1865)—*contd.***s. 1 provs. 1. and 2.—contd.**

Permanent Settlement was an engagement with the Government within the meaning of pro. 1 of s. 1 of the Act VII of 1865. That the effect of the Permanent Settlement was to vest the channel with their head sluices and branch and subsidiary channels, and the tanks or reservoirs in the zamindars through or within whose zamindars the same respectively passed or were situate, and to give the zamindar the right or easement of taking water from the river for irrigation purposes. That the zamindar on whose estate the head sluices and initial portions of each of the four channels in question were situate, obtained under his sanad the right to take water from the river (assuming that it belonged to Government), and such right was to be measured by the size of the channel, or the nature and extent of the sluices and weirs governing the amount of water which entered the channel, and not by the purposes for which the grantor or his tenants had been accustomed to use water from the channel prior to the date of the grant. That after the water was lawfully taken into the channel the Government had no further rights in it except as owners of the other zamindars. That the zamindars in whose favour the sanads were made, took, subject to the customary rights of the ryot cultivators, and the rights of all holders of mans under existing jumma grants and in other respects, the right *in specie* of the several zamindars under the sanads were analogous to the rights of upper and lower riparian owners on a natural stream. That there being no evidence that more water was being taken from the river than would be justified by the sanads as construed, the cesses were wrongly levied on the appellants. The law of the Madras Presidency as to rivers and streams certainly differs in some respects from the English law, and it is quite possible that it recognizes some proprietary rights on the part of Government in the water flowing in rivers and streams. *PRASAD ROW v THE SECRETARY OF STATE FOR INDIA* (1917)

I. L. R. 40 Mad. 886

IRRIGATION CESS AMENDMENT ACT (MAD. V OF 1900).*See* IRRIGATION CESS ACT (MAD VII OF 1865), s. 1, PROVS. 1 AND 2

I. L. R. 40 Mad 886

IRRIGATION CHANNEL.

—right to obstruct flow of rain water into—

See ESTATES LAND ACT (MAD ACT I OF 1908), ss. 4, 27, 73 AND 143

I. L. R. 40 Mad. 640

IRRIGATION WORKS.

—*Government, liability of, for not repairing irrigation works—No duty of Government to repair irrigation works.* In India, the Government is under an obligation with regard to each individual ryot to repair irrigation works whenever they require repair. *Madras Railway Company v Zamindar of Carothanpattam*, 1 L. R. 11 A 361, distinguished. The rule derivable from English cases is that where statutory powers have been conferred and statutory duties imposed on persons or corporations, no liability for nonfeasance in regard to individuals arises, in the absence of such liability under the common law,

IRRIGATION WORKS—contd.

merely because such duty is imposed. The statute must impose the liability expressly or by clear implication. *Sankara Vadivelu Pillai v Secretary of State for India*, 1 L. R. 23 Mad. 72, referred to. The right and obligations of Government in regard to irrigation works in this country have to be ascertained from unrecorded custom and practice; and no custom or practice, recorded or unrecorded gives the ryot, in case of non repair, compensation measured by the value of the crops lost by defects in irrigation works commanding his land arising from such non repair. There is no contract between a ryot and the Government, by which the latter is bound to maintain a supply of water for the irrigation of lands belonging to the former. The irrigation rights of ryotwari owners are not rights *personam*, but rather partake of the nature of rights in rem. *Chinnappa Mudaliar v. Sitta Nairan*, 1 L. R. 24 Mad. 36, doubted. SECRETARY OF STATE FOR INDIA v MUTHUVEERAMA REDDY (1910) . 1 L. R. 34 Mad. 82

ISSUES.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 1 L. R. 37 Bom. 563

See LABEL . 1 L. R. 37 Calc. 760

See PRELIMINARY DECREE
1 L. R. 37 Bom. 60

Issues, raising of—Practice. The practice of raising a number of issues which do not state the main questions in the suit but only various subsidiary matters of fact upon which there is not agreement between the parties is very embarrassing. Issues should be confined to questions of law arising on the pleadings and such questions of fact as it would be necessary for the Judge to frame for decision by the jury in a jury trial at *nisi prius* in England. WEST FRED WATCH COMPANY v BESSA WATCH COMPANY (1910) . 1 L. R. 35 Bom. 425

Several issues should not be tried together. The practice of trying all the issues in a case together defeats the object of the law in requiring the various issues to be kept separate and distinct, and cannot but lead to confusion. RAJANI KANT MUKERJEE v RAM DULAL DAS (1912) . 17 C. W. N. 55

Not exactly framed but no surprise. Held, that High Court was right in treating question in respect of which no express issue was framed as an issue upon which the parties had in fact gone to trial and was entitled to look at the evidence recorded. Held, that the appointment by the head of a Matt of a successor to avoid criminal prosecution was not bond fide and was invalid. NATARAJA TAMBIRAN v KAILASAM PILLAI . 25 C. W. N. 145

ITMAM.

See PAYEE REGULATION

25 C. W. N. 857

"Taluk," what it imports—"Marjaddars" receipts, if conclusively show tenure to be non transferable.—Settlement Reports and District Gazetteers, if admissible in evidence.—Written instrument, terms of, inconsistent with ordinary implication of an expression, effect of.—Grant for an indefinite period, nature of.—Condition restraining alienation with no clause of re-entry.—Transfer notwithstanding such condition, if opera-

ITMAM—contd.

—Evidence Act (I of 1872), s. 35 The word "itmam" imports a permanent, heritable and transferable tenure, when applied to a tenure in the permanently settled parts of Chittagong. *Maibul Ali Choudhury v Jogesh Chandra Roy*, 23 C. W. N. 915, referred to. The word "taluk" primarily imports permanency. *Sarada Krishna Laha v Akhil Bandhu Biswas*, 21 C. W. N. 903, and *Upendra Lal Gupta v Jogesh Chandra Roy*, 22 C. W. N. 275, followed. The fact that rent-receipts have been granted *marjaddars* in the name of the original grantee does not necessarily show that a tenure is not transferable. There can be no objection to refer to settlement Reports or District Gazetteers, whether they are strictly speaking evidence or not, under a. 35 of the Evidence Act. *Gauradhwaja Prasad v Superdhwaja Prasad*, 1 L. R. 23 All. 37, 1 L. R. 271 A. 233, referred to. If a grant be made to a man for an indefinite period it enures, generally speaking, for his lifetime and passes no interest to his heirs, unless there are some words showing an intention to grant an hereditary interest. But that rule of construction does not apply if the term for which the grant is made is fixed or can be definitely ascertained. *Lekhraj Roy v Kunhya Singh*, 1 L. R. 3 Cal. 210; 1 L. R. 41 A. 223, referred to. A condition against transfer does not, without more, render an assignment or transfer of the lease inoperative. Such a condition is often inserted merely as a foundation for a claim to *nazar* (or premium). *Nil Madhab Sikdar v Naraitam Sikdar*, 1 L. R. 17 Cal. 826, and *Basarat Ali Khan v Mansrelli*, 1 L. R. 36 Cal. 745, referred to. JOGESH CHANDRA ROY v MAIBUL ALI (1920)

1 L. R. 47 Cal. 979

J**JAGIR.**

See BOMBAY REVENUE JURISDICTION ACT 1872, s. 12. 1 L. R. 45 Bom. 451

See POLICE JAGIR. 2 Pat. L. J. 725

See SAVAD . 1 L. R. 36 Bom. 639

See SETTLEMENT, CONSTRUCTION OF
1 L. R. 39 Calc. 1

—whether Land is held on Political Tenure—

See BOMBAY REVENUE JURISDICTION ACT, 1872, s. 2. 1 L. R. 45 Bom. 464

*Sanal, construction of—Tenure created by document—Custom—Life estate—Use of the words "putra poutradi"—Absolute and heritable estate—Regulation XXXII of 1773, s. 15. A grant of a jagir is a grant for life only, but in the absence of any custom to the contrary, the addition of the words "putra poutradi" in the grant implies an absolute and heritable estate and passes an estate of inheritance. Under a *sanal* *gatta* the ancestor of the plaintiff granted a jagir in the district of Hazaribagh to the grantee and his *putra poutradi*. On the death of the grantee and of his sons without any male issue, the plaintiff finding that the tenants of the jagir stopped paying him the rents, brought a suit for resumption of the jagir on the ground that according to custom the grant was a service grant and resumable by the grantor and his representatives.*

JAGIR—contd

on failure of male issue in the line of the grantee, and obtained a decree. On appeal to the High Court *Held*, that the original grantee took an absolute, heritable, and alienable estate and that all his heirs were capable of inheriting it. *Ram Lal Mookerjee v The Secretary of State for India*, 1 L R 7 Cal 304, L R 8 I A 46 followed. *Gulabdas Jugvandas v The Collector of Surat*, 1 L R 3 Bom 186, L R 6 I A 54, *Bhujanga Puri v Ramayamma*, 1 L R 7 Mad 357, and *Lalit Mohan Singh Roy v Chukkun Lal Roy* 1 L R 21 Cal 834, L R 24 I A 76, referred to. *Perkash Lal v Rameshwar Vaid Singh*, 1 L R 31 Cal 581, and *Roopnath Konwar v Jugun Nath Sahas Das*, 6 S D A R 31, Rep 153, distinguished. *RAM SARAN LAL v RAM NARAYAN SINGH* (1914) 1 L R 42 Cal 305

Construction of jagir
—Life estate—Custom of succession in Chota Nagpur
—Construction of words *putraputraditi*—Grant must be not ambiguous—Bengal Regulation XXXVII of 1793, s 15—Liability to resumption on failure of lineal male heirs A predecessor in title of the appellant granted a jagir of a village in Raj Ramgarh, Chota-Nagpur, in the following terms: "you with your putraputraditi will continue to enjoy the same." The respondents were not the direct lineal heirs of the grantee but only collateral, the lineal male heirs having failed. The evidence showed that all jagirs granted in Raj Ramgarh were by custom resumable on failure of lineal heirs in the male line of the original grantee. In a suit to resume the jagir—*Held* (reversing the decision of the High Court, and restoring that of the Subordinate Judge), that a jagir must be taken to be *prima facie* an estate for life only though it might possibly be granted in such terms as to make it hereditary. But the terms making the grant of a jagir a grant of an estate of inheritance must, if they are to be considered alone, be terms which are not ambiguous, and must clearly shew whether it was intended by the grantor that the right of inheritance should be general or should be confined to a particular class of heirs. In this case it was held on the evidence that the jagir was resumable by the heirs of the grantor on failure of male heirs in the direct line of descent. *Ramlal Mookerjee v Secretary of State for India*, 1 L R 7 Cal 304; L R 8 I A 46, and *Lalit Mohan Singh Roy v Chukkun Lal Roy* 1 L R 21 Cal 834, L R 24 I A 76, distinguished. *RAM NARAYAN SINGH v RAM SARAN LAL* (1918) 1 L R 46 Cal 683

JAIL CODE.

Rules in the Jail Code are framed by the Local Government and have the force of law when sanctioned by the Governor General in Council *PRABU MOHAN DAS v WATSON* 16 C W N 145

JAIL REGISTER

—extract from—

See SECURITY FOR GOOD BEHAVIOUR.
1 L R 43 Cal 1128

JAGADGURU.

See CIVIL PROCEDURE CODE, 1908, s 9
1 L R 45 Bom 590

JAINS

See HINDU LAW

See HINDU LAW—ADOPTION

1 L R 32 All 247

1 L R 45 Bom 754

25 C W N 273.

See HINDU LAW—INHERITANCE.

1 L R 33 Mad 439

See HINDU LAW—SUCCESSION

Jains are of Hindu Origin They are Hindu dissenters and although generally adhering to Hindu Law (i.e.) the Law of their 3 superior castes they recognise no divine authority in the 'Vedas,' and do not practise the 'Shradhs' or ceremony for the dead but the Hindu rules of adoption are applied in the absence of customary usage *SAROKHARRAI v JEOBAJ* (1920) 25 C W N 272

JAJNAVALKYA.

—Ch II, Vers 117, 145—

See HINDU LAW—STRIDHAY

1 L R 43 Cal 944

JALKAR

—right of—

See FISHERY . 1 L R 42 Cal 489

Dispute concerning jalkar—Jurisdiction of Magistrate to institute proceedings under s 145 of the Code after an order binding down one of the parties to keep the peace—Order attaching the subject of dispute on being unable to determine the question of possession—Criminal Procedure Code (Act V of 1895) s 107, 145 146 The Magistrate has jurisdiction to take proceedings under s 145 of the Criminal Procedure Code, after an order under s 107 of the Code binding down one of the parties to keep the peace, when the circumstances so require. Where there was a reasonable apprehension that several persons who were interested in the subject of dispute and had absconded at the time of the s. 107 proceeding might cause a breach of the peace with the first party, who were fishermen, or that the latter might seek to enforce their rights against the second party, who had been bound down, in which case the order binding them down would have the effect of ousting them from any possession they might have *Held*, that the Magistrate acted properly in instituting proceedings under s. 145 of the Code, in order to determine which party was in actual possession of the disputed property, and was justified in attaching the same, under s. 146, if he found himself unable to determine the question of possession. *BAISNAH CHAMAN MAJHI v GATEWATH MURSHI* (1912) 1 L R 39 Cal 468

Rights in a river—Bed of a river, meaning of—Hunter's Statistical Accounts s) can be referred to for establishing existence of private rights *Per JESNIAH, C J*—Jalkar rights of a river extend to waters in the river bed though they are not connected with the waters of the flowing stream throughout the year Where the right of fishery is in a river the Court has to be satisfied on a consideration of all the material facts and conditions whether it can fairly and reasonably be said that the waters over which the fishery is claimed are a part of the river *Per HARRINGTON, J*—The tract in dispute was the bed of the river because it was habitually and regularly covered by the river for a substantial portion of the year in the ordinary course of

JALKAR—contd.

nature. *Per MOOKERJEE, J*—The bed of a river is the whole of what contains its waters when most swollen in whatever time of the year without leaving its channel and overflowing its banks. The grantee of a fishery right in the river is entitled to fish in all waters comprised within the banks of the river, and the circumstance that a particular sheet of water may, during part of the year, be disconnected from the flowing stream of permanent current does not affect the rights of the grantee. *ANMODI BEGUM v. TARAKNATH GHOSH* (1913) . . . 17 C. W. N. 1173

Jalkar rights in river
—*Shifting of bed leaving sheets of water which become connected with the river only when there is inundation*—Certain *kopras* or sheets of water which once formed the bed of the river Mahananda are now surrounded by cultivable lands within the plaintiff's *pattas*. The river has moved many miles away, the *kopras* are completely isolated, and are no longer part of the river bed, and there is no connection of the *kopras* with the river except when the whole country is inundated by the flood water of another river. *Held*, that the defendant, who have *jalkar* rights in the Mahananda have no right of fishery in the *kopras* which belong exclusively to the plaintiffs. *SARU KANTA ACHARYA v. KUNJA MOHAM MOITRA* (1917) . . . 22 C. W. N. 63

JATS.

See CUSTOM . . . I. L. R. 44 Calc. 749

JEWISH LAW.

Marriage Custom—*"Ketuba," legal effect of—Rights of wife.* In a suit brought by a Jewish lady, married in Calcutta, for the recovery from her deceased husband's estate of the sum mentioned in a *ketuba*, executed on the occasion of their marriage. *Held*, that the *ketuba* was a necessary but formal incident of the marriage contract and ceremonial, and created no such right in favour of the widow. *JOSHUA v. ABRAHAM* (1912) . . . I. L. R. 40 Calc. 266
CONFIRMING . . . I. L. R. 38 Calc. 708

JIVAI GRANT.

See HINDU LAW—ADOPTION
I. L. R. 43 Bom. 778

JODI.

See JUDL

JOINDER OF CAUSES OF ACTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O II, R. 2.
I. L. R. 38 Bom. 444

JOINDER OF CHARGES

See CRIMINAL PROCEDURE CODE ss 223 to 239

1 — *Offences against different persons by the same accused—Legality of joint trial—Criminal Procedure Code (Act V of 1898), s 234—Practice* S 234 of the Criminal Procedure Code is not limited to the case of offences committed against the same person, but applies also where they are committed against different persons. *Manu Miya v. Empress, I L R 9 Calc. 371*, and *Sri Bhagwan Singh v. Empress, 13 C W. N. 507*, followed. *Empress v. Murari, I L R 4 All. 147*, *Nanda Kumar Sircar v. Empress, 11 C. W. N. 1123*, *Ali Mahomed v. Empress, 13*

JOINDER OF CHARGES—contd.

O. W. N. 418, dissented from. *Queen Empress v. Juala Prasad, I L R 7 All. 174*, referred to. At the same time the powers under the section should be used with great care and caution where there are different complainants. *SUBEDAR AHIR v. EMPEROR* (1915) . . . I. L. R. 43 Calc. 13

2 — *Offences of the same kind committed in respect of different persons—Legality of joint trial—Criminal Procedure Code, ss 234 and 239—Practice* The words "offences of the same kind" used in s 234 of the Code of Criminal Procedure, and as defined by sub cl. (2) of the said section, do not imply that the offences should necessarily have been committed against the same person. Where, therefore, there were six persons accused of having been jointly concerned in carrying on a systematic swindle, and three joint charges were framed against all the accused. *Held*, there was nothing illegal in the procedure. *Subedar Ahir v. Emperor, I L R 43 Calc. 13*, followed. *Empress v. Murari, I L R 4 All. 147*, dissented from. *EMPEROR v. BACHAN PANDE* (1916) . . . I. L. R. 38 All. 457

JOINDER OF PARTIES.

See HINDU LAW—JOINT FAMILY
I. L. R. 37 Bom. 340

See JURISDICTION OF HIGH COURT
I. L. R. 34 Bom. 13

See PARTIES, JOINDER OF
I. L. R. 42 Bom. 87

JOINT AND ACQUIRED PROPERTY.

See JURISDICTION OF HIGH COURT
I. L. R. 34 Mad. 257

JOINT APPEAL.

See COMPANIES . . . I. L. R. 1 Lah. 368

JOINT BOND.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 462 I. L. R. 39 Mad. 409

JOINT BUSINESS.

See JOINT FAMILY BUSINESS
See MAHOMEDAN LAW—JOINT PROPERTY
I. L. R. 38 Mad. 1099

JOINT CONTRACT.

See CIVIL PROCEDURE CODE, 1882, s. 462
I. L. R. 34 Mad. 314
I. L. R. 39 Mad. 409

See CONTRACT ACT ss 43 to 45

JOINT CONVICTION.

Joint Penalty—Calcutta Municipal Act (Beng. III of 1899), ss 444 and 574—Disobedience of order under s. 444 (2) by two persons The owner and an occupier of a house in Calcutta were jointly convicted of disobedience of an order under s. 444 of the Calcutta Municipal Act, and a joint penalty of fine was imposed upon them. *Held*, that the joint conviction and the joint penalty were illegal, each of the accused being guilty of a separate offence. *BHAI RAB CHANDRA KOLAT v. CORPORATION OF CALCUTTA* (1910) . . . I. L. R. 37 Calc. 895

JOINT CREDITORS.

See CONTRACT ACT, 1872, s. 55.
2 Pat. L. J. 520

JOINT DEBTS.See ACCOUNTS, *SUIT FOR.*

I L. R. 44 Calc. 1

JOINT DEBTORS— *suit for contribution between—*

See LIMITATION I. L. R. 39 Mad. 238

JOINT DECREE.— *execution of—*

See LIMITATION I. L. R. 46 Calc. 25

JOINT DECREE-HOLDERS— *rights of, inter se—*

See EXECUTION OF DECREE.

I L. R. 33 All 563

JOINT ESTATE

— *Private partition—En-
cumbrance by co-sharer—Holding in severalty—
Tenancy in common—Partition by Collector, effect
of—Estates Partition Acts (Beng Act V of 1897,
s 99, and Beng Act VIII of 1878, s 123)—Practice
—Abandonment of plaintiff's case and adoption by
him of defendant's s. 99 of Beng Act V of 1897
applies only where the lands are held jointly by the
proprietors and not in severalty in pursuance of a
private arrangement between the parties. *Hriday
Nath v Mohobutnessa* I L. R. 29 Calc. 235
Aimanaddi Patra v Nabin Chandra Gope, 11
C L J 95 *Syed Abdul Latif v Aimanaddi Patra*
15 C W N 476, followed. *Joy Sankari Gupta v,
Bharat Chandra Bardhan*, I L. R. 26 Calc. 431,
distinguished. Where a section of an Act (here, s.
123 of Beng. Act VIII of 1878) which was received
a judicial construction [*Hriday Nath v Mohobut-
nessa*] is re-enacted in the same words such re-
enactment [here, s 99 of Beng Act V of 1897]
must be treated as a legislative recognition of
that construction. *Mansell v Regina*, 8 E and B
54 *Ex parte Campbell*, L. R. 5 Ch. App. 703,
followed. When on a partition by the Collector
any land of an undivided joint estate, which had
been encumbered by any co-sharer, is allotted to
another co-sharer, the latter takes it free from the
encumbrance so created. *Byjnath v Ramodeen*,
L. R. 11 A 104 followed. The decision in
Sheikh Ahmadullah v Sheikh Ashraf Hossein, 13
W R 417, [where the lands were held in severalty]
which was followed in *Hriday Nath v Mahobut-
nessa* I L. R. 29 Calc. 235, is not, as is assumed in
Joy Sankari Gupta v Bharat Chandra Bardhan,
I L. R. 26 Calc. 431 [inconsistent with, and has
not consequently been overruled in effect by the
decision of the Judicial Committee in *Byjnath v
Ramodeen*, L. R. 11 A 106, [where the lands were
held in common tenancy] *Byjnath v Ramodeen*,
L. R. 11 A 106, *Venkatarama v Evumia*, I L. R.
33 Mad 429 *Sheikh Nura v Bhatudamm Roy*
21 C L J 596, *Broja Nath Saha v Dinesh Chandra
Roy*, 21 C L J 599 *Taralanta v Ishur Chandra*,
21 C L J 693, *Joy Sankari Gupta v Bharat
Chandra Bardhan* I L. R. 26 Calc 431, distin-
guished as cases where land was held in common
tenancy. A plaintiff cannot be allowed to abandon
his own case adopt that of the defendant and
claim relief on that footing *Shabiruts Sircar v
Abdul Haqueem*, I L. R. 5 Calc. 602, *Ramdayal v
Jumunoy* I L. R. 14 Calc. 791 *Balmukund
Kewada v Bhagvandas Kewada*, 15 Bom. L.
R. 202 followed. But that does not prevent the
defendant from contending that even on the facts*

JOINT ESTATE—contd

found the plaintiff's claim [here, for ejectment]
cannot be sustained. *NAKENDRA MOHAN ROY v
PYARI MOHAN SAHA* (1915)

I L. R. 43 Calc. 103

JOINT EXECUTION.

See ATTESTATION BY EXECUTANTS.

I L. R. 37 Calc 526

See PROMISSORY NOTE.

I L. R. 38 Mad. 689

JOINT FAMILY

See CIVIL PROCEDURE CODE, 1832,

s 231 I L. R. 32 All 404

s. 214 I. L. R. 1 Lah 134

See CONTRACT ACT (IX of 1872) s. 68-
I L. R. 32 All. 325

See JOINT HINDU FAMILY

See KHUJAS I L. R. 33 Bom 419

See SALE IN EXECUTION OF DECREE.

I L. R. 41 Calc. 524

JOINT FAMILY BUSINESS.

See HINDU LAW—JOINT FAMILY

I L. R. 39 Bom 715

See MUHAMMADAN LAW

I L. R. 33 Mad. 1039

— *Private arbitration—Award, operation of, on
moneys realised by member on behalf of family—
"Cash" meaning of. The members of a joint
family business referred their disputes (in view of
dissolution) to an arbitrator before whom on 31st
July 1895 they stated inter alia, that they had
divided amongst themselves all the moveables con-
sisting of cash and kind, etc. that a sum of Rs.
5,650 was payable to one of them B, that they
had understood the accounts among themselves
and that "now no co-sharer has any right to
demand accounts from another, and the arbitra-
tor made his award on 5th August 1895. At the
date of the award, there was an undischarged
usufructuary mortgage executed on 10th June
1893, for 14 years, by one M in favour of B as re-
presenting the family to be discharged by receipt
of the usufruct. Held that the terms and intent
of the award precluded the other co-sharers from
asking for an account of moneys realised previous
to the date of the award. The word "cash"
referred to all moneys received by the parties
before the statement was made to the arbitrator
SHRO NARAIN SINGH v BISHUVAH SINGH (1913)
18 C W. N 426*

JOINT FAMILY PROPERTY.

See AGRA TENANCY ACT (II of 1901) s.
22 I L. R. 38 All 325

See HINDU LAW—JOINT FAMILY

See HINDU LAW—JOINT FAMILY PRO-
PERTY

See HINDU LAW—SUCCESSION

I L. R. 39 Mad. 138

See UNITED PROVINCES LAND REVENUE
ACT (II of 1901) ss. 107, 111 112.

I L. R. 35 All 543

— *if exists in Mahomedan Law—*

See MUHAMMADAN LAW—JOINT BUSINESS
I L. R. 33 Mad. 1039

JOINT FAMILY PROPERTY—contd.

Sale by father—

See HINDU LAW . I. L. R. 2 Lah. 338

JOINT HINDU FAMILY.

See AGRA TENANCY ACT (II OF 1901),

s. 20 . . . I. L. R. 40 All. 314

s. 22 . . . I. L. R. 42 All. 668

See CIVIL PROCEDURE CODE (ACT XIV OF 1852), ss 366, 371

I. L. R. 40 Bom. 248

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss 2 (11), 53

I. L. R. 42 Bom. 504

s. 2 AND O XXII, r. 3

I. L. R. 2 Lah. 114

s. 11 Expt VI . I. L. R. 42 All. 359

O XX, r. 18 . I. L. R. 38 All. 461

See COPYRIGHT . I. L. R. 43 All. 41

See EVIDENCE ACT 1872, r. 69

I. L. R. 34 All. 615

See GUARDIAN *ad litem*

I. L. R. 38 All. 315

See HINDU LAW—ALIENATION

See HINDU LAW—JOINT FAMILY

See HINDU LAW—JOINT FAMILY PROPERTY

See HINDU LAW—LEGAL NECESSITY

See HINDU LAW—MANAGER

See HINDU LAW—PARTITION

See HINDU LAW—WIDOW

I. L. R. 40 All. 98

See JOINT FAMILY.

See MORTGAGE . I. L. R. 34 All. 239

See PARTITION . I. L. R. 39 All. 651

See REGISTRATION I. L. R. 37 All. 105

See SALE OF GOODS

I. L. R. 40 Calc. 523

See SPECIFIC RELIEF ACT (I OF 1877)

s. 42 . . . I. L. R. 36 All. 126

See SUCCESSION CERTIFICATE ACT (VII OF 1889), s. 4 I. L. R. 38 All. 380

See SPECIFIC PERFORMANCE.

I. L. R. 41 All. 515

See TRANSFER OF PROPERTY ACT (IV OF 1852), s. 93 . I. L. R. 36 All. 516

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901)

ss 107 AND 111 I. L. R. 35 All. 527

ss 111, 112, 233 (k)

I. L. R. 35 All. 123

—Whether salary of a member in the ICS is partible property—

See JOINT HINDU FAMILY

I. L. R. 2 Lah. 263

—Whether salary of a member in the ICS is partible property—

See HINDU LAW . I. L. R. 2 Lah. 40

—Ancient property—

Will—Probate—Payment of full probate duty in a case where there was admittedly a joint Hindu

JOINT FAMILY PROPERTY—contd.

family consisting of a father and a minor son, the father made a will in effect bequeathing the whole property to his minor son. It was not disputed that the property covered by the will was joint family property. The executors contended that the deceased testator had no beneficial interest in any part of the property devised and therefore they were exempted from the payment of any probate duty: *Held*, that where the matter in question was probate, the parties claiming under the will could not go behind its terms, or claim any exemption whatsoever upon allegations utterly inconsistent not only with the fact of the will itself, but with the express statements made therein and that the executors must pay full probate duty upon the will. *Collector of Kara v Chaudhri* I. L. R. 29 Bom. 161, distinguished. KASHINATH PARSHARAM : GOUDAVARAI (1913)

I. L. R. 39 Bom. 245

JOINT HOLDING.

—Widow of one of the joint owners claiming partition—

See SECOND APPEAL

I. L. R. 2 Lah. 348

—Whether section 145, Criminal Procedure Code, is applicable to—

See CRIMINAL PROCEDURE CODE, s. 145

I. L. R. 2 Lah. 372

JOINT IMMOVEABLE PROPERTY.

—partition of—

See BENAMIDAR I. L. R. 43 Calc. 504

JOINT INQUIRY.

—against members of a gang—

See SECURITY FOR GOOD BEHAVIOUR

I. L. R. 37 Calc. 91

JOINT JUDGMENT-DEBTORS.

Release of some—Liability of others—English law—Indian Contract Act (I of 1872), s. 41—Rule of justice, equity and good conscience—Rule of English law, applicability of A release by a decree holder of some of the joint judgment debtors from liability under the decree, does not operate as a release of the other judgment debtors from liability under the decree. The rule of English law should not be applied, in India, as it is based on the substantive rule applicable to contractual joint debtors, which is different under s. 41 of the Indian Contract Act, and is not in consonance with justice, equity and good conscience. *Quare* Whether the English law should be applied in cases arising within the original jurisdiction of the High Courts. *Chinnammannar and Gurusami v. Sadanra*, I. L. R. 5 Mad. 337, referred to. *Moolchand v. Alwar Chetty* (1915) . . . I. L. R. 39 Mad. 548

JOINT MAGISTRATE.

See BENGAL REGULATION No. VI of 1825,

s. 2 . . . I. L. R. 33 All. 84

JOINT OWNERS.

See DISPUTE CONCERNING LAND

I. L. R. 33 Calc. 833

JUDGE—contd

prosecution by—

See **CONTENT OF COURT**

I L R 43 Calc 169

No privilege or protection attaches to the publication of acts of a Judge who exempts him from advertisement content CHANNING ANSOLD v IMPEROR I L R 41 Calc 1023

JUDGMENT

S & ARBITRATION

I L R 47 Calc 611

See **ATTACHMENT BEFORE JUDGMENT**See **CIVIL PROCEDURE CODE, 1908**

O XLI R 2

I L R 33 All 236

I L R 35 All 358

I L R 42 All 262

O XLI R 11 I L R 37 Bom 610

See **CRIMINAL PROCEDURE (22)**

s 110

I L R 38 All 393

ss 367 AND 491

I L R 36 All 496

2 Pat. L J 695

See **JUDGMENT OF A SINGLE JUDGE**See **LETTERS PATENT 1865 (115)**

I L R 39 Mad 235

I L R 34 Bom 1

I L R 42 Bom 260

I L R 45 Bom 377 & 428

See **MISJOINDER OF PARTIES**

I L R 45 Calc 111

See **PES JUDICATA**

I L R 38 Mad 158

a nullity—

See **JURISDICTION**

I L R 38 Calc 639

affirmed on appeal—

See **ESTOPPEL**

L R 44 I A. 213

Foreign Judgment—Sult on—

See **CIVIL PROCEDURE CODE 1908 s 13**

I L R 40 Mad. 112

necessity of writing—

See **CIVIL PROCEDURE CODE, 1908**

O XLI R 11

I L R 36 Bom 118

not on the merits of the case—

See **CIVIL PROCEDURE CODE (ACT V OF 1908) s 13 (b)**

I L R 40 Mad. 112

of a single Judge—

See **LETTERS PATENT APPEAL**

I L R 43 Calc 90

of the previous Judge, successor not bound to pronounce—

See **CRIMINAL PROCEDURE CODE (ACT V OF 1908) s 367**

I L R 40 Mad 168

relevancy of—

See **EVIDENCE** I L R 41 Bom 1**JUDGMENT—contd**

remarks against a person not a party or witness—

See **PRACTICE AND PROCEDURE**

I L R 43 Bom. 1127

setting aside a, for fraud—

See **FRAUD** I L R 38 Mad. 203

1 ——— Judgment binding nature of, on succeeding Judge—*Partition of property between co-owners may be effected orally. Where a Judge on appeal decides certain points and remands the case his decision is binding on his successor before whom the case comes up again on appeal from the judgment of the remand. There is no hindrance in the transfer of property A to prevent co-owners from effecting an absolute sale of their property or by LATCHUMAMMAL v ANJANMAL (1913)*

I L R 34 Mad 2

2 ——— Personal knowledge of Judge—*Material facts in evidence or improperly admitted as basis of judgment—Invalidity of such judgment. A judgment which is based on material facts which were not in evidence and which have been improperly admitted or on the personal knowledge of the Judge is a nullity in accordance with law. See to this effect Madras v Ram Doyal referred to D. P. S. RAMASWAMI v RAM Doyal CHAUDHURI (1910)*

I L R 38 Calc 153

not enter part ——— *Per judgment—Fiduciary—Estate—R. Levan v. The Hindu purchased certain properties at a sale in execution of a decree against A. Another B whose claim to the property under a katha a village to have been executed by the original owner B had been dismissed in execution proceedings also failed in a suit instituted by her against plaintiff and others under Act of the Civil Procedure Code of 1882 having been found that B was really a benamdar for A. Plaintiff's proceeding to take possession was opposed by D. In a suit by the plaintiff to recover the property from D. Held that the orders and decrees in the proceedings were relevant to the issue as to title and the plaintiff not res judicata between the parties were admissible in evidence. Ramaswami Doyal v. The Secretary of State for India I L R 35 Mad 141 referred to. PRASAD MOHAN SHARMA v. DURLAVI DASSA (1913)*

18 C W N 954

lost—*Procedure. Where a criminal case the accused was convicted and sentenced the records in the case being at the time lost. Held that it was unnecessary for the High Court to order a retrial especially in the absence of an appeal by the accused person. There is no provision of law which enacts that unless all the records of a case are in the court house at the time of conviction and sentence the conviction and sentence are void and should be quashed or that the Sessions Judge's jurisdiction is ousted by the loss of the records. Where a judgment has been lost the appropriate course is for the Sessions Judge to rewrite the judgment in memory and from the materials before him and place it on record. See KAMAK SHARMA (1913)*

I L R 38 Mad 498

A judgment of one Judge for or leave is valid. SARAJ PANDAY CHOWDHURY v. FRENCHAND CHOWDHURY (1913)

22 C W N 263

JOINT FAMILY PROPERTY—contd

Sale by father—

See HINDU LAW . I. L. R. 2 Lah. 338

JOINT HINDU FAMILY.

See AGRA TENANCY ACT (II OF 1901),

s 20 . . . I. L. R. 40 ALL 314

s 22 . . . I. L. R. 42 ALL 668

See CIVIL PROCEDURE CODE (ACT XIV
OF 1882), ss 366, 371

I. L. R. 40 Bom. 248

See CIVIL PROCEDURE CODE (ACT V OF
1908), ss 2 (II), 53

I. L. R. 42 Bom. 504

s 2 AND O XXII, r 3

I. L. R. 2 Lah. 114

s 11 Expt. VI . I. L. R. 42 ALL 359

O XV, r 18 . I. L. R. 38 ALL 481

See COPYRIGHT . I. L. R. 43 ALL 41

See EVIDENCE ACT 1872, r 69

I. L. R. 34 ALL 615

See GUARDIAN *ad litem*

I. L. R. 38 ALL 315

See HINDU LAW—ALIENATION

See HINDU LAW—JOINT FAMILY

See HINDU LAW—JOINT FAMILY PRO-
PERTY

See HINDU LAW—LEGAL NECESSITY

See HINDU LAW—MANAGER.

See HINDU LAW—PARTITION

See HINDU LAW—WIDOW

I. L. R. 40 ALL 96

See JOINT FAMILY.

See MORTGAGE . I. L. R. 34 ALL 289

See PARTITION . I. L. R. 39 ALL 651

See REGISTRATION I. L. R. 37 ALL 105

See SALE OF GOODS

I. L. R. 40 CALC 523

See SPECIFIC RELIEF ACT (I OF 1877)

s 42 . . . I. L. R. 38 ALL 126

See SUCCESSION CERTIFICATE ACT (VII
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See SPECIFIC PERFORMANCE.

I. L. R. 41 ALL 515

See TRANSFER OF PROPERTY ACT (IV OF
1882), s 93 . I. L. R. 38 ALL 516See UNITED PROVINCES LAND REVENUE
ACT (III OF 1901)

ss 107 AND 111 I. L. R. 35 ALL 527

ss 111, 112, 233 (1)

I. L. R. 35 ALL 126

Liability of Co-parcenary property
under money decree against father—

See JOINT HINDU FAMILY.

I. L. R. 2 Lah. 263

Whether salary of a member in the
I.C.S. is partible property—

See HINDU LAW . I. L. R. 2 Lah. 40

Ancestral property—
Will—Probate—Payment of full probate duty
in a case where there was admittedly a joint Hindu**JOINT FAMILY PROPERTY—contd**

family consisting of a father and a minor son, the father made a will in effect bequeathing the whole property to his minor son. It was not disputed that the property covered by the will was joint family property. The executors contended that the deceased testator had no beneficial interest in any part of the property devised and therefore they were exempted from the payment of any probate duty. *Held*, that where the matter in question was probate, the parties claiming under the will could not go behind its terms, or claim any exemption whatsoever upon allegations utterly inconsistent not only with the fact of the will itself, but with the express statements made therein and that the executors must pay full probate duty upon the will. *Collector of Kara v. Chunilal*, I. L. R. 29 Bom. 161, distinguished. *KASHINATH PARSHARAM v. GOURAVABAI* (1914)

I. L. R. 39 Bom. 245

JOINT HOLDING.Widow of one of the joint owners
claiming partition—

See SECOND APPEAL

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Whether section 145 Criminal Proce-
dure Code, is applicable to—

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JOINT JUDGMENT-DEBTORS

Release of some—Liability of others—English law—Indian Contract Act (I of 1872) s 41—Rule of justice, equity and good conscience—Rule of English law, applicability of. A release by a decree-holder of some of the joint judgment debtors from liability under the decree, does not operate as a release of the other judgment debtors from liability under the decree. The rule of English law should not be applied, in India, as it is based on the substantive rule applicable to contractual joint debtors, which is different under s 41 of the Indian Contract Act. And is not in consonance with justice, equity and good conscience. *Quære* Whether the English law should be applied in cases arising within the original jurisdiction of the High Courts. (*Chinnamannar and Gurusami v. Sadanra*, I. L. R. 5 Mad 387, referred to *MOOLCHAND v. ALWAR CHETTY* (1913) . . . I. L. R. 33 Mad 543)

JOINT MAGISTRATE.

See BENGAL REGULATION NO VI OF 1823,

s 2 . . . I. L. R. 33 ALL 84

JOINT OWNERS.

See DISPUTE CONCERNING LAND.

I. L. R. 33 CALC. 683

JOINT OWNERS—contd

See EVIDENCE I L R 39 All 696

See NOTICE I L R 40 Cal 503

See PENAL CODE (ACT XLV of 1860) s 497 I L R 33 All 773

—suit by, to recover rent—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX of 1887) Sec II Art 31

I L R 40 All 666

Part 10.—Abolition of formally divided but separate portions thereof taken possession of by the various owners.— In a suit for an equal share of the rights of a village was divided into three mahals with the exception of the *ghat* as to which it was found that it had not been divided between the mahals by agreement on the village map or on the spot but the owners of the mahals had been in separate possession of portions of it. It held that the only possible inference from this finding was that the parties had agreed amongst themselves as to the possession of the *ghat* and that so long as the agreement continued each party was entitled to use the portion in his possession in any way he pleased so long as such user or possession did not interfere with the user or possession of the owners of the other mahals. *Kumud N. D. Desai v. P. J. J. Mazumdar* 11 C H N 51 followed *JAGAN NATH PRASAD v. BADRI PRASAD* (1911)

I L R 34 All 113

The right.— *Quarter what amounts to—* Cause of action.— Each joint owner has the right to the possession of all the property held in common equal to the right of each of his companions in interest and superior to that of all other persons. He has the same right to the use and enjoyment of the common property that he had to his sole property except in so far as it is limited by the equal right of his co-sharers. Accordingly each co-owner may at all times reasonably enjoy every part of the common property that is he is entitled to such enjoyment as will not interfere with the like rights of the co-owners. It necessarily follows that one co-owner has no right to the exclusive possession and use of any particular portion of the joint property and if he exercises such rights and excludes his co-sharers from participation in the possession he must account to his co-sharer for his interest in the part from which he is ousted even though he takes no more than his just share. But the co-sharer out of possession cannot complain of the mere possession of the co-owner so long as he refrains from setting up any claim to share in that possession. Hence in order to give rise to a cause of action against the co-sharer it must be proved that he has amounted to ouster or disavowal. It is not easy to frame a formula to cover all cases of ouster but it may generally be stated that where there is an actual turning out or keeping excluded the party entitled to the possession there is an ouster. Any resistance preventing a co-sharer from obtaining effective possession is an actual ouster. Such resistance must be clearly and affirmatively shown and is not presumed from equivocal acts which may or may not have been designed to operate as an exclusion. *Jacob v. Seaward* I L R 5 H L 464 referred to *DEBENDRA NARAYAN SINGH v. NARENDRA NARAYAN SINGH* (1919)

I L R 47 Cal 182

JOINT PENALTY

See JOINT CONVICTION

JOINT POSSESSION

See CIVIL PROCEDURE CODE 1908 O XVI s 25 I L R 24 All 150

See COMMON LAW I L R 2 Lab 73

See HINDU LAW—HUSBAND AND WIFE I L R 38 Mad 1036

See LANDLORD AND TENANT I L R 37 Cal 637

Suit for possession of a house.— When a house is divided into two parts and one part is only a portion of the whole and the other part is a proper residence when it is taken a suit for joint possession is not maintainable unless there is actual ouster. If it is stated by the defendant in possession that the plaintiff has no right and if he is refused leave to enter the land it is a case of actual ouster and a suit for joint possession will lie. *SARAT CHANDRA MUKHOPADHYAY v. PRAJENDRA LAL MITRA* (1913)

13 C W N 420

JOINT PROBATE

See HINDU LAW VIII

I L R 59 Mad 365

JOINT PROPERTY

See HINDU LAW—HUSBAND AND WIFE I L R 38 Mad 1036

See LIMITATION ACT (XI of 1877) Sec I Art 12

I L R 37 Bom 64

See PARTITION I L R 37 All 155

—Suit for damages for ouster by co-owner—

See DEBENDRA NARAYAN SINGH v. NARENDRA NARAYAN SINGH (1919)

23 C W N 900

Co-owners.—Purchase of an undivided moiety.— Occupancy of the other moiety in virtue of a lease deed.—Subsequent hold over.— I must on Act (IX of 1908) Arts 110, 115 and 120 Arts 110 and 115 of the Limitation Act presuppose the existence of a contract, express or implied where there is no such contract or any relationship of landlord and tenant subsisting between the parties or no holding over as tenant but when the relationship is referable to rights as co-owners a suit for recovery of the moiety of a house and rent for a period of years governed by art 120 of the Limitation Act. *Rel. v. Watson & Co. Ltd. v. Ram Chand Dutt* I L R 23 Cal 790 applied *Quare* Whether the fiction of tenancy by sufferance should be kept up after the passing of the Transfer of Property Act. *Subbairam Ram v. Gundala Pamanna* 1 Mad W N 145 referred to. *MADARI KADAR SINGH* (1914)

I L R 39 Mad. 54

JOINT PROPRIETORS

—Liability of—

See THEATRICAL PERFORMANCE

I L R 44 Cal 1025

JOINT TENANCY—

1.—Presumption of joint tenancy.— *Gift.—* *Donor's gift for himself.—* *Manager*

JOINT TENANCY—contd

ment handed over on different dates, effect of—*Transfer of Property Act, s 46* Where there are no words in an instrument of gift of property to several persons indicating an intention to create tenancies in common, there is a presumption that the donees hold the property as joint tenants and not as tenants in common *Indian Succession Act, s 93*, illustration, relied on Differences in dates of handing over the management of the property by the donor to the several donees creates no presumption in favour of a tenancy in common the property having vested on the same date. *Karoyi Munocky Wadia v Peroshan, I L R 23 Bom. 50*, referred to *S 45, Transfer of Property Act*, has no application to gifts. *ARAJAL JOSEPH GABRIEL v. DOMINGO INAS (1910)*

I. L. R. 34 Mad. 80

2. ——— Partition—*Suit by transferee of a portion of a joint tenancy for part on of such portion, maintainability of—Limitation Act XV of 1877, Sec II, Art 144—Adverse possession burden of proving, in a suit for partition* The transferee of a portion of a joint tenancy can maintain a suit for partition of such portion when such partition will not be attended with much inconvenience to the other sharers *Ramasamy Chetti v Alagarsamy Chetti, I L R 27 Mad 361*, not followed Where in such a suit by the transferee, it is alleged that the right of the transferor to claim a share has become barred by exclusion for more than twelve years from enjoyment, the article of the Limitation Act applicable is Art 141 and the burden will be on the defendant to show that the sharer was, in denial of his title, excluded from enjoyment of his share *HARIKRISHNA CROWDARY v VENKATALAKSHMI NARAYANA (1910)*

I. L. R. 34 Mad 402

JOINT TORT-FEASORS.

See CONTRIBUTION I. L. R. 38 All. 237

See TORT . . . 4 Pat. L. J. 486

JOINT TRADE.See HINDU LAW—HUSBAND AND WIFE
I. L. R. 38 Mad. 1036**JOINT TRIAL.**See CHARGE . I. L. R. 40 Calc. 318
I. L. R. 46 Calc 712

See CONFESSION I. L. R. 38 Calc. 446

See CRIMINAL PROCEDURE CODE s. 110
AND 117. 25 C W. N. 331

ss. 110 AND 190 . 4 Pat. L. J. 7

ss. 197, 239, AND 732
I. L. R. 43 Bom. 147

s. 239 . . I. L. R. 38 All. 311

s. 237, CL (3) I. L. R. 37 Bom. 146

s. 433 . . I. L. R. 39 All. 549

See EVIDENCE ACT (I OF 1872), s 30.
I. L. R. 37 All 247

See JOINDER OF CHARGES.

I. L. R. 43 Calc. 13
I. L. R. 38 All. 457

See MISJOINDER OF CHARGES.

I. L. R. 42 Calc. 1133

——— of thief and receivers—

See MISJOINDER I. L. R. 45 Calc 741

JOINT TRIAL—contd

——— of two separate calendar cases—

See CRIMINAL PROCEDURE CODE (Act
V OF 1898), ss 421, 233, 537

I. L. R. 39 Mad. 527

Secret society—Waging war—*Penal Code ss 121 to 123* Where the accused were all alleged to have been members of a secret society, with its head quarters in Manipal in the suburbs, and its places of meeting in Calcutta and elsewhere and to have joined in the unlawful enterprise, and with others, known and unknown, to have conspired to wage war or to deprive the King of the sovereignty of British India and to have collected arms and ammunition with such intent and to have actually waged war *Held*, that the joint trial of the accused on charges under ss 121, 121A, 122 and 123 of the Penal Code was not bad for misjoinder of persons or charges. *BALINDRA KUMAR GHOSH v. EMPEROR (1900)*

I. L. R. 37 Calc 467

Receivers of stolen property acting in concert If two persons are shown to have been acting in concert and were in joint control of the stolen property a joint trial would not be illegal *Query* where it is merely shown that a part of the property which has been stolen was found in the possession of one person and the remainder was found in the possession of another *JADUNANDAN PRASAD v KING EMPEROR*

I Pat L J. 64

JOINT VENTURE.

——— agreement for—

See PARTNERSHIP

I. L. R. 39 Bom. 281

JOSHI VATANDAR.

See VATANDAR JOSHI

I. L. R. 40 Bom 112

I. L. R. 42 Bom 618

JUDGE.See CIVIL PROCEDURE CODE (ACT V OF
1908), O XLII, r 27, CL (6)

I. L. R. 38 Mad 414

——— Defamatory Statements made by—

See JUDICIAL OFFICERS PROTECTION ACT,
1856

I. L. R. 45 Bom. 1099

——— formerly Counsel for a party—

See COUNSEL . I. L. R. 47 Calc. 823

See CHAMBERS

See STAY OF EXECUTION.

I. L. R. 48 Calc. 796

——— order of a single—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898), ss 435 437, AND 113.

I. L. R. 39 Mad. 537

——— order of a single, in revision—

See APPEAL FROM DECISION (24 AND 25 VICT
c. 104, s. 15) I. L. R. 39 Mad. 539

——— personal knowledge of—

See EVIDENCE . I. L. R. 36 Mad. 163

See JUDGMENT . I. L. R. 38 Calc. 163

JUDGE—could

prosecution by—

See **CONTEMPT OF COURT**

I L R 45 Cal 169

No pr v lepe or prote-
tion attaches to the publc acts of a Judge wh ch
attempts h m from adverse comment CHANNING
ARNOLD v EMPEROR I L R 41 Cal 1023

JUDGMENTSee **ARBITRATION**

I L R 47 Cal 611

See **ATTACHMENT BEFORE JUDGMENT**See **CIVIL PROCEDURE CODE 1908**

O V L R 33 All 236

I L R 35 All 388

I L R 42 All 262

O V L R 37 Bom 610

See **CRIMINAL PROCEDURE CODE**

s 110 I L R 38 All 293

ss 377 AND 471

I L R 36 All 496

s 471 2 Pat. L J 695

See **JUDGMENT OF A SINGLE JUDGE**See **LETTERS PATENT 1865 CL 15**

I L R 39 Mad 235

I L R 34 Bom 1

I L R 42 Bom 260

I L R 45 Bom 377 & 428

See **MISJOINDER OF PARTIES**

I L R 45 Cal 111

See **RES JUDICATA**

I L R 38 Mad 158

a nullity—

See **JURISDICTION**

I L R 38 Cal 639

affirmed on appeal—

See **ESTOPPEL** L R 44 I A 213

Foreign Judgment—Sustained—

See **CIVIL PROCEDURE CODE 1908 s. 13**

I L R 40 Mad 112

necessity of writing—

See **CIVIL PROCEDURE CODE, 1908**

O V L R 33 Bom 118

I L R 38 Bom 118

not on the merits of the case—

See **CIVIL PROCEDURE CODE (ACT V OF 1908) s. 13 (b)**

I L R 40 Mad 112

of a single Judge—

See **LETTERS PATENT APPEAL**

I L R 43 Cal 60

of the previous Judge successor not
bound to pronounce—

See **CRIMINAL PROCEDURE CODE (ACT V
OF 1908) s. 307**

I L R 40 Mad 108

relevancy of—

See **EVIDENCE** I L R 41 Bom 1**JUDGMENT—could**

remarks against a person not a party
or witness—

See **PRACTICE AND PROCEDURE**

I L R 45 Bom 1127

setting aside a, for fraud—

See **FRAUD**

I L R 38 Mad 203

1 Judgment binding nature of
on succeeding Judge—*Parties of property
between co n does may be eff t d orally* Where a
Judge on appeal dec des certa p nts and re-
mends the case h s dec s on a b nd ng on l s suc-
cessor before whom the case comes up again on
appeal from the judgment o remand There s
no b nd ng n the Transfer of Prop ty Act to pre nt
co w dows effect ng an absolute d v s on of property
orally LATCHUMAMMAL GANJAMS AL (1910)
I L R 34 Mad 72

2 Personal knowledge of Judge
—*Ma rals not n e dence or mprop ly ad a ted
as bas s of judgn nt l d j of su h j dgn t*
A judgn nt wh ch s based on mater als wh ch
were not n evden s and wh ch ha e been mprop-
perly admitted or on the personal knowledge
of the Judge a not accordance w th law *Pat
labha v M doud an* I L R 19 Mad 495
referred to D RGA PRASAD SINGH v RAM DOYAL
CHANDRURI (1910) I L R 23 Cal 153

*Judgments and ord rs
not nter pa t es—Res j d cala Pa opnl—F d nce*
—*Rel vancy* Pla nt d purchased certa n property es
at a sale n execut on of a n oncy decre aganst
A As mother B whose clm to the property
under a kobala alleged to have been executed by
the org nal owner D had been d sn ssed execu-
t on proceedngs also failed in a su t nter t d
by her again t pla nt ff and others n l r s. 267 of
the C v l Procedure Code of 1892 i hav ng been
found that B was really a benamdar for A
Pla nt ff on proceed ng to take possess on was
opposed by D In a su t by the pla nt ff s to re-
cover the property from D *Held* tl at the orders
and decrees n the prevous t gat on were relevant
to the issue as to tle and though not *res j d cala*
between the parties were adm ssible n evd nce
*Lamamurti Dhora v The Secretary of State for
Ind a* I L R 36 Mad 141 referred to PEANI
MODAN S IANA v DURLATI DASSYA (1913)
19 C W N 954

Not pronounced—*Pe-
cord lost—Procedure* Where n a cr m nal case the
accused was convicted and sentenced the records
in the case being at the time lost *Held* that it
was unnecessary for the H gh Court to order a
retrial especially n the absence of an appeal by
the accused person There s no prov s on of law
which enacts that unless all the records of a case
are in the court house at the t me of convict on
and sentence the convict on and sentence are v d
and should be quashed or that the Sec ons Jud s
trial has been held or the sentence passed w thout
jurisdiction. Where a judgment has been lost
the appropriate course is for the Sec ons Judge
to recall to it from memory and from the mater als
before him and place it on record *Re KANAK
SUNAMA* (1913) I L R 38 Mad 498

A judgment of one Judge
of H gh Court read in Court by another when
former on leave is val d *SARAJ PARSAN CHOD-
DRURY v PRINCHAND CHODDRURY* (1917)
22 C W N 263

JUDGMENT—contd.

Civil Procedure Code (Act 1 of 1908), O. XX, rr 1, 2, 3—**Judgment, provisions of the law relating to—Infringement—Curable by consent or waiver** O. XX, r 3, Civil Procedure Code, lays down that a judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and when once signed shall not afterwards be altered or added to save as provided by s 152, or on review. The provisions of the law relating to the delivery of judgment may be deemed to have been framed for the benefit of the parties litigant and their contravention is an irregularity curable by consent or waiver. It is not a case of lack of inherent jurisdiction where the maxim applies that consent cannot give jurisdiction *Golab Saa v. Chowdhury Madho Lal*, 2 C. L. J. 384 and *Gardeo Singh v. Chandrikah Singh*, 5 C. I. J. 611. Nor is it a case of a mandatory provision of law, the infringement whereof nullifies the entire proceedings: *Ashutosh v. Bchari Lal*, 1 L. R. 35 Cal. 61, and *The Liverpool Borough Bank v. Turner*, 2 De G. F. and J. 502. The infringement of the procedure prescribed by O. XX, rr 1, 2, 3, constitutes an irregularity curable by consent or waiver. It affords no ground for reversal of the decree based on the judgment irregularly pronounced, where the irregularity is waived by the parties and does not affect the merits of the case *Brand v. Hammersmith and City Ry. Co. L. R. 2 Q. B. 223*, *Mahomed Akil v. Aradunissa Bibi*, 9 W. R. 1, *Lachman Prasad v. Ram Kishan*, 1 L. R. 33 All. 236, *Holmes v. Russell*, 9 Dougl. 437, *Garratt v. Hooper*, 1 Dougl. 28, *Sukh Lal v. Tara Chand*, 1 L. R. 33 Cal. 66, referred to *Fort Gloster Jute Manufacturing Co. v. Chandrar Kumar Das* (1919). I. L. R. 46 Cal. 978.

Insufficient judgment ground for interference in second appeal. A mere general statement that on a perusal of all the evidence in the case the Court is satisfied as to a certain state of facts, is not a sufficient judgment within the meaning of the law. The High Court in second appeal will interfere with a finding of fact where it is shown that a miscarriage of justice has been occasioned by the lower Court's failure to weigh all the evidence before it. *Moharab Hussain v. Syed Shah Hamid Hussain*.

2 Pat. L. J. 8

Written and signed by one Judge and pronounced by his successor, validity of—Code of Civil Procedure (Act V of 1908), O. XX, r 3. Where the Judge who had heard the evidence and arguments in a case also wrote and signed the judgment and was then succeeded by another Judge who, after giving notice to the parties, pronounced the judgment and signed the decree *Held*, that the judgment was valid. *Sar Motya Lakshama Jin v. Loknath Das*.

5 Pat. L. J. 147

of Appellate Court in Criminal case—What it must contain—Proper procedure—Where appellant is charged with an offence under section 228 of the Indian Penal Code—Criminal Procedure Code, Act I of 1898, Sections 367, 424, 480, 487. The petitioner was convicted by a Magistrate of the 3rd class of the offence of intentionally offering insult or causing interruption to a Court under section 228 of the Indian Penal Code and fined Rs. 20. He appealed to the District Magistrate

JUDGMENT—contd.

who dismissed the appeal recording the following order:—"I have heard the Pleader for the appellant. He has dealt with the points only which are already dealt with in the judgment. In my opinion the appellant has been rightly convicted. Appeal rejected." *Held* that the judgment of the District Magistrate does not satisfy the requirements of section 367, Criminal Procedure Code, the provisions of which are applicable to the judgment of an Appellate Court—vide section 424 of the Code. An Appellate Court is not required to write a long and elaborate judgment, but it is clearly its duty, not only to examine the evidence, but also to write a judgment affording a clear indication that the appeal has been properly tried and that the points urged by the appellant, have been duly considered and decided. An Appellate Court, which writes a judgment which the High Court is unable to follow without reference to the judgment of the trial Court, obviously falls in the discharge of the duty imposed upon it by law. *Held* also, that a Court taking action under section 480, Criminal Procedure Code, is required to record particulars mentioned in section 481 and *inter alia* must record the facts constituting the offence, and the record must also show the nature of the interruption or insult attributed to the accused. When the guilt or innocence of a person depends upon the exact words used by him it is obviously the duty of the Magistrate to record them with a reasonable degree of precision, and his omission to record the nature of the insult constitutes a grave defect of procedure. *Dalip Singh v. The Crown*.

I. L. R. 2 Lah. 308

Charges of unlawful assembly and theft—Statement of points for determination and findings thereon in such cases—Criminal Procedure Code (Act V of 1898), ss 367 and 424. Under s. 424, read with s. 367 of the Criminal Procedure Code, the judgment of a lower Appellate Court must, among other matters, contain the point or points for decision, the decision thereon and the reasons for the decision. On a charge under s. 143 of the Penal Code the judgment of such Court should contain, as one of the points for determination, a statement as to the existence of the elements constituting the unlawful assembly in the particular case, and the decision thereon, bearing in mind the provisions of s. 141 of the Penal Code. The judgment on a charge under s. 379 of the Penal Code should contain, as one of the points, the question as to the dishonest intention and a finding on it, especially when the taking of property is admitted, but a *bona fide* claim of right thereto is set up by the accused. *Raw Lal Singh v. Hari Charan Ahir* (1909). I. L. R. 37 Cal. 194.

JUDGMENT CREDITORSee *INSOLVENT* v. I. L. R. 42 Cal. 72**JUDGMENT DEBT.**

—payment of a portion of—

See *CIVIL PROCEDURE CODE (ACT V OF 1908)*, O. XVI, r. 89 (b).

I. L. R. 39 Mad. 429

JUDGMENT-DEBTOR.See *ASSIGNMENT OF A MONEY DECREE*

I. L. R. 33 Mad. 35

JUDGMENT DESTROYED—contd

See CIVIL PROCEDURE CODE, 1882, s. 201
I L R 33 Mad 485

See CIVIL PROCEDURE CODE (ACT V of 1908)

O XXI

n. 89 I L R 40 Bom 557

n. 91 I L R 35 Bom 29

See DEPOSIT IN COURT
I L R 43 Cal 100

See EXEMPTION I L R 34 Bom 567

See PROVINCIAL INSOLVENCY ACT (III of 190) s. 31 I L R 87 All 452

— alienation by—

See ATTACHMENT I L R 41 Cal 682

— death of—

See CIVIL PROCEDURE CODE (XIV of 188) s. 241 25 817
I L R 34 Bom 546

See CIVIL PROCEDURE CODE (ACT V of 1908) s. 47 AND 50.

I L R 38 Mad. 1076

See EXECUTION OF DECREE.

I L R 41 Cal 50

— disability of, to mortgage—

See CIVIL PROCEDURE CODE, 1882, s. 32A I L P 40 Cal 183

— examination of—

See PRACTICE I L R 43 Cal 285

— interest of—

See SALE IN EXECUTION OF DECREE.
I L R 44 Cal 524

— payment by as interest—

See EXECUTION OF DECREE.

I L R 43 Cal 207

— representative of—

See APPEAL I L R 41 Cal 418

— security for default of—

See CIVIL PROCEDURE CODE (1908), s. 145; O XXXIV, s. 14.
I L R 38 All 327

JUDGMENT OF A SINGLE JUDGE

See LETTERS PATENT APPEAL.
I L R 43 Cal 80

JUDI

See ADVERSE POSSESSION
I L R 45 Bom 638

See KANDAR I L R 41 Bom 159
I L R 40 Mad 93

— payment of—

See CONTRACT ACT (IX of 1879) s. 60
I L R 42 Bom 93

JUDICIAL ACT

See SEARCH FOR ARMS.
I L R 39 Cal 853

JUDICIAL COMMISSIONER

See JURISDICTION
I L R 43 Cal 136

See SECOND APPEAL.
I L R 47 Cal 107

JUDICIAL COMMITTEE.

See JURY COUNCIL

See PRACTICE

I L R. 43 Cal. 984

— functions of in criminal cases—

See JURY COUNCIL, PRACTICE OF
I L R. 41 Cal 1023

— Practice of—

See PRACTICE I L R 43 Cal 110

JUDICIAL DECISIONS

— application of—

See SANCTION FOR PROSECUTION
I L P 41 Cal 446

— suspicion not a ground for—

See BURDEN OF PROOF
I L B 34 All 511

JUDICIAL DISCRETION

See CIVIL PROCEDURE CODE, 1908, s. 145 AND 145 4 Pat. L J 428

OVI s. 1. 25 C. W N 289

See COMMISSION AGENCY

I L R 45 Cal. 139

See LIMITATION L R 44 I A 218

Decision not based on adequate and no power of High Court to reverse—
—Law not on— *Not justice of accounts* Where it is left to the Court's discretion to act or to refuse to act in a particular way and it is found that the conclusion of fact at which the Court arrived and which formed the basis of its decision were not such as could possibly support that decision, then the Court's discretion has not been exercised in a legal and proper manner and the High Court is entitled to reverse the decision arrived at. In this case a discretion had been exercised because of the negligence of a party's servant which was not right and the High Court therefore interfered. Where the law has provided a time limit within which any particular step is to be taken and a party waits until the last moment before beginning to take action he is not entitled to the Court's indulgence if an accident prevents the step from being taken within the time prescribed by law. *SETH JAHAN MAL v G M. LEITCHMAN (1913)*
4 Pat. L J 391

JUDICIAL ENQUIRY

See SURVEY I L R 42 Cal 706

JUDICIAL INTERPRETATION

See BENGAL TENANCY ACT s. 160
2 Pat. L J 722

JUDICIAL NOTICE

See MAPILLAS OF NORTH MALABAR.
I L R 39 Mad 1052

See LABEL I L R 37 Cal 760

JUDICIAL OFFICER

— suit against—

See JUDICIAL OFFICERS PROTECTION ACT (XVIII of 1850) s. 1
I L R 39 All 516

Defamatory statement made by a Judge in the course of a suit—Discharge of judicial duty—Judge protected from being sued in a Civil Court The plaintiff

JUDICIAL OFFICER—contd

iff, a pleader, while conducting a suit in the defendant Subordinate Judge's Court, applied for an adjournment. The defendant, considering that the application contained a statement which was false and was intended to deceive the Court, called upon the plaintiff to apologise and withdraw the alleged objectionable statement. The plaintiff having refused to apologise or to withdraw the statement, the defendant issued a notice to the plaintiff and reported his conduct to the District Judge. The plaintiff alleged that both the notice and the report contained defamatory statements and therefore sued the defendant for libel. *Held*, that the defendant in dealing with the conduct of the plaintiff pleader was acting as a Judge in discharge of his judicial duty, and was, therefore, protected from any liability to be sued in a civil Court under Act XVIII of 1850. **VITHAL RAMCHANDRA v. RAGHA VENDEA RAMRAO** (1920) **I L R 45 Bom. 1089**

JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850).

See **TRESPASS** **I. L. R. 34 Cal. 953**

Suit for damages—

Allegation that defendant had brought a false case against plaintiff—Rejection of plaint. A suit for damages was filed against a judicial officer, the material allegations in the plaint being that the defendant had, on account of enmity, taken the plaintiff into custody, and had, through ill feeling and dishonesty, brought a false charge against him under ss 384 and 165 of the Indian Penal Code. *Held*, that the plaint as framed could not be said to disclose a cause of action, so as to justify its rejection *in limine*, for which purpose it was necessary to consider the plaint only and nothing else; but it was necessary to ascertain what facts the plaintiff could prove before it was possible to decide whether the case came within the purview of Act XVIII of 1850. **IZZAT ALI v. MUHAMMAD SHARAFAT ULLAH KHAN** (1917)

I L R. 39 All. 518

JUDICIAL OPINION

difference of—

See **CIVIL PROCEDURE CODE (ACT V OF 1908)**, O XXXIII, R. 5.

I. L. R. 41 Mad. 620

JUDICIAL PROCEEDINGS.

See **CHOTA NAGPUR TENANCY ACT, 1908** s. 27. **I. L. R. 40 Calc. 518**

See "COURT," MEANING OF.

I. L. R. 37 Calc. 642

See **CRIMINAL PROCEDURE CODE**, s. 476. **I. L. R. 33 All. 396**

See **DEFAMATION**

I. L. R. 43 Calc. 383

See **LEGAL PRACTITIONERS ACT**, s. 14. **15 C. W. N. 269**

See **PENAL CODE**, s. 193. **I. L. R. 45 Bom. 834**

stage in a—

See **SANCTION FOR PROSECUTION**

I. L. R. 43 Calc. 597

1. *—* **Criminal Procedure Code**, s.

476—"Judicial proceeding," execution proceeding

JUDICIAL PROCEEDINGS—contd

if An execution proceeding is a "judicial proceeding" within the meaning of s. 476 of the Code, the definition in s. 4, cl. (m), being clearly not exhaustive. **SHAIKH BAHADUR v. SHAIKH ERABATULLA** (1910) **I. L. R. 37 Calc. 642**
14 C. W. N. 789

2. *—* **Preliminary inquiry—Preliminary inquiry by an Assistant Settlement Officer to determine whether a prosecution should be directed—Power to take evidence on oath in such inquiry—False evidence in the course of the inquiry—Criminal Procedure Code (Act V of 1895), ss 4 (m) and 476—Indian Penal Code (Act XLV of 1860), s. 193 and Explanation (2)—Oaths Act (X of 1873), s. 4—Government Rules under the Bengal Tenancy Act (VIII of 1885), Rule 40. A Court holding a preliminary inquiry under s. 476 of the Criminal Procedure Code may legally take evidence on oath therein, and the inquiry is, therefore, a "judicial proceeding" within the terms of s. 4 (m) of the Code. **Raghobhans Sahoy v. Kailash Singh**, **I L R 17 Calc. 572**, and **Emperor v. Gopal Barik**, **I L R 34 Calc. 42**, referred to. Such an inquiry is also a stage of a judicial proceeding under Explanation 2 to s. 193 of the Penal Code, and a person giving false evidence in the course of it commits an offence under the section. Under s. 4 of the Oaths Act and Rule 40 (a) of the Government Rules framed under the Bengal Tenancy Act, a Settlement Officer has the power to receive evidence on oath, and is competent to hold a preliminary inquiry under s. 476 of the Criminal Procedure Code. **ABDULLAH KHAN v. EMPEROR** (1909)**

I L R. 37 Calc. 52

JUDICIAL SEPARATION.

See **DIVORCE ACT (IV of 1869)**, s. 23.

I. L. R. 33 All. 500

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See **ACQUITTAL**. **I. L. R. 44 Calc. 703**

See **ADMINISTRATION SUIT**

I. L. R. 44 Calc. 890

See **AGRA TENANCY ACT (II of 1901)—**

s. 4. **I. L. R. 39 All. 605**

ss 4, 5 AND 8 **I. L. R. 43 All. 445**

ss 58 AND 177 (e).

I. L. R. 38 All. 485

s. 79. **I. L. R. 39 All. 455**

s. 106. **I. L. R. 43 All. 454**

s. 177. **I. L. R. 43 All. 18**

s. 198. **I. L. R. 43 All. 325**

s. 95. **I. L. R. 35 All. 14**

I. L. R. 43 All. 168

s. 190. **I. L. R. 37 All. 94**

See **APPEAL**.

See **ARBITRATION**

I. L. R. 45 Bom. 1

I. L. R. 47 Calc. 29, 752

I. L. R. 36 All. 354

I. L. R. 43 Calc. 1059

See **ARBITRATION BY COURT**

I. L. R. 38 Calc. 421

See **ARBITRATION ACT (IX of 1899)**

ss 8 (1) (a), (b), (c) (d) AND (2) 0

I. L. R. 43 Bom. 809

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I L R 43 Calc 780

See BENGAL NORTH WESTERN RAILWAYS
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s. 8 & 20 I L R 31 All 383

s. 8 & 21 I L R 34 All 205

s. 21 I L R 32 All 222

s. 22(3) I L R 37 All 232

See BENGAL REGULATION VI OF 1843

s. 2 I L R 33 All 84

See BOMBAY CIVIL COURTS ACT (XIV of
1862) s. 10 I L R 39 Bom 136

See BOMBAY DISTRICT MUNICIPAL ACT

1901 s. 151 I L R 44 Bom 738

See BOMBAY HEREDITARY OFFICES ACT

BOMBAY III OF 1874 ss. 23 AND 30

See BOMBAY CITY IMPROVEMENT ACT 1870,

I L R 36 Bom 203

See BOMBAY LAND REVENUE CODE s. 121

I L R 45 Bom 6

See BOMBAY REVENUE JURISDICTION ACT

(X OF 1876) s. 4 (a)

I L R 43 Bom 277

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See CIVIL PROCEDURE CODE 1902—

s. 43 I L R 33 All 244

s. 278 I L R 34 All 365

s. 539 I L R 36 Bom 29

s. 583 I L R 32 All 79

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s. 9 I L R 32 All 527

I L R 37 All 313

I L R 45 Bom 500

s. 10 I L R 44 Bom 283

16 (a) and (d) I L R 41 All 513

s. 20 (c) I L R 34 All 49

I L R 36 All 563

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I L R 39 All 807

I L R 45 Bom 1238

s. 24 I L R 34 Bom 411

I L R 39 All 214

I L R 40 All 525

I L R 1 Lah 158

s. 47 and 144 I L R 44 Bom 702

s. 54 I L R 42 Bom 639

s. 60 I L R 37 Bom 415

s. 68 O XXI s. 100.

I L R 37 Bom 438

s. 80 I L R 35 All 439

I L R 42 Bom 742

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I L R 39 All 101

I L R 42 All 18

I L R 42 Bom 119

3 Pat. L. J 378

O 7 s. 10 I L R 1 Lah 203

O IV s. 13 I L R 37 All 208

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O IV s. 8 AND 9

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O XVI s. 1 I L R 38 Bom 184

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O XVIII s. 1 I L R 44 Bom 593

OO XVIII s. 1 I L R 44 Bom 593

OO XVIII s. 1 I L R 44 Bom 593

O XIX s. 22 I L R 1 Lah 396

O XX s. 1 I L R 38 Bom 416

I L R 43 All 238

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I L R 37 Bom 32

See COLLECTOR I L R 40 Calc 465

See COMPANIES ACT (VII OF 1913) s. 207

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I L R 40 Calc 245

I L R 40 Calc 615

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s 339	I L R 37 All 331
ss 345 AND 439	I L R 37 All 419
s 350	I L R 36 All 315
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s 437	I L R 36 All 53
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- See **SCH II ART 13.**
I L R 40 All 663
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- preliminary decrees—Duty of Court to draw up—
- See **INTERIMINARY DECREE**
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- objection to, not taken in first Court—
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- See **CIVIL PROCEDURE CODE 1908, s 11**
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- in suit for maintenance—
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- of subordinate Courts to take proceedings under s 14—
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- submission to, whether voluntary—
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- to try offence committed on high seas—
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- voluntary submission to—
See FOREIGN COURT
 I. L. R. 39 Mad 733

1. — Secretary of State for India in Council—"Dwell or carry on business of personally work for gain"—*Letters Patent*, 1863, s 12 This Court has no jurisdiction to entertain a suit brought against the Secretary of State for India in Council, where the cause of action arose wholly outside the ordinary original civil jurisdiction of this Court, on the sole ground that the Secretary of State for India in Council dwells or carries on business or personally worked for gain within the local limits of Calcutta, the capital of India, at time of the institution of this suit. *Doya Narain Tewary v The Secretary of State for India*, I. L. R. 14 Cal. 256, followed. *RODRICKS v SECRETARY OF STATE FOR INDIA* (1912).
 I. L. R. 40 Cal. 308

2. — evidence taken by another Judge—*Practice*—Evidence in criminal case recorded by Assistant Sessions Judge—Judgment pronounced by Sessions Judge without rehearing the evidence. Where a Sessions Judge decided a case upon evidence taken, not before him, but before an Assistant Sessions Judge, it was held that the Sessions Judge's judgment was *ultra vires* and a fresh trial was ordered. *KARNAN v BAPU PRASAD* (1912).
 I. L. R. 35 All. 63

3. — Sonthal Parganas—*Suit to enforce Mortgage*—Land partly in Sonthal Parganas—*Urgy*—Sonthal Parganas Act (XXXVII of 1913), s 2

JURISDICTION—contd

—Sonthal Parganas Settlement Regulation (Beng III of 1872), ss 5 and 6—Sonthal Parganas Justice Regulation (Beng V of 1893) Part II—Civil Procedure Code (XIV of 1932), s 19. A suit was brought in 1901 in the Court of the Subordinate Judge at Bhagalpur to enforce a mortgage of land, of which a portion was situate in the Sonthal Parganas (a part only of that land having been settled) and a portion in the Bhagalpur district. The mortgage provided that it might be enforced in the Bhagalpur Court. *Held*, (1) that all suits in regard to land in the Sonthal Parganas, so long as the land has not been settled and the settlement notified in the Calcutta Gazette, must be brought before the settlement officers or the Courts of officers appointed under the Sonthal Parganas Act, 1853, and the Sonthal Parganas Justice Regulation, 1893, and that the Bhagalpur Court had no jurisdiction in the present suit under the Code of Civil Procedure, 1882, s 19, or otherwise, (2) that the Court exercising jurisdiction to enforce the mortgage was bound by the rules as to usury contained in s 6 of the Sonthal Parganas Settlement Regulation, 1872. *MARA PRASAD v RAMANI MORAN SINGH* (1914).
 L. R. 41 I. A. 197

4. — Concurrent Jurisdiction—*Trial*—High Court—Power to determine venue when several Courts have concurrent local jurisdiction—Absence of any doubt as to which Court has such jurisdiction—Interference on the ground of convenience only—Criminal Procedure Code (Act I of 1893), s 185 S 185 of the Criminal Procedure Code does not warrant the High Court within the local limits of whose criminal jurisdiction the offender actually is, in interfering thereunder merely on the ground of convenience, but only when a doubt arises as to the Court by which an offence should be enquired into or tried. Where, therefore, there is no doubt that two Courts are equally competent to exercise jurisdiction, the High Court has no power under the section. *RAJANI BEYODE CHAKRAVARTI v ALL INDIAN BANKING AND INSURANCE CO* (1913).
 I. L. R. 41 Cal. 305

5. — Additional Sessions Judge, competency of, to try suit under s 92 of the Civil Procedure Code, 1908, if not directly empowered by Local Government—Civil Procedure Code (Act V of 1908), ss 21, 22—Bengal N. W. P. and Assam Civil Courts Act (XII of 1887), s 8. An Additional District Judge, who is not vested with the power of trying suits under s 92 of the Code of Civil Procedure by the Local Government, has no jurisdiction to try such suits, and a transfer of such a suit by the District Judge to the Additional District Judge is not competent. *Abul Karim Abu Ahmed Khan v Abdul Subhan Chowdhury* I. L. R. 33 Cal. 116 referred to. *MAHOMED MUSA v ABUL HASSAN KHAN* (1914).
 I. L. R. 41 Cal. 866

5(a) — Valuation—A plaintiff landlord sued for a declaration of title and an injunction to restrain from realising rents the defendant who had been recorded in settlement proceedings as entitled to realise rent from tenants. The value of the property was found to be Rs 4,000 or Rs 3,000 but the plaintiff valued the relief prayed by him at only Rs 500. *Held*, the value of the suit ought to be the value of the property. *KRISHNA DAS LALA v HARI CHAND BAYENJEE*.
 15 C. W. N.

JURISDICTION—contd

8 ——— Execution of decree—Ejectment—*Indian High Courts Act, 1861* (24 & 25 V.L., c 104) s 10—*Bengal, Assam Civil Courts Act* (XII of 1887) s 21—*Sonthal Parganas Civil Courts Statutory Rules* paragraph 29—*Sonthal Parganas Act* (XXXI of 1885), s 1, cl (2), s 2—*Sonthal Parganas Settlement Regulation* (III of 1872)—*Sonthal Parganas Rent Regulation* (II of 1896) s 25—*Sonthal Parganas Justice Regulation* (I of 1893), ss 7, 9, 12, 14, 15, 27 Where the decree holder applied for execution of a rent decree by ejectment, as previous applications for attachment and sale had failed, and the Sub Deputy Collector of Deoghar ordered the ejectment of the judgment-debtor from a portion of the holding but the Deputy Commissioner on the recommendation of the Sub Divisional Officer sanctioned eviction from the whole holding and as the suit for rent was valued at less than one thousand rupees, though the market value of the land was more. *Held* that the suit was rightly tried in the Court of the Sub Deputy Collector, and the execution proceeding was properly commenced in the Court in which the suit had been brought and the decree made. *Held* also that in relation to that Court, the Court of the Commissioner was the High Court (rule s. 15 of Regulation V of 1893), and not this High Court. Though the same individual may be appointed to discharge the duties of Sub Divisional Officer and Subordinate Judge or Deputy Commissioner and District Judge, and in one set of Courts be subject to the superintendence of this High Court, still the two sets of Courts as institutions or tribunals were entirely distinct from each other. *Abul Karim v The Municipal Officer, Aden*, 1 L R 27 Bom 575, *Municipal Officer, Aden v Iemal Hayre Khan*, 1 L R 39 Bom 246, *Rhinat v Marum*, 1 L R 31 Bom 267. In the matter of *John Thomson*, 6 B L R 180 14 B R 237, distinguished *Golum Naja Vash v Pancharan Gupta*, 19 C L J 292, followed. *Held*, further, that s. 2 of Regulation II of 1893 was framed for the protection of the raiyat. If the execution Court determined that the decree was to be executed by ejectment, that order was not to be carried out until it had been sanctioned by the Deputy Commissioner, and even then there need be no ejectment if the decree was satisfied. It could never have been intended that the scope of the order as made by the execution Court should be widened by the Deputy Commissioner, as had been done in the present case, and that without any notice to the raiyat. *DARABAI PANJARI v BHORI ROY* (1814)

I L R. 41 Cal 915

7. ——— Cantonment tax—Civil Courts—*Taxes levied by cantonment authorities—Payment under protest—Jurisdiction of Civil Courts to entertain suit for recovery of payment* Civil Courts have jurisdiction to entertain a suit to recover the amount of taxes levied by the cantonment authorities and paid under protest on the ground that the assessment was illegal. This may be the case both when a serious demand requiring very attenuated consideration has been made on the plaintiff, and reasonable time has not been given to the latter to take advice on the subject and when the cantonment authorities have wholly disregarded the basis on which the rate should have been assessed by assessing the rate upon the gross income of the plaintiff. *Koodas v Antimony*, 1 L R 25

JURISDICTION—contd

Bom 294, followed *SECRETARY OF STATE FOR INDIA v MAJOR HUGHES* (1913)

I L R. 38 Bom 293

8 ——— Transfer of venue from one Court to another after decree—*Appellate forum* The District Munsif of Madanapalle having jurisdiction over Kadiri, passed a decree on 30th March 1911 in respect of a cause of action which arose in Kadiri on 1st April 1911. Kadiri was transferred to the territorial jurisdiction of the District Munsif's Court at Penakula, from which appeals lay to the District Court at Bellary, whereas appeals from the District Munsif's Court at Madanapalle lay to the District Court at Cuddapah. *Held*, on the question as to the proper appellate forum in the case that the appeal from the decree lay to the District Court at Bellary, as the transfer of territorial jurisdiction *post facto* effected a transfer of venue. *SUBBAYYA v RAOHALLY* (1914)

I L R 37 Mad 477

9. ——— *L. devaluation of suit—Change of Court of Appeal owing to undervaluation—Jurisdiction of Appellate Court—Judgment of Court having no jurisdiction, a nullity—Effect of such judgment—Consent decree to the prejudice of minor or any reversionary heir, not binding on heir—Stranger, introduction of into appeal, without leave of Court* A suit was intentionally undervalued. The defendants raised no objection as regards valuation, and the suit was tried. The appeal was filed before the District Judge instead of before the High Court, in consequence of the undervaluation, and the District Judge decided the appeal, by a consent decree. *Held*, that if a Court has no jurisdiction over the subject matter of the litigation its judgments and orders, however precisely certain and technically correct, are mere nullities, and not only voidable, they are void and have no effect either a stoppage or otherwise, and may not only be set aside at any time by the court in which they are rendered but be declared void by every Court in which they may be presented. These principles apply not only to Original Courts, but also to Courts of Appeal. Jurisdiction cannot be conferred upon a Court of Appeal by consent of parties, and any waiver on their part cannot make up for the lack or defect of jurisdiction. *Gurdeo Singh v Chandrooth Singh*, 1 L R 35 Cal 193, *Bai Nath Singh v Gajraj Singh*, 7 All L R 675, *Gooroo Pershad Roy v Juggobandoo Mazumder* (1862) 11 B R 15, *Gulab Sae v Chowdhury Madho Lal*, 9 C W 936, *Ledger v Bull*, 1 L R 9 All 191, 1 L R 13, 1 A 134, *Minoakshi Vaidya v Sarthamangya Satri*, 1 L R 11 Mad 26, 1 L R 141 A 160 *Lawrence v Wilcock*, 11 A F E 941 *The Queen v The Judge of the country Court of Shropshire* 20 Q B D 258 referred to. Where in a suit between a Hindu Widow and a claimant to the estate of her husband, a stranger who was not a party to the suit in the Original Court was made a party to the appeal without leave of the Court and a consent decree made, the decree was not binding upon the reversionary heirs. A Hindu widow, who is a limited or qualified owner, cannot confess judgment and be party to a consent decree so as to bind the inheritance in the hands of the reversionary heirs. *Kutana Duttcher v the Raja of Sitampura* 9 Moo A 539 *Stapleton v Stapleton* 1, 11 All and Ind, 8th Ed 231, 1 All 2 distinguished *Imrit Kooner v Roop Narain*

JURISDICTION—contd

Singh 6 C L F 76, explained *Shoo Narain Singh v Khurgo Kowry*, 10 C L R 377, *Sant Kumar v. Deo Saran*, 1 L R 8 All 365, *Jeram Laljee v. Vurba*, 5 Bom L R 555, *Gowind Krishan Narain v Khursi Lal*, 1 L R 29 All 487, *Mans Lal I L R 29 All 487*, *Mahadev v. Baldeo*, 1 L R 40, All 75, *Roy Radha Kissan v. Navaratnam Lal*, 6 C L J 190, *Asharam Sadhani v. Chandi Charan Mukerjee*, 13 C W N 147, referred to. A consent decree does not operate to the parties thereto. *Nicholas v. Asphir*, 1 L R 24 Calc 218, *In re South American and Mercan Company*, (1895) 1 C, 37 and the *Balcarran*, 10 P D, 161, distinguished, *Huddersfield Banking Company, Limited v. Lister* (1895) 2 Ch. 273, followed. **RAJLAKSHMI DASSEE v. KATY AYANI DASSEE**, (1910)

I. L. R. 38 Calc 639

10. ——— Objection by defendant to Defendant, if acquiesces by not applying for transfer. A defendant who takes exception to the jurisdiction of the Court, is not bound to apply for a transfer of the suit to the proper Court, and does not acquiesce in the trial of the suit by not so applying. **RATAY CHAND DHARAM CHAND v. SECRETARY OF STATE FOR INDIA** (1914)

18 C. W. N. 1340

11. ——— Interlocutory orders—Proceeding under s. 10, Civil Procedure Code—High Court's jurisdiction to interfere with interlocutory orders—Civil Procedure Code (Act V of 1908), s. 10—Charter Act (24 & 25 Vict., c. 104) s. 15. The jurisdiction of a Court in a proceeding under s. 10 of the Code of Civil Procedure is limited to stopping a new suit if the circumstances mentioned in that section as conditions precedent to the passing of the order be found by the Court to exist. Courts have no jurisdiction to decide the question of *res judicata* in such a proceeding. Where a Court has jurisdiction to pass an order, but it has been exercised in violation of the provisions of the law and under a misapprehension of the questions at issue, the Court must be held to have acted with material irregularity in the exercise of its jurisdiction. *Venkatul v. Lakshman Venkata Khori* 1 L R 12 Bom. 617, *Sero Bur Boyla v. Shih Chunder Sen*, 1 L R 13 Calc. 275, *Gogobandhu Puttuck v. Joda Ghore*, 1 L P 15 Calc 47, *Tarun Charan Banerjee v. Chandra Kumar Dey*, 14 C W N 783, referred to. The High Court is entitled to interfere under s. 15 of the Charter Act, if not under s. 115 of the Code, with interlocutory orders when they might lead to failure of justice or irreparable injury. *Dhapa v. Ram Prasad*, 1 L R 14 Calc 765, *Gowind Mohan Das v. Kunja Behary Das*, 14 C W N 147, and *Amjad Ali v. Ali Hussain Johar*, 15 C W N 353, referred to. **SIVAPRASAD RAM v. TRICOMDAS COVERJI BHOJA** (1916)

I. L. R. 42 Calc. 826

12. ——— Suit for land or other immovable property—construction of—Letters Patent, 1863, cl. 13—*Tripura*—Compensation for wrong to land—Wrongful cutting and removal of coal—Civil Procedure Code (Act V of 1908) s. 16—Civil Procedure Code (Act VIII of 1859), s. 5—*Fenar*. The expression "suits for land or other immovable property" in cl. 12 of the Charter of 1863 cannot be construed as being limited to suits for the recovery of land in its strict sense, but must be construed as extending to a suit for compensation for wrong to land, where the sub-

JURISDICTION—contd

stantial question is the right to the land. **SUDAM-DIH COAL CO., LD. v. ESPIRE COAL CO., LD.** (1915)

I. L. R. 42 Calc. 942

14. ——— Suit to eject a tenant holding over—Court Fees Act (VII of 1870) s. 7, cl. (x) (cc)—*Madras Civil Courts Act* (III of 1873), s. 14. The effect of amendment of s. 7 of the Court Fees Act (VII of 1870) by adding to it cl. (x), (cc) is that a suit to recover immovable property from a tenant is governed for purposes of jurisdiction by s. 8 of the Suits Valuation Act (VII of 1887), and not by s. 14 of the *Madras Civil Courts Act* (III of 1873), so that in the case of such suits the valuation for purposes jurisdiction is the same as for court fees. *Chalasarmy Ramiah v. Chalasarmy Romanam* 11 Mad L J 155 distinguished. **SESHAGIRI ROW v. NARAYANA SWAMI NAIDU** (1914)

I L R 38 Mad 795

15. ——— To entertain suit after remand—Suit originally tried by District Judge, after remand tried with consent of parties by Subordinate Judge—Irregular assumption of jurisdiction no objection. Where a suit valued at Rs 1,368 was heard in the first instance before the District Judge and dismissed as barred by limitation, but on appeal the High Court remanded it for trial on the other issues and thereafter (the case having been transferred to the file of the Subordinate Judge, the latter officer with the consent of the parties tried and disposed of the suit. Held, that if the order of the High Court did not place any restrictions on the power of the District Judge to transfer the case the transfer was authorised by s. 21 of the Civil Procedure Code. But if the remand order was interpreted to have directed the District Judge himself to try the suit, it was not a case of the trying Court not having local or pecuniary jurisdiction but of that Court assuming jurisdiction in an irregular manner, and the parties having consented to the trial by the Subordinate Judge were not entitled to object to it on that ground on appeal, and it was immaterial that as consequence of such trial appeal from his decision on facts lay before the District Judge and not before the High Court. **PHOTAP CHAVARA POY v. JEDHETIR DAS** (1914)

19 C W. N. 143

16. ——— Chota Nagpur Tenancy Act (Beng VI of 1908), ss. 57, 253, 261—*Revenue Officer*—Judicial Commissioner—Government's power to appoint the officer to hear appeals. S. 87 of the Chota Nagpur Tenancy Act provides for a suit before a Revenue Officer and for an appeal in the prescribed manner to the prescribed officer from decisions passed under sub s. (b) that is a decision on any other matter not referred to in cl. (a) to (c). The rules made by the Government provide that suits under s. 87 of the Act shall be tried in all respects as suits between the parties. S. 264 (viii) of the Act gives the Government power to prescribe the officer to hear appeals, and the Judicial Commissioner is the prescribed officer under the rules. The provisions for appeal appear to have been overlooked in s. 258 and it must, therefore, be understood that the special Appellate Court in Revenue cases, in dealing dispute under this Act, performs the functions of a Revenue Officer. **HANESH NARAIN SARKI DZO v. PHOTAP UNAI NATH SARKI DZO** (1913)

I L R. 43 Calc. 136

17. ——— *Meane* Profits—Court of limited pecuniary jurisdiction—*Meane* profits amounting

JURISDICTION—*contd*

6. ———— **Execution of decree—*Ej cunctis***
*—Indian High Courts Act, 1861 (24 & 25 Vict., c. 104) s. 15—Benjal, Assam Civil Courts Act (XII of 1887) s. 21—Southal Parganas Civil Courts Statutory Rules, paragraph 29—Southal Parganas Act (XXVIII of 1885), s. 1, cl (2), s. 2—Southal Parganas Settlement Regulation (III of 1872)—Southal Parganas Rent Regulation (II of 1856), s. 25—Southal Parganas Justia Regulation (I of 1893), ss. 7, 9, 12, 14, 15, 27 Where the decree holder applied for execution of a rent decree by ejectment, as previous applications for attachment and sale had failed, and the Sub Deputy Collector of Deghar ordered the ejectment of the judgment-debtor from a portion of the holding but the Deputy Commissioner on the recommendation of the Sub Divisional Officer sanctioned eviction from the whole holding, and as the suit for rent was valued at less than one thousand rupees, though the market value of the land was more *Held*, that the suit was rightly tried in the Court of the Sub Deputy Collector, and the execution proceeding was properly commenced in the Court in which the suit had been brought and the decree made. *Held*, also that in relation to that Court, the Court of the Commissioner was the High Court (*vide* s. 15 of Regulation V of 1893), and not this High Court. Though the same individual may be appointed to discharge the duties of Sub Divisional Officer and Subordinate Judge or Deputy Commissioner and District Judge, and in one set of Courts be subject to the superintendence of this High Court, still the two sets of Courts as institutions or tribunals were entirely distinct from each other. *Abdul Karim v The Municipal Officer, Aden*, 1 L. R. 27 Bom. 575, *Municipal Officer, Aden v Ismail Hajeer Allana*, 1 L. R. 30 Bom. 246, *Rhimbo v Marum*, 1 L. R. 31 Bom. 267, In the matter of *John Thomson*, 6 B. L. R. 130, 14 H. R. 257, distinguished *Gulam Nafis Vah v Panchanan Gupta*, 19 C. L. J. 299, followed, *Held*, further that s. 20 of Regulation II of 1846 was framed for the protection of the raiyat. If the execution Court determined that the decree was to be executed by ejectment that order was not to be carried out until it had been sanctioned by the Deputy Commissioner, and even then there need be no ejectment if the decree was satisfied. It could never have been intended that the scope of the order as made by the execution Court should be widened by the Deputy Commissioner, as had been done in the present case, and that without any notice to the raiyat. *DARSINI PANJARA v BROTHI ROY* (1814)*

1 L. R. 41 Cal. 915

7. ———— **Cantonment tax—Civil Courts**
—Taxes levied by cantonment authorities—Payment under protest—Jurisdiction of Civil Courts to entertain suit for recovery of payment Civil Courts have jurisdiction to entertain a suit to recover the amount of taxes levied by the cantonment authorities and paid under protest on the ground that the assessment was illegal. This may be the case both when a serious demand requiring very attentive consideration has been made on the plaintiffs and reasonable time has not been given to the latter to take advice on the subject and when the cantonment authorities have wholly disregarded the basis on which the rate should have been assessed, by assessing the rate upon the gross income of the plaintiffs. *Kasand v Aslam*, 1 L. R. 26

JURISDICTION—*contd*

Bom. 234 followed. SECRETARY OF STATE FOR INDIA v MAJOR HUGHES (1913)

I L. R. 35 Bom. 293

8. ———— **Transfer of venue from one Court to another after decree—Appellate forum**
 The District Munsif of Madanapalle having jurisdiction over Kadiri, passed a decree on 30th March 1911 in respect of a cause of action which arose in Kadiri on 1st April 1911. Kadiri was transferred to the territorial jurisdiction of the District Munsif's Court at Penakonda, from which appeals lay to the District Court at Bellary, whereas appeals from the District Munsif's Court at Madanapalle lay to the District Court at Cuddapah. *Held*, on the question as to the proper appellate forum in the case that the appeal from the decree lay to the District Court at Bellary, as the transfer of territorial jurisdiction *ipso facto* effected a transfer of venue. *Subbaya v Raghaya* (1911)

1 L. R. 37 Mad. 477

9. ———— **U. Jurisdiction of Suit—Change of Court of Appeal owing to under valuation—Jurisdiction of Appellate Court—Judgment of Court having no jurisdiction, a nullity—Effect of such judgment—Consent decree to the prejudice of minor or any reversionary heir, not binding on heir—Stranger, introduction of, into appeal, without leave of Court** A suit was intentionally undervalued. The defendants raised no objection as regards valuation, and the suit was tried. The appeal was filed before the District Judge instead of before the High Court in consequence of the undervaluation, and the District Judge decided the appeal, by a consent decree. *Held*, that if a Court has no jurisdiction over the subject matter of the litigation its judgments and orders, however precisely certain and technically correct, are mere nullities, and not only voidable they are void and have no effect either a estoppel or otherwise, and may not only be set aside at any time by the court in which they are rendered but be declared void by every Court in which they may be presented. These principles apply not only to Original Courts, but also to Courts of Appeal. Jurisdiction cannot be conferred upon a Court of Appeal by consent of parties, and any waiver on their part cannot make up for the lack or defect of jurisdiction. *Gurdeo Singh v Chandroth Singh*, 1 L. R. 36 Cal. 193, *Bhai Yath Singh v Vajray Singh* 7 All. L. J. R. 676, *Gowra Prasad Roy v Juggabundoo Masumder* (1862) 11 R. F. B. 18, *Gulab Rao v Chaudhary Madho Lal*, 9 C. W. N. 956, *Ledjard v Bull*, 1 L. R. 9 All. 191, L. R. 13, 1 A. 134, *Munshi v Vasu v Subramanyam Sastri*, 1 L. R. 11 Mad. 26, L. R. 141 A. 160, *Lawrence v Wilcock*, 11 A. F. E. 941. *The Queen v The Judge of the county Court of Shropshire* 20 Q. B. D. 255 referred to. Where in a suit between a Hindu Widow and a claimant to the estate of her husband, a stranger who was not a party to the suit in the Original Court was made a party to the appeal without leave of the Court and a consent decree made, the decree was not binding upon the reversionary heirs. A Hindu widow, who is a limited or qualified owner, cannot confess judgment and be party to a consent decree so as to bind the inheritance in the hands of the reversionary heirs. *Kelana Nakhari v The Paga of Shrivangana* 9 Mo. 1 A. 539, *Stapilton v Stapilton* 1, White and Ind. 5th Ed. 234, 1 Atk. 2 distinguished *Imrit Kooner v Roop Narain*

JURISDICTION—contd

Singh & C. L. P. 76, explained *Shro Narain Singh v. Kharjo Kowrey*, 10 C. I. R. 377, *Sant Kumar v. Deo Siran*, 1 L. R. 8, 111 365, *Jerani Laljee v. Verbai*, 5 Bom. L. R. 353, *Gound Krishna Narain v. Ahunt Lal*, 1 L. R. 29 All. 487, *Muni Lal* 1 L. R. 29 All. 487, *Mohadir v. Baidoo*, 1 L. R. 40, All. 75, *Roy Radha Kisan v. Narraiam Lal*, 6 C. L. J. 450, *Akhanna Siddhans v. Chandi Charan Mukerjee*, 12 C. W. N. 147, referred to. A consent decree does not operate to the parties thereto. *Nicholas v. Asphir*, 1 L. R. 24 Calc. 218, *In re South American and Mercan Company*, (1895) 1 C. 37, and the *Balleau*, 10 P. D. 161, distinguished, *Huddersfield Banking Company, Limited v. Lister* (1895) 2 Ch. 273, followed. **RAJAKHSHI DASER v. KATI ANANI DASER**, (1910)

I L. R. 38 Calc. 639

10. ——— Objection by defendant to—*Defendant, if acquiesces by not applying for transfer*. A defendant who takes exception to the jurisdiction of the Court, is not bound to apply for a transfer of the suit to the proper Court, and does not acquiesce in the trial of the suit by not so applying. **RATAN CHAND DHARAM CHAND v. SECRETARY OF STATE FOR INDIA** (1914)

19 C. W. N. 1340

11. ——— Interlocutory orders—*Proceeding under s. 10, Civil Procedure Code—High Court's jurisdiction to interfere with interlocutory orders—Civil Procedure Code (Act I of 1908), s. 10—Charter Act (24 & 25) Act, c. 104, s. 15*. The jurisdiction of a Court in a proceeding under s. 10 of the Code of Civil Procedure is limited to stopping a new suit if the circumstances mentioned in that section as conditions precedent to the passing of the order be found by the Court to exist. Courts have no jurisdiction to decide the question of *res judicata* in such a proceeding. Where a Court has jurisdiction to pass an order, but it has been exercised in violation of the provisions of the law and under a misapprehension of the questions at issue, the Court must be held to have acted with material irregularity in the exercise of its jurisdiction. *Yeshubhai v. Lakshman Yeshubhai Khat*, 1 L. R. 12 Dom. 617, *Sew Durr Begla v. Shik Chunder Sen*, 1 L. R. 13 Calc. 203, *Jugobundhu Pattuck v. Sen*, 1 L. R. 15 Calc. 47, *Tarun Charan Joda Ghose*, 1 L. R. 15 Calc. 47, *Tarun Charan Banerjee v. Chandra Kumar Dey* 14 C. W. N. 783, referred to. The High Court is entitled to interfere under s. 15 of the Charter Act, if not under s. 115 of the Code, with interlocutory orders, when they might lead to failure of justice or irreparable injury. *Thapi v. Rini Pershad*, 1 L. R. 14 Calc. 768, *Gobind Mohan Das v. Kunja Behary Das*, 14 C. W. N. 147, and *Amjad Ali v. Ali Das*, 14 C. W. N. 353, referred to. **HUSSAIN JOHAR, 15 C. W. N. 353**, referred to. **SIVAPRASAD RAM v. TRICOWDAS COVERJI BHOOJA** (1915)

I L. R. 42 Calc. 925

12. ——— Suit for land or other immovable property—*construction of—Letters Patent, 1865, cl. 12—Trespass—Compensation for wrong to land—Wrongful cutting and removal of coal—Civil Procedure Code (Act I of 1908), s. 16—Civil Procedure Code (Act VIII of 1859), s. 5—Civil Procedure Code (Act VIII of 1859), s. 5*. The expression "suits for land or other immovable property" in cl. 12 of the Charter of 1865 cannot be construed as being limited to suits for the recovery of land in its strict sense, but must be construed as extending to a suit for compensation for wrong to land, where the sub-

JURISDICTION—contd

stantial question is the right to the land. **SEHAM-DIN COAL CO. LD. v. FATHAL COAL CO. LD.** (1915)

I. L. R. 42 Calc. 942

14. ——— Suit to eject a tenant holding over—*Court Fees Act (VII of 1870), s. 7, cl. (vi) (cc)—Madras Civil Courts Act (III of 1873), s. 14*. The effect of amendment of s. 7 of the Court Fees Act (VII of 1870) by adding to it cl. (vi), (cc) is that a suit to recover immovable property from a tenant is governed for purposes of jurisdiction by s. 8 of the Suits Valuation Act (VII of 1887), and not by s. 14 of the Madras Civil Courts Act (III of 1873), so that in the case of such suits the valuation for purposes of jurisdiction is the same as for court fees. *Chalawumji Ramji v. Chalawumji Rameshwarji* 11 Mad. L. J. 155, distinguished. **SESHAGIRI ROW v. NARAYANA SWAMI NAIDU** (1914)

I. L. R. 38 Mad. 795

15. ——— To entertain suit after remand—*Suit originally tried by District Judge after remand tried with consent of parties by Subordinate Judge—Irregular assumption of jurisdiction no objection*. Where a suit valued at Rs. 1,368 was heard in the first instance before the District Judge and dismissed as barred by limitation, but on appeal the High Court remanded it for trial on the other issues, and thereafter the case having been transferred to the file of the Subordinate Judge, the latter officer with the consent of the parties tried and disposed of the suit. *Held*, that if the order of the High Court did not place any restrictions on the power of the District Judge to transfer the case, the transfer was authorised by s. 24 of the Civil Procedure Code. But if the remand order was interpreted to have directed the District Judge himself to try the suit, it was not a case of the trying Court not having local or pecuniary jurisdiction but of that Court assuming jurisdiction in an irregular manner, and the parties having consented to the trial by the Subordinate Judge were not entitled to object to it on that ground on appeal, and it was immaterial that as consequence of such trial appeal from his decision on facts lay before the District Judge and not before the High Court. **PHOTAP CHANDRA ROY v. JUDHISTIN DAS** (1914)

19 C. W. N. 143

16. ——— Chota Nagpur Tenancy Act (Beng. VI of 1908), ss. 87, 258, 261—*Revenue Officer—Judicial Commissioner—Government's power to appoint the officer to hear appeals*. S. 87 of the Chota Nagpur Tenancy Act provides for a suit before a Revenue Officer and for an appeal in the prescribed manner to the prescribed officer from decisions passed under sub s. (f) that is a decision on any other matter not referred to in cl. (a) to (e). The rules made by the Government provide that suits under s. 87 of the Act shall be tried in all respects as suits between the parties. S. 264 (viii) of the Act gives the Government power to prescribe the officer to hear appeals, and the Judicial Commissioner is the prescribed officer under the rules. The provisions for appeal appear to have been overlooked in s. 268 and it must, therefore, be understood that the special Appellate Court in Revenue Cases, in deciding dispute under this Act, performs the functions of a Revenue Officer. **GANESH NARAI SARI DEO v. 1 ROTAP UDAI NATH SARI DEO** (1915)

I. L. R. 43 Calc. 136

17. ——— Mesne Profits—*Court of limited pecuniary jurisdiction—Mesne profits amounting*

JURISDICTION—contd

to Rs 60,000, antecedent to suit and pendente lite whether can be investigated by Munsif—*Civil Procedure Code (Act XI of 1882)* s 50, 211, 212—*Civil Courts Act (XII of 1887)*, s 7, cl (1), 19. When a plaintiff institutes his suit for possession and means profits antecedent to the suit in a Court of limited pecuniary jurisdiction, he may be rightly deemed to have limited his claim to the maximum amount for which that Court can entertain a suit. In fact in such a case if the plaintiff subsequently put forward a claim in excess of the jurisdiction of the Court, he may be justly required to remit the excess because he had with his eyes open brought his suit deliberately in a Court of limited pecuniary jurisdiction. *Golap Singh v Indra Kumar Haria*, 13 C L J 493 9 C L J 367, followed. *Sudarshan Dass v Ramprasad* 7 All J P 963, dissented from. But means profits antecedent to the suit and means profits pendente lite stand on very different grounds. A Munsif cannot entertain an application for investigation of means profits pendente lite when the claim was laid over Rs 60,000. The proper course to follow was to direct the return of the plaint in so far as it embodied a prayer for assessment of means profits from the institution of the suit to the date of delivery of possession, for presentation to the Court of competent pecuniary jurisdiction i.e., the Court of the District Judge. *Pamessar Makhan v Dulu Makhan*, 1 L R 21 Calc 350, distinguished. *BRUPENDRA KUMAR CHAKRAVARTY v PURNA CHANDRA BOSE* (1910)

1 L R 43 Calc 650

13 ——— **Ruling Prince or Chief—Consent of Local Government—Submission to jurisdiction—***Water—International Law—Civil Procedure Code (Act V of 1908)* s 86 construction of Where His Highness Rajah of Cochin was impleaded as a defendant in a suit in the capacity of a trustee of a temple, without the consent of the Local Government under s 86 of the Code of Civil Procedure (Act V of 1908) Held that the suit was not maintainable as against the Rajah of Cochin in the absence of consent of the Local Government under s 86 of the Code of Civil Procedure. *Per Oudizeld J.*—The recognition of cases of waiver, as excepted from the ordinary provision of International Law as understood in England cannot be imported into the clear language of the Indian Code. *Chandulal v Ahmad bin Umar Sultan*, 1 L R 21 Bom 351 dissented from. *Per SADA SIVA AYYAR J.*—Objection to jurisdiction is enough to show that there was no voluntary submission by the defendant to the jurisdiction of the Court. *Perry & Co. v Appanappa Pillai* 1 L R 2 Mad 487 approved. *Veeraraghava Iyer v Muga Sa I*, 1 L R 33 Mad 24 referred to. *NARAYANA MOORTHY v THE COCHIN SIRCAR* (1913)

1 L R 39 Mad 681

19 ——— **Criminal misappropriation or breach of trust—Receipt of money and conversion at head office of a company in Madras Presidency—Loss to complainant in a district in Bengal—Jurisdiction of Court at latter place to try the offences—***Criminal Procedure Code (Act V of 1908)*, s 179, 181(2). The jurisdiction of a Court to try the offences of criminal misappropriation or breach of trust is governed by s. 181 (2) and not s. 179 of the Criminal Procedure Code. Loss, though a normal result is not an ingredient of the offences of criminal misappropriation or breach of trust and not, therefore a consequence within

JURISDICTION—contd

the meaning of s. 179. A complaint of offences under ss 403 and 406 of the Penal Code against an official of an Insurance Company having its head office at B in the Madras Presidency, where the money was received and the contracts took place, cannot be tried by a Court at A where loss occurred to the complainant. *Ganesh Lal v Nand Ashore*, 1 L R 34 All 487 and *Pambhoo v Emperor*, (1914) Mad W N 394 followed. *Queen Empress v O'Brien* 1 L R 19 All 111 and *Langridge v Affins* 1 L R 35 All 29 dissented from. *Cohilla v Aristo Ashore Esar* 1 L R 26 Calc 740, *Emperor v Mahadeo* 1 L R 32 All 397, distinguished. *SIMHACHALAM v EMPEROR* (1916)

1 L R 44 Calc 812

20 ——— **Leave to withdraw suit by the Appellate Court—Subsequent Suit—Res Judicata—***Civil Procedure Code (Act XIV of 1882)* s 373 (Act I of 1908) O XIX 111 r 1. The plaintiff brought a suit for the declaration of his title in respect of certain rights and for other reliefs. This suit was dismissed by the Court of first instance on the merits after the evidence had been gone into. The plaintiff thereupon preferred an appeal. At the hearing of the appeal he made an application for leave to withdraw from the suit under s 373 of the Code of Civil Procedure, 1882 on the grounds of a formal defect and of his inability to produce the necessary evidence in time and obtained an order in the presence of the defendants to the effect that the appeal be dismissed with costs and the plaintiff's suit be allowed to be withdrawn with leave for fresh act on for the same subject matter if not barred. Subsequently the plaintiff brought a fresh suit against the same parties on the same cause of action as in the previous suit. Held that the ground on which the order was made by the Appellate Court was not a ground which was contemplated by s 373 of the Civil Procedure Code and that therefore, the order was without jurisdiction. *Akorda Coal Co Ltd v Durga Charan Chandra* 11 C L J 45, and *Mohd Ha Sardar v Hemangra Debi*, 11 C L J 512 referred to. *KALI PRASAD SETH v PANCHANAN NARAI* (1916)

1 L R 44 Calc 367

21 ——— **Execution proceedings—Suits above Rs 5000—Appeal from order in execution proceedings—***Civil Courts Act (XII of 1887)* s 21, sub-s (1)—*Civil Procedure Code (Act V of 1908)*, ss 99, 100, 108. Where, in execution proceedings in a mortgage suit the value of which exceeded Rs 5000 an order was made by the Court of first instance which on appeal was modified by the District Judge. Held that the order of the District Judge was made without jurisdiction and was contrary to law. In such a suit an appeal against an order made in a proceeding arising out of the decree lay to the High Court and not to the Court of the District Judge under the provisions of s 2 sub-s (1) of the Bengal Civil Courts Act 1887. Held also that as the order was passed on appeal by the District Judge a second appeal lay to the High Court under s. 100 of the Civil Procedure Code 1908. *Ranjit Meher v Ramdhar Singh* 16 C L J 77, referred to. *BANDHAN MOOKERJEE v PURNA CHANDRA ROY* (1917)

1 L R 45 Calc 928

22 ——— **Deficit court-fee whether recoverable by attachment of movables**
Where after the dismissal of a suit the Court ordered the deficit court-fee to be paid by the

JURISDICTION—contd

plaintiff and, on default, of its own motion ordered the attachment of his movables. *Held*, that the Court had no jurisdiction to do so. **JATRA MOHAY SEV v SECRETARY OF STATE FOR INDIA (1918)**

I. L. R. 46 Calc. 520

23. ——— Mortgage of property situated partly in district subject to the Code of Civil Procedure, 1908, and partly in a scheduled district under Act XXIV of 1839—Mortgage of such property and order for sale made by Court under Code of Civil Procedure—Order for sale without jurisdiction—Civil Procedure Code, 1908, s 1, sub s (3), and ss. 17, 21—Meaning of 'Courts' in s 17. A suit was brought under the Code of Civil Procedure, 1908, to enforce a mortgage of property which was situate partly in a district to which that Code applied, and partly in a scheduled district under Act XXIV of 1839, and therefore subject to the special jurisdiction of the Agency Courts and a decree on the mortgage and for sale of the mortgaged property, was made by the Subordinate Judge, and affirmed by the High Court. *Held*, that so far as the decree was for sale of the mortgaged property in the scheduled district the Courts had no jurisdiction to make it s 21 of the Code not being applicable to such case. And it could be set aside, notwithstanding that no objection to the jurisdiction had been taken in the Subordinate Judge's Court. The word 'Court' in s 17 of the Civil Procedure Code, 1908, means Courts to which that Code applied, and not Courts one of which was subject to the Civil Procedure Code and the other to the Agency jurisdiction. The alteration made in the decree by striking out that part of it which ordered the sale of the mortgaged property would not interfere with the plaintiff's right to obtain from the Agency Court an order for the sale of the property situate in its jurisdiction. **RAMABHADRA PAJJI BHADUR v MAHARAJA OF JEYPORE (1919)**

I. L. R. 42 Mad 813

24. ——— Second Appeal—Decree set aside—Consideration of wrong question of fact—Absence of evidence to support finding—Civil Procedure Code (Act V of 1908), s 100. Upon a second appeal the decree of a Subordinate Judge in favour of the plaintiffs, affirmed on the facts by the District Judge, was set aside by the High Court on the grounds that the evidence taken showed that the true question of fact, which had not been considered and as to which no issue had been framed, should have been answered in favour of the defendant, and that there was no evidence to support a finding of fraud arrived at by the lower Courts. *Held*, that there was jurisdiction under s 100 of the Code of Civil Procedure, 1908, to set aside the decree upon the grounds above stated and that, upon the evidence, it had been rightly set aside. **DAURCAR v ABDUL SAMAD (1919)**

L. R. 46 I A 140

25. ——— Error—Whether misinterpretation is a question of—Superintendence—Code of Criminal Procedure (Act V of 1908), ss. 115 and 117—Mining rights, whether included in 'land'—Where a Magistrate has jurisdiction to take cognizance of a case and devotes his judicial mind to a consideration of the points which he is required to determine any error in law with regard to the interpretation of the words of the section which he is applying is not an error in the exercise of his jurisdiction but an error

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which would, in the ordinary course, be subject to an appeal. Such errors are not subject to superintendence. S 145 of the Code of Criminal Procedure, 1899, covers all profits derivable from land or water, including mining rights. **ANDREW YULE Co v A H SONE (1919)**

4 Pat. L. J. 154

26. ——— Distinction between existence and exercise of jurisdiction—Withdrawal of suit—Liberty to institute a fresh suit—Civil Procedure Code (Act V of 1908), O XXIII, r 1. An order for withdrawal of a suit with leave to institute a fresh suit made under O XXIII, r 1, but in circumstances not within the scope of the rule, cannot be treated as an order made without jurisdiction, such order is consequently not null and void. A fresh suit instituted upon leave so granted is not incompetent. The Court trying the subsequent suit is not competent to enter into the question whether the Court which granted the plaintiff permission to withdraw the first suit with liberty to bring a fresh suit had properly made such order. The authority to decide a case at all and not the decision rendered therein is what makes up jurisdiction. **Kali Prasanna Sil v Panchannan Nandi Chowdhury, 23 C L J 489, 20 C W A 1000 overruled. Hriday Nath Roy v Ram Chandra Banya Sarma (1920)**

I. L. R. 48 Calc 138

27. ——— Income-tax—Agricultural income—Practice—Vakil—Right of Audience—Advocate. When a Court hears a reference really performs the functions of the Court of Appeal. On a reference by the Chief Revenue authority under s 51 of the Income tax Act (VII of 1918), in cases, where the assessee or the business is outside the local limits of the Original Jurisdiction of the High Court, vakils and not attorneys are entitled to appear. **Girdhar Singh v Hurdoy Narain, 21 W R 263, Secretary of State for India v British Indian Steam Navigation Company, 13 C L J 99, referred to Solani or premium received on settlement of waste land, but not on transfer of a holding, is exempt from assessment of income tax. Illegal evictee are assessable. Patridge v Holland, 18 Q B D 276, referred to. BIRENDRA KISHOR MANIYA v SECRETARY OF STATE FOR INDIA (1920)**

I. L. R. 48 Calc. 766

28. ——— Mortgage comprising properties outside Calcutta—Sub-mortgage including properties in Calcutta—Suit on sub mortgage whether maintainable in the High Court—Leave under cl 12 of the Letters Patent, may be granted in such a case—*Fos judicata*—Decree without jurisdiction, if wholly void—Waiver or acquiescence, whether confers jurisdiction—Question of jurisdiction not raised or decided in the previous suit, effect of. On 30th August 1907 A mortgaged to B certain immovable properties situated outside Calcutta and outside the Ordinary Original Jurisdiction of the High Court. On 17th December 1907 B mortgaged to C certain immovable properties in Calcutta together with his interest as mortgagee under the mortgage of 30th August 1907. On 25th November 1912 C instituted a suit in the High Court to enforce his mortgage against A and B by the sale of properties comprised in both the mortgages after having obtained leave under cl 12 of the Letters Patent. The preliminary decree was passed ex parte on 21st

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September 1914 and the final decree was passed on 24th August 1917. On 20th June 1916 D purchased the right title and interest of A at an execution sale and in July 1918 D filed the present suit for a declaration that the decrees in the previous suit were without jurisdiction so far as they affected properties outside Calcutta and that the leave under cl 12 of the Letters Patent was improperly obtained. *GRIMES, J.* held that the Court had jurisdiction to pass the decrees. *Held*, that the decrees were without jurisdiction in so far as the immovable properties outside Calcutta were concerned and that leave under cl 12 of the Letters Patent could not be granted. *Held* further that the question of jurisdiction could be raised in the present suit though it could have been and was not raised in the previous suit. *PER MOOREHEAD J.*—It is an elementary principle that where a Court has no jurisdiction over the subject-matter of the action in which an order is made, such order is wholly void, for jurisdiction cannot be conferred by consent of parties and no waiver or acquiescence on their part can make up for the lack or defect of jurisdiction. *Rajkshami v Kalyani* 1 L R 38 (al 659 (1910)) *Gurdo v Chandra* 1 L R 35 Cal 133 (1907) and *Ranjit v Ramdutt* 17 C W 116 (1911) referred to. *Held* also, there could not be *res judicata* inasmuch as the question of jurisdiction raised in this suit was neither raised nor decided in the previous suit. *PER MOOREHEAD J.*—When a Court judicially considers and adjudicates the question of its jurisdiction and decides that the facts exist which are necessary to give it jurisdiction over the case the decision is conclusive till it is set aside in an appropriate proceeding. But when there has been no such adjudication the decree remains a decree without jurisdiction and cannot operate as *res judicata*. *KRISHNA BHISHORE DE v AMAR NATH BHISHETRY* 24 C. W. N 633

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a Civil Court, and that they had failed to discharge that duty. *RAMESH LAL v MANOJ SINGH* 1 L R. 2 Lab. 302

30. ——— Suit for money advanced and for specific performance of an agreement to mortgage land outside jurisdiction—*Injunction to restrain disposal of land outside jurisdiction—Interest in land.* In a suit instituted in the High Court in its original jurisdiction the plaintiff stated that the plaintiff firm advanced in Calcutta various sums of money secured by promissory notes as well as by the deposit of title deeds of property outside Calcutta to the defendant who resided outside the jurisdiction. It stated that the title deeds were with the plaintiff firm in respect of a previous regularly executed mortgage. It stated further that the defendant agreed to register and execute a regular mortgage whenever called upon to do so but that the defendant refused to return the money or execute the said mortgage and in breach of the agreement the defendant was attempting to transfer the property to others. The plaintiff firm prayed for leave under clause 12 of the Letters Patent and under Order II r 4 of the Civil Procedure Code to institute the suit in this Court. On an application for settlement of issues. *Held*, that a suit for specific performance of an agreement to mortgage lands outside the jurisdiction, even if the title is accepted, is a suit for land within the meaning of clause 12 of the Charter and accordingly that leave cannot be given. *Srinath Roy v Gally Dass Ghose*, 1 I L R 5 Calc 82, followed. *RATANCHAND DHARACHAND v GOVIND ALL DUTT* (1921) 1 L. R. 48 Calc. 892

JURISDICTION AND CLAIM.

——— denial of—

See FOREIGN DECREE, EXECUTION OF
1 L R. 39 Mad 24

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See APEN SETTLEMENT REGULATION (VII OF 1900), s 13

1 L R. 40 Bom. 446

See JURISDICTION

See LAND ACQUISITION

1 L R. 44 Calc. 219

See LAND REVENUE CODE (BOM ACT V OF 1879) s 79A 1 L R. 35 Calc. 72

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 1 L R. 38 Mad 609

See PENSIONS ACT (XVIII OF 1871), ss 4, 5, 6 1 L R. 37 All. 338

See REGULATION II OF 1827

1 L R. 34 Bom. 455

See RIGHT OF SUIT

1 L R. 40 Bom. 200

See TITLE 1 L R. 37 Calc. 662

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) s 231 (1)

1 L R. 33 All. 440

——— *Caste question*

See HINDU LAW—RELIGIOUS OFFICE

1 L R. 36 Bom. 94

See TRUSTS ACT (II OF 1882)

ss 5 AND 6. 1 L R. 34 Bom. 467

29. ——— Civil or Revenue—suit for recovery of price of barley delivered to defendants by a Revenue Officer—whether competent—*Punjab Land Revenue Act XIII of 1857, sections 144, 158 (2) (XIX)*—onus probandi. Defendants applied to the Revenue Officer for division and appraisement of the produce of a holding in which they were co-sharers with the plaintiffs. An appraisement was duly made, but before the produce could be divided the plaintiffs removed it and stored it in a house. Thereupon the referee appointed by the Revenue Officer made over a whole *Khatta* of barley to the defendants in lieu of their share of the produce. The plaintiffs after making an unsuccessful attempt to get redress through the Revenue Authority brought the present action for the price of the barley alleging that it belonged to them exclusively. *Held*, that the question whether the barley is joint property or belongs exclusively to the plaintiffs is a question of title which cannot be determined by a Revenue Officer, who is required only to divide the produce which is admittedly joint, or to determine its value; and that consequently the Civil Court has jurisdiction to entertain the present suit which does not come within the purview of section 158 (2) (XIX) of the Punjab Land Revenue Act. *Held*, also that the onus was on the defendants to satisfy the Court that the claim made by the plaintiffs is not within cognizance of

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— question of title—

See BOMBAY LAND REVENUE ACT 1879

s. 121

I. L. R. 45 Bom. 67

1. ——— Aden Act (II of 1864), ss. 8 and 15—Court fees Act (VII of 1870), s. 7, sub-s. 4, cl. (c) and (d)—Suits Valuation Act (VII of 1887), s. 8—Civil Procedure Code (Act XIV of 1882), s. 551—Civil Procedure Code (Act V of 1909), s. 115—Valuation for the purposes of Court fees and jurisdiction—Suit for declaration and injunction—Rejection of plaint as not properly stamped—Appeal—Application to state a case to High Court—Summary dismissal of appeal—Application for revision. The plaintiff brought a suit in the Court of the Assistant Resident at Aden for a declaration of heirship and an injunction with reference to certain property of the value of upwards Rs. 50,000. The claim being for declaration and injunction was, under the provisions of the Court fees Act (VII of 1870), s. 7, sub-s. 4 cl. (c) and (d) valued by the plaintiff at Rs. 130 upon which the prescribed Court fee stamp was Rs. 10 only. The Assistant Resident rejected the plaint on the ground that it was not properly stamped. Against the order of the Assistant Resident the plaintiff appealed to the Resident at Aden, and on the 23rd September 1903 presented an application under s. 8 of the Aden Act (II of 1864) to state a case to the High Court upon certain questions specified in the application. The Resident, however, on the next day, that is, on the 24th September, summarily dismissed the appeal under s. 551 of the Civil Procedure Code (Act XIV of 1882). The judgment dismissing the appeal was read out to the plaintiff on the 7th October following when she attended the Court. The plaintiff, thereupon, preferred an application for revision to the High Court praying that the order dismissing the appeal might be quashed and that the Resident be required to state a case. A question having arisen as to whether the High Court had jurisdiction to interfere in revision with any order passed by the Resident in the exercise of his Civil Jurisdiction under the Aden Act (II of 1864) *Held* that with regard to questions which might arise regarding cases to be stated by the Resident for the decision of the High Court under the provisions of s. 8 of the Aden Act (II of 1864) the Resident's Court is subordinate to the High Court. Under s. 15 of the Aden Act (II of 1864) as the Court of the Resident is to be guided by the spirit and principle of the laws and regulations in force in the Presidency of Bombay and administered in the Courts of that Presidency not established by Royal Charter and in the High Court in the exercise of its jurisdiction as a Court of Appeal from those Courts the provisions of the Suits Valuation Act (VII of 1887) are 'the law for the time being for the valuation of claims' in the Courts of the Resident of Aden. *Held*, further, that the plaintiff's claim being valued at Rs. 130 according to the law for the valuation of claims for the time being in force and according to the rulings of the Bombay High Court, it did not fulfil the requirements of s. 8 of the Aden Act (II of 1864) so as to give the plaintiff a right to demand the statement of the case upon any question of fact or law arising in the suit. *REHMAJI JAMALBUKH* v. *MARIAM BINTI ABDUL* (1909)

I. L. R. 34 Bom. 267

2. ——— Appellate decree passed without jurisdiction—High Court bound to set aside

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such decree Where a small cause suit is tried by a Munsiff on the original side and his decision is reversed on appeal, the High Court is bound to set aside the appellate decree as having been passed without jurisdiction. *Tarameskhvira Lambudri* v. *Isakhu Embrandiri*, I. L. R. 27 Mad. 478, dissented from. *Pamasamy Chettiar* v. *Orr*, I. L. R. 26 Mal. 176, approved. *Shankarbhau v. Samabhai*, I. L. R. 25 Bom. 417, approved. *KOLLI PAPA KRISHNAIAH* v. *KANKIPATI SUBBAYYA* (1902)

I. L. R. 33 Mad. 323

3. ——— Suit for land—Letters Patent, cl. 12—Suit in which decree is asked for operating directly on land, is a suit for land. A suit which prays for any relief with reference to any specific immoveable property is a suit for land within the meaning of cl. 12 of the Letters Patent. Where in a suit for maintenance the plaintiff prays that the amount may be charged, not on the ancestral property generally, but on specific land, the suit is a suit for such land within the meaning of cl. 12 of the Letters Patent. *SCNDARA BAI SANKRA* v. *TIRUMAL RAO SANKRA* (1909)

I. L. R. 33 Mad. 131

4. ——— Letters Patent, cl. 12, 14—application under—Cause of action arising partly within jurisdiction—Further cause of action arising wholly outside jurisdiction—Joinder—Time of application. An application under cl. 14 of the Letters Patent to join a further cause of action arising wholly outside the jurisdiction, can be made in a case in which leave to sue has to be obtained under cl. 12, nor is there anything in cl. 14 to show that this application must be made before the plaint is filed. There is nothing to prevent the plaintiff making the application at any time before the hearing but it would certainly be advisable for him to make it at the time the plaint is presented. *JOHN GEORGE DORSON* v. *THE KRISHNA MILLS, LTD.* (1910)

I. L. R. 34 Bom. 564

5. ——— Practice—Precedency. Small Cause Courts Act (XI of 1882), s. 22—Suit commencing by Small Cause Court brought in High Court—Non-joinder—Contract of sale subject to rules of the Merchants Association—Rule providing jurisdiction of Court of law—Rule providing for fixing value rate of goods for purpose of ascertaining difference in case of non fulfilment of contract—Suit by buyer for damages for non-delivery—Plea that no damages recoverable having regard to rate fixed—Allegation by plaintiff that rate fixed was not binding inasmuch as the rules were not observed—Construction of rules—Principal and agent—Agent's power to bind his principal to arbitration—Indian Contract Act (IX of 1872), s. 93—Sale—Tender. The Bombay United Rice Merchants Association was a commercial body of which most of the principal rice merchants in Bombay were members. Its rules were printed and circulated and they prescribed a certain form of contract which was very generally used in Bombay. By these rules a Sub-Committee was nominated "to decide all disputes which may arise as to contracts and do all other business relating to contracts." It was also provided that the exclusive authority "to decide all such disputes should be the said Sub-Committee and the Association and that no party should be at liberty to go to Court with respect to any matter connected with such contracts except to enforce the decision of the Sub-Committee and the Association. It was further

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provided that the Sub-Committee should keep a record of the daily rates and on the last day of the month should fix the weekly rate (i.e. the market rate of the day) on the basis of which differences should be calculated which became payable in cases in which contracts were not carried out. The plaintiff who were rice merchants in Paterson were not members of the Association, but they employed agents in Bombay, who were members, to purchase rice for them and on the 24th November 1941 these agents bought from the defendants 1,340 bags of rice at Rs. 9 per bag deliverable at the end of March but 1943 (i.e. from the 10th November 1941 to 10th November 1943). The contract which was in the printed form framed under the rules as above-mentioned contained the following clause: "This contract is made subject to the rules of the Bombay United Rice Merchants Association. Each party is bound to act in accordance with the same. For delivery at this time a large number of the members of the Association had made contracts of sale. The plaintiffs and a few others were purchasers and they were agreeable to act in settling the weekly rate the interests of the buyers would be disregarded in favour of those of the sellers. They accordingly wrote to the President of the Association asking him to see that no interested person was allowed to act on the Sub-Committee for fixing the weekly rate. In accordance with the practice a general meeting of the Association was held on the 24th November 1941 at which after discussion a special Sub-Committee was appointed to fix the rate consisting only of three persons, one of whom was not a member of the standing Sub-Committee and another of whom had large contracts of sale due at this time. This Sub-Committee fixed the rate at Rs. 8.11.0 per bag. The plaintiffs alleged that it should have been fixed at Rs. 8.5.0 or Rs. 9.4.0 per bag which was the real market rate of the day at the rate fixed was deliberately fixed in the interest of sellers; that the Sub-Committee was not constituted according to the rules, two members of it being ineligible one because he did not belong to the standing Sub-Committee and the other because he was interested in fixing a low rate, and they contended that for those reasons (inter alia) they were not bound by the rate fixed. They had also demanded delivery of the rice contracted for and the defendants failed to give delivery and the plaintiffs now seek for the difference between the contract price (Rs. 9) and the market price on the 24th November 1941. The case claimed as damages was less than Rs. 1,000. The defendants pleaded: (1) That having regard to s. 13 of the Civil Procedure Code (IX of 1908) and s. 14 of the Provincial Small Cause Courts Act (IX of 1937) the suit was not maintainable in the High Court. (2) That certain alleged partners of the plaintiffs and being parties to the suit it should be dismissed for want of due diligence. (3) That having regard to the rules of the Association which provided a remedy in case of default among its members and that in the present case the plaintiffs were prevented from suing at law at all events until they had exhausted the remedies provided by the rules. (4) That the plaintiffs were to sue by the weekly rate fixed by the Sub-Committee appointed by the Association. (5) That the High Court had jurisdiction and that the suit should proceed subject to the provisions as to costs contained in s. 21 of the Provincial Small Cause Courts Act

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(IX of 1937). (6) That the alleged partnership was proved, but nevertheless the suit could not be dismissed for non-joinder. (7) That the plaintiffs were entitled to sue at law notwithstanding the provisions contained in the rules of the Association requiring all disputes to be submitted for decision to the Association and restricting the right of members to sue each other. (8) That at the meeting of the Association held on the 20th November 1941 the plaintiffs (through their agents) had consented to the appointment of a Sub-Committee of three persons to fix the weekly rate and that they were therefore bound by the rate then fixed. Any stipulation that the award of an arbitrator shall be accepted as final restricts the rights of contracting parties to invoke the aid of the ordinary Courts and to that extent is void. The effect of s. 24 of the Indian Contract Act (IX of 1932), s. 21 of the Specific Relief Act (I of 1927), read with the related provisions of the Indian Arbitration Act (IX of 1909) and the Civil Procedure Code dealing with arbitration, is that a person may not contract himself out of his right to have recourse to Courts of law but that in the event of any party having made a lawful agreement to refer a matter of difference to arbitration as a condition precedent to going to law about it the Courts will recognise the agreement and give effect to it by staying proceedings in the Courts. *Mellor Tasson v. Rayer Dwyer* (1909) L. R. 34 Bom. 13

6. ———— Suit for share in produce of immovable property—Provincial Small Cause Courts Act (IX of 1937), ss. 16, 27, 32, Sec. 11 Cls. (2) and (3)—had for the recovery of certain sums representing a share in the produce of immovable property—Compromise by the Court of Small Causes—*Interlocutory Appeal*. A suit for the recovery of Rs. 12.11.4 representing plaintiff's share in the produce of immovable property in a suit for money but not received to the plaintiff was and is recoverable by the Court of Small Causes and the decree in such a suit is final under s. 27 of the Provincial Small Cause Courts Act (IX of 1937). Notwithstanding its finality an appeal was preferred to the District Court at Ahmedabad, which Court entertained the appeal and reversing the decree allowed the plaintiff's claim. The defendant, thereupon, preferred a second appeal and at the hearing proved that the second appeal ought to be treated as an application for review under s. 115 of the Civil Procedure Code (Act V of 1908), on the ground that the District Court acted without jurisdiction in entertaining the appeal. The respondent (plaintiff) urged that a second appeal lay and further that by reason of the conduct of the parties and the fact that the appellant (defendant) had not objected to the jurisdiction of the District Court, it was too late to second appeal to take the point. *Held*, that the District Court had no jurisdiction to try the case and the conduct of the parties would not prevent its jurisdiction. *Interlocutory Appeal*, L. R. 111 Cal. 111 and *Monsalvo Sankar v. Subramanyam Sankar*, L. R. 111 Cal. 151 referred to. *Decree* of the District Court reversed and that of the first Court restored. *Datta Ramani (Monsalvo Sankar) v. Anandappa Sankar* (1941) L. R. 34 Bom. 171

7. ———— Suit for declaration of title and injunctive, valuation of—*Interlocutory Appeal*—*Act* (IX of 1937), s. 16, sub-s. (4),

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(c) and (d)—*Suits Valuation Act (VII of 1887), s 8—Jurisdiction* Plaintiff landlord sued for declaration of title and for an injunction to restrain from realising rents the defendants who had been recorded in settlement proceedings as entitled to realise rent from tenants. The value of this property was found to be about Rs. 4000 or Rs. 5000, but the plaintiff valued the reliefs prayed by him at only Rs. 500. *Held*, that the value of the suit ought to be the value of the property as it was virtually a suit for possession and that therefore the suit did not lie in the Court of the Munsif. *Ganapati v Gantha, I. L. R. 12 Mal. 223, Prayaga v Kamamath, I. L. R. 15 Mal. 511*, referred to. The proposition cannot be maintained that it is open to the plaintiff in such cases to value the suit arbitrarily. *Hari Sankar Datt v Kabi Kumar Patra, I. L. R. 32 Cal. 734*, commented on and distinguished. *Brij Nath Alix v Vithas Lal Alix, I. L. R. 17 Cal. 631, Ram Brij Lal v Luchoo Koor, I. L. R. 11 Cal. 691*, referred to. *Krishna Das Lala v Hari Churn Bayersie (1911)*

15 C. W. N. 823

8 ————— *Content of the parties as to jurisdiction—Suit of value beyond the jurisdiction of the Court—Trial of suit—Jurisdiction cannot be questioned in appeal—Evidence Act (I of 1872), s 58* The plaintiffs filed a suit for partition in the Court of the Subordinate Judge, First Class, valuing their claim at an amount which made the suit triable by that Court alone. The Judge, however, made over the trial of the suit to the Joint Subordinate Judge. In the latter Court neither party raised any objection on the ground of jurisdiction, nor was any issue raised relating to it. The trial proceeded on merits and a decree was passed in favour of plaintiffs. The defendant appealed to the lower Appellate Court, where he, for the first time, raised the question of jurisdiction on the strength of the market value stated in the plaint. The objection was overruled. On appeal — *Held*, that the market value stated in the plaint *prima facie* determined the jurisdiction. *Held*, further, that as neither party raised any question as to want of jurisdiction in the first Court, and as they by their conduct and silence treated the market value to be of the amount sufficient to give jurisdiction to the Court, they dispensed with proof on the question by their tacit admissions, and thus the principle of law laid down in s 58 of the Indian Evidence Act came into operation and prevented the result of the statement of the market value in the plaint. As a rule, parties cannot by consent give jurisdiction where none exists. This rule applies only where the law confers no jurisdiction. It does not prevent parties from waiving inquiry by the Court as to facts necessary for the determination of the question as to jurisdiction, where that question depends on facts to be ascertained. *Joshi Akravich v Prayoncho Akravich (1910)*

I. L. R. 35 Bom. 21

9. ————— *Suit for declaring adoption invalid—Jurisdiction—Civil Court—Subordinate Judge of Special Class—Bombay Civil Court Act (XIV of 1897), s. 21—Claim valued for Court fee purposes at Rs. 137—Court Fees Act (VII of 1870), s. 7, cl. 10, sub-cl. (i), (d)—Property exceeding Rs. 500 in value—Mishra v. K. —Consent from Hinduism—Question of adoption—Burden of proof* A suit to obtain a declaration that an adoption was invalid was valued for

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Court fee purposes at Rs. 130, though the property affected by the adoption was more than Rs. 5,000 in value. It was brought in the Court of the Subordinate Judge of the second class, whose jurisdiction extended only to suits involving claims valued under Rs. 500 (Bombay Civil Courts Act, 1897, s. 21). It was objected that the Subordinate Judge had no jurisdiction to entertain the suit. *Held*, that the Subordinate Judge was competent to try the suit. *Varappa v Subramya, (1899), P. J. p. 93, and Bai Revu v. Keshoram D. Churn, (1895), P. J. p. 223*, followed. The Mahomedan law does not recognise adoption. Hence, where a Hindu is converted to Mahomedanism, the presumption is that as a necessary consequence of conversion the law of adoption recognised by Hindu law has been abandoned by him. He who alleges that the 1897 Act and law in question had been retained must prove it. *Bai Himmata v. Bai Himmata (1911)*

I. L. R. 35 Bom. 231

10 ————— *Judgment of Court having no jurisdiction, a nullity—Jurisdiction—Under-valuation of suit—Change of Court of Appeal owing to undervaluation—Jurisdiction of Appellate Court—Effect of such judgment—Consent decrees to the prejudice of minor or any reverentary heir, not binding on him—Stranger, introduction of, into app. at suit at leave of Court* A suit was tentatively undervalued. The defendants raised no objection as regards valuation and the suit was tried. The appeal was filed before the District Judge instead of before the High Court, in consequence of the undervaluation and the District Judge decided the appeal, by a consent decree. *Held*, that if a Court has no jurisdiction over the subject-matter of the litigation, its judgments and orders, however precisely certain and technically correct, are mere nullities and not only voidable; they are void and have no effect either as estoppel or otherwise, and may not only be set aside at any time by the Court in which they are rendered, but be declared void by every Court in which they may be presented. These principles apply not only to Original Courts, but also to Courts of Appeal. Jurisdiction cannot be conferred upon a Court of Appeal by consent of parties and any waiver on their part cannot make up for the lack or defect of jurisdiction. *Gurdev Singh v. Chant Singh, I. L. R. 33 Cal. 191, Bai Nath Singh v. Gurdev Singh, 7 All. J. R. 675, Ganga Pershad Bai v. Jagdishdas J. J. J. (1907), W. R. P. B. 15, Gopal Rao v. Chavhanji, Madras L. R. 9 C. W. N. 355, Lalji v. Bull, I. L. R. 9 All. 131, I. L. R. 13 All. 131, Marathi Naula v. Subramanyam Sastri, I. L. R. 11 Mal. 36, I. L. R. 11 All. 169, Lawrence v. Wilcock, 11 All. 911, The Queen v. The Judge of the County Court of Shropshire, 20 Q. B. D. 217 and In re Alford, 20 Q. B. D. 253 referred to. When in a suit between a Hindu widow and a claimant to the estate of her husband, a stranger who was not a party to the suit in the Original Court was made a party to the appeal without leave of the Court and a consent decree made, the decree was not binding upon the reverentary heirs. A Hindu widow, who is a limited or qualified owner, cannot confer judgment and be party to a consent decree as to the title of the inheritance in the hands of the reverentary heirs. *Krishna Vachar v. The Rajah of Shajapur, 2 Mor. L. J. 517, Stephen v. Stephen, 1 White & Tait, 8th Ed. 331—1st Ed. 2, distinguished. In re Koor v. Ravi Varan Singh 6 C. L. R. 176, explained**

JURISDICTION OF CIVIL COURTS—*contd.*

Sheo Narain Singh v Khunjo Korry, 10 C L R 337 *Sant Kumar v Deo Saran*, 1 L R 8 All. 365 *Jeram Laljee v Ferraz*, 5 Bom. L R 885, *Gobind Krishna Narain v Khunjo Lal*, 1 L R 29 All 437, *Mahadev v Baloo*, 1 L R 39 All 75, *Roy Radha Kanta v Narayan Lal*, 6 C L J 499, *Asharam Sarhani v Chandu Churn Mukerjee*, 13 C B N 147, referred to A consent decree does not operate to the prejudice of persons not parties thereto. *Dholak v Aghar* 1 L R 21 Calo 218, *In re South American and Mexican Company*, [1896] 1 Ch 37, and *The Bellocan 10 P D 161* distinguished. *Huldersfield Bunting Company Limited v Lister* [1895] 2 Ch 273, followed. **RADJAKSHMI DASKE v KATYAKANI DASKE** (1910) 1 L R 38 Calo. 639

11 ——— Suit for declaration regarding various alleged customary rights of zamindars, mostly of the nature of *ceases*. A suit was filed by certain tenants of a village against the zamindars praying for a declaration that no custom existed in their village which entitled the zamindars to take certain fruits and wood, or to the use of a plough, or to a number of other dues, including sugarcane juice from some of the tenants, poppy seed from the Koria, and various other matters of the same description. *Held*, that the suit was properly filed in a Civil Court, and was not excluded from the jurisdiction of such Court by anything contained in either the Agra Tenancy Act 1901 or the United Provinces Land Revenue Act 1901. **SHROFAMBAH AMR v THE COLLECTOR OF AZAM GARRH** (1912) 1 L R 34 All. 358

12 ——— Burma Town and Village Lands Act—(*Burma Act IV of 1893*) s 41(b)—*Act taking away power of subject to sue Government to determine any right to land—Power of Lieutenant Governor in Council to pass Act—Legislation ultra vires—India Councils Act 1851* (24 & 25 Viet c 67), s 22—*Government of India Act, 1858* (21 & 22 Viet, c 106) ss 65, 66 67 *Held* (affirming the decision of the majority of a Full Bench of the Chief Court of Lower Burma), that s 41(b) of the Burma Town and Village Lands Act (*Burma Act IV of 1893*), which enacted that "no Civil Court shall have jurisdiction to determine any claim to any right over land as against the Government" was *ultra vires* of the Lieutenant Governor of Burma in Council, and therefore invalid. s 22 of the India Councils Act 1861 (24 & 25 Viet c 67), provides that the Governor General in Council shall have no power "to repeal or in any way effect (amongst other matters) any provision of the Government of India Act 1858 (21 & 22 Viet, c 106). And the effect of s 65 of the latter Act which enacted that "all persons shall and may have and take the same suits remedies and proceedings, legal and equitable against the Secretary of State in Council of India as they could have done against the East India Company," was to debar the Government of India from passing any Act which could prevent a subject from suing the Secretary of State in Council in a Civil Court in any case in which he could have similarly sued the East India Company. The words could not be construed in any different sense without reading into them a qualification which is not there, and may well have been deliberately omitted. The question was not one of procedure, but of the power of the Government to take away by legislation the right to proceed against them in Civil Court in a case involving

JURISDICTION OF CIVIL COURTS—*contd.*

a right to land; and the suit in this case (for damages for interference with the respondent's property) was one which would have lain against the East India Company. **SECRETARY OF STATE FOR INDIA v MOMENT** (1912)

1 L R 40 Calo. 391

13 ——— Chota Nagpur Tenancy Act—(*Beng VI of 1905*), s 139(3), *cl* (a) The plaintiffs brought a suit in the Civil Court against the defendant for recovery of arrears of *basta* rent. The defendant contended that as crops were grown on a portion of the *basta* lands, this land was agricultural, and suits in respect thereof were triable exclusively by the Revenue Court under the Chota Nagpur Tenancy Act. *Held*, that the land in respect of which rent was claimed was *basta* land and consequently the suit was maintainable in the Civil Court. *Ramdhun Khan v. Haradhin Paramanki*, 12 W R 404, *Kaler Kishen Biswas v Sreemully Jankar* 8 W R 250, and *Kumod Narain Shoop v Purna Chunder Roy*, 1 L R 4 Calo 547, referred to. **MIDNAPURAM ZAMINDARI CO LD v MURTAGHJI DAS** (1912)

1 L R 40 Calo 403

14 ——— Agra Tenancy Act, Ch. X, and s 198—*suit by rent free grantee against Zamindar for declaration of status and recovery of rent allowed in a Civil Court*. **SHAM DAS v BANADUR SINGH** 1 L R 43 All. 325

JURISDICTION OF CIVIL AND REVENUE COURTS—

See AGRA TENANCY ACT

See CIVIL AND REVENUE COURTS

See JURISDICTION

See MADRAS ESTATES LAND ACT (1 OF 1908) s 8 1 L R. 38 Mad. 608, 343

Occupancy holding—One of two co-owners of an occupancy holding upon the allegation that the other co-owner was in fact cultivating more than his proper share of the holding, sued him in a Civil Court, asking for a decree for possession of his half share of the holding and for mesne profits. The court however, granted him a decree for a declaration of his right to a half share and also for mesne profits. *Held*, that there was no objection to such a decree being granted by a Civil Court. In such circumstances a Revenue Court could not grant a decree for mesne profits. *Ashiq Hussain v Iqbal Begam*, 1 L R 30 All 90 referred to. **GANGA BANAH BANSI** 1 L R. 43 All 64

Civil and Revenue Courts—Rent-free grantees against zamindar—*To recover possession after alleged unlawful ejectment*. There is no section in the Agra Tenancy Act and no article in the schedule thereto which provides for a suit by a rent free grantee to recover possession as such in the event of his wrongful ejectment even though that ejectment may be the act of his zamindar. *Nanhu v Sri Thakurji Maharaj*, 1 L R 41 All 37, distinguished. **GOVIND RAI v BANWARI LAL** 1 L R. 42 All. 412

Partition of trees—*An dispute from zamindari property*. *Held*, that a suit for partition of trees which had been purchased by the plaintiff and others jointly from one of the zamindars of two villages but apart from any interest in the zamindari itself, was a suit which

JURISDICTION OF CIVIL AND REVENUE COURTS—contd

would lie in a Civil and not in a Revenue Court
SHEO SAMPAT PANDE v THAKUR PRASAD

I L R 42 All. 574

Civil and Revenue Courts—Act (Local) No. II of 1901 (Agra Tenancy Act) chapter X, and section 198 (2)—Rent free grantee—Suit against zamindar for declaration of status and recovery of rent wrongfully realized by zamindar from sub tenant Plaintiff brought his suit in a Civil Court and asked for a declaration that he was the rent free grantee of certain land, and that, having occupied the land for a certain period he had thereby become the proprietor. Incidentally, plaintiff also asked for the refund of a sum of money which the defendant's predecessor in title had received as rent from a third party. Held that the suit as framed was within the cognizance of a Civil Court **Gobind Rai Banwari Lal, I L R 42 All. 412**, referred to **SHAM DAY v BHADUR SINGH**

I L R. 43 All. 325

Suit by a minor for a declaration that a partition of land effected by the Revenue Officers is not binding on him where no question of title is involved—whether cognisable by Civil Court—Punjab Land Revenue Act, XVII of 1887, s. 158 (1) and (2) (XVII) The plaintiff, a minor, was one of the two sons of one S K who died in 1909, leaving inter alia the landed property in dispute. The defendant A H his half brother, a major, applied in 1911, to the Revenue authorities for partition which was completed in 1912. In those proceedings the plaintiff was represented by his mother who had been previously appointed by the District Court as his guardian. The plaintiff sued for a declaration that the land is still the joint property of himself and his half brother and that consequently the partition is not binding on him. He alleged that the partition was detrimental to him that the Revenue Officer had not taken account of the trees, that he was not properly represented and that the sanction of the District Judge was necessary, etc. Held, that, as there was no dispute as to title in the land partitioned, the plaintiff's grievances arising solely out of the manner in which the land was actually allotted, the Civil Court was debarred from taking cognizance of the suit, and the plaintiff must pursue his remedy on the revenue side, vide s. 158 (1) and (2) (XVII) of the Punjab Land Revenue Act **Gulab Singh v. Mussamat Sukhan (104 P R 1900)**, followed **Dasandi v. Buta (74 P R 1915)**, distinguished. **GHULAM HAIDAR : AMIR HAIDAR**

I L R. 1 Lah. 298

Civil suit for recovery of price of barley delivered to defendants by a Revenue Officer—Whether competent—Punjab Land Revenue Act, XVII of 1887, sections 144, 158 (2) (XIX)—onus probandi Defendants applied to the Revenue Officer for division and apportionment of the produce of a holding in which they were co-sharers with the plaintiffs. An apportionment was duly made, but before the produce could be divided the plaintiffs removed it and stored in a house. Thereupon the referee appointed by the Revenue Officer made over a whole *khatts* of barley to the defendants in lieu of their share of the produce. The plaintiffs after making an unsuccessful attempt to get redress through the Revenue authorities

JURISDICTION OF CIVIL AND REVENUE COURTS—contd

brought the present action for the price of the barley alleging that it belonged to them exclusively. Held, that the question whether the barley is joint property or belongs exclusively to the plaintiffs is a question of title which cannot be determined by a Revenue Officer, who is required only to divide the produce which is admittedly joint, or to determine its value, and that consequently the Civil Court has jurisdiction to entertain the present suit which does not come within the purview of section 158 (2) (XIX) of the Punjab Land Revenue Act. Held also, that the onus was on the defendants to satisfy the Court that the claim made by the plaintiffs is not within cognizance of a Civil Court, and that they had failed to discharge that onus **RAMJI LAL v MANGAL SINGH**

I L R. 2 Lah. 302

JURISDICTION OF CRIMINAL COURTS.

See COGNIZANCE OF AN OFFENCE.

See CRIMINAL PROCEDURE CODE—

s. 188, 227. I L R. 33 All. 516

s. 339 I L R. 1 Lah. 218

s. 476 I L R. 33 All. 396

See DISPUTE CONCERNING LAND

See EMIGRATION I L R. 37 Calc. 27

See JURISDICTION OF MAGISTRATE

See JURY, RIGHT OF TRIAL BY

I L R. 37 Calc. 467

See OFFERINGS TO DEITY

I L R. 38 Calc. 387

1. ——— Practice—Order directing prosecution for instituting a false case—False information to the police—Subsequent complaint before the Magistrate—Grounds of the exercise of such jurisdiction—Criminal Procedure Code (Act V of 1898), ss. 195 (b) and 476 S. 476 of the Criminal Procedure Code must be read subject to the restrictions contained in s. 195 (b), and does not, therefore, empower a Court to direct a prosecution for making a false charge before the police **Dhar madas Kaur v King Emperor, 7 C L J 373**, followed **Lalji Gope v Gridhari Chaudhury, 5 C W N 106** referred to **In re Dey, I L R 18 Bom 581, Aikil Chandra Dev Queen Empress, I L R 22 Calc 1004, Abdul Rahman v Emperor, 7 C L J 371, and Habib Khan v Emperor, I L R 33 Calc 30**, distinguished. But if the informant, upon the police reporting the information to be false, subsequently petitions the Magistrate for a judicial inquiry, he must be taken to have preferred a complaint and s. 476 would then apply **Queen Empress v Sham Lal, I L R 14 Calc 707, Queen Empress v Sheikh Bani, I L R 10 Mad. 232 and Jogendra Nath Moosherjee v Emperor, I L R 33 Calc 1**, referred to. No sanction should be granted or prosecution directed, unless there is a reasonable probability of conviction, though the authority granting a sanction under s. 195, or taking action under s. 476, should not decide the question of guilt or innocence. Great care and caution are required before the Criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which a prosecution is sanctioned or directed. **Ishri Jorad v Sham Lal, I L R 7 All 371, Ash Charan Lal v. Basudeo Narain Singh, 12 C. W. N.**

JURISDICTION OF CRIMINAL COURTS— contd.

(VI of 1909), of which the Magistrate could not then take cognizance for want of the consent of Government under s. 7 of the Act, and a complaint was subsequently filed by the Superintendent of Police, with such a consent obtained, before the additional District Magistrate *Held*, that the latter had jurisdiction to take cognizance of the offence, and that the initiation and continuation of the proceedings by him were legal, notwithstanding that he had not withdrawn the original case to his own file *Jhumuck Jah v. Pathuk Mandal*, 1 L. R. 27 Calc. 798, *Gulapdy Sheikh v. Queen Empress*, 1 L. R. 27 Calc. 979, [followed in *Radhoballur Ray v. Benode Behari Chatterjee*, 1 L. R. 30 Calc. 449] *Emperor v. Sonairam Mohan Chuckerbutty*, 1 L. R. 37 Calc. 412, *Moul Singh v. Mahabir Singh*, 4 C. W. N. 242, *Charu Chandra Das v. Narendra Arishna Chakravarti*, 4 C. W. N. 367, *Bhishen Doyal Rai v. Chedi Khan*, 4 C. W. N. 560, and *Jharu Jola v. Shukh Deo Singh*, 3 C. L. J. 87, distinguished *Held*, also, that in any case, having regard to ss. 529 (c), 530 (k), and 531 of the Criminal Procedure Code, unless it appeared that the proceedings wrongly held had, in fact, occasioned a failure of justice they could not be set aside. *Sonatai Dass v. Gooroo Churn Deuan*, 21 W. R. Cr. 88, referred to. A search for explosives by police officers of rank, not below that of an Inspector, is legal under rule 32 (1) (v) of the Government Rules framed under the Indian Explosives Act (IV of 1884) s. 309 (1) of the Criminal Procedure Code requires the opinions of the Assessors to be stated orally, and not in writing or in the form of a judgment under s. 367. Under s. 399 of the Penal Code, having in possession or immediate control any explosive substance is one of several means to the end, whereas, under s. 4 (b) of the Explosive Substances Act, it is the offence itself, provided the necessary intent is proved. In order to render documents found in the possession of a party admissible against him as proof of their contents, it is necessary to show that he has in some way identified himself or, in other words, has, by any act, speech or writing manifested an acquaintance with, and knowledge of, the contents of all or any of them. The rule would apply more strongly where some of the papers and letters were received, and others written, by the party against whom they are sought to be used *Wright v. Tatham*, 5 Cl. & Fin. 670 and *Barindra Kumar Ghose v. Emperor*, 1 L. R. 37 Calc. 467, followed *LALIT CHANDRA CHANDA CHOWDHURY v. EMPEROR* (1911)

1 L. R. 39 Calc. 119

7. ——— Transfer of territory to native state—Jurisdiction—Offence committed in British India—Accused committed to Sessions—Accused discharged for want of jurisdiction—Remission. Certain persons were charged with committing an offence at a place in British India and were committed to the Sessions Court of Mirzapur, the case being subsequently transferred to the Sessions Court of Benares. Before trial, however, the place where the offences had been committed became part of the newly constituted state of Benares. *Held*, that the Sessions Court, whether of Mirzapur or Benares, was not deprived of jurisdiction to dispose of the case which had been committed to it for trial, inasmuch as at the time of the transfer to the state of Benares of the place where the alleged offence had been committed

JURISDICTION OF CRIMINAL COURTS— contd.

the accused were in British India in custody in point of law, if not in fact, of a Court of competent jurisdiction. *Emperor v. Malabar*, 1 L. R. 33 All. 678, followed, *Danodahr Gordhan v. Dhoram Kanyu*, 1 L. R. 1 Low. 367, distinguished. *EMPEROR v. RAM NARESH SINGH* (1911)

1 L. R. 34 All. 118

8. ——— Conspiracy at Cambay, foreign territory—Jurisdiction—Forgery—Abetment of forgery—Abetment by conspiracy—Consequent forgery committed in British India—Trial in British India of the forger who conspired to forge at Cambay and who was in Cambay when the forgery was committed in British India—Indian Penal Code (Act XLV of 1860), ss. 31, 109, 467. The accused was a subject of the Cambay State. He lived there and traded with his business partner A. He conspired with A at Cambay and sent A to a professional forger at Umreth (a place in British India) with instructions to instigate the latter to forge a valuable security. To facilitate the forgery, the accused sent his *Khata* book with A. In pursuance of A's instigation the forgery was committed at Umreth. On these facts, the accused was charged, in a Court in British India, with the offence of abetment of forgery under ss. 407 and 109 of the Indian Penal Code. The trying Judge referred to the High Court the question whether the accused, not being a British subject, was amenable to the Jurisdiction of his Court—*Held*, that the Court in British India had jurisdiction to try the accused, for the accused's offence was not wholly completed within Cambay limits, but having been initiated there, was continued and completed within the British territory of Umreth. Where a foreigner starts the train of his crime in foreign territory, and perfects and completes his offence within British limits, he is triable by the British Court when found within its jurisdiction. s. 34 of the Indian Penal Code provides not only for liability to punishment but also for subjection of a conspirator to the jurisdiction of a Court though he conspires at a place beyond the jurisdiction. *EMPEROR v. CHHOTALAL BABAR* (1912)

1 L. R. 36 Bom. 524

9. ——— Order of discharge—By the High Court in its original criminal jurisdiction, *ex bar* to fresh proceedings—Criminal Procedure Code (Act V of 1898), s. 190 (c)—Nolle prosequi—Practice. An order of discharge does not operate as a bar to fresh proceedings being taken before a competent Magistrate upon complaint or upon a police report, or under s. 180 (c) of the Criminal Procedure Code. *Mir Akbar Hossein v. Mahomed Askari*, 1 L. P. 29 Calc. 728, referred to. *EMPEROR v. SHEIKH IDOO* (1912) 1 L. R. 40 Calc. 72

10. ——— Complaint—Irregularity—Criminal Procedure Code (Act V of 1898), ss. 195, 476, 532, 537—Order for prosecution—Penal Code (Act XLV of 1860), s. 211—False charge laid before the Police—Police Report—Judicial inquiry—Commitment to the Court of Session. A conviction by the Court of Session cannot be set aside simply on the ground of a defect in the initiation of the proceedings in the commitment Court or on the ground of some irregularity in the commitment of proceedings more especially when that point was not raised in the lower Court. s. 532 of the Criminal Procedure Code would cure such a defect. *Haidat Khan v. Emperor*, 1 L. R. 33 Calc. 30, distinguished *Abdul Rahman v.*

JURISDICTION OF CRIMINAL COURTS— continued

Emperor v C L J 371, and Queen Empress v 4 Morlan and Moortzen Ah, I L R 9 Bom 238, referred to Recommendation for prosecution by a Police officer under s 211 of the Penal Code comes within the meaning of the word 'complaint' as used in s. 193 of the Criminal Procedure Code as that section clearly contemplates prosecution at the instance of Police officers. DILAN SINGH v EMPEROR (1912) I L R 40 Calc 380

11 ——— Arrest of an Indian subject in railway land in the Gwalior State.—Under a warrant issued by the District Magistrate of Montgomery for a non-extraditable offence committed in British India—Government of India Notification No 534 I B, dated 8th February 1907 Petitioner was arrested at the Railway Station at Gwalior by the Railway Police in pursuance of a telegram sent by the District Magistrate of Montgomery in the Punjab for an offence under s. 101 Indian Penal Code alleged to have been committed in the Montgomery District. Held, that the arrest was illegal, as it could not be said that the Gwalior State had ceded to the British Government jurisdiction over railway lands in respect of offences not committed in those lands and having no connection with the railway administration, regard being had to the words in paragraph 3 of the Notification No. 534 I B of the 8th February 1907 viz. have ceded to the British Government full jurisdiction, or all the jurisdiction they had or the jurisdiction necessary for the administration of Railways and of Civil and Criminal justice in connection therewith. *Muhammad Yusuf ul Din v Queen Empress I L R 25 Calc. 20 C P R (Cr.) 1897, (F C) followed. RADHA KISHEN v CROWN I L R 1 Lah 406*

JURISDICTION OF DISTRICT COURT

See GUARDIAN AND WARD ACT 1890.
I L R 36 Mad 23
88. 12 13 17, 19 24 25.
I L R 40 Bom 600

JURISDICTION OF HIGH COURT

See AGRA TENANCY ACT, 1901 s 167
I L R. 42 All 83

See EQUITABLE MORTGAGE
I L R 38 Calc 824

See EXTRADITION I L R. 46 Calc 31
I L R 38 Calc 547

See HAWKES CORPUS
I L R. 39 Calc 164

See HIGH COURT JURISDICTION OF
See HINDU, SETT OR
I L R 40 Bom 473

See INJUNCTION
I L R 38 Calc 405
I L R 42 All 98

See SANCTION FOR PROSECUTION
I L R. 44 Calc 816

over conviction and sentences by
Mewar Agent—

See SCHEDULED DISTRICTS ACT (XIV OF 1874), s. 7
I L R 41 Bom 657

in revision—
See CIVIL PROCEDURE CODE (1908) s 115
I L R 40 All 674

See REVISION
I L R. 47 Calc 433

JURISDICTION OF HIGH COURT—contd

1 ——— Revision—Appeal wrongly lost before Collector instead of District Judge—Procedure by Deputy Collector under s 101 of the Rent Recovery Act—Civil Procedure Code, how far governs Act X of 1859—Act X of 1859, s. 103—Civil Procedure Code (XIV of 1859) s. 310A The High Court has jurisdiction to interfere with the orders of the Collectors and Deputy Collectors, passed under Act X of 1859. *Haro Mohan Moortzen v Kedarnath Das s W R 1st X 25* commented on *Blyrub Chunder Chunder v Shama Saunderson Debi 6 W R Act X 68, Gobind Coomur Chowdhry v Asst Coomur Chowdhry 7 W R 531 Deannutoolah v Nourab Nizam Suther Yu et Ah Khan Bishar 10 W R 311, Cudabhar Chatterjee v Nand Lal Mookerjee, 12 W R 406 Anantmaji Nour Jon v Akbar (Muzumdar 15 W R 318 Vilnani Singh Das v Tarunath Mukerjee I L R 9 Cal 295 referred to Mohan Gobind Ramanuja Das v Lukhan Parida 11 C W N 112 explained. The jurisdiction of the Deputy Collector under Act X of 1859 being a limited one and the procedure under s 109 of the said Act not being strictly followed, a sale under s. 109 must be held to be ultra vires. *Deannutoolah v Nourab Nizam 10 W R 311, referred to. Except upon points expressly provided for by Act X of 1859 the procedure of the Revenue Courts must be governed by the Civil Procedure Code. The ratio decidendi of Vilnani Singh Das v Tarunath Mukerjee I L R 9 Cal 295 followed. Harish Chandra Ghose v Ananta Churn Patra 2 C W N 127 doubted. Adhiram Narain Karmar v Raghun Moopatraya I L R 12 Calc 50 approved. Radha Madhub Santra v Laksh Narain Roy Chowdhry I L R 21 Calc. 418 and Mokunda Buller Kar v Bhogban Chunder Das I L R 21 Calc. 514 discussed. Nandendra Nath Mallik v Mathura Mahan Paria I L R 18 Calc 363 explained. Hare Krishna Mahanta v Bhuban Chandra Mahanta I L R 35 Calc 79 Ram Lochan Singh v Beni Prasad Kumar I L R. 36 Calc. 250 and Madha Prakash Sinha v Juri Manohar I L R 33 Calc 406 referred to. Where a sale under Act X of 1859 is impeached as ultra vires and illegal or the sale is rightly sought to be set aside under s. 310A of the Code of Civil Procedure (XIV of 1859) the proceedings of the Deputy Collector are amenable to the revisional jurisdiction of the High Court in either case. The fact that the original suit was valued at above Rs 100 and an appeal lay to the District Judge and not to the Collector before whom the appeal was, in reality heard, does not take away the right of the High Court to interfere in revision. CHATTAN PATRONI MAHAPATRA v KUNJA BEHARI PATRAIK (1911) I L R 38 Calc 832**

2. ——— Power to revise an order of acquittal at the instance of a private party.—Decision on a point of local jurisdiction and not on the merits—Criminal Procedure Code (Act V of 1859), s. 432 433 (2)—Practice S. 433 (5) of the Criminal Procedure Code does not bar the jurisdiction of the High Court to interfere with an order of acquittal on an application made at the instance of a private party. Where the Appellate Court set aside a conviction and sentence on the ground that the place of occurrence was outside the local limits of the trying Magistrate's jurisdiction, overlooking the provisions of s. 631 of the Code the High Court set aside the order of acquittal and directed a rehearing of the appeal.

JURISDICTION OF HIGH COURT—*contd*

What the Appellate Court has to find is whether, the offence, of which an accused is convicted has been made out, not with reference to any dispute as to jurisdiction, but on the merits and in accordance with the evidence. **KANGALI SARDAR v BAMA CHARAN BHATTACHARJEE (1911)**
I. L. R. 38 Calc. 786

3 ————— *Jurisdiction—*
High Court—Letters Patent 1885 Ch 12 The plaintiff Company's predecessors in title, who held certain coal lands known as Mouza Lodna in Manbhium under a permanent lease, granted an underlease of a share thereof to S, and it was agreed that the boundary should be demarcated between the portion underleased and the portion retained by the grantors, and that a barrier of 30 feet of coal should be maintained between the two portions of the Mouza, and that if either party encroached within 15 feet of the boundary line, he should make good any loss sustained by the other party. No boundary was demarcated at the time. The permanent lease of the said Mouza was, subject to the said underlease to S, subsequently assigned to T and others, and thereafter the boundary was laid down and marked by the respective Agents of T and others, and of S and a plan showing the boundary was signed by both parties. Subsequent thereto T and others assigned their permanent lease of the mouza to the plaintiff company, and S granted an underlease of his share in the mouza to R L S, who granted an underlease of the same to the defendant who there carried on a colliery. The plaintiff alleged that the defendant had wrongfully cut into and removed portions of coal from the 30 feet of barrier and beyond it, that the trespass and conversion had taken place within two years, and that the coal so removed had been sold and delivered to the plaintiff company under an agreement to purchase the output of the defendant's colliery, and claimed damages for the value of the coal so removed and damages caused by the breach of contract in cutting through the barrier. The defendant denied that he had carried away any coal from the 30 feet barrier, and stated that he had confined his operations well within the area underleased to him, and that the plaintiff company had never been in possession of the area from which he had carried away coal.—*Held* that the suit, so far as it sought to recover damages for carrying away the plaintiff company's coal, was founded on a case of trespass *quare clausum fregit*, which necessitated the title in respect of that coal being gone into and was therefore a suit for land within the meaning of Cl 12 of the charter *Raj Mohan Bose v East Indian Railway Company, 10 B I R 211* distinguished. That so far as the agreement not to cut into the 30 feet of barrier was concerned, there was no priority of contract or estate between the defendant and the plaintiff company, and the defendant was not personally liable on any of the covenants in the underlease granted to S and that the plaintiff did not disclose any cause of action against the defendant based on the agreement *LODHA COLLIERY Co, Ltd v BIPIN BHARBI BOSE* I. L. R. 39 Calc. 739

4. ————— “Dwelling” within the jurisdiction of the Court—Executor, liability of—*Reproduction of will—Executor and trustee acting up adverse title to property disposed of by will—E stopped—Removal of trustee and executor from office—Joint and*

JURISDICTION OF HIGH COURT—*contd*

acquired property This was a suit on the Original Side of the High Court by three of the executors and trustees of a will against the fourth executor and trustee (who was the son of the testator) for the removal of the defendant from his office and for administration of the estate by the Court. Probate had been granted to the executors by the High Court at Madras and the assets realised under the grant had come into the possession of the defendant, who subsequently repudiated the will and alleging that the property of the testator was joint claimed in this suit to be entitled to the estate by survivorship. The defendant was domiciled and resided in the State of Mysore, but some months previously to the institution of the suit he left his house there in charge of a servant, and hired a house in Madras to which he brought his wife and family, and apprenticed himself for a year to a vakil of the High Court with a view to become in due course enrolled as a vakil himself. He was in Madras on 30th April, 1901, when the plaint was filed but left on 31st before the summons was served. The first Court made a decree removing the defendant from his office as executor and trustee which was affirmed by the High Court, and both Courts decided that the cause of action arose partly within the jurisdiction of the Court, and that the Court could therefore entertain the suit. *Held* (affirming the decision of the High Court), that the defendant was at the time the suit was brought “dwelling” within the jurisdiction within cl 12 of the Letters Patent of the High Court. *Held* also, that no person who has accepted the position of a trustee and has acquired property in that capacity can be permitted to assert an adverse title on his own behalf until he has obtained a proper discharge from the trust with which he has clothed himself. On the question whether the property dealt with by the will was joint or acquired, their Lordships of the Judicial Committee also agreed with the Courts below that on the evidence it was self acquired and that the testator therefore had power to dispose of it as he had done in the will. **Srinivasa Moorthy v Venkata Varada Aiyangar (1911)**

I. L. R. 34 Mad 257

5 ————— *Practice—Civil Procedure Code (Act V of 1908), s 115 O XXIII, r 1—Withdrawal of suit under O XXIII, r 1—Notice to the other side, if necessary—Judicial order—Practice* The High Court has power to set aside orders made under Order XXIII, r 1, in the exercise of the powers vested in it by s 115 of the Code of Civil Procedure. *Khanda Coal Co v Durga Charan, 11 C L J 45, Mahalla v Hemangini, 11 C L J 512, Ram Krishna v Ram Kirpanath 9 All. L J 358, Umesh Chandra Palodia v Balkrishna Chandra Chatterjee, 15 C W N 666 Burata Gunda v Thirlapatti, 9 Mal L T 204*, referred to. Though r 1 of O XXIII of the Code of Civil Procedure does not specifically require that notice of an application under it must be given to the opposite party, still it is an elementary rule of universal application and founded upon the plainest principles of justice that a judicial order which may possibly affect or prejudice any party cannot be made unless he has been afforded an opportunity to be heard. *Ajant Singh v F. T. Christian, 17 C W. N 562*, referred to. *Panes Singh v Krishna Lal Thakur, 1 L. R. 41 Calc 632*, dissented from. **RAJENDRA LAL SINGH v ATAL BEHARI SINGH (1916)**

I. L. R. 44 Calc. 454

JURISDICTION OF HIGH COURT—*concl'd*

6 ———— *Criminal Procedure Code (Act V of 1893), ss 150, 521, scope of—* "Doubt," meaning of—*Transfer—Questions of convenience and expediency—Power of the High Court over Courts outside its territorial limits—Form of order.* *Held*, by the majority (WOODROFFE, J. dissenting) The High Court has power under s. 185 of the Criminal Procedure Code to make an order in respect of an enquiry instituted or trial commenced in a Court situated beyond its territorial limits. *Hiran Kumar Choudhary v. Majrat Sen*, 17 C W N 761, *Emperor v. Chanchal Singh*, 3 Cr L J 551 approved. S. 185 is not restricted to proceedings instituted in a Court subordinate to the High Court where the application is made. The section invests that High Court with authority to determine the question within the local limits of whose Appellate Criminal Jurisdiction the offence actually is. Where jurisdiction is given to more Courts than one for the same offence, if a doubt arises as to the Court by which such offence should be tried, it must involve a doubt as to the suitability of one Court as compared with another from the point of view of "convenience," and "expediency." *Pajani Ebnale Chakravarti v. 47 India Banking and Insurance Company*, 1 L R 41 Cal 305, *discussed* *tenet*. The order should be limited to a declaration that the case should be inquired into or tried by the Court of the Chief Presidency Magistrate in Calcutta. This will leave it open to the prosecution or the applicant to take such steps as they may be advised. *Per WOODROFFE, J.* S. 185 does not deal with transfer or decisions on the ground of mere convenience raised by the accused but with doubt as to competency. S. 185 is not designed to cut down admitted jurisdiction but to determine cases where the facts said to constitute jurisdiction are doubtful. These provisions deal with jurisdiction and not with convenience. *Per MOOKERJEE J.* The two ss. (185 and 527) have entirely different scopes. In the first place, the order under s. 527 is an executive order which may be made without opportunity afforded to the accused to be heard. In the second place, s. 527 contemplates an order for transfer, and recourse may possibly be had thereto if an order made by one High Court under s. 185 is disregarded by another. *CHANDU CHANDRA MOHAMMAD v. EMPEROR* (1916) 1 L R 44 Cal 595

7 ———— *Review of order made in criminal case—Criminal Procedure Code (Act V of 1893), ss 438, 439—Enhancement of sentence by High Court on reference by District Magistrate without hearing accused—Review of order on application of accused.* On a reference under s. 438 Criminal Procedure Code, by the District Magistrate the Bench taking undefended criminal cases made an order enhancing the sentence. Subsequently, on the application of the accused, the same Bench reviewed the said order, set it aside and referred the case to the regular Criminal Bench, holding that no order of enhancement could be made under s. 439, Criminal Procedure Code, without hearing the accused. *KING-EMPEROR v. KAMESH CHANDRA GUPTA* (1917) 22 C W N 168

JURISDICTION OF INFERIOR COURT.

——— *Jurisdiction of Inferior Court to set aside decree of Superior Court obtained by fraud—Reliefs that can be granted.* A District Munsif can entertain a suit for a declaration that a

JURISDICTION OF INFERIOR COURT—*cont'd*

decree passed by a District Court was obtained by fraud when the suit concerned subject matter of the suit and within his jurisdiction, but he cannot direct a retrial of the suit by the District Court. The present suit can be revived only by an application to the District Court. *ARUNA CHELLAM v. SAMATHY* (1917) 1 L R 41 Mad. 213

JURISDICTION OF MAGISTRATE

- See BROTHEL* 1 L R 45 Cal 301
See CRIMINAL PROCEDURE CODE (ACT V OF 1893)—
 ss 107, 192 528.
 1 L R 41 Mad 246
 1 L R 38 Mad 469
See DISPUTE CONCERNING EASEMENT
 1 L R 39 Cal 560
See DISPUTE CONCERNING LAND
 1 L R 39 Cal 150
See FALSE INFORMATION
 1 L R 43 Cal 173
See JALKAR 1 L R 39 Cal 469
See JURISDICTION OF CRIMINAL COURT
See MAGISTRATE
See SECURITY FOR GOOD BEHAVIOUR.

——— A Magistrate who has received information in another public capacity of the offence of mischief by cutting timber from the state forest cannot act on it in his capacity as Magistrate and initiate proceedings under s. 190 of the Criminal Procedure Code. *LAKSHI NARAYAN GHOSH v. EMPEROR*

1 L R 37 Cal 221

——— *Charge with a view to commitment, cancellation of—Criminal Procedure Code (Act V of 1893), s 213 (2)—Cross examination of prosecution witnesses after framing of the charge, effect of—* "Witnesses for the defence, interpretation of—Practice. It is open to a Magistrate, having drawn up a charge against an accused person with a view to his commitment to the Court of Session, to allow the accused to cross examine the witness for the prosecution and, as the result, to cancel the charge. The words "witnesses for the defence" in s. 213 (2) are wide enough to cover evidence elicited in cross examination of witnesses for the prosecution. *Surjya Narain Singh In re*, 5 C W N 110 referred to *JOGENDEA NATH MOOKERJEE v. NATI LAL CHUCKERBUTTY* (1912) 1 L R 39 Cal 385

JURISDICTION OF REVENUE COURT

- See JURISDICTION OF CIVIL COURT*
See MADRAS ESTATES LAND ACT (I OF 1908) 1 L R 38 Mad. 33

JURISDICTION OF SMALL CAUSE COURT

- See PROVINCIAL SMALL CAUSES COURTS ACT (IX OF 1887)—*
 ss 15 AND 33 1 L R 37 Bom. 675
 SCH. II, ART 13. 1 L R 42 All 446
See RENT (WAR RESTRICTIONS) ACT (BOM. II OF 1903), s 9
 1 L R 45 Bom. 1043

JURISDICTION OF SMALL CAUSE COURT—
*could**See SMALL CAUSE COURT* 3

Plaintiff deposited money with the Defendant for payment to Plaintiff's creditor. The Plaintiff's case was that only a small portion of the money deposited was paid to the creditor and on his demanding the balance the Defendant agreed in the presence of witnesses to refund it which he did not do. The Plaintiff sued to recover this balance—*Held*—That the acts alleged amounted to misappropriation and the cause of action was not based on the promise to make restitution and the suit was not triable by the Court of Small Causes. *CHERRA-KUDDIN v RAM SUDAMAN*

25 C. W. N. 256

JUROR.

speaking to a person not a juror—

See VERDICT . I. L. R. 46 Calc. 207**JURY—TRIAL BY.***See CRIMINAL PROCEDURE CODE—*

s 133 . . . I. L. R. 37 All. 26

s 282 . . . I. L. R. 36 All. 481

ss 367, 418, 423 I. L. R. 39 All. 348

ss 462 (3), 537 I. L. R. 33 All. 385

See PREFERENCE

I. L. R. 42 Calc. 789

See TRIAL BY JURY

absence of proper charge to—

See CRIMINAL PROCEDURE CODE ss 435
439

25 C. W. N. 309

evidence how to be summed up—

See JURY

25 C. W. N. 623

trial of question of forfeiture as a
preliminary issue—*See PARDON*

I. L. R. 42 Calc. 856

misdirection of—

See ACCOMPLICE . . . 24 C. W. N. 119*See PRACTICE* . I. L. R. 40 Bom. 220power to question as to the reasons
for verdict—*See VERDICT OF JURY*

I. L. R. 41 Calc. 621

verdict of—

See DACTORY . . . 15 C. W. N. 434

Misdirection in the charge—*Omission to bring certain facts to the notice of the jury violating the charge—First information—Evidentiary value of—Jury, questioning after verdict—Absence of—Jury, not justified in questioning the jury after they have given an unanimous verdict in respect of one of the offences included in the charge—It is a misdirection when the Judge asks the jury to accept the statement in the first information in preference to the evidence in the case—Where the defence is cross-examining a prosecution witness asked whether two other men did not beat the deceased and the accused in his*

JURY—TRIAL BY—could

written statement gave an account suggesting that he was not the culprit—*Held*, that it was misdirection for the Judge to tell the jury that there was no suggestion that any one other than the accused was the culprit. Where the charge to the jury ended abruptly with the statement "no evidence adduced by the defence"—*Held*, that if the Judge thought it necessary to put this fact so prominently to the jury, he was at least bound to qualify it by pointing out to the jury that the defence was not bound to call any evidence, that they could rely upon the prosecution evidence as far as it could help them and that they were entitled to the benefit of doubt, and that the omission of these qualifying statements constituted a misdirection. Where the medical evidence showed that the wound on the neck of the deceased was directed downwards and inwards from the left to the right side of the neck and it was proved that the accused was very much shorter than the deceased—*Held*, that the Judge ought to have drawn the attention of the jury to this fact and asked them to determine whether it was possible for the accused to have raised his hands to a sufficient height to strike downwards at the deceased's neck. Where the Judge after pointing out to the jury the Sub Inspector's evidence that he found the accused and the other villagers absconding, wound up by saying "under the circumstances, can the jury doubt, etc." *Held*, that this was a misdirection inasmuch as it was the duty of the Judge to tell the jury that absconding was a matter which was equally consistent with innocence as with guilt and that it could only be considered in connection with the rest of the evidence and it was for the jury to attach any weight to it which the rest of the evidence enabled them to do, but that it was in itself a circumstance of no weight. *ASAFAR SHERKH v EMPEROR* (1910)

15 C. W. N. 198

Misdirection to—*Confession before village salsak—Evidence Act (I of 1872) s 24—Person in authority—Indian Penal Code (Act XLV of 1860), ss 302/115, 328/116—Abetment of murder by poisoning and causing hurt by means of poison—Absence of evidence as to amount of poison proposed to be administered—The accused was charged under ss 302/115, and 328/116, Indian Penal Code, the case for the prosecution being that the accused suspecting an intrigue between her husband and a certain woman gave a powder to a girl with instructions to give it to the woman. Owing to the intervention of a relative of the girl the powder was not given to the woman. The accused asked the girl to give her back the powder and the girl returned a portion of it. On the matter getting about in the village a salsak was summoned before whom the accused made a confession and produced the powder. The chemical analyst's report was that traces of white arsenic were found in the powder but it was not disclosed how much arsenic was there. It was found that the president and members of the salsak told the accused that if she confessed they would compromise the matter. The Sessions Judge in charging the jury said that the confession was not inadmissible because the members of the salsak were not persons in authority and the accused was not then charged with any offence. *Held*, that the Sessions Judge misdirected the jury in the matter of the confession. The president of a panchayat may be a person in authority within the meaning of s 24 of the Evidence Act, and to tell the jury that he was not*

JURY—TRIAL BY—contd

was clearly erroneous: the matter depending on a question of fact i.e. whether the confession was caused by any inducement, threat or promise, having reference to the charge against the accused. *Nazir Jharadar v The Emperor*, 9 C W N 474, and *the Emperor v Jasha Beus*, 11 C W N 904, referred to. That the *solah* being summoned to consider the case which was being made against the accused she was before the *solah* on that charge and the Sessions Judge was wrong in directing otherwise. That having regard to the inducement offered by the president and members of the *Yafiah* to the accused it is extremely doubtful whether the confession should have been allowed to be placed before the jury at all. It certainly ought not to have been placed before them without an explanation as to how they should value it having regard to the circumstances in which it was made. That the chemical analysis not disclosing how much arsenic was found in the powder there was no evidence on the record against the accused as to the amount of poison which was proposed to be administered and it was doubtful whether the case would come under s 302 or s 324, Indian Penal Code. *KING EMPEROR v ARSHI BIRI* (1913) 20 C. W. N 512

Forgery—Where in a case under s 465 Indian Penal Code the charge against the accused was that by personating *A* *B* the husband of one *S* he induced the Mahomedan Marriage Registrar to make an entry of the divorce of *S* by her husband to which entry he affixed his thumb impression and the Sessions Judge charged the jury as follows. If the person who put his thumb impression in the register as *Mir Baksha* was not really *Mir Baksha*, it is clear that he made a false document within the meaning of s 364 and that his intention was that fraud should be committed, also that injury should be caused to *Mir Baksha*. He therefore committed forgery. *Held* that the Sessions Judge misdirected the jury in not having left it to the jury to say whether on the evidence they found that the intention of the accused was dishonest or fraudulent. The High Court did not set aside the verdict holding that it was not erroneous in spite of the misdirection. *EMPEROR v NAIMADDI* (1918) 22 C. W. N 572

Duty of Judge to place before jury cases of prosecution and defence—**Defective direction on a point of law**—**Propriety of delivering charge through interpreter**. The appellants were charged under s 148 304/149 and 324, Indian Penal Code. In the record of the heads of the charge there was no clear statement of the cases for the prosecution and defence but the Sessions Judge stated that he placed the evidence of the witnesses before the jury reminding them of the nature of the offence and dealing with some of the principal points. As to the charge under s 324 the direction was "certain persons are charged with causing certain wounds. If you find they gave those wounds they cannot plead right of private defence because they have not admitted giving those wounds". *Held*, that it did not appear that the jury were made fully acquainted with the nature of the case for the prosecution and the nature of the case for the defence. That the mode in which the case was placed before the jury was defective and the verdict must be set aside and the case

JURY—TRIAL BY—contd

retried by a new Judge. *Per CHAUDHURI, J.*—That the jury are responsible for their verdict and are the sole judges of facts but the Judge's charge is not only for the purpose of stating the law and explaining it to them but also of helping the jury to find facts. He has to advise the jury as to the logical bearing of the evidence admitted upon the matters to be found by them. It is a privilege granted to Judges and a duty cast upon them. In a case of this character it is absolutely essential that the principal points should be clearly placed before the jury and it should appear from the Judge's charge that he did so. Heads of charge to jury how to be recorded pointed out. Propriety of delivering charge to jury through interpreters considered. *ARSHI BIRI v KING EMPEROR* (1919)

23 C. W. N 833

Citation of ruling in the charge to the jury—*Right of private defence when trespassers have begun cutting crop*. When trespassers began cutting and carrying away crop grown by the person in possession reasonable apprehension to the property having already commenced the right of private defence of the latter commenced at the same time and it was misdirection on the part of the Judge to leave it to the jury to say whether the fact that the police station was only 9 miles off from the place of occurrence did not take away that right. The reference in such circumstances to his civil remedies also amounted to misdirection. No rulings or authorities should be cited by the Judge in his charge to the jury nor should they be asked to differentiate or form any opinion whatever on any authorities. Such procedure confuses the minds of the jury and constitutes misdirection. *MEHER SARDAR v THE KING EMPEROR* (1911)

116 C. W. N 46

jurisdiction—Grievous hurt—Abetment by conspiracy—Cases by Jury—Retrial—Jurisdiction. Where there was evidence that certain persons conspired to eject the complainant from his land or, in other words, to commit criminal trespass and the Judge said that if the jury found that those persons conspired with the first accused to commit criminal trespass then they would if absent be guilty of abetment, and being present they were guilty of the substantive offence. *Held* that the omission to notice that the substantive offence, for which the accused were being tried was not one of criminal trespass but of voluntarily causing grievous hurt constituted misdirection. The jury have to give their verdict on the facts as against each man severally and they are not, like the Judge in charge of the entire case as a whole. When an accused is to be retried he must be placed before the jury upon all the charges which were framed against him and the High Court has no jurisdiction to uphold the conviction under one section and to order him to be retried under another. *JANTRUDDI BISWAS v KING EMPEROR* (1912) 16 C. W. N. 909

Verdict by casting lots—Admissibility of the evidence of jurors and of admissions by jurors as to the mode of arriving at the verdict—Evidence of other persons in proof of the same, admissibility of. The sworn statements of jurors, and evidence of admissions by them as to the modes in which their verdict had been

JURY—TRIAL BY—contd.

arrived at, are inadmissible. But the evidence of other persons as to the same is receivable. *Queen v Harbison*, 1 B & P 326, *Straler v Graham*, 4 M & W 721, *Burgess v Langley*, 5 M & G 722, and *Queen v Murphy* L R, 2 P C 535, referred to. The evidence of a witness that he saw one of the jurors put some pieces of crumpled up paper in his *alcoa*, shake them up and take them out, is not sufficient to prove that the verdict was arrived at by casting lots. *EMPEROR v HARKUMAR BARMAN ROY* (1913)

I. L. R. 40 Calc. 693

Suggestion by the Judge of an alternative aspect of the case not put forward by the prosecution or defence—Omission to point out to the jury, specifically, the evidence against each accused and minute details—Criminal Procedure Code (Act V of 1898) ss 297, 303—Riding—“Violence,” meaning of—Penal Code (Act XLV of 1860), ss 146, 147—Admissibility of evidence of a proceeding to keep the peace as part of the *res gestæ*. Where the common object alleged in the charge as framed was to take forcible possession of the complainant's land and hut and to assault him and others named, and the prosecution and defence each asserted exclusive possession and an attack by the opposite party. *Held*, that the Judge was not wrong in asking the jury to consider, as a third alternative an intermediate state of facts, viz., that the complainant's party went to turn the accused party out of possession, was resisted and driven back, and that the latter then followed after they assaulted the former. *Banga Hadua v King Emperor*, 11 C L J 270, *Queen v Sabid Ali*, 20 W R Cr 6, and *Wafadar Khan v Queen Emperor*, 1 L R 21 Calc 955, distinguished. The word “violence” in s 146 of the Penal Code is not restricted to force used against persons only, but extends also to force against inanimate objects. The omission to point out to the jury, specifically, the exact evidence against each accused, is not a misdirection when the Judge has discussed the whole of it and has told them to be satisfied as to the guilt of, and to return an independent verdict against, each accused. *SAMARUDDI v EMPEROR* (1912)

I. L. R. 40 Calc. 367

Misdirection—Held that omission of Judge to give direction on point of law arising out of the plea in defence amounts to a misdirection. When a verdict is quashed it is in the discretion of the High Court to order acquittal instead of retrial. ABDEL RAHIM MIA v THE KING EMPEROR 25 C. W. N 623

Misdirection—Civil Procedure Code, s 297. When material witnesses named in the first information and the evidence were not examined at the trial and the Judge did not tell the jury they could draw an inference unfavourable to the prosecution and also did not draw their attention to discrepancies in evidence given in chief and cross examination, the conviction and sentence passed on the accused were set aside. TENARAM MONDAL v THE KING EMPEROR 25 C. W. N. 142

Held, that Judge was wrong in charging jury to the effect that if accused pleaded *abbi* he was bound to prove the plea and if he failed then that would arise a presumption against him. *KING EMPEROR v TARBELLAK SUREKH*. 25 C. W. N. 682

JURY—TRIAL BY—contd

Irregularity in procedure and absence of proper charge. When evidence given by three police witnesses with preliminary enquiry was read over and treated as their examination in chief and two witnesses whom Public Prosecutor declined to call were called as Court witnesses and cross-examined by both sides, the Court putting no question and there was no examination of accused under s 342 of the Code of Criminal Procedure and the heads of charge contained no indication as to how the evidence was summed up nor how the law of private defence which was material was explained to the Jury. *Held*, that there were sufficient irregularities to justify the setting aside of an acquittal. GANGA DHAR GOALA v ROISAID WILLIAM SIMON REED 25 C. W. N 609

Misdirection—Trial by Jury—Misdirection in charge to Jury—Questions of fact, Judge's expression of opinion in dogmatic and unqualified terms—Material evidence, omission to refer to—Conditio precedent to using certain evidence and drawing adverse inference against accused omission to point out—Abandoning not incompatible with innocence omission to point out—Retrial by a new Judge. Where the accused was convicted under ss 304 328 of the Penal Code, for having administered arsenic mixed with sugar to two boys and thereby caused the death of one and hurt to the other, and the Sessions Judge in his charge to the jury expressed his own opinion on the evidence in terms too dogmatic and unqualified, although he informed them that on questions of fact they were not bound by any opinion of his and omitted to refer to some statements of one of the two boys before the Committing Magistrate and before the Sessions Judge and did not warn the jury that before drawing inferences against the accused they must first be satisfied that he knew of the presence of arsenic in the sugar and that the evidence negatived the possibility of accident or mistake, and that before using the Chemical Examiner's report they must be satisfied on the evidence that the substances examined were in fact what they were said to be, and in discussing the question of accused's absence from his village did not warn the Jury that even if they believed that he absconded, absconding is not necessarily or invariably incompatible with innocence. *Held*, that the charge to the jury was vitiated by misdirection. The High Court set aside the conviction and sentence and ordered a retrial by a new Judge on the ground that the trying Judge had formed a strong opinion on the case. *OFEL MOLLAN v THE KING EMPEROR* (1913) 18 C. W. N. 180

Jurymen, communication with by stranger and by Clerk of the Crown—Police Officer's presence near jury room—Communication of deliberation by jurymen before or after case is over—Habeas corpus, writ of—Jurisdiction—Criminal Procedure Code (Act V of 1898), s 491—Letters Patent, 1865 cls 25 and 26—Trial vitiation of—Practice Per Curiam. It is highly undesirable that a juror should have any communication with any body who is not a jurymen upon the subject-matter of the trial. But the mere fact that one of them is addressed by a stranger, to whom apparently the jurymen makes no reply or whose remarks the jurymen does not look upon as worthy of consideration, cannot have the effect of invalidating a trial. A mere casual question (which

JURY—TRIAL BY—contd.

Held, that the joint trial of the accused on charges under ss. 121, 121A, 122 and 123 of the Penal Code was not bad for misjoinder of persons or charges. A confession under s. 164 of the Criminal Procedure Code must be made either in the course of an investigation under Chapter XIV or after it has ceased and before the commencement of the inquiry or trial. The condition requiring the confession to be prior to the commencement of the inquiry or trial is only imposed when the investigation has ceased, and not when it is made in the course of the police investigation. Where a number of persons were arrested on the 1st May and the confessions of some of them were recorded on the 4th and 5th, while others were brought in subsequently and their confessions taken while the police investigation was then actually going on, and on the 17th an order under s. 196 was obtained and the police report sent in, and on the next day the examination of the prosecution witnesses begun—*Held* that the Magistrate did not take cognizance under s. 190 of the Code, nor did the inquiry commence on the 4th, and that the confessions were taken in the course of an investigation under Chapter XIV. The fact that the Magistrate who has taken the confessions, afterwards holds the inquiry, does not, under s. 164, constitute the recording of the confessions an examination of the accused in the course of it and at its commencement. *Empress v Anuntam Singh*, 1 L R 5 Cal 951, and *Empress v Yakub Khan*, 1 L R 5 All 251, declared obsolete. *Sat Narain Tewari v Emperor*, 1 L R 32 Cal 1035, distinguished. S. 164 includes confessions taken by a Magistrate who afterwards holds such inquiry or trial. *Empress v Anuntam Singh*, 1 L R 5 Cal 951, and *Reg v Bay Ratan*, 10 Bom. II O 166 declared obsolete on the point. Ss. 164, 342 and 364 of the Code are not exhaustive, and do not limit the generality of s. 21 of the Evidence Act as to the relevancy of admissions. *Queen-Empress v Narayan*, (1893) 10 All 679, referred to. The mere fact that a statement was elicited by a question does not make it irrelevant as a confession under s. 164 of the Criminal Procedure Code or s. 29 of the Evidence Act, though such fact may be material on the question of its voluntariness. Methods of proving handwriting discussed. A document does not prove itself nor is an unproved signature proof of its having been written by the persons whose signature it purports to bear. S. 73 of the Evidence Act does not sanction the comparison of any two documents, but requires, first, that the standard writing shall be admitted or proved to be that of the person to whom it is attributed, and secondly, that the disputed writing must itself purport to have been written by the same person. A comparison of handwriting is at all times, as a mode of proof, hazardous and inconclusive and especially so when made by one not conversant with the subject and without guidance from the arguments of counsel and evidence of experts. *Phooda Bibe v Govind Chunder Roy*, 22 W R 272, referred to. The value of expert evidence of handwriting discussed. *Reg. v Harvey*, 11 Cox C C 346 referred to. To constitute an admission, the document need not be written by the party against whom it is used; it is sufficient if it is found in his possession and his conduct thereto creates an inference that he was aware of its contents and admitted their accuracy, but, unless this is done, the document cannot be used against him as proof of its contents. What

JURY—TRIAL BY—contd.

conduct would properly give rise to such inference depends on the facts of each case. The mere fact of possession of letters is not of much value, unless it is shown that their contents were recognized and adopted by the parties elicited or the conduct inspired by them. The expression "wages war" in s. 121 of the Penal Code must be construed in its ordinary sense, and a conspiracy to wage war, or the collection of men, arms and ammunition for that purpose, is not waging war. An agreement between two or more persons to do all or any of the unlawful acts mentioned in s. 121A of the Penal Code is an offence, and the fact of the purpose not being immediate is only material in connection with s. 95. No proof is necessary of direct meeting or combination, nor need the persons be brought into each other's presence, but the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. Nor is it necessary that all the accused should have joined in the scheme from its inception. Eliciting answers from witnesses while under examination in chief or re-examination, by leading questions, deprecated. *PERCARPUS, J.*—Regard being had to the definition of "proved" in s. 3 of the Evidence Act, "moral conviction," provided it is based exclusively on evidence that is admissible is not distinguishable from "legal proof." Save when an accused person is being examined under s. 342 of the Criminal Procedure Code, there is nothing to prevent a Magistrate from eliciting information from him by independent enquiry so long as the information is voluntarily given. A statement by an accused to the police, which tells against him but does not amount to an admission of guilt, is admissible in evidence. Each case must be decided as it arises with reference to the question whether the particular statement is or is not a confession. *Queen v Macdonald*, 10 B L R App. 2. *Empress v Dabee Pershad*, 1 L R 6 Cal 530, *Queen v Amir Khan* 9 B L R 36, 72, and *Emperor v Mahomed Ibrahim*, 5 Bom. L R 312, referred to. *Queen v Haribhole Chavter Ghose*, 1 L R 1 Cal 277. *Queen-Empress v Mathias*, 1 L R 10 Cal 1922. *Queen-Empress v Mehr Ali Mullick* 1 L R 15 Cal 559. *Imperatrice v Pandharinath* 1 L R 6 Bom. 34, and *Queen-Empress v Jacharam* 1 L R 19 Bom. 363, discussed and distinguished. Handwriting may, in addition to the usual methods, be proved by circumstantial evidence under s. 67 of the Evidence Act, which prescribes no particular kind of proof. *Neel Kant Pandit v Jyotsnabai Ghose*, 12 B L R App. 18. *Abdul Ali v Abdul Rahman*, 21 W R 422 and *Idalla Paru v Gannabai* 1 L R 11 Bom 697 referred to. *BARINDRA KUMAR GHOSH v EMPEROR* (1909) 1 L R 37 Cal 487

—*Trial by, in Criminal case Ouns of proof in—Penal Code (Act XLV of 1862) s. 417—Receiving stolen property.* In a criminal case the onus is on the prosecution to prove beyond reasonable doubt the guilt of the accused. That onus never changes. Where recent possession of stolen property by the prisoner is established, and he offers an explanation which the jury thinks may be reasonably true though they are not convinced that it is true, the prisoner is entitled to an acquittal because the Crown in such a case has not discharged the onus of proof that rested upon it. In a case under s. 411 Indian Penal Code, in charging a jury it should be pointed out that the possession

JURY—TRIAL BY—concluded

of stolen goods referred to must be possession soon after the theft or that the stolen goods must have been recently stolen **HATHEN MONDAL v KING EMPEROOR** 24 C W N 619

— **Misdirection—On mission to explain ones.**—When the Sessions Judge in his charge to the Jury did not clearly explain that the ones of proof was on the prosecution nor set out the points for decision and omitted to give proper direction on facts **Held**, that it amounted to a misdirection which vitiated the verdict. **ABDUL CONEE SIKAR v KING EMPEROOR** 26 C W N. 972

— **to—Verdict when should be interfered with.**—Test whether misdirection occurs oned failure of justice. The accused were found not guilty by the unanimous verdict of the jury and acquitted by the Sessions Judge. On the appeal by the Local Government against the acquittal on the ground of misdirection in the Judge's charge to the jury **Held**—That though there was misdirection this did not justify a reversal of the verdict of the jury unless the misdirection in fact occasioned a failure of justice. The High Court not being prepared to hold that the jury's verdict was due to the misdirection in the charge and that apart from this they would not have come to the same conclusion, the acquittal was not disturbed. **SUPERINTENDENT AND REVENUE BRANCHER OF LOCAL AFFAIRS v SHAYAM SUNDAR BHUMY** 26 C W N. 558

JUST ANTECEDENT DEBT

See CUSTOM (ALIENATION)

I L R 1 Lab 472

JUS TERTII

See AGRA TENANCY ACT (II OF 1901)—

ss 102 AND 198 I L R 33 All 61

s 177 I L R 33 All 260

See CIVIL PROCEDURE CODE 1908 s 11

EXPL VI I L R 33 All 493

— **Suit in ejectment.** **Held** that a defendant in ejectment might set up and prove *jus tertii*. And is entitled to rely on the *jus tertii* appearing from the facts adduced by the plaintiff to defeat his claim. **SITARAM BHIMAJI v SADHU** I L R 38 Bom 240

JUSTICE, EQUITY AND GOOD CONSCIENCE.

See JOINT JUDGMENT DEBTORS.

I L R 39 Mad. 548

See WILL I L R 35 All. 211

JUSTICE OF THE PEACE

See EUROPEAN BRITISH SUBJECT

I L R 39 Mad 942

— **Trials of European British subjects.** The powers of Magistrates of the first class who are Justices of the Peace and European British subjects are the powers referred to in s. 36 of the Code of Criminal Procedure of 1894 as hereinafter conferred upon them and specified in the third schedule and styled 'ordinary powers.' They do not include powers with which by virtue of s. 37 of the Code a Magistrate of the first class may be invested by the authorities mentioned therein. **LOUAY v LOMER (1910)**

I L R 34 Mad 344

JUSTIFICATION

See TORT

I L R 39 Mad 433

JUTE TRADE.

See SHARES I L R 46 Calc 331 342

— **usage of—**

See VENDOR AND SUB VENDOR.

I L R 39 Calc 127

— **Furnish—Trade usage at Chandpur—Passing of property on sale—Custody with purchaser merely as security for advances—Insurance of that interest benefit of—Contract Act (IX of 1872) s. 81.** When nothing remains to be done to the goods by the seller for the purpose of ascertaining the price then *prima facie* the property in them passes although they have not been weighed by the buyer. **Summons v Swift 5 B & C 857 Turley v Bate 2 H & C 200 Shook Mohun Pal Chowdhry v Vaboo Krishna Poddar I L R 4 Calc 301 Marinneau v Kuching L R 7 Q B 436** referred to. It would be otherwise in England if the parties intended that property in the goods should not pass until the goods had been weighed. The Indian Law is the same and the provisions of s. 81 of the Contract Act do not exclude the question of intention which is laid down in the English cases as the determining factor. Where according to the usage of trade at Chandpur the sale of jute by *furnish* is not complete until the goods are examined, selected and weighed by the company (purchaser) although stored in the godowns of the company by whom advances have been made to the *furnish* against these goods—**Held** that the contract in the present case being in the first instance a contract for the sale of unascertained goods, what remained to be done by the buyer to the goods appropriated to the contract by the seller was not merely for the purpose of ascertaining the price but was also for the purpose of placing the buyers in a position to say whether and to what extent they would for their part accept the goods offered to them. That the position seemed to be that the buyer had a right to the custody of the jute as security for his advances, and that in addition while the seller had no right to sell to others, the buyer was under a corresponding obligation to buy as much of the jute as was of the requisite standard. That (though the company had insured this jute as their own) the insurance appeared to have been intended for the protection of their own interest in the jute not for the protection of the seller's interest which they were not bound to insure. That the defendants therefore were entitled to apply the whole amount which they received under the policies of insurance to indemnify themselves against the loss which they themselves had actually sustained and were not bound to apply any portion of it to the benefit of the plaintiff. That there was no usage that the loss is borne entirely by the company in cases where the jute is not insured to the full extent. **ABDUL AZIZ BEPARI v JOGENDRA KRISHNA ROY (1916)** I L R 44 Calc 93

K**KABULIYAT**

See INTEREST I L R 41 Calc 342

I L R 43 Calc 93

See LANDLORD AND TENANT

I L R 41 Calc 493

KABULIYAT—contd.

See RENT . I. L. R. 47 Cal. 133

See TRANSFER OF PROPERTY ACT, s 105
14 C. W. N 73

— containing false recitals—

See FABRICATING FALSE EVIDENCE
I. L. R. 46 Cal. 986

— construction of—

See RENT . I. L. R. 47 Cal. 133

— stipulation in—

See ILLEGAL CESS
I. L. R. 45 Cal. 259— Stipulation to pay same as mamuli
for the Idol—See ILLEGAL CESS
I. L. R. 45 Cal. 259

Kabulyat, construction of—Rent, partly in money and partly in kind—Fixed rent—Evidentiary value of later documents between different parties in construing an earlier one Where the terms of a document clearly point to the fact that the rent is to be partly in money and partly in kind, the rent cannot be regarded fixed in amount, even though the *kabulyat* is a *molarvari* one, and in the original deed the two items of rent in kind and rent in cash were lumped up and expressed as a consolidated money rent. An earlier document cannot be construed by reference to a later document which is not between the same parties. BANESWAR MUKHERJEE v UMESH CHANDRA CHAKRABARTY (1910) . I. L. R. 37 Cal. 626

Lease—Landlord and Tenant—Kabulyat without pottah if constitutes a lease—Transfer of Property Act (IV of 1882) s 4, 105 and 107—Amending Act (III of 1885) s 3—Registration Acts (III of 1887), s 3, and (XVI of 1908), s 2(7) A registered *kabulyat* signed by the lessee and accepted by the lessor is sufficient to constitute a lease within the meaning of s 107 of the Transfer of Property Act. *Akram Ali v Durga Prasanna Roy Choudhury*, 14 C L J 614, referred to *Nand Lal v Hanuman Dass* I. L. R. 26 All 368, *Kashi Gir v Jogendra Nath Chose*, I. L. R. 27 All 136, *Sheo Karan Singh v Maharaja Parbhu Narain Singh*, I. L. R. 31 All 276, *Tufel Sahib v Esuf Sahib*, I. L. R. 30 Mad 322, *Kali Subbanadri v Muthu Rangayya* I. L. R. 32 Mad 532 discussed *Sayed Ajam Sahib v Madura Sree Menatchi Sundaresvaran Desai* 21 Mad L J 292, approved *Nilmamund Sarkar v Baul Das*, 14 C H N 73 distinguished *RAI MONI DAS v MATHURA MOHAN DEY* (1912)

I. L. R. 39 Cal. 1016

Stipulating to pay rent in kind, a money value being given in the document—Landlord if may recover market value or the amount stated—Proof that amount was inserted for registration purposes or to fix stamp duty, if inadmissible—Evidence Act (I of 1872) s 92—Conflict of decision Where a tenant executed a *kabulyat* promising to pay as rent Rs 4 in cash and 91 *aris* of paddy as the landlord's share of the produce and it was stipulated that on the tenant's failure to pay the said rent and share of paddy, the landlord would be competent to realise the said rent and Rs. 30 as price of the paddy. Held, that on the tenant making default in paying the landlord's share of the paddy the latter was not entitled to recover the market value of the paddy at the

KABULIYAT—contd

time but only the fixed amount of Rs 36. *Per CHATTERJEE, J.*—Contracts for payment of *bag* paddy are very common and it was well known that middle class people, specially of the *badra logue* class who cannot cultivate lands themselves, let out their lands for getting paddy for the consumption of their family and in some cases the *bag* paddy is the only means of subsistence of the family. A certain value has to be fixed for the paddy in the *kabulyat* not only for the ascertainment of the registration fee, but also (and specially) for fixing the stamp duty payable, though that is not expressly stated in the *kabulyat*. A distinction may perhaps be drawn between cases where there is no express stipulation to pay the sum mentioned in the *kabulyat* as the value of the paddy in the event of its non delivery and where there is such a stipulation. But even in the latter class of cases, it has been held upon a construction of the contract in some cases that the value mentioned was the value of the paddy at the date of the contract or stated for purposes of registration, while a contrary view has been taken in some other cases. The view taken in *Ajer Morale v Pro sunna Kumar*, 15 C W N 249 & c. 12 C L J 649 (1910) and recent decisions, viz., that it is not open to the Court to hold that the value of the paddy mentioned in the *kabulyat* is applicable on the ground that it was so done for fixing the stamp duty or registration fee, affects not only the cases where there is stipulation that the money value mentioned is to be paid on default but also where there is no such stipulation, and it is desirable that the question should be settled by a Full Bench. GURU DAS SEN v GOBINDA CHANDRA SINHA 24 C. W. N. 85

Contract of tenancy, whether kabulyat amounts to Where a tenant has been put into possession of land on the strength of a *kabulyat* and has paid rent at the *kabulyat* rates, the *kabulyat* having been confirmed by the conduct of the parties must be deemed to have been adopted as a contract of tenancy. *Sheikh Kasim Ali v Sheikh Ahmad Ali* 2 Pat L J 40

KACCHI ADAT.

See CONTRACT I. L. R. 42 Bom. 224

KADIM INAMDAR.

Grantee of soil—Introduction of summary settlement into the alienated village—Mirasdar holding lands in the village to be before the alienation—Inamdar's right to enhance the rent—Bombay Land Revenue Code (Bombay Act V) of 1879, s 217 A *Kadim Inamdar* who is a grantee not merely of the Government share of rent and land revenue but a grantee out and out of soil in a village where a survey settlement has been introduced, is entitled to enhance the rent of the *Mirasdar* whose tenancy dates from a *Umo* prior to the grant. *PANDU v RAMCHANDRA GANESH* (1917) . I. L. R. 42 Bom. 112

KAHUTS.

See CUSTOM I. L. R. 2 Lah. 170

KAIMI-LEASE.See BENGAL TENANCY ACT 1885, s 20
5 Pat L J 257

KAIMI-LEAST—*contd*

S & LANDLORD AND TENANT
I L R. 37 Cal. 515

KALIGHAT TEMPLE.

See PALAR OR TURNS OF WORSHIP
I L R. 42 Cal. 455

KAMATHIS.

See HINDU LAW—INHERITANCE
I L R. 31 Bom 553

KANQANAM.

levy of, legality of—
See ESTATES LAND ACT (Mad. Act I of 1908), ss 4, 27, 73 AND 143
I L R. 40 Mad. 640

KANOM.

See MALABAR LAW I L R. 44 Mad. 344

KANTI MARRIAGE

See MARRIAGE . . . 24 C. W. N. 958

KANUNGO.

See CONTRACT ACT (IX OF 1872) s 27
I L R. 39 All 51, 58

KARNAM.

*Nature of tenure—Land appurtenant to office and impartible—Enfranchisement and its effect of—Law governing Palayams not applicable in Madras, the Karnam of the village occupies his office not by hereditary or family right but as personal appointee, though in certain cases that appointment is primarily exercised in favour of a suitable person who is member of a particular family. It follows that land appurtenant to the office so enjoyed should continue to go with that office and should accordingly be impartible. The enfranchisement of the Karnam lands in 1906 whereby the Karnam was confirmed to V his representatives and assigns to hold and dispose of as he or they might think proper subject to the payment of quit rent and the reservation of minerals, did not ensure for the benefit of the joint family of which V was a member but to him exclusively. Different considerations apply to the case of a Palayam, or when a Palayam was abolished in so far as the duty of rendering military service was concerned, the estate was continued with all its hereditary incidents to the Palayam in the same manner as it possessed by a zamindar and the Privy Council in Madras was in error in applying the law regarding Palayams by analogy to a Karnam case in *Quasim v Karnam & Ayaz*, I L R 96 Mad 392, *MUSTI VENKATA JAGANNATHA SANKA v MUSAMMAT VEERABHADRAYYA (PL)**

25 C. W. N. 301

KARNAVAN

See MALABAR LAW I L R. 44 Mad 140
See MALABAR LAW
I L R. 39 Mad 518

KARAKKARI TENURE

See MALABAR LAW
I L R. 38 Mad. 389

KARTA

See HINDU LAW—MANAGER.
See HINDU LAW—JOINT FAMILY.
See HINDU LAW—MINOR.
See HINDU LAW—PARTITION
I L R. 43 Cal. 459

of Hindu joint family—

See HINDU LAW JOINT FAMILY
23 C. W. N. 500—

suit against—

See LIMITATION ACT 1908, ss 10 AND 20
23 C. W. N. 358

KASBATIS.

*History and status of Kasbatis in Gujarat—Ahmedabad Talukdar's Act (Bombay Act VI of 1862)—Gujarat Talukdar's Act (Bombay Act VI of 1865)—Bombay Land Revenue Code (Bombay Act V of 1879), ss 68, 73—Rights of Kasbatis after cession to and annexation by British Government—Rights of leasees from British Government—Onus of proof on claimant of rights of permanent tenure—Lease implies no obligation to renew at end of term—Obligation to give up possession at end of lease. In this case their Lordships of the Judicial Committee held (reversing the judgments of the Courts below) that the respondent, the descendant of a family of Kasbatis who were in possession of a village called Charodi in the district of Ahmedabad in Gujarat and the date of the cession of that district by the Peshwa to the British Government, and whose predecessors in title held thereafter under leases from the Government, where more leasees of the Government of Bombay, bound to give up, at the end of each term of lease, possession of the village, and were never legally entitled as each lease terminated to have a new lease granted in the last leasee or representative, and therefore never acquired permanent possession of the village. The only legal enforceable right the Kasbatis could have as against the British Government were those and those only, which that Government by agreement express or implied, or by legislation chose to confer upon them. The relation in which they stood to their native sovereign, and the consideration of the existence, nature and extent of their rights before the cession were only relevant matters for the purpose of determining whether and to what extent the British Sovereign had recognized their antecedent rights and had elected or agreed to be bound by them. The burden of proving that they had any such rights which the Bombay Government consented to their continuing to enjoy rested upon the respondent. The principle laid down in *The Secretary of State for India vs Council v Kamache Boye Sahaba* 7 Moo I A 476, and *Cook v Spry*, [1899] A C 572, followed. The just and reasonable inferences to be drawn from the evidence were that the respondent had failed to discharge the onus on her, that the Bombay Government had never by agreement express or implied conferred upon her or any of her ancestors the proprietary rights in, or ownership of, the village claimed by her, they never conferred upon any of the leasees of the village a legal right to insist, at the termination of the lease upon a new lease being granted, they were never under a legal obligation to grant any lease of the village, and the granting or withholding of a*

KASBATIS—contd.

lease rested solely in their discretion. The mere repetition of acts of grace by the Government could not *per se* create a legal right to their continuance. *Prima facie* a lease for a term does not impart any right to a renewal of on the contrary it *prima facie* implies that the lessee's right to the premises ends with the term. There was no analogy between holdings of the Grassias and the Kasbatis, they and the Mewassies were clearly distinguishable from the Kasbatis. The Ahmedabad Taluqdars Act (Bombay Act VI of 1862) did not apply to Kasbati lessees. They never were Ahmedabad Taluqdars in the true sense they did not lose their ancient rights of ownership of land by taking leases as did the Grassias and therefore did not suffer the injustice which the statute was designed to remedy. The effect of ss. 68 and 73 of the Bombay Land Revenue Code (Bombay Act V of 1879) read with the Gujarat Taluqdars Act (Bombay Act VI of 1883) is that a lessee whether a true Taluqdar, or a Thakur, Mewassie, Kasbati, or Naik, is bound by the terms of his lease one term of which is that he shall only occupy for the term of years for which a lease for years is granted, and *prima facie* no longer. SECRETARY OF STATE FOR INDIA v. *BAR RAJRAJ* (1915)

I. L. R. 39 Bom. 625

KAZI.

alienation of inam lands granted for Kazi service

See BOMBAY REVENUE JURISDICTION ACT, s 4 . I. L. R. 41 Bom. 120

discretion of—

See MAHOMEDAN LAW—ENDOWMENT I. L. R. 43 Calc. 1085

sanction by—

See WAKF § I. L. R. 47 Calc. 592

KAZIS ACT (XII OF 1880).

ss. 2 and 4—Kazi not entitled to any exclusive right to officiate as such. The appointment of a person as Kazi under the Kazi's Act (XII of 1880) does not confer on the appointee any exclusive franchise or any exclusive right to perform the functions of his office. Where therefore, the plaintiff, a Kazi, appointed under the Act, sued the defendant to restrain him from officiating at marriages, and for the recovery of sums of money received by the latter as fees for niklas performed by him. Held that the suit must fail as the plaintiff had no right to restrain any person from discharging any of the functions of a Kazi. *Mohammad Yusub v. Sayid Ahmed*, 1 Bom. H-C R. App. 18 distinguished. *Sayid Hashim Saheb v. Hussainsha*, I. L. R. 13 Bom. 329, *Mura Mohidin v. Asan Mohidin*, 17 Mad. L. J. 421, *Bhoolwa v. Syid Umar Ulee*, (1859) V. W. P., S. D. A. 127, and *Zeenatoolah Case v. V. Jeebhoo*, 1815 6 Ben. S. D. A. 31 referred to. *SHEIK UMMAH v. BUDAY KHAN* (1914)

I. L. R. 37 Mad. 223

"KETUSAH"

See JEWISH LAW.

I. L. R. 40 Calc. 236

KHAIRAT.

See BEQUEST . I. L. R. 41 Bom. 181

KHADIANIS.

See MAHAMMADANS . 2 Pat. L. J. 103

KHAMAR LAND.

See NON OCCUPANCY RAIYAT

I. L. R. 41 Calc. 267

KHANA-DAMAD

See CUSTOM . I. L. R. 41 Calc. 749

KHANDESH DISTRICT.

See PRE EMPTION I. L. R. 40 Bom. 358

KHANGA ATTACHED TO DARGA.

See MAHOMEDAN LAW—ENDOWMENT

I. L. R. 35 Bom. 303

KHARACH-I-PANDAN.

See MAHOMEDAN LAW—MARRIAGE

I. L. R. 32 AH. 410

KHAS POSSESSION.

See UNDER RAIYAT . 23 C. W. N. 435

suit for—

See CHAWKIDARI CHAKRAN LANDS

I. L. R. 37 Calc. 57

KHATEDAR.

See LAND REVENUE CODE (BOM ACT V OF 1879), s 74

I. L. R. 41 Bom. 170

inamdar's name entered as—

See LAND REVENUE CODE (BOM ACT V OF 1879), ss 3 (11) 217

I. L. R. 34 Bom. 685

KHATIB INAM LANDS

See BOMBAY REVENUE JURISDICTION ACT, 1876 s 4

I. L. R. 44 Bom. 130

KHOD-KAST JOTES.

Dowl Bandobast Kabuliyaat—Transfer of Property Act (IV of 1882), ss 10, 111 and 117—Evidence Act (I of 1872), s 92—Proof of custom—Bengal Tenancy Act (VIII of 1885) s 104 A suit lies to correct an entry in a finally published record of rights. The fact that an application under a. 106 of Bengal Tenancy Act was withdrawn does not bar the jurisdiction of the Civil Court to deal with the matter. *Troilakya Nath Bose v. Marleni* I. L. R. 28 Calc. 28, *Saidabekhan Hazra v. Shaukh Eshahar* 19 C. W. N. 636, followed. *Jogendra Nath Ray v. Krishna Pramada Datta*, I. L. R. 35 Calc. 1013 disented from. *Gulab Misser v. Kumar Kalandand Singh*, 14 C. W. N. 831, *Pandab Dwar Das v. Ananda Kisin Chakrabarti*, 14 C. W. N. 897, referred to. With regard to Dowl kabuli yats from the fact that the sons have been allowed to hold the tenancy, it does not follow that it is heritable. Nor from the fact that the landlord accepted the mortgage of the tenancy from the sons can it be inferred that it is heritable. It is necessary to look into the express terms regarding the tenancy as appearing in the kabuliyaat. The evidence of custom in respect of tenance is inadmissible where the custom alleges it is contrary to the terms of the written agreement. Therefore, in an agreement where

KHOD-KAST JOTES—contd

the tenancy was non transferable in express words, no evidence can be given of the customary transferability of tenures in the locality *Webb v Plummer, 2 Barn Ald 746, Beranton v Green, 18 East 71, Clarke v Royston, 13 M W 752, and Brown v Byrne, 3 El El 703*, referred to. An interest in land created before the passing of the Transfer of Property Act is not subject to that Act. *Paramoti Dasya v Ananda Prasad Ghose, 7 C L J 553, and Ananda Mohan Saha v Gobinda Chandra Roy Chaudhuri, 20 C W N 320*, referred to. But where it is found that a yearly tenancy commenced after the passing of the Act *Held* that such a tenancy is an interest in land which can be transferred and could only be determined under s. 111 of the Transfer of Property Act by a notice. *MAHOMAD ATZJEDDIN, PROXYAT KUTAN TAGORE (1928). I. L. R. 48 Cal. 359*

KHOJAS.

See DOCTRINE OF SATISFACTION

I. L. R. 37 Bom. 211

Hindu law, how far applicable to Khojas—Joint family—Presumption as to membership of joint family—Mahomedan law—Spec successions, transfer of—Family arrangement in the nature of a partition, reasonableness of—Limitation Act (IX of 1908), Articles 91 and 127 In the year 1879 one D, a Khoja was living at Malad in the Thana District, where he carried on a small business, together with, *inter alia*, his mother and unmarried daughter, his sons A and I and A's wife and A's son J. In that year it was agreed that A should separate from the rest of the family and should receive what was considered to be his share in the family property. The family property was valued at Rs. 4,500 and Rs. 900 or the fifth part of it was made over to A or the members of his family at his share namely, Rs. 400 in cash given to A, ornaments of the value of Rs. 200 given to A's wife and a house of the value of Rs. 300 settled on J. The terms of this transaction were contained in a deed of release dated the 13th of February 1879, by which deed A released all claims of himself and his wife and son against the family and family property. Subsequently I by himself or assisted by his father D continued to carry on business and acquired a considerable amount of property. After the release, A lived in the house given by the release to his son J and some 12 or 13 years after the release another son was born to A, namely X. J and X at times lived with their grandfather D and their uncle I and received assistance from them in various ways, in particular their marriage and other ceremonies being performed from D's house and at his expense. J and X were at times also employed by D and I in their business for wages. In the year 1902, D made a gift to I of his property at Malad reserving about Rs. 7,000 to himself. J and X filed the present suit. In their plaint they stated that the release of the 13th of February 1879 was not valid or binding as having been obtained by fraud, undue influence, etc., and also because it had not been acted upon. They prayed, *inter alia*, for a declaration that the above-mentioned business and properties were the properties and business of an undivided family, that the rights of the plaintiffs and defendants therein might be ascertained and declared, that the properties might be partitioned between the plaintiffs and defendants in accordance with their

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interests so ascertained and declared, that all necessary accounts might be taken that a receiver might be appointed, that D and I might be restrained by injunction from alienating the properties that it might be declared that the release of the 13th of February 1879 was not valid and binding on the plaintiffs and A and that it might be declared that the deed of gift of the 8th of October 1902 was void and of no effect as against the interests of the plaintiffs and other members of the joint family. D and I filed written statements denying the allegations as to fraud, etc., and asserting that the release of the 13th of February 1879 had been acted on. It was assumed in the pleadings that the parties were governed by the Hindu law of the joint family. *Held*, that, as to the law governing Khojas the proper way to approach the question was as follows:—(i) Where Mahomedans were concerned the invariable and general presumption was that they were governed by the Mahomedan law and usage and that it lay on a party setting up a custom in derogation of that law to prove it strictly. (ii) But that in matter of simple succession and inheritance it was to be taken as established that succession and inheritance among Khojas and Memons were governed by Hindu law "as applied to separate and self acquired property." *Held*, accordingly, that the plaint disclosed no cause of action at all unless the plaintiffs had alleged and were prepared to prove two or three salient features of the Hindu law of the joint family as customs adopted by the Khojas of Bombay as the question involved in the suit did not really arise on a plea of simple succession and inheritance and that there had been no allegation of custom and no attempt had been made to prove a custom and in any case many of the prayers in the plaint were on the face of them bad as the plaintiffs could not have the declaration asked for as to the nature of the property and their rights thereon not sue for partition. *Held*, further, that assuming this to have been a joint family under Hindu law when A passed the release of the 13th of February 1879, he went out of the family and purported to take out of it his wife and infant son that the plaintiffs could not dispose of the release as void under Mahomedan law as the mere transfer of a spec succession as under Mahomedan law the plaintiffs had no cause of action and that X, having been born after his father A had gone out of the family, from the point of view of members of the joint family did not exist. *Held*, further, that it could not be inferred from the facts that their grandfather and uncle had kept the plaintiffs, educated them, and got them married, etc., that the plaintiffs thus became members of a joint family, that what was to be looked at in estimating the reasonableness of such family arrangements as the release of the 13th of February 1879 (under Hindu law) was not the state of the family fortune on the day it was called in question but at the time it was made and that if there was then an adequate motive the Court would not scrutinize too closely the adequateness of the consideration. *Ramdas v. Chabildas, 12 Bom L. R. 621, applied Simble* Where the existence of a document if valid and binding on a party would defeat his suit to recover possession of any property, he must sue under Article 91 of the Limitation Act for the cancellation of the document and that if he does not take steps in time to remove what else will be a bar to the success of his suit, he cannot surmount that

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bar during the trial by exactly the attack he ought to have made on it directly and within the shorter period allowed by the law of limitation. *Semle* Article 127 of the Limitation Act does not apply to Mahomedans as such or to Khojas and Memons except where the property is shown to have gone through one unimpaired descent and thereafter to have been held by the survivors as joint family property. *Wasant Rao v Anand Rao*, 6 Bom L R 225, considered *Semle* also since no Khoja son can enforce a partition it follows that he can not be a co-sharer. *Ahmedbhai Husbhai v Laseembhai Ahmedbhai* 1 L R 13 Bom 534, and *Rani Saraj Kuari v Rani Deoraj Kuari*, 1 L R 15 I A 51, considered JAN MAHOMED v DATU JAFFER (1913) 1 L R 38 Bom 449

Settlement—Settlor him self trustee—No delivery of possession—Son born after settlement—Power of settlor to revoke settlement—Settlor's intention not carried out owing to settlor's death—Power of Court to aid defective execution—Suit by after-born son to set aside settlement—Limitation Act (IX of 1908), s 10—Resulting trust back to settlor—Adverse possession—Difference between estoppel and res judicata—Validity of wakf contained in deed containing other gifts—Local usage cannot override Mahomedan Law—Requisition—Vis Major By an indenture of settlement dated 7th January, 1886, J P, a Khoja Mahomedan, purported to convey certain immovable properties to trustees for the benefit of his family. The trusts were in effect for J P for life and after his death, subject to certain rights of residence and maintenance, to pay the net income of the trust properties to N M for his life and in the event (which subsequently occurred) of the death of N M without leaving male issue to divide the trust funds into ten equal parts to be held in favour of certain donees, four tenths being given to charity. The indenture also reserved to the settlor power to revoke or vary any of the trusts contained therein. There was no surrender of the property in fact to any one except J P himself in his character as trustee for himself. The donor however, opened an account in his books of this property as trust property. On the 26th October 1886, a second son, the plaintiff was born to J P, whereupon J P being desirous of providing for the second son desired to vary the terms of the deed of the 7th of January 1886 and to resettle the same so that his two sons should share equally. A draft deed of declaration of new trusts was accordingly prepared by J P's attorneys and on the 24th of July 1887 was finally settled and approved by J P. An engrossment was thereupon made and duly stamped but on taking the engrossment to J P for his execution on July 29th it was found that owing to an error of the engrossing clerk several pages of it were missing. Another engrossment was prepared forthwith but on the same day before the new engrossment was ready J P died. The plaintiff thereupon brought a suit to have it declared whether or not the deed of 1886 was a valid deed and prayed that the defective execution of the second deed might be added by the Court and the provisions of the said second deed declared to be valid. *Held*, (i) That the plaintiff was not time-barred as against the trustees from bringing the action. (ii) That however, restricted the gift was in form to J P it was in effect a gift absolute to him for life, and that entirely irrespective of the power of revocation. (iii) That all the gifts in the

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trust settlement made contingent upon N M dying without issue were bad. (iv) That the portion of the instrument which purported to create a wakf in respect of four tenths of the settled property was bad and void. (v) That the gift was bad for want of contemporaneous delivery of possession. (vi) That this was a case, if ever there was a case in which the Courts might act upon those principles which have always guided the Courts of Equity in England and aid defective execution of a power, defective not through any fault on the part of the person intending to execute it but by reason of an act of God and that the unsigned deed ought to be effectuated by the Court to the extent of making it binding on that conscience of the trustees. *PER CURIAM* It is only in the events of the trusts of some of them being bad that the question of limitation can arise. For if a trust deed in its entirety is good, then of course effect must be given to it irrespective of any question of lapse of time. Where what purports to be a trust deed turns out to have been entirely void and therefore not to have passed the legal estate, the position of those who took possession believing themselves to be trustees but not in law real trustees necessarily assumes the character of possessors on by trespass and is therefore from its inception in law adverse against all the world. Where, however, the trust deed in itself is good and valid to the extent of passing the legal estate but the trusts declared are in themselves wholly or partially bad then there is a resultant trust to the author of the trust and the possession of the trustees, whatever they might think of it and however they might intend to use it for the purpose of carrying out the bad trusts, could not in law be adverse to the *cestus-que trust*, that is to say the grantor. Widely different is the case of trustees who obtain the legal estate from the author of the trusts to apply the beneficial uses to specified objects which may or may not be good. For then from the beginning there is always a relation between the author of the trusts and the trustees in whom confidence has been reposed and there is always the legal possibility at least of another relation coming into existence between them where owing to the failure of the declared trusts, there is a resultant trust back to the grantor who from that moment becomes in law the *cestus-que trust* of the trustees. Where it was the intention that there should be an ultimate trust in favour of the grantor it is usual to express that on the face of the deed. A deed so framed as upon its very face to provide for the springing back of the trust fund or a part of it in certain events to the author of the trust does create what is at once an express and resultant trust. The current of authority seems to have set steadily against the extension of s 10 of the Limitation Act to all cases of resultant implied or constructive trusts. Where the ultimate resultant trust which is to spring back to the settlor is consistent with the discharge of the declared trusts, then it may, by loose use of language, be said to be express on the face of the deed but when the extinction or failure of all the intended trusts is a condition precedent to the resultant trusts coming into being, then the latter is clearly a true resultant trust and is not express and never can be express on the face of the deed. The answer to the question—What is the true position when declared trusts failed and there is a resultant trust over to the settlor or his heirs—is to be found in the very elementary proposi-

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tion that the possession of the trustee is always that of *cestui-que-trust*, and, therefore, however he may think or wish to be holding as trustee for trusts which have failed in the eye of the law, he is really holding, when those trusts failed, as trustee for the settlor. Then the position is simply this so long as he retains and professes to retain the character of a good and legal trustee, he is holding the legal estate as stake holder for two claimants, the intended beneficiaries of the declared trusts which have failed and the resultant trustee, that is, the settlor. And no length of possession by a trustee can be adverse to his *cestui-que-trust* as soon as that legal person is discovered and ascertained. So long as the trustee occupies the position of a trustee as soon as declared trusts failed and there is a resultant trust in favour of the settlor, the trustee's possession is essentially that of his *cestui-que-trust* and can only be changed into adverse possession by a conscious and deliberate act, that is to say, that he must repudiate all intention of holding for the resultant *cestui-que-trust* and he must assert his intention of continuing to apply the trust fund to uses which the Court has declared or which are known to him to have failed. Then his possession might become adverse to his legal *cestui-que-trust* and if that person did not take steps within twelve years he might not be able to avail himself, under the Indian authorities, of the provisions of s. 10 of the Limitation Act. Estoppel and *res judicata* are entirely distinct. *Res judicata* precludes a man averring the same thing twice over in successive litigations, while estoppel prevents him saying one thing at one time and the opposite at another. It is consistent with the Mahomedan Law that a Mahomedan may devote his property in *wakf* and yet reserve to himself and his descendants in a very indefinite manner the usufruct of property. *Jamdal v R D Sekha, 1 L R 34 Bom. 601*, considered. The power of revocation is inherent in the donor of every gift, so that expressing it as is usually done by English drafts men in these voluntary settlements is merely surplusage and so far from invalidating the gift as a whole would necessarily be implied in it were it not expressed. Under the Mahomedan Law where a gift is conditioned by a power restricting alienation, the gift is absolute and the condition is void. A gift to the donor himself for his life and then over to others could not be reconciled with any recognised principle of the Mahomedan Law of gift and must necessarily, therefore, so far as the remoter donees are concerned, be bad *ab initio*. *Jamdal v P D Sekha, 1 L R 34 Bom. 601*, followed. A vested remainder in the strictest sense of the English words and a *fortiori* a contingent remainder could not possibly by any stretch of ingenuity be made the subject of a valid Mahomedan gift, *inter vivos* consistently with the requirements of the Mahomedan Law on that head and for this very simple reason that no man can give possession in *present* of that which may never come into possession at all. It is of the essence of a Mahomedan gift *inter vivos* that the donor should divest himself of the actual possession of the thing given and transfer it to the donee and if the donee does not take physical possession of it at the time of making the gift, then till he does, the gift is revocable. There is no authority to be found anywhere in the Mahomedan Law books themselves for the proposition that a man giving *inter vivos* may give an estate first to himself and then

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to A for life and then to B absolutely. It is undoubtedly a rule of the Mahomedan Law that where a donor makes a gift and accepts in exchange something, whether that something be independent of or part of the original gift, then the rest of the gift is irrevocable. No gift *in futuro* can be made by a Mahomedan *inter vivos*, in order to validate such a gift there must be an actual delivery of seisin to the donee there must be a transfer of possession and that transfer of possession must be from the donor to the donee. While the Mahomedan Law insists that a gift to private persons should be free of all pious and religious purposes this does not necessarily prohibit the making of the gift to *wakf* which may be contained in a deed which makes other gifts at the same time to private persons. It appears to be the Mahomedan Law that a donor may give his property in *wakf*, that is to say, appropriate and dedicate the corpus to the service of God, while reserving for himself a life interest in the usufruct. But as in the case of gifts to private individuals the Mahomedan Law never contemplated and will not allow a merely contingent gift in *wakf*. This necessarily flows from the juristic conception of a *wakf* which is the immediate appropriation and consecration of specified property to the service of God and the reservation of the donor's life interest in that property does not in any way clash with that conception for the corpus is there and then definitely and finally appropriated to its intended purpose. But it is plainly otherwise, while the gift is conditioned upon the happening of some future uncertain event. There can, in such circumstances, be no appropriation synchronizing with the declaration because should the future events happen it is neither the donor's intention then nor after the happening of that event that the property ever should be appropriated to the service of God. It would be passing the limits of the application of the maxim *Ubi est contentio incertum legem*. If it were sought to be a gift to the Khojas are allowed by local usage to override the Mahomedan Law which prohibits any Moslem from disposing of more than one third of his property by will. *CASRAMALLY JAFRAHAI v SIE CURENBHOY INHAIN (1911) 1 L R 36 Bom 214*

KHORPOSH GRANT *Sub-soil right* The interest of a *Khorphoshdar* heritable in the male line was a limited interest liable to be defeated at any time by the failure of heirs and thereupon resumable by the proprietor for the time being, and would not be an interest sufficient to carry with it the sub-soil rights. *BHAWANATH GOBAIN v SURENDRA MOHAN GHASE (1913) 19 C W N. 102*

KHOT *Effect of adverse possession against—*
S. 10 KHOT SETTLEMENT ACT, 1890, s. 8 AND 10. **1 L R 45 Bom 1001**

KHOTI SETTLEMENT ACT (BOM. I OF 1880).
ss. 8 and 10—
—*Khot—Privileged occupant*
—*Renunciation of occupancy in favour of Khot—*

KHOTI SETTLEMENT ACT (BOM I OF 1880)

—contd

—ss 8 and 10—contd

Adverse possession of land against the occupant—
Error of adverse possession against the Khot—
Ejectment by Khot—Notice—Land Revenue Code
(Bom 1st V of 1879) section 81 An occupancy
 tenant of khoti land having died in 1894, the
 defendant who was his remote relative took posses-
 sion of the land and held it adversely. A
 first cousin of the deceased relinquished the hold-
 ing in favour of the plaintiff Khot in 1914. The
 plaintiff having sued to recover possession of the
 land—*Held* that the defendant's adverse posses-
 sion against the heir of the occupancy tenant only
 extinguished the latter's right to the actual
 possession of the land and did not operate to an-
 nullate the occupancy tenant's right which he
 would transfer to the plaintiff Khot. *Held* further,
 that the defendant, on account of the resignation
 of the rightful occupancy tenant could claim
 to be a tenant under s 8 of the Khoti Settle-
 ment Act 1880, and in the absence of any specific
 agreement between himself and the Khot he should
 be held to be a yearly tenant liable to pay rent
 to the Khot at the rates prescribed, and that he
 was accordingly entitled to the notice prescribed
 in the case of yearly tenants under section
 84 of the Land Revenue Code 1879. *VISHNU*
BHASKAR v BABLA LAKHA (1920)

I L R 45 Bom 1001

—s 9—

See RES JUDICATA

I L R 40 Bom 675

—ss 9, 10—*Khoti Takshu's—Resignation*
of occupancy rights—Transfer—Lease for a term of
years—Expiration of the lease—Suit to recover pos-
session—Impeachment of plaintiff's title—Consent
of Khot necessary for transfer—Resignation accom-
panied by consideration—Porties in pari delicto—
Falselple The defendant resigned his occupancy
 rights in a khoti takshu to the plaintiff who was
 one of the khots in the year 1907. Synchaneously
 with the resignation a lease for a term of five
 years was executed and the defendant attorned
 to the plaintiff in respect of the lands. The
 defendant's resignation was accompanied by
 consideration. After the expiration of the term
 of the lease the plaintiff sued to recover possession
 of the lands and the defendant impugned the
 plaintiff's title. *Held* dismissing the suit for
 recovery of possession that the foundation of the
 plaintiff's title in 1907 was illegal, that the resig-
 nation and lease having been made at the same
 time and having formed part of what was virtually
 one transaction if the transfer which the resig-
 nation was held to amount to were tainted with any
 illegality as being in contravention of the statute
 law, namely the Khoti Settlement Act (Bom
 Act I of 1880) the letting must go with it that
 under s 9 of the said Act the consent of the Khot
 including the plaintiff was necessary to the validity
 of the transfer and it was not shown that such
 consent had been obtained that accordingly the
 conditions stated in s 9 being not complied with
 there was no transfer under that section nor could
 the transaction be regarded as a resignation under
 s 10 of the said Act because it was accompanied
 by consideration. *Held*, further, that in the case
 of a contract where both the parties were in pari

KHOTI SETTLEMENT ACT (BOM I OF 1880)

—contd

—ss 9, 10—contd

delicto the plaintiff was not entitled to estop the
defendant from showing the illegality of his title,
nor was there any estoppel against any Act of
Parliament or in India against an Act of the Legis-
lature *SHRIDHAR BALKRISHNA v RADAJI MULA*
(1914) I L R 38 Bom 769

—Occupancy tenants—

Transfer of occupancy rights—Possession—Right of
Khot to forfeit occupancy right Defendants Nos
 2 to 6 were the occupancy tenants of the plaintiff
 Khot. On the 12th January 1912, the defendant
 sold their occupancy rights to the defendant No 1
 giving him possession. The plaintiff having sued
 for a declaration that by transfer the defendants
 had forfeited their occupancy rights, and that
 therefore he was entitled to possession of the
 property. *Held*, dismissing the suit that although
 the transfer to defendant No 1 was null
 and void as against the Khot, the defendants
 Nos 2 to 6 still remained his occupancy tenants.
JESU BIN RAMA v SAKHARAM GOPAL (1905) 30
 Bom. 290, followed. *DAMODAR RAMCHATH v*
VASUDEO PARASHURAM (1919)

I L R 44 Bom 267

—s 20—Entry in settlement register—

Occupancy tenant—The fact of tenancy not conclu-
sively settled by the entry The rule of evidence
 laid down in s. 20 of the Khoti Act that the entry
 in the settlement register purporting to record
 the fact that the interest of any occupancy tenant
 is not transferable shall be conclusive evidence
 cannot apply where according to a judgment
inter partes the person relying on the section is
 not an occupancy tenant, for the fact of the
 tenancy of the individual is not conclusively
 settled by the entry. *CHINTO MAHADEV v MAHA-*
DEV RAMCHANDRA (1913)

I L R 43 Bom 565

—s 21—Decision of the Recording

Officer—Finality—Mere entry in revenue records as
occupant is not such decision—Scope of the section
 S 21 of the Khoti Settlement Act, 1880 makes
 conclusive certain decisions of the Recording
 Officer. The mere entry of the name of some
 particular person as occupant is not such a
 decision. What are contemplated as conclusive
 are decisions as to the class of tenure and as
 complicated rights of the Khots. *BIWA BABA*
to the v BAHU BALESET (1918)

I L R 43 Bom 469

—ss 33 (c) 40 (a), Rules I III and

VIII—Occupancy tenant—He is bound to the law—
Appraisal is under the provision of s 33—
Appraisal by the tenant I VIII of the Rules
 framed under s 40 (a) of the Khoti Settlement
 Act (Bom Act I of 1880) is in force, and under
 the provisions of that rule the Khot can recover
 from the occupancy tenant rent either on the basis
 of appraisal made under the provision of that
 rule or on the basis of appraisal made by the
 tenant himself. The Court is precluded from
 arriving at what it considers the reasonable amount
 of rent by the provision of the said rule. *VINAYA*
BALKRISHNA v SITARAM JANARDAN (1912)

I L R 37 Bom. 284

KHOTI TAKSHIM

See KHOTI SETTLEMENT ACT (BOM I OF 1880) ss 9 10

I L R 38 Bom 709

KHOTI VILLAGE

See BOMBAY SURVEY AND SETTLEMENT ACT 1863 ss 25 28, 37 38.

I L R 36 Bom 290

KHUD-KASHT

See BENGAL TENANCY ACT 1885 s. 120(?) 5 Pat L J 87

See LANDLORD AND TENANT I L R 38 Calc 432

KHURDAH IN ORISSA

See SARDARAKARI TENURE I L R 48 Calc 378

KIDNAPPING

See CRIMINAL PROCEDURE CODE s 188. I L R 41 All 452

See PENAL CODE (ACT XLV OF 1860)—s 360 I L R 38 Mad 453

s 361 I L R 42 All 146

ss 361 366 169 I L R 38 All 664

ss 361, 363 AND 368 4 Pat L J 74

s 363 I L R 37 Mad 567

s 366 I L R 34 All 340

ss 366 AND 372. I L R 37 All 624

ss 366 AND 368. I L R 40 All 507

Removal by the mother of her child from the custody of the father after decree nisi deliv'ing custody to him—Absence of prayer for divorce put on for custody and of subsequent application therefor—Ex parte decree—Subsequent application to High Court for confirmation—Order of custody part of the decree—Time of operation of order of custody—Dorce Act (IV of 1869) s 17 43 57—Penal Code (Act XLV of 1860) s 363 Where the plaintiff in a divorce suit did not contain a prayer for custody of the child and there was no subsequent application therefor by the husband but the District Judge passed an ex parte decree and included in it as one of its terms, a decree to deliver the child to the wife to deliver her child to the father and submitted the decree to the High Court for confirmation and where the father subsequently obtained custody of the child but she took it away from his house, and was charged with kidnapping—Held that the Judge's direction as to the custody of the child was not intended to be an ad interim order under s. 43 of the Dorce Act which was to take effect immediately but formed an integral part of the decree and did not operate till confirmation by the High Court and that she had, therefore, committed no offence punishable under the Penal Code

KIDNAPPING—contd

Lall v Lall & L. R 28 Calc. 473, referred to BORTHWICK & BORTHWICK (1913)

I L R 41 Calc. 714

KIDNAPPING A GIRL OUT OF BRITISH INDIA

See PENAL CODE (ACT XLV OF 1860) ss 366 360 90

I L R 42 Bom 391

KILLADARI ESTATE (ORISSA)

See CHOWKIDARI ACT s. 1 15 C W N 300

KILLAJAT ESTATES (ORISSA)

See RENT I L R 38 Calc 278

KINGS BENCH, COURT OF

See CONTEMPT OF COURT I L R 41 Calc 173

KINGS PREROGATIVE OF PARDON

See PRIVY COUNCIL PRACTICE OF I L R 42 Calc 739

KITTIMA ADOPTION

See BURNES LAW I L R 45 Calc 1

KNOWLEDGE

See ATTESTATION OF INSTRUMENT I L R 37 All 350

See HINDU LAW—ALIENATION I L R 44 Calc 186

See PROBATE I L R 42 Calc 450

KNOWLEDGE AND INTENT

See PENAL CODE (ACT XLV OF 1860) s. 36 I L R 38 Mad 479

s 309 I L R 40 All 360

KOBALA

See FALSIFYING FALSE DOCUMENT I L R 48 Calc. 911

KOCHES

See HINDU LAW (SUCCESSION) 24 C W N 173

KOLI CASTE

See HINDU LAW—MARRIAGE I L R 37 Bom 295

KONKANI MAHOMEDANS

See CONTRACT . I L R 42 Bom 499

KOWL

See LAND REVENUE CODE (BOM) OF 1870, s. 3, CL. (19)

I L R. 35 Bom. 462

KUDIVARAM

See LAND TENURE IN MADRAS.

L R. 46 I A 123

— acquisition of—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 8, (EXCEPT)

I L R 38 Mad 843

— ownership of—

See CIVIL COURTS

I L R. 39 Mad 21

— right to—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 8 (EXCEPT)

I L R 38 Mad 608, 843

— sale of—

See LIMITATION ACT (II OF 1908) s. 22

I L R 38 Mad 837

KULACHAR

See BARTANA GRANT

KULKARNI VATAN

See BOMBAY PREVENTIVE JURISDICTION ACT, 1878, s. 4

I L R 44 Bom 261

See LIMITATION ACT, 1908, s. 20

I L R. 45 Bom 1207

See PENSIONS ACT (XXIII OF 1871)

s. 4 I L R. 42 Bom 257

KUMAUN

— land tenures of—

See CIVIL PROCEDURE CODE (1908) s. 100

I L R 36 All 258

KUMAUN RULES (1894)

— r. 17—'Final decree'—Civil Procedure Code (1908) s. 2 (2)—Promissory note liability of maker of not disclosing name of principal *Held* that the definition of "decree" as given in s. 2, cl. (2) of the Code of Civil Procedure, (1908) cannot be applied strictly in interpreting the term 'Final decree' as it occurs in the Kumaun Rules, which were framed in 1894 *Held* also, that where a person executes a pro-

KUMAUN RULES (1894)—contd

— r. 17—contd

missory note without either before or at the time of execution thereof disclosing the fact that he does so merely as an agent the executant is personally liable on the note *Sadasuk Janki Das v Sir Kishan Pershad*, I L R 46 Cal 663, referred to *NARIB ULLAH v KUNWAR ANAND SINGH* I L R 42 All 642

KUNJPURA. STATE OF.

— Succession to estates of Punjab Ruling Chiefs—Custom—Impartible estate—Primogeniture—Mahomedan law—Sust by junior members of Kunjpura family for shares in estate—Zemindari rights—Property appertaining to Chief ship up to 1819—Property subsequently acquired The question in this case was as to the rule of succession applicable to the Kunjpura State situate in the Cis-Sutlej districts of the Punjab. The *raiat* or *raj*, was founded by Najabat Khan, who in 1748 obtained a *sanad* from the Afghan Conqueror, Ahmed Shah Abdali, granting him an hereditary *pagar* of the villages of which he was then in possession which were declared to be revenue-free, and held subject to the obligation of maintaining order in his possessions. In 1849, however the British Government withdrew from the Chief of Kunjpura the civil and criminal jurisdiction under which he had been until then exercising quasi sovereign power *Held*, that it had been established beyond doubt that the Kunjpura State had ever since the time of Najabat Khan, descended to a single heir who had been recognised as the Chief of an impartible *raiat* and that at attempts by junior members of the family to obtain shares in it had invariably failed. The two instances relied on as showing the allotment of shares to junior members were, in their Lordships' opinion, opposed to that contention, and no other evidence had been referred to suggesting that there had ever been a division of the estate in accordance with Mahomedan Law. The opinion of the Board of Administration in 1852 that the zemindari rights in the villages comprised in the *pagar* were the subject of "inheritance according to the Mahomedan law" and should be shared by all the members of the family, became in effect, and was never acted upon in the course of the constant claims put forward by the junior members of the family to a share in the estate, and later decisions on those claims laid down in explicit terms that the zemindari rights belonged to the *raiat*. With regard to the property acquired after 1849 in which the Chief Court had decided that the plaintiffs (younger brothers of the defendant who had taken possession of all the property as the eldest son) were by the Mahomedan law entitled to shares *Held* (reversing that decision) that there was nothing to show that the Government in withdrawing the civil and criminal powers which the Chiefs had exercised prior to 1819 intended to make any alteration in their status or to vary the rule which had governed the succession to the estate. *ISRAHIM ALI KHAN v MUHAMMAD ANSARULLAH KHAN* (1912)

I L R 39 Cal 711

KUZHIKANAM

See CUSTOMARY LAW

I L R 41 Mad. 118

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LABOURER

prosecution of—

See MADRAS PLANTERS' LABOUR ACT
(Mad 1 of 1903) at 24, 33
1 L. R. 39 Mad 869

LACHES.

See HUNDI BHAN JOO

1 L. R. 39 Bom 513

See JUDICIAL DISCRETION

4 Pat. L. J. 381

LAKHRAJ LAND

See ASSESSMENT

1 L. R. 43 Calc. 973

See LAND ACQUISITION

20 C. W. N. 1028

See LIMITATION 1 L. R. 38 Calc 453

See RENT FREE HOLDING

18 C. W. N. 1200

1. ——— *Lakhraj* or rent free holding, grant of, if valid—*Lakhraj*, meaning of—*Belagan*, meaning of—*Pecord of rights*, entries of holdings in, as *belagan* and *kabilagan*, effect of—*Presumption from long and uninterrupted non payment of rent, in holding lakhraj* The word *belagan* means simply not paying agricultural rent" and does not imply anything as to liability to pay rent, whilst the word *kabilagan* indicates a tenancy for which rent is not actually paid, but which is liable to pay rent Where in respect of a holding entered in the record of rights as *belagan* the District Judge presumed, from evidence of long and uninterrupted possession without payment of rent, a grant of land under conditions which make it rent-free *Held*, that the District Judge was entitled to make that presumption and his determination in no way conflicted with the entry in the record of rights. There can be a rent free grant of permanently settled land and such a grant cannot be treated as a nullity by the grantor or his heirs or by any person claiming through him. *Mohamed Ali v. Anandram Das* 9 D. R. 2, referred to. *KESWAN BHAGAT v. SAKO PROSAD LAL* (1914)

18 C. W. N. 913

2. ——— *Presumption arising from possession*—*Opinion of a try in Pargana register, Kanungo register, General and Mauzawar registers, Taluk & map, evidentiary value of—Bengal Tenancy Act (I of 1855) s. 103B, 106—Regulation XIX of 1793 ss. 22 to 25* I purchased a potal taluk in 1899 and the Record of Rights was finally published in 1909 containing an entry to the effect that no rent was actually paid but that the occupant B was not entitled to hold without payment of rent. B instituted a suit under s. 106 of the Bengal Tenancy Act, for a declaration that the lands were his rent free *bramottar*, and that the entries in so far as they stated that the lands were liable to be assessed to rent were incorrect, and claimed continued possession without payment of rent or revenue since the date of the grant of the lands to his predecessor. I relied upon the omission of any entries as to the lands being *lakhraj* in the Pargana, Kanungo, General and Mauzawar registers and Taluk & map and proceedings *Held*, also, that the proved possession free from payment of rent was sufficient to rebut

LAKHRAJ LAND—contd

the presumption that the lands were liable to be assessed to rent. *Held* further, that the omission from the Pargana, Kanungo, General and Mauzawar registers, and Taluk & map and statements, of any indication that the lands were *lakhraj*, was of no evidentiary value. *Held* therefore, in the absence of proof of payment of rent at any time that the lands were *lakhraj* and no part of the mal assets of zemindars or taluk *BIRKARAR LAL CHOWDHURY v. MANORAMA DEBI* (1917)

1 L. R. 43 Calc. 574

3. ——— *Lakhraj* lands in the zemindars of *Tenastages*—Government, if may assess revenue thereon—*Income tax*, if apply to them—*Permanent settlement of revenue*, if could be concluded apart from Reg. XXV of 1862 (Mad)—ss 3 and 4—*Reg. XXXI of 1862 (Mad)*, s. 4 of Dec 4 of Reg. XXV of 1862 (Mad), by which Government in concluding permanent settlement of revenue with the zamindars of the Madras Presidency reserved to itself the power of imposing additional revenue upon *lakhraj* lands, had no application to the *Veristagari* zamindars inasmuch as the award a *malikani* zamindari granted by the Government to the zamindar in respect of it made no such reservation and must, in view of the provisions of s. 3 of the Regulation and the necessity which arose of making separate arrangements with powerful zamindars, have been granted independently of the provisions of the Regulation. Reg. XXXI of 1862 (Mad.) refers entirely to procedure appointed for the investigation of title to hold lands exempted from payment of revenue. *SECRETARY OF STATE v. HAJI GOFALA KRISHNA JACHURNA VARU*

20 C. W. N. 809

LANEBARDAR

See AGRA TENANCY ACT II of 1901, s. 194

1 L. R. 38 All 441

suit against, for profits—

See AGRA TENANCY ACT (II of 1901)—s. 164 1 L. R. 38 All 223

—Ejection, still for—*Central Provinces Land Revenue Act (XVIII of 1871)*, ss. 112, 113 A *lanbardar* is only a representative of the proprietary body of a mahal in its relations with Government and is not entitled alone to bring a suit for ejection. *SILMANI GOENTIA v. JAGNENDRA GOENTIA* (1910)

1 L. R. 37 Calc. 694

—*Implication Act (13 of 1934) Schedule I, Arts 89, 115 and 120* A suit by some of the proprietors of a village against the *lanbardar*, for an account of the profits of the village governed by Art. 115 of the Limitation Act, 1909 and not by Art. 120. In so far as the proprietors permit the *lanbardar* to collect rents and to manage the village on their behalf he is their agent, and he is as such bound by an implied contract to render an account at the end of each agricultural year. The *lanbardar's* liability to account commences on the date upon which the account should have been rendered under the implied contract, and the period of limitation of three years commences from that date. *ANANTRAM BODHAR v. GANESHRAM BODHAR*

4 Pat. L. J. 304

LAND ACQUISITION—*co M*

the meaning of the provisions of s 32 of the Land Acquisition Act. Where a portion of the *debtor's* property was acquired under the Land Acquisition Act, and the compensation money was invested in approved securities the *debtor* is entitled to withdraw a portion of the invested funds and apply the same to effect necessary repairs to the remainder of the *debtor's* property. As under s 32 of the Act the compensation money is placed in the custody of the Court, jurisdiction is by implication conferred upon it to deal with all questions that may arise as to the application of the fund in its custody. *KAMINI DEBI v PRAMATHA NATH MOOKERJEE* (1911)

I L R. 39 Calc 33

See Also *SHEBAY* I L R. 40 Calc 895

Apportionment of Compensation-money—*Method of Assessment*—Government as landlord, share of. In assessing the amount of compensation due to the landlord regard must be had to the question of how much the landlord is actually realising from the land. The Government in its capacity as landlord, is entitled as usual to a capitalisation of as much rent as may be found to be payable in respect of the proportion of the holding that is taken together with 15 per cent for compulsory acquisition and something more in respect of the possibility of the enhancement of the value of the land thereafter. The Government is not entitled in law to a higher proportion on the ground that in similar cases it has frequently received a higher proportion either by consent of the parties or otherwise. Where a *raiyat's* rent is fixed in perpetuity it would be enough in apportioning compensation to capitalize this rent according to the rule laid down in *Disandra Narain Roy v T. Turam Mookerjee* I L R 30 Calc 891 in order to arrive at the share due to the landlord, but where that is not the case, this rule will not be sufficient and some other means of calculation must be adopted. *MAHMOHAN DUTT v COLLECTOR OF CHITTAGONG* (1912)

I L R. 40 Calc 69

17 C W N 1001

Estate Land—Valuation—*Calcutta Municipal Act (Beng Act III of 1897) s 557, sub-s (c) (d)*—Market value—Inadmissibility of evidence with regard to sales of other lands in the neighbourhood—*Land Acquisition Act (I of 1894) ss 6, 23*. When land is compulsorily acquired any use to which the land may be put in future should not be taken into consideration in determining its value. The valuation should be according to the market value at the time of the acquisition. Sub-s. (c) of s 557 of the Municipal Act precludes evidence being given of other purposes to which *estate* land can be put in future. Evidence, relating to the undertenants and rents paid by them, is not relevant for the purpose of ascertaining the market value as defined by sub-s (c) of s 557 of the Municipal Act. *Harnish Chunder Nagoy v Secretary of State for India* 11 C W N 375 followed. *MAHENDRA CHANDRA NANDI v SECRETARY OF STATE FOR INDIA* (1914)

I L R. 41 Calc. 967

Godowns used as servants' residence, whether part of house or building—*Compensation of such godown alone, legality of*—*Land Acquisition Act (I of 1894) ss 49 (1) 54*—*Principle*—*Appeal*. Godowns necessary as residence for servants are part and parcel of a building (within the meaning of s 49 (1) of the Land Acquisition Act)

LAND ACQUISITION—*contd*

being a most important part of that building for the purpose of letting it out to gentlemen as a place of residence. The acquisition of such godowns would thus be an acquisition of a part of a house contrary to the provisions of the Act. It has never been doubted that an appeal would lie in the case of such an order under that section. *Hosain Halls v Tanvirul Haq* I L R 39 Calc. 393, distinguished. *DALCHAND SINGH v THE SECRETARY OF STATE FOR INDIA* (1916)

I L R. 43 Calc 685

Court, if may determine question of title—*Claim to compensation by Zemindar as against person holding under a lakhraj title—Onus of proof*. A purchaser of an entire estate soil for arrears of revenue suing to recover land claimed by the defendant as lakhraj must prove a *prima facie* case that his soil land has, since 1790 been converted into lakhraj. The fact that the lands are within the ambit of the estate is not sufficient to meet this burden. Whether in a particular case, the plaintiff has been able to prove such a *prima facie* case would depend upon its own circumstances. Where the question of title to a plot of land arose between claimants to compensation money paid by Government on acquisition thereof under the Land Acquisition Act one being the purchaser of the estate at a sale for arrears of land revenue, whilst the other was holding it as lakhraj. *Held*, that the former was in the position of the plaintiff and the burden of proof as stated above was on him. *Harikar Mookerjee v Madob Chandra Babu* 14 Moo I A 152 relied on. A Land Acquisition Court has jurisdiction to determine a conflict of title between rival claimants. *KRISHNA KALYANI DAS v R. BRAUNFELD* (1915)

20 C W N 1028

Title by adverse possession—On the acquisition of a piece of land under the Land Acquisition Act it was found that the person in possession had taken possession of it on the death of the last male owner and held possession for more than 12 years without payment of rent. He asserted that he held the land under another person and not under the rival claimant who was the reversionary heir of the last male owner. *Held* that the person in such possession was entitled to the full compensation paid for its compulsory acquisition having acquired the right to hold the land rent free by twelve years adverse possession. *RATHANS SAHAY v RAJ MAHARAJ PRASAD* (1916)

20 C W N 828

Award, meaning of—*Appeal*—*Land Acquisition Act (I of 1894) ss 49, 51*. A decision or determination under the Land Acquisition Act which has no reference to compensation in some form or other, is not an 'award'. An order under s. 49 of the Land Acquisition Act is not an 'award' and is not appealable, under s 54 of that Act. *Dalchand Singh v Secretary of State for India*, I L R 43 Calc 655. *Mulraj Akhtar v Collector of Poona* 15 Bom. L R 802, *Siddon v Deputy Collector of Madras*, 17 Ind C 117, *Bhramanar Ray v Sham Sunder Varadra*, I L R 23 Calc 896 and *Trivayana Das v Krishnaiah De* 17 C W N 833, referred to. *SARAT CHANDRA GHOSH v THE SECRETARY OF STATE FOR INDIA* (1919) I L R. 46 Calc 861

Timber compensation for—*Destruction between Landlord and Tenant*. By custom of the country bamboos are used in building and there-

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fore are Timber *Held* Landlord entitled to half compensation for the trees in this case **MAHARAJA SRI RAMESHWAR SINGH BAHADUR v BASUDERA SINGH** 6 Pat. L. J. 127

— Binding agreement can be made between parties fixing the amount of compensation—*Before the Collector has made his award*

— Offer and acceptance by letter—*Contract—Specific performance of contract—Power of Municipal Commissioner—Powers of Directors of Joint stock Companies—Collector—Award—Indian Contract Act*

(IX of 1872), ss 2 and 10—*Land Acquisition Act* (I of 1894), ss 6 (3) and (7), 11, 18, 25, 31, 43 and 51 (2)—*The City of Bombay Municipal Act* (III of 1883), ss 61 (m), 64, 69, 87, 90, 91, 92) 296 and 517—*Specific relief—Declaration, form of* In August 1916, the plaintiffs, the Municipal Corporation for the City of Bombay, wishing to acquire certain property belonging to the defendant Company, for the purpose of widening a street, entered into negotiations with the defendants in order to arrive at the price the defendants would accept for their property. No agreement having been arrived at, the plaintiffs applied to the Government to acquire the property for them by proceedings under the Land Acquisition Act. Thereafter, on 12th July 1917, the defendants resumed negotiations with the plaintiffs. On 26th July 1917, the usual notification was published in the *Government Gazette*. On 12th September 1917, the Secretary of the defendant Company in pursuance of the previous correspondence between the parties and the interviews of their respective engineers wrote to the plaintiffs' engineer—"The Company is willing to accept without prejudice the sum of Rs. 1,45,517 inclusive of 15 per cent for compulsory acquisition. The amount will be subject to deductions of the capitalised dues to the Collector and of the easements of the neighbouring properties if any." The said letter was placed by the plaintiffs' engineer before the Municipal Commissioner who endorsed on it his approval of the acceptance of the offer. On the 14th September 1917, at a meeting before the Deputy Collector who held inquiry under the Land Acquisition Act, the plaintiffs' solicitor produced the letter of 12th September 1917. The defendants' engineer stated at the meeting that the term "without prejudice" in their letter had no longer any force as the Municipality had accepted the proposal of the defendants. Thereupon, the Deputy Collector recorded the agreement between the parties and adjourned the inquiry to determine the claims of owners of adjoining premises to easements of light and air. On the 22nd September 1917, the Directors of the Company passed a resolution approving of the letter of 12th September 1917, and noting that the said letter conveyed the acceptance of the plaintiffs' offer by the Secretary on behalf of the Company. On 23rd October 1917, the defendants through their solicitors intimated to the plaintiffs' engineer that they had withdrawn the offer made by them on the 12th September 1917. The plaintiffs' solicitors replied that there was a definite agreement concluded between the parties and that the defendants were not entitled to resile from the same. At an adjourned meeting before the Collector held on 29th January 1918, the defendants made a formal claim of Rs. 5,71,600 as compensation and the proceedings were adjourned by the Collector. The plaintiffs, there

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upon, sued for a declaration (1) that there was a contract binding on the defendants in terms of the letter of the 12th September 1917, which had been accepted by the plaintiffs, (2) that the defendants were not entitled to claim in the proceedings before the Collector any sum for compensation other than or beyond Rs. 1,45,517 and (3) that if Collector awarded more the excess belonged to the plaintiffs. The plaintiffs also claimed thereon in question accordingly. The defendant contended that their letter was not an offer but an invitation or in the alternative that the agreement was void for want of mutuality or was made without authority or that Government could withdraw under s 48 of the Act. *Held* that the letter was an offer and not a mere invitation and that the offer and the acceptance thereof had been made by the duly authorised agents of the defendants and the plaintiffs, respectively. *Held*, further, that the offer and acceptance amounted to an agreement definitely fixing the compensation as between the parties themselves whatever sum may be ultimately awarded by the Collector and with an obligation on either party to refund any excess or make good any deficiency as the case might be and that this agreement was a "contract" within the meaning of ss. 2 and 10 of the Indian Contract Act, which was capable of being specifically enforced against the defendants. *Held*, also that the agreement was not wanting in mutuality nor rendered nugatory as between the parties merely because power of withdrawal was reserved to the Government under s. 48 of the Land Acquisition Act. The dicta of Bowen L. J. in *The Moorcock* (1889) 11 P. D. 64 at p. 68, referred to **FORT PRESS CO., LTD v THE MUNICIPAL CORPORATION OF THE CITY OF BOMBAY** (1919)

I L. R. 44 Bom 797

— Application by owner for abandonment of acquisition in consideration of special payment—*Application—Street scheme—Submission of scheme to Government for sanction—Building sites not demarcated—Scheme ultra vires—Calcutta Improvement Act (Beng V of 1911), ss 39, 41 and 73*

There is nothing in the Calcutta Improvement Act which compels the Trust to delineate on the plan the building sites before the scheme is submitted to Government for sanction. The owner of certain premises made an application to the Board of Trustees for the Improvement of Calcutta, under s. 73 of the Calcutta Improvement Act, for the abandonment of acquisition in consideration of special payment. Such application was subsequently rejected by the Board, inasmuch as the disputed property was too small to form an independent building site on a 100 feet main thoroughfare and would not fit in with the lay out. *Held*, that the Board came to the conclusion *bona fide*, and as there was no evidence to show that the land was not required for the execution of the scheme within the meaning of sub s. (1) of s. 73, there was no basis for the application to the Trustees, nor was there any ground for complaint in the suit, for the fact that they made enquiries under s. sub-s. (2) of s. 73 did not entitle them ultimately to reject the application on the ground that it did not come within sub s. (1) of that section. **DIPIN DEBARI SINGH v TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA** (1920) I. L. R. 47 Calc. 604

— Recoupment—*Calcutta Improvement Act (Beng V of 1911), ss 42 (a), 73-75 (2),*

LAND ACQUISITION—contd

122—Street scheme— *Affected, meaning of* On the construction of s 42 (a) of the Calcutta Improvement Act 1911 their Lordships of the Judicial Committee held that there was no limitation of severance either in that section or in s 79, and there was no ground for implying any limitation as affecting the authority of the Board of Trustees for the acquisition of land under s 42. The result, in the opinion of their Lordships, was that none of the suggested limitations to the usual and normal meaning of the word "affected" in s 42 was admissible, and that there was no reason, either in the general purpose of the Act or in the special context, that the word should not be construed in its ordinary sense, and that, as so construed, s 42 authorised the acquisition of the land of the respondent, which was inserted in the scheme, because, in the opinion of the Board it would be enhanced in value by its execution. **TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA v CHANDRA KANTA GHOSI (1910)**

I L R 47 Cal 500

OVER RULING I L R 44 Cal 219

—Piecemeal acquisition—Land Acquisition Act (I of 1894) ss 6 to 9, 11 Where there is one holding there cannot be piecemeal acquisition, as the Land Acquisition Act refers only to one notice, one proceeding and one award to be given, taken, and made regarding one holding and one ownership. But when the Collector in obedience to the decision of a Court to which he was subject desisted, pending an appeal from that decision, from proceeding with the acquisition of the portion of the premises affected by that decision, he is not thereby debarred from further proceeding with the acquisition when a Court superior to that which gave the decision declared the latter to be erroneous. **R. C. SEW v THE TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA AND THE LAND ACQUISITION COLLECTOR OF CALCUTTA (1921)**

I L R 48 Cal 892

—Calcutta Improvement Act—(Beng V of 1911)—Calcutta Municipal Act (Beng III of 1899) ss 20, 357, 516—Land Acquisition Act (I of 1894) ss 6(3) 52—Evidence Act (I of 1872) s 4—Proceedings before Land Acquisition Collector—High Court, power of, to restrain further proceedings—Specific Relief Act (I of 1877) s 45 (c) In an application under s 45 of the Specific Relief Act by the owner of certain premises to restrain the Corporation and the Improvement Trust from taking further steps in the proceedings then pending before the Acquisition Collector in the acquisition of the said premises by the Corporation under a Government notification in terms of s 6 of the Land Acquisition Act, it was found having regard to the absence of a sanctioned project on the part of the Corporation or of a scheme on the part of the Trust and having regard to the fact that the Corporation was to acquire and the Trust was to pay, that notwithstanding a Government notification under s 6 of the Land Acquisition Act, the acquisition proceedings should not be continued. *Held*, that though the notification under s 6 of the Land Acquisition Act is conclusive so far as s 4 of the Evidence Act, considered, yet the Court is entitled to enquire into the validity of the steps leading up to the recommendation, and was competent to inquire into the legality or otherwise of the acts of the Corporation and the Trust. *Held*, also, that

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special powers of the Corporation for purposes of acquiring land cannot be used to enable another body to acquire land through them, however estimable the purpose. The power to acquire is limited to cases where the Corporation itself undertakes the work. It was observed that it is to be assumed that the Local Government and the Land Acquisition authorities will stay their hands in view of a decision of the Court, and not be parties to what may be held to be illegal and ultra vires action. **MANICK CHAND MANATA, JARU v THE CORPORATION OF CALCUTTA AND THE CALCUTTA IMPROVEMENT TRUST (1921)**

I L R 48 Cal 916

—Assessment of compensation—Prospective user, it may be taken into account—Land not capable of use as independent brickfield, but wanted for inclusion in existing brick fields, if may be valued as brick field Land Tribunals assessing compensation must take into account not only the present purpose to which the land is applied but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied just as an owner might do if he were bargaining with a purchaser in the market. Where it appeared that the lands acquired could not profitably be used as independent brickfields, but there was trust worthy evidence to show that if the acquired lands had been thrown into the market, adjoining brick field owners would have come forward to purchase them or take leases of them for inclusion in their brick fields. *Held*—That the Court was justified in assessing the value of the lands as brickfield lands. Too much importance must not be attached to evidence of offers in ascertaining the market value of land but the position is different when the question is whether there is a market at all for a tract of land for use for a specified purpose. **MOHINI MOHAN BANERJEE v THE SECRETARY OF STATE FOR INDIA**

25 C. W. N 1002

—City of Bombay Municipal Act (III of 1888) ss 91 and 226—Land Acquisition Act (I of 1894), ss 16 and 31—Land acquired by the Government of Bombay of the instance of Municipality—Effect of acquisition—Feeding of land in Municipality—Municipality empowered to acquire land in addition to that required for its scheme and to sell such additional land—Bombay Rent (War Restrictions) Act II of 1918, s 9—Bombay Rent Act does not override general provisions of the Land Acquisition Act or the Municipal Act—"Sufficient Cause" within the meaning of s 9 of the Rent Act—Leases for fixed period terminate on compulsory acquisition—Monthly tenants under the original leases—Tenants on sufferance not entitled to a month's notice—Ejectment. In pursuance of a scheme for the widening of a street within the Fort, the Municipal Corporation of the City of Bombay, plaintiff No. 1, moved the Government of Bombay to acquire certain buildings on behalf of the Corporation under the Land Acquisition Act. The Governor in Council thereupon issued the necessary notification for the acquisition of the said buildings. Plaintiff No. 2 was the owner of the buildings in the five suits and he had leased them to D for a period of three years from 1st November 1917. D let out different portions of the buildings to the several defendants in the suits on monthly tenancies. By the time the proceedings before the Collector terminated, but before the award was actually published, an

LAND ACQUISITION—*contd*

agreement was arrived at between the Municipality and plaintiff No. 2 whereby in consideration of the plaintiff No. 2 agreeing, *inter alia*, not to claim from the Municipal Corporation the compensation payable to himself and to pay the portion of compensation payable to two other claimants the Municipality agreed to convey to him the residue of the land acquired from him after retaining the portion necessary for the purpose of widening the street, and to give in addition a certain strip of land which the Municipality were to get under an arrangement with a third party. The Collector thereupon published his award. Soon after, the Collector's Surveyor wrote to the Acquisition Officer of the Municipality that plaintiff No. 2 had handed over to him charge of his properties; and he further sent along with the letter a charge receipt for the properties and the same was signed by the Surveyor and the Acquisition Officer whereby it was recorded that they had respectively handed over and taken charge of the said properties. The Municipality thereafter served on 23rd December 1919 notices on the various defendants in the suits to vacate the premises in their occupation by the 31st December 1919 and on defendants' refusal to vacate filed suits against them in ejectment. *Held*, that under s. 16 of the Land Acquisition Act when the Collector made the award he could take possession of the land which thereupon vested absolutely in the Government free from all incumbrances; that the acquisition and the resulting vesting were equally effective and complete in the case of acquisition undertaken by Government on the application of the Municipal Commissioner under s. 91 of the City of Bombay Municipal Act which *pro tanto* modified the provisions of the Land Acquisition Act so as to vest the property in the Corporation instead of in the Government on the payment of compensation awarded, and that no transfer from Government to the Corporation was needed. *Held*, further, that the provisions of s. 31 of the Land Acquisition Act did not apply in the case of acquisitions made by virtue of the provisions of s. 91 of the City of Bombay Municipal Act and payment of the compensation amount by the Commissioner was enough. *Held*, also, that in the case of acquisitions under s. 91 of the City of Bombay Municipal Act, the taking of possession by the Collector and his handing over the same to the Municipality was not necessary inasmuch as the property vested directly in the Corporation without the intervention of the Government or the Collector and the Corporation became entitled to take possession, and that if actual possession was required, the same was given by the Collector to the Municipality as evidenced by the signing of the charge receipt. *Held* further, (1) that the general provisions of the Rent Act could not be held by implication to repeal and override particular and special enactments like the Land Acquisition Act and the Municipal Act, inasmuch as the whole object of such an acquisition was to get the land immediately for useful public purposes and it would be defeating that object to lay down that the public body acquiring the land was not entitled to immediate possession, and (2) that assuming the Rent Act applied for the premises were required by the Municipality for a satisfactory cause in order to enable them to carry out the whole scheme and to fulfil their obligation under the agreement with plaintiff No. 2. *Dodd v. Shepherd* (1876) 1 Fr D 75

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at p 78 followed *Held*, further, that on the compulsory acquisition of the premises, the lease of D terminated and that on such determination the monthly tenancies of the defendants as under-lessees of D also came to an end with the result that the defendants thereafter remained on the premises merely as tenants on sufferance and were not entitled to a month's notice. *PER SETALVAD, J.*—S. 290 of the City of Bombay Municipal Act expressly empowers the Municipality to acquire in addition to the land actually required for widening any public street all such land and buildings outside the intended regular line of such street as it shall deem expedient and to sell such additional land. *THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY v. M. DAMODAR BROTHERS* (1920) I. L. R. 45 Bom. 725

LAND ACQUISITION ACT (I OF 1894).

See APPEAL TO PRIVY COUNCIL

I. L. R. 40 Cal. 21

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1883, AS AMENDED BY BOM ACT V OF 1905) s. 297, 299, 301 I. L. R. 42 Bom. 482

See INTEREST I. L. R. 35 Bom. 255

See LIMITATION ACT, 1908 SEC. I, ARTS. 120, 132, 141 and 144 3 Pat L. J. 522

See MADRAS ESTATES LAND ACT (I OF 1908), s. 6, SUB S (6) AND S. 8 I. L. R. 39 Mad 944

See RAILWAY COMPANY

I. L. R. 43 I A 310

See RAILWAYS ACT (IX OF 1890 AS AMENDED BY ACT IV OF 1896), s. 7 I. L. R. 41 Bom. 291

award, whether a decree—

See LETTERS PATENT CLS 15, 36

I. L. R. 41 Mad 943

proceedings under—

See APPEAL TO PRIVY COUNCIL

I. L. R. 40 Cal. 21

1. — Compensation—Valuation of residential property—Elements to be considered—Evidence before Acquisition Officer—Practice The income of a property whether actual or imaginary is no doubt one of the recognised starting points for a valuation, but it is a mistake to think that it is the only element to be taken into consideration. In the case of residential property, to endeavour to arrive at the market value solely, on the basis of an hypothetical rent may work grave injustice to the owner. There are commodities which may possess a value in the market not for the return they give on capital invested but for the advantages and enjoyment which accrue from their possession. Residential property, in the sense of property which a purchaser wishes to acquire for his own residence is such a commodity. The first question to determine is whether there is a demand, and if there is a demand the original cost is the most important element for consideration. It is the duty of legal practitioners attending before the Acquisition Officer to assist him in arriving at a valuation by putting before him all the information and materials at their disposal. *In the matter of LAND ACQUISITION ACT (In the matter of GOVERNMENT AND SURESHAWAD)* (1909) I. L. R. 34 Bom. 486

LAND ACQUISITION ACT (I OF 1894)—*contd.*

2 ———— "Land"—Acquisition of *outstanding interest* where Government owns *fee-simple*. *Per CHANDAVARKAR, J*—To acquire a land (b. under the Land Acquisition Act) is not necessarily the same thing as to purchase the right of fee simple to it, but means the purchase of such interests as clog the right of Government to use it for any purpose they like. The definition given to the word 'land' in s. 3 (a) of the Act is not exhaustive. The use of the inclusive verb 'includes' shows that the Legislature intended to lump together in one single expression—viz., 'land'—several things or particulars, such as the soil, the buildings on it, any charges on it, and other interests in it, all of which have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require. *Per BATHCHELOR, J*—Government are not debarred from acquiring and paying for the only outstanding interests merely because the Act which primarily contemplates all interests as held outside Government, directs that the entire compensation based upon the market value of the whole land, must be distributed among the claimants. In such circumstances there is no insuperable objection to adopting the procedure to the case on the footing that the outstanding interests, which are the only things to be acquired, are the only things to be paid for. *In the matter of the LAND ACQUISITION ACT THE GOVERNMENT OF BOMBAY v. EASTERN SALEBHAI* I L R 34 Bom 618

3 ————, Collector's award—Government directing Collector to publish his award on a lower valuation. When the Collector, appointed under the Land Acquisition Act of 1894 once makes the enquiry prescribed by the Act and reaches his own conclusion as to the amount of compensation to be awarded to the claimant it is not competent to the Government to set aside the conclusion and to direct the Collector to substitute a smaller amount than that which as the result of his inquiry, he has determined to offer. *Dossabai Bejanji v. The Special Officer, Salsette Building Sites* (1912)

I L R 26 Bom 599

4 ———— Apportionment of compensation—Between zamindar and occupancy ryot, principles of—Value of trees on land acquired to be given to whom. In making an apportionment of compensation for land, awarded under the Land Acquisition Act, between a zamindar and his occupancy tenant, several factors are to be taken into consideration for determining their respective rights in the land such as expenses of cultivation, the fact that the cultivator has a home and a sphere for labour for himself and his family and the nature of the tenure. The principle of *Apprentice Mudali v. Rangappa Nattar*, I L R 1 Mad 367, applied. This decision which apportioned, on the facts of that case, three fifths to the zamindar and two fifths to the ryots was not intended to lay down a general rule applicable to all cases. On the facts of this case their Lordships affirmed the decision of the lower Court which apportioned the compensation given for land in the ratio of three fifths to the ryots and two-fifths to the zamindar. *Raja Rammadavara Tenkalanarasimha Nayudu Bahadur v. Lakshmanrao* (Appeal No. 119 of 1931) *Shama Prasanna Laxa Mazumdar v. Brakoda Sunders Dasi*, I L R 23 Cal 146, *Lakshendra Narain Poy v. Tirumal Sivaswami* I L R

LAND ACQUISITION ACT (I OF 1894)—*contd.*

30 Cal 561, *Rajya Poy v. Secretary of State*, 5 C. L. J. 662, and *Baiba Chandra Chittooradhya v. Rao Jahendra Anth Choudhury*, 7 C. L. J. 284 distinguished on a consideration of the whole evidence in the case, their Lordships affirmed the decision of the lower Court which gave to the ryots the whole value of the trees, (fruit) trees that stood upon the land which was compulsorily acquired. *Saravaya Appaygar v. Orr* I L R 26 Mad 252, and *Boddi v. Godappa v. The Mahorah, a* *for its* *namam* I L R 30 Mad 155, distinguished. *Per CUTLA*. Proceedings under part III of the Act are not by way of appeal and what is contemplated is a new enquiry by the District Judge. *RAMADEVARA V. KATANTARASIMHA NAIKA v. SUBBARAYUDU* (1913) I L R 36 Mad 395

5 ———— Special adaptability of land for purpose required—Where a piece of land is compulsorily acquired by Government for quarrying purposes, its special adaptability for quarrying is an element for consideration in fixing the amount of compensation. *DAYA KUTSAL v. ASSISTANT COLLECTOR, SERAT* (1913) I L R 38 Bom 37

6 ———— Noabad Mehal property—Apportionment of compensation between Government and claimant—Basis of calculation of value of Government interest—Chance of enhancement of rent value of A Noabad Mehal held under Government implies a hereditary and transferable title in perpetuity subject to payment of rent for all lands under cultivation. Where certain properties included in a Noabad Mehal held under the Government were acquired under the Land Acquisition Act. Held that the mere fact that the rent was enhanced did not justify the Court awarding half the compensation money to Government as Government would not in ordinary course increase the assessment unless the assets of the property also increased. That the interest of the Government ought to be measured by capitalising the present rent at 30 years purchase. *JOSEPH CHANDRA PAT v. THE SECRETARY OF STATE FOR INDIA* (1912)

18 C W N 531

7 ———— Objection to award by one of two claimants—Other claimant, if entitled to any portion of the excess amount allowed by Judge on reference. When in a proceeding under the Land Acquisition Act the tenants accepted the Collector's valuation but the landlord objected to it and asked for a reference and the Judge allowed an excess amount representing all the interests in the land. Held that the tenants were not entitled to any portion of the excess amount allowed by the Judge. *SECRETARY OF STATE FOR INDIA v. MANOHAR MUKHERJEE* (1913)

23 C W. N 720

8 ———— Acquisition of lands for building purposes—If lands in a zamindari—Occupancy rights of tenants included—Valuation of lands, mode of—Interests of zamindar and tenant, how valued—Apportionment of compensation—Land whether to be valued merely as wet lands or as house etc. Where wet lands in a zamindari are acquired by the Government under the Land Acquisition Act for extension of the village site the lands have to be valued in the first instance including all interests in it, and the amount as ascertained has then to be apportioned among the parties interested accord-

LAND ACQUISITION ACT (I OF 1894)—contd.

ing to their interest. The proper way of valuing lands with occupancy rights is to ascertain what would be their market value if they were put to the most lucrative use, having regard to their condition, and when they are acquired for building purposes, they ought to be valued as building sites and not merely as wet lands, the fact that neither the landlord nor the tenant can utilize the lands for building purposes without the concurrence of the other, does not make any difference. *Collector of Belgaum v Bhima Rao*, 16 Bom L R 657, and *Collector of Dacca v Hari Das Eynak*, 14 I C 163, followed. *Raja of Pithapur v The Revenue Divisional Officer, Cocanada*, Appeals Nos 371 and 372 of 1916 (unreported), dissented from *Raja of Pithapur v The Revenue Divisional Officer, Cocanada* (1919).
I L R 42 Mad 644

9 Compensation—

The Government acquired certain land containing gravel and laterite, for the gravel for which it had been paying the owner at the rate of six annas per hundred feet. Compensation was assessed on the basis of the average income which had actually been obtained by the owner from lands of this description. On objection that the compensation should have been based upon the value of the entire quantity of gravel and laterite contained in the land at the rate of six annas per hundred cubic feet, held, that the basis upon which compensation had been assessed was correct. *Birabar Narayan Chandra Dhie Nareyda v The Collector*.
2 Pat L J. 147

10 Acquisition of land for quarrying—Principle of compensation—

Value of prospective gravel. When a piece of land is compulsorily acquired for quarrying purposes, its special adaptability for quarrying is an element for consideration in fixing the amount of compensation, in spite of the fact that no one but the local authority for which the acquisition was made, ever made any demand for the land as a quarry, and it is not right to award compensation for it only as cultivable land. *Daya Khush v Assistant Collector, Surat* (1914) 1 L R 38 Bom 37, followed. *Ja. ment of Moulton, L. J.*, in *In re Lucas and Chesterfield Gas and Water Board* (1903) 1 K B 16 at 30, 31, distinguished. The amount of compensation to be awarded is the present value of all the gravel that might be expected to be realized in the future. *Raghunatha Row v Secretary of State for India* (1921).
I L R 44 Mad. 264

s 3(a)—**Per Chandavarkar**

J To acquire land is not necessarily the same, thing as to purchase the right of the fee simple in it but means the purchase of such interests as clog the right of Government to use it for any purpose they like. *The Government of Bombay v Eustali Salenbhai*.
I L R 34 Bom 618

Land, meaning of—Bungalow (a cantonment limits)—Compulsory acquisition—Compensation for building awarded to claimant and for land awarded to Government on the footing that it belonged to Government—Jurisdiction—Appeal by claimant to recover compensation for land—Apportionment of compensation between claimant and Government—Valuation of

LAND ACQUISITION ACT (I OF 1894)—contd.**s. 3 (a)—contd.**

claim—Ad valorem Court fee on memo of appeal—*Court Fees Act (VII of 1870)*, s 3 The claimant owned a bungalow which stood within the limits of Ahmedabad cantonment. The Government having acquired the bungalow under the Land Acquisition Act, the claimant was awarded Rs 4,600 as compensation for the superstructure of the bungalow, and Rs 18,634 were awarded to Government as compensation for the land on the footing that the land being within cantonment limits belonged to Government. The claimant appealed to the High Court contending first that the superstructure was undervalued and secondly that he was entitled to the full compensation for land also inasmuch as under the provisions of the Land Acquisition Act the Court had no jurisdiction to try any question of title or apportionment between the claimant and Government. The memorandum of appeal bore a Court fee stamp of Rs 2 only, as the claim in appeal was treated as one of apportionment of compensation between the claimant and Government. A preliminary point having been raised whether the memorandum of appeal was properly stamped—*Held*, by *Shah and Hayward JJ.*, that the memorandum of appeal should bear Court fee stamp ad valorem on the value of the land claimed, since what was styled as apportionment was really the determination of the amount payable by Government to claimant for the land. On the question, whether proceedings under the Land Acquisition Act were proper to determine compensation when the land was claimed by Government—*Held* by *Shah and Crump JJ.* that in a proceeding under the Land Acquisition Act it is competent to the Court to adjudicate on any question of title to the land acquired or to apportion the amount of compensation for it as between the claimant and Government. *The Government of Bombay v Eustali Salenbhai* (1909) 34 Bom 618 approved. *Per Shah J.*—Under the Land Acquisition Act, what is acquired is the land which includes all that is stated in clause (a) of s 3 of the Land Acquisition Act. But in the case of any land with superstructure thereon in which either the Government have an admitted interest or wherein that interest is a matter of dispute between a claimant interested in the property and the Government it is open to the Government to acquire that property, under the Act. When it comes to a question of determining the market value of the property acquired and the sum payable as compensation for the property acquired to the person having a limited interest in the property it is open to the Court to determine what sum is really payable to the limited owner. The question of title in such proceedings is really incidental to the question of the determination of the market value of the interest of the claimant in the land acquired. *Mangaldas Girdharadas v The Assistant Collector of Prant Anjniabad* (1920).
I L R 45 Bom 277

ss 3 (b) 11, and 31 (1) and (2)—Compensation money deposited in Court under s 31 (2)—Claim of Government to deduct poundage and fees paid by Government on such deposit out of the money deposited—Interest in compensation money—Compensation money how to be apportioned among Government sought under the Land Acquisition Act (I of 1894) to acquire a piece of land vested in the City of Bombay Im-

LAND ACQUISITION ACT (I OF 1894)—*contd.*s 3 (b)—*contd.*

Improvement Trust under Schedule C of Bombay Act IV of 1893, and in the occupation of one Pestonji Jehangir under an agreement with the Improvement Trust under which he had the right to obtain a lease of the land for 99 years when certain buildings had been erected in accordance with the terms of the said agreement. The amount payable as compensation for the land was fixed by the Collector under s 11 of the Act and was apportioned under the same act on between the Government, the Improvement Trust and Pestonji Jehangir. The amount awarded to the Improvement Trust was deposited by the Collector in Court under s 31 (2) of the Act and poundage and fees thereon were paid by Government. Pestonji Jehangir raised objections to the basis on which his claim had been valued but this matter was settled by a consent decree. Government thereon claimed to deduct the amount of the poundage and fees paid by them from the amount deposited in Court. *Held*, that the Court had only power to direct payment of the compensation money without any deduction to the person or persons interested therein and consequently had no power to direct that portion of such money should be refunded to Government as representing the poundage and fees paid by them when the money was deposited in Court. *Semle*. It is possible for a person to be interested in the compensation money within the meaning of cl 11 of the Act without having an interest in the land in the legal sense of the term and that the Collector and the Court should apportion the sum awarded among the persons interested as far as possible in proportion to the value of their interests the market value of which might afford some guide as to the amount to be apportioned in respect of that interest, but only considered in relation to the total sum awarded as compensation. *Pestonji Jehangir Modi, in the matter of (1911)*

I L R 37 Bom 76

s 3 (b), 18

*Award of compensation by Revenue Divisional Officer—Application for reference to Court—Person claiming interest—Power of Collector to refuse to refer—Order refusing reference—Judicial or administrative order—Revision petition to High Court—Power of High Court to revise—Civil Procedure Code (Act V of 1908) s 115—Government of India Act (5 & 6 Geo V, Cap 61) s 107. An order passed by a Revenue Divisional Officer dismissing an application under s 18 of the Land Acquisition Act (I of 1894) for a reference to the Court regarding his award of compensation for certain lands, is a judicial order and is subject to revision by the High Court. *The Administrator General of Bengal v The Land Acquisition Collector, 12 C W R 241* followed. *Leit & Co v Deputy Collector of Madras 20 M L T 388* discredited from S 18 read with s 8 (b) of the Act enables any person, claiming an interest in the compensation who has not accepted the award, to require a reference to the Court; it is no part of the Collector's duty to decide whether the claim is well founded and he is not authorized to refuse to make the reference merely because he may think the claim is not well founded. *PARAMESWARA AYYAR v LAND ACQUISITION COLLECTOR, PALNAT (1918)**

I L R 42 Mad. 221

LAND ACQUISITION ACT (I OF 1894)—*contd.*

s 3 (1) 6—

“Public Purpose” meaning of

The provision of a suitable house for Government Officers in Bombay held to be a public purpose. *HANABAT FRANKS v SECRETARY OF STATE*

I L R 39 Bom. 279

s 6—

Sec 3

I L R 39 Bom 279

s LAND ACQUISITION

I L R 48 Calc 892, 916

s 6 (3), (7) 11, 18 25, 31, 48 and 41 (2)—

Sec LAND ACQUISITION

I L R 44 Bom 797

s 6, 9, 23 (1) (4), 24 (6), 48—

Sec RECOVERY

I L R 45 Calc 343

s 6, 23—

Sec LAND ACQUISITION

I L R 41 Calc 967

s 7—

Sec RAILWAYS ACT (IX OF 1900) s 7

I L R 38 Bom 565

I L R 41 Bom. 291

s 9—

Sec LAND ACQUISITION

I L R 48 Calc 892

*Procedure—Occupier of land sought to be compulsorily acquired—Notice. Under s 9 cl (3) of the Land Acquisition Act 1894 the occupier of land concerning which a public notice has been given under cl (1) of the section, is entitled to such notice as will give him in the same manner as the persons mentioned in cl (2) fifteen days interval in which to state before the Collector the nature of his interest in the land and the particulars of his claim for compensation etc. *KRISHNA SAR v THE COLLECTOR OF BARKILLY (1917)**

I L R 39 All 534

s 9 to 21, 50, 53—

Sec LAND ACQUISITION

I L R 38 Calc 230

s 9 18, 25—Effect of omission of owner to state his claim under s 9—Reference under s 18—Limitation of powers of Judge. The facts that there had been previous negotiations between the Government and a person whose land the Government wished to acquire and that the Government was aware of the price which the owner had asked for the land would not afford a sufficient reason for the owner omitting to put in any claim under s 9 of the Land Acquisition Act 1894, nor relieve the owner from the consequence of such omission as not forth in s 25. *NARAYAN DAT v THE SUPERINTENDENT OF DEHA DUT (1914)*

I L R 37 All 68

s 9 25—Omission to attend in answer to notice—Owner not entitled to claim more than what was awarded by the acquisition officer. It is intended by s 9 cl (2) of the Land Acquisition Act that the owner of property about to be acquired should appear and state his claim in the manner provided by the clause s as to enable the acquire

LAND ACQUISITION ACT (I OF 1894)—*contd.***ss. 9, 25—*contd.***

tion officer to make a fair, reasonable and proper award based upon a proper inquiry after the proper means have been placed before him for holding such inquiry. S. 25, cl. (2), makes the refusal or omission to comply with the provisions of s. 1 (2) without sufficient cause an absolute bar to the obtaining of a greater sum than that awarded by the Collector. **SECRETARY OF STATE FOR INDIA v. BISHAN DAT (1911)**

I. L. R. 33 All. 378

Claim of owner filed beyond time, but no objection raised before Judge—Objection not entertainable in appeal. In a case under the Land Acquisition Act, the owner's claim was not filed until after the period prescribed therefor, but no objection was taken on that score before the Collector. *Held* that it was too late to raise the objection when the case had come in appeal before the District Judge. **LACHMAN PRASAD v. SECRETARY OF STATE FOR INDIA IN COUNCIL**

I. L. R. 48 All. 652

When a claimant appeared before the Collector on the date specified in a notice under s. 9 and probably made a verbal statement but filed his petition of claim next day held that this was sufficient compliance with the notice under s. 9 or alternately "sufficient reason" under s. 25. **GYANENDRA NATH PAL v. SECRETARY OF STATE FOR INDIA**

25 C. W. N. 71

ss. 9 (3) and 45—Notice of award—Want of notice of acquisition proceedings. The Collector's failure to serve notice of the intended acquisition on the occupier or owner, as required by ss. 9 (3) and 45 of the Land Acquisition Act, does not make the subsequent proceedings, such as the award, void so as to entitle the owner or occupier to resist a suit in ejectment. **Ganga Ram Marwari v. Secretary of State for India (1903)**

I. L. R. 30 Calc. 576, followed. HASTURI PILLAI v. MUNICIPAL COUNCIL, ERODE (1920)**I. L. R. 43 Mad. 280****s. 11****See s. 3****I. L. R. 37 Bom. 76****See LAND ACQUISITION****I. L. R. 44 Bom. 797****I. L. R. 48 Calc. 892****15 C. W. N. 87**

Apportionment of compensation by Collector—S. 13 and proviso to s. 31, cl. (2), maintainability of a separate suit by a person dissatisfied with the apportionment but who did not ask for reference to "Court". Some lands were acquired for a Railway and the Collector after serving notice under s. 9 of the Land Acquisition Act on the zamindar and the putindar, apportioned the compensation half and half between them. Neither party applied for any reference to Court under s. 13 of the Act and the putindar withdrew the amount awarded to him. The zamindar thereupon brought a suit for recovery of the amount withdrawn by the putindar on the ground that under the *putni lababiyat* the putindar was not entitled to any portion of the compensation money. *Held*—That the zamindar having been served with notice under s. 9 of the Act was bound to apply for a reference under s. 13 when he was dissatisfied with the award, and

LAND ACQUISITION ACT (I OF 1894)—*contd.***s. 11—*contd.***

he cannot maintain a suit in the ordinary Civil Court to re-open the question. The Act creates a special jurisdiction and provides a special remedy. And ordinarily when jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy such jurisdiction is exclusive and the ordinary jurisdiction of the Civil Court is ousted. Under the third proviso to s. 31, cl. (2), a person who was a party to the apportionment proceedings cannot re-open the question by a regular suit. The proviso must be given a limited application, and it applies only to cases where the person was under a disability or was not served with notice of the proceedings before the Collector. **SATISH CHANDRA SARKAR v. SIR BEJOY CHAND MAHATAB BANARJEE**

26 C. W. N. 506

ss. 11 and 12—A person in possession without payment of rent for 12 years preferred to collateral heir of last male owner. **RAJ BUNS SAHAY v. MAHADEB PRASAD**

20 C. W. N. 829**ss. 11, 12, 18, 31—**

See BOMBAY CITY IMPROVEMENT TRUST ACT (BOM. ACT IV OF 1893) s. 48 (11)

I. L. R. 42 Bom. 54**s. 18—****See s. 3****I. L. R. 42 Mad. 231****See LAND ACQUISITION ACT****I. L. R. 34 Bom. 466****See LAND ACQUISITION****I. L. R. 33 Calc. 230****I. L. R. 44 Bom. 797****1—Hereditary Offices**

Act (Bom. Act III of 1874), ss. 10 and 13—Maharaja's Vatan land—Acquisition by Government—Award—Compensation—Title by adverse possession against Vatan-dars—Collector's certificate—Jurisdiction. Certain land with buildings thereon having been acquired by Government under the Land Acquisition Act (I of 1894), the Assistant Collector passed an award whereby he awarded, by way of compensation, one sum to the owner of the buildings on the land and another to certain Mahar Vatan-dars on account of the land being Maharaj's Vatan. The owner of the buildings having objected to award, the Assistant Collector at the instance of the objector referred the matter to the District Court under s. 18 of the Act. The District Judge found that the objector had acquired title to the land by adverse possession and thus became entitled to the compensation on account of the land as against the Mahar claimants. Subsequently the Collector forwarded to the District Court a certificate issued under s. 10 of the Hereditary Offices Act (Bom. Act III of 1874) that the order for the payment of the compensation to the objector should be set aside in accordance with the provisions of ss. 10 and 13 of the Act. Thereupon the District Judge holding that he had no jurisdiction to decide whether the property was Vatan or not in the face of the Collector's certificate cancelled his order. The objector having appealed against the said order *Held*, restoring the award of the District Court that an award under the Land Acquisition Act (I of 1894) was not a decree or order payable of execution under the Civil Procedure Code (Act V of 1908) and was therefore not within the purview of s. 10

LAND ACQUISITION ACT (I OF 1894)—*contd.*ss. 18—*contd.*

of the Hereditary Officers Act (Bomb. Act III of 1944) *Held* further that the award of the District Court which was the cause of the certificate made it clear that the Maharaja's property had been acquired by the Government by adverse possession before the commencement of the proceedings for the acquisition of the land by Government. *Per curiam*. Even if it could be said that there was any danger of the passing of the ownership by virtue of an execution of a decree or order in the Land Acquisition proceedings it could not be said that that result was arrived at without the sanction of Government who set the machinery of the Act in motion for the acquisition of the land. *And in this* The Collector of Dhule v. P. D. D. 22 Ind. 402 (Calcutta 1940) v. Phakar N. D. 11 P. 410 (1961) *Phakar N. D. 11 P. 410 (1961)* referred to. *LALONA PRAKASHANI CO. v. THE ASSISTANT COLLECTOR, LALONA* (1910)

I L. R. 35 Bom. 146

2. — *Money paid out to one party before reference heard—Power of Court to exercise reference—Inherent power to recover the money* The mere fact that the compensation money awarded under the Land Acquisition Act has been paid out to a party does not oust the jurisdiction of the Civil Court to entertain a reference duly made under s. 18 of the Act. Where the party to whom the money had been paid is found to have no title to receive it the Court to which the reference has been made has inherent power to recall it. In this case, the High Court directed that on failure of the party to restore the money within a time limited the other party would be entitled to recover it in execution. *JOGESH CHANDRA RAY v. YAKUB ALI* (1912)

27 C. W. N. 1037

2. — *Reference to Court for valuation—Duty of Court to see whether the award replaces Collector's award—Effect when evidence exaggerated and unreliable—Compensation payable for land acquired by Government cannot be ascertained with mathematical accuracy and the Court has to see whether the evidence adduced displaces the amount awarded by the Collector* The valuation of the Collector is not displaced by evidence of value given by the claimant which is so exaggerated and reckless that an inference can be drawn therefrom. *HORRIDGE v. SECRETARY OF STATE FOR INDIA* (1917)

22 C. W. N. 639

4. — *Application by claimant for reference on the ground of inadequacy of award—Reference of land to be made and given under s. 18 of the Act—Nothing in the Land Acquisition Act or s. 18 of the Act to state the grounds in detail upon which an application for a reference under s. 18 of the Land Acquisition Act, he claims a larger sum than that awarded by the Collector. *MANABENDRA LAL v. THE SECRETARY OF STATE FOR INDIA* (1917)*

24 C. W. N. 716

5. — *Final award under s. 18 of the Act—Award made by the District Judge and not an appeal. *BHAKTAVATSALA V. RAY v. ARMOH CHANDRA**

I L. R. 26 Mad. 293

6. — *ss. 18 and 26—Whether the Court to which a reference has been made should consider the compensation as a whole or as a part of the property value. Certain land belonging*

LAND ACQUISITION ACT (I OF 1894)—*contd.*ss. 18 and 26—*contd.*

to the appellants was acquired by Government for the new capital of India at Delhi. The Special Land Acquisition Officer made a separate valuation for wells, bauling trees and for the land the total of the various items with 15 per cent addition amounting to Rs. 11,613. The appellants raised objections and a reference was made under s. 18 of the Land Acquisition Act to the District Judge of Delhi who came to the conclusion that, having regard to prices paid for land in the immediate vicinity, the market value of the property acquired was approximately Rs. 10,000 and as that sum with 15 per cent addition amounted to slightly less than that awarded by the Land Acquisition Officer maintained the original award. Against this decision the present appeal was presented, and it was contended that the District Judge had no power to examine the compensation awarded as a whole but should have confined himself to a consideration of the valuation of the various parts into which it had been split up by the Land Acquisition Officer. *Held* that when a case is referred under the Land Acquisition Act, the whole case is referred subject to the limitation in s. 26 of the Land Acquisition Act and not merely any particular objection, and the District Judge was therefore right and in legal bound to consider the question of the compensation awarded in its entirety. *Ganpathrao Dastur v. Deputy Collector of Madras (14 Indian Cases 70)* followed. *British India Steam Navigation Co. v. Secretary of State for India* (1917) I L. R. 39 (Cal. 239) not followed. *ZITTO DIS v. THE SECRETARY OF STATE*

I L. R. 1 Lah. 352

ss. 18, 30—

See *MORTGAGE* I L. R. 42 Cal. 1145

— s. 23—

See *LAND ACQUISITION*

I L. R. 41 Cal. 967

7. — *Compensation—Market value of land—Valuation by sale* The Government acquired land on the banks of the Hugli. The owners objected to the Collector's award. The Special Judge on reference determined the amount of compensation by having his calculations on a system of dividing the land into belts. On appeal the High Court rejected the Special Judge's method of valuation and upon a careful consideration of previous awards and prices realised on sales of land in the neighbourhood and other matters, increased the amount. *Held* on the appeal of the Government to His Majesty in Council that the argument based on the great expense of the Special Judge in such cases amounted to a denial of the right of the High Court to review his finding. The judgment of the High Court which gave due weight to the evidence in the case was affirmed. *SECRETARY OF STATE FOR INDIA v. THE HINDU DISTRICT STEAM NAVIGATION AND RAILWAY CO., Ltd.* (1909)

I L. R. 34 Cal. 967

14 C. W. N. 124

8. — *Although in ascertaining the market value of land sought to be acquired under Act No. I of 1894 the general principle to be applied is that the value of the land should be calculated with reference to the most lucrative and advantageous way in which the land might be*

LAND ACQUISITION ACT (I OF 1894)—*contd*s. 23—*contd*

used, if it is apparent that the use of such land for some special purpose e.g., as building sites, would be permitted, the land should not be valued as if it could be utilized for such purpose *Stobbing v Metropolitan Board of Works, L R 6 Q B 37*, referred to *UJAAR LAL v THE SECRETARY OF STATE FOR INDIA*. I L R 33 All 733

Orchard land, method of valuing In assessing the amount of compensation to be paid on the acquisition of orchard lands, regard should be had to the suitability of the land for orchard purposes. A calculation of the value of ordinary occupancy rights in neighbouring plots and of the value of the trees of which the orchard is composed is not a satisfactory method of arriving at the proper compensation for orchard land, and should only be adopted when there is no possibility of ascertaining the value of lands as orchard lands *ELIAS M COHEN v THE SECRETARY OF STATE FOR INDIA IN COUNCIL*. 2 Pat L J. 615

See LAND ACQUISITION

I L R 41 Cal 967

Market value of land, definition of—How to determine market value, whether with reference to commercial value or abstract legal rights—Tenancy at will, valuation of In a Land Acquisition case there were two sets of claimants, one was a tenure holder and the others were sub tenants in actual occupation of the land acquired. The Collector awarded to the tenure holder the capitalized value of the rent actually recovered by him from the sub tenants. It was contended on behalf of the tenure holder that the award was inadequate. On the other hand, on behalf of the Secretary of State it was contended that at the time when the tenant in occupation transferred his interest in the land to the present occupant the rent being increased from Rs 24 to Rs. 36 per bigha, it was not probable that the rent could be further increased and consequently the capitalized value of this rent was more than adequate. *Held*—That when the rent was enhanced the landlord took premium and did not claim a higher rent as he might well have done if no premium had been paid. Consequently it was not sufficient to award to the tenure holder the capitalized value of the rent as then settled. *Held also*—That the market value means the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land. The Court below in concurrence with the Collector had not awarded any compensation to the sub tenants on the ground that their tenancies were of so precarious a nature that they could not be deemed to have any market value. It was found in evidence that they were tenants at will having no transferable interest in the land, but that their interest in the land was frequently sold and substantial prices were paid by the purchasers who thereupon approached the landlord and got his consent to the sale. *Held*—That the sub tenants had an interest in land which had a market value inasmuch as such sales were common because purchasers were able in usual course to secure recognition from the landlord. *Held also*—That the question of market value is to be determined rather with reference to the commercial value than with reference to any

LAND ACQUISITION ACT (I OF 1894)—*contd*s. 23—*contd*

abstract legal rights. *Held further*—That the view that the value of land should ordinarily be determined as a whole and the question of apportionment of the compensation awarded amongst claimants of different degrees should thereafter be taken into consideration, has not always been accepted in practice. The procedure adopted in the present case, namely, that the market value of the interests claimed by persons who held interests of different degrees in the property acquired has been determined successively and independently of each other has been followed as a matter of convenience *GIRISH CHANDRA ROY CHOWDHURY v SECRETARY OF STATE FOR INDIA IN COUNCIL*. 24 C. W. N 124

Circumstances to be considered by the Court in determining compensation Special use of land (in this case for a Municipal drain) is an important factor and introduces the principle of reinstatement *BARODA PRASAD DEY v SECRETARY OF STATE FOR INDIA (1921)*. 25 C. W. N 677

ss 23 (2) and 32—*Hindu widow—Position of widow under the law prevailing in Bikanir—Mode of calculating the 15 per cent extra allowed for compulsory acquisition* A piece of land with some buildings and trees on it was taken up by Government under the provisions of the Land Acquisition Act, 1894. The land belonged to a Hindu widow, but evidence was given on her behalf that her husband a native country was Bikanir, and that according to his personal law his widow would take an absolute interest in the property left by him and not merely an ordinary Hindu widow's estate. *Held* that the widow was entitled to be paid the whole of the price awarded for the land and not merely to have it invested for her and to receive the interest during her life time. *Held, also*, that the 15 per cent which is to be added for compulsory acquisition was not to be calculated on the value of the land alone but on the combined value of the land buildings, and timber *KRISHNA BAI v THE SECRETARY OF STATE FOR INDIA IN COUNCIL*. I L R 42 All 555

ss 23, 49—*Principles of assessment of compensation—Land forming part of compound of house, but actually in possession of tenants with occupancy rights* The owner of a house with a compound attached to it let out a large part of the compound to agricultural tenants whom he allowed to acquire occupancy rights therein. *Held*, on a question arising as to the principle of assessing compensation for this portion under the Land Acquisition Act, 1894 that so far as the owner's interest was concerned compensation was properly calculated at so many years purchase of the annual profits actually received by the owner at the time of the sale. The owner could not in the circumstances, be allowed to claim compensation as for a building site. *Bombay Improvement Trust v Jathbhoy Irdesair, I L R 33 Bom 483* referred to *ORDER v THE SECRETARY OF STATE FOR INDIA IN COUNCIL (1918)*. I L R 40 All 267

s. 25—

See 0

I L R 33 All 376
25 C. W. N. 71

LAND ACQUISITION ACT (I OF 1894)—cont'd

—s 25 and 31—

See LAND ACQUISITION

I L R 44 Bom 297

—s 26—

See s 18

I L R 1 Lab 352

—s 30—Compensation—Mode of apportioning amount allotted as compensation between different interests Where land which is taken up under the Land Acquisition Act belongs to two or more persons the nature of whose interest there is differs the compensation allotted therefor must be apportioned according to the value of the interest of each person having rights therein so far as such value can be ascertained. *HIRDE NARAIN v POWELL* (1919) I L R 35 All 6

Preference to Civil Court

if filed after payment of compensation to one party by Collector—Order by Civil Court directing Government to pay compensation to party found entitled to it and to realise the amount wrongly paid from the other party property of—Facts to be proved by claimant in order to be entitled to compensation—Road cess return value of to show status as *Likhtajdar* The appellant who was the first party claimed that he had a *likhtaj* title to a land acquired under the Land Acquisition Act The second party claimed as *putndars* and *darputndars* The Collector made an award in favour of the first party and the amount of compensation was actually paid to him On a reference to the Civil Court under s 30 of the Act the Subordinate Judge found in favour of the second party and directed the Government to pay the compensation to them and to realise the amount previously paid to the first party from him. *Held* that though the Land Acquisition Act clearly contemplates that when there is a dispute as to apportionment the reference to the Civil Court under s 30 should be made before any payment has been made, still there is nothing in the Act that prohibits the Land Acquisition Collector from making the reference after payment of compensation to one of the parties When such a reference has been made, it is undesirable that the party who succeeds in showing that the Collector's order was wrong should have to resort to a regular suit to compel the opposite party to refund the compensation on to which he has been held not to be entitled nor can the rights of the opposite party be in any way prejudiced by the reduction of litigation. That the omission of the appellant to file any road cess return with regard to the land went strongly against his claim to have asserted a *likhtaj* title to it The High Court varied the decree of the Subordinate Judge and ordered the first party to pay the amount of compensation received by him to the second party with interest at 6 per cent. per annum from the date of withdrawal. *Held* further that a claimant in a Land Acquisition proceeding can get no share of the compensation on without establishing either title to or possession of the land acquired. *SATISH CHANDRA SETHI v ANANDA GOPAL DAS* (1916). 20 C W N 816

—s 31 cl (2)—

See s 3 I L R 37 Bom 76

See BOMBAY CITY IMPROVEMENT TRUST ACT 1893 s 48

I L R 42 Bom 54

See SHERRATT I L R 40 Cal. 895

LAND ACQUISITION ACT (I OF 1894)—cont'd

—s 31, 32—Debutter lands—Status of *shabats*—Order for deposit of compensation money, there being no person competent to alienate the lands Where certain lands dedicated to an idol were acquired under the Land Acquisition Act and the application of the *shabats* for payment of the compensation money was rejected and an order for deposit thereof in Court was made. *Held* that a *shabari* has no power to alienate the dedicated property in the general character of his rights and the order made was a proper order. *RAN PRASAD NANDI v SECRETARY OF STATE FOR INDIA* (1913) 19 C W N 652

—s 32—

See COURT FEE I L R 39 Cal. 906

See LAND ACQUISITION

I L R 39 Cal. 33

Bhagdari and Narvaders Act (Bom Act V of 1882) s 3—Unrecognised sub-division of a *narva* holding—Compulsory acquisition The provisions of s 32 of the Land Acquisition Act (I of 1894) cannot be made applicable to a case where the land compulsorily acquired is an unrecognised sub-division of a *narva* holding. *Per BATHUR J* The only case contemplated by the *drugi* *tasam* (in s 3 of the Land Acquisition Act, 1894) was the case where the legal estate was in a person possessing only a limited interest while outstanding rights were in a beneficiary or reversioner who upon the exhaustion of the limited estate would become in the words of the clause "absolutely entitled to the land" *ASSISTANT COLLECTOR OF KATRA v VIKRANT DAS* (1915).

I L R 40 Bom 254

—Widow's estate—Purchaser of widow's estate, if may withdraw compensation money—Refund of money withdrawn power of Court to order—Investment of compensation on money A widow's estate in a property was sold without any legal necessity and purchased by the defendant. Subsequently the land was acquired under the Land Acquisition Act and the defendant withdrew the compensation money. In a suit by the reversioners for a declaration that they were not bound by the sale to the defendant and for a deposit of the money in Court for investment in Government securities. *Held* that the defendant could be compelled to refund the money into Court for the purpose of investment and the Court has authority to give directions for proper investment of the money in the interest of the reversioners in accordance with the rules of justice equity and good conscience in the absence of any statutory power. S 32 of the Land Acquisition Act applies to Hindu widows who hold possession of property as limited owners. *Shree Ramesh v Mohan I L R 21 All 354 Shree Prasad v Jaleha I L R 21 All 189* followed. *Mahammad Ali v Ahmmed Ali, I L R 26 Mad. 236* distinguished. Till the money passes into the hands of a person absolutely entitled thereto there is constructive reconversion of it into land. S 32 makes it reasonably clear that although an owner may be deprived of the land for the sake of public purposes the Legislature intended that the protection enjoyed by reversionary heirs when land is in the hands of limited owners should not by reason of the acquisition alone be completely withdrawn. Cases of this kind where land has been compulsorily converted into money stand on a different footing from

LAND ACQUISITION ACT (I OF 1894)—*contd*s 32—*contd*

cases where a Hindu widow inherits moveable property, and the law applicable to the latter case does not apply to the former. *Quare* Whether the Land Acquisition Court could compel refund of the money improperly withdrawn in violation of s 32. *Nobin Kuli v Danalata* I L R 32 Cal 921. *Gobinda Rani v Brinda Rani* I L R 35 Cal 1101 s c 12 C W N 1039 referred to. *MRINALINI DAS v ABINASH CHANDRA DUTT* (1910) 14 C W N 1024

Investment in the purchase of other lands.—If includes erection of buildings. Some lands having been acquired for the Calcutta Improvement Trust a sum of Rs 244,000 was deposited with the President of the Calcutta Improvement Tribunal. The Trustees of the estate to which the lands belonged applied for delivery of the money to them in order that they might erect buildings on the exempted portion. The President refused. *Held* that s 32 of the Land Acquisition Act as amended by the Calcutta Improvement Act provides that the Tribunal shall order the money to be invested in the purchase of other land to be held on like conditions and having regard to the definition of "land" s 32 includes the erection of buildings. *In re GANENDRA MULLICK* 25 C. W. N 597

ss 35 36 (2)—Compensation.—Principle on which it should be awarded. Where culturable land in the hands of tenants was acquired temporarily for the purpose of digging kankar. *Held* that having regard to s 36 of the Land Acquisition Act 1894 such portion of the compensation as might be awarded to the owner for the purpose of restoring the land to its original condition was not assessable until after the term of occupation had expired. In the circumstances of the case also this amount was not rightly assessed on the probable value of the kankar which might hypothetically be extracted from the land. *SECRETARY OF STATE FOR INDIA v ABDUL SALEEM KHAN* (1915) I L R 37 All 347

s 45—

See s 9 I L R 43 Mad 280

s 48—

See LAND ACQUISITION I L R 44 Bom 497

ss 48 and 51—

See LAND ACQUISITION I L R 44 Bom 297

s 49—

Question whether land under acquisition part of house.—Reference to Court.—Refusal by Collector.—High Court if may interfere in revision. Where a Land Acquisition Collector refused to make a reference to the Civil Court under s 49 of the Land Acquisition Act, the High Court in revision set aside his proceedings subsequent to the refusal and directed the Collector to proceed according to law. *The Administrator General of Bengal v The Land Acquisition Deputy Collector 24 Parganahs* 12 C W N 241 followed. *British India Navigation Co v Secretary of State for India*, 12 C L J 505 s c 15 C W N 87 referred to. An application for a reference under the section

LAND ACQUISITION ACT (I OF 1894)—*contd*s 49—*contd*

may be made at any time before the award is actually made. *KRISHNA DAS ROY v THE LAND ACQUISITION COLLECTOR OF PABNA* (1911)

18 C W. N 327

Acquisition of part of a house.—reference to Civil Court duty of Deputy Collector to make.—refusal to refer.—High Court's power to interfere with order of refusal.—Revision. The High Court has jurisdiction to interfere with an order refusing to refer to the civil court a question under the second proviso to sub s (1) of s 49 of the Land Acquisition Act 1894. In making or refusing to make a reference under that proviso the Deputy Collector is a court. *ABASHWATTI PATTA v THE LAND ACQUISITION DEPUTY COLLECTOR OF CHAMPARAN* 2 Pat L J 204

ss 49 (1), 54—

See LAND ACQUISITION

I L R 43 Cal 665

I L R 46 Cal 861

s 52—

See LAND ACQUISITION

I L R 43 Cal 918

s 53—

See RECORDS POWER TO CALL FOR

I L R 43 Cal 239

The Court can enforce refund of compensation money taken from Court in certain instances. *COLLECTOR OF AHMEDABAD v LARAJI MULAJI* I L R 35 Bom 235

Review whether District Judge may order.—Code of Civil Procedure (Act V of 1908) O XLVII. A District Judge is competent to review his own order apportioning the compensation money paid on compulsory acquisition of and between the parties entitled to it. *Pangoon Butatoung Co v Collector of Rangoon* I L R 40 Cal 21 referred to. *SURESH SARTI NARAIN SINGH v BIR SINGH* 5 Pat L J 253

ss 53 54—

See ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904) ss 10 21

I L R 42 Bom 100

Land—Compulsory acquisition.—Compensation.—Award by Assistant Judge.—Appeal to the District Judge.—Second appeal.—Practice and procedure.—Civil Procedure Code (Act V of 1908) ss 98 100. Where an award is made by the Assistant Judge under the provisions of the Land Acquisition Act 1894 and there has been an appeal to the District Judge, no second appeal can lie from the appellate decision. *NATHU BHAI NARAYAN v MANORAS LAL DAS* (1911)

I L R 36 Bom 360

s 54—

See APPEAL I L R 39 Cal 393

See LAND ACQUISITION

I L R 43 Cal 665

I L P 46 Cal 861

I L R 40 Cal 21

See LIMITATION ACT 1908 ART 100

I L R 43 Mad 51

LAND ACQUISITION ACT (I OF 1894)—*contd*— s 51—*contd*

by High Court on appeal—appeals to Privy Council—*Leave to appeal—Letters Patent* 39 An appeal does not lie to His Majesty's Privy Council from the decision of the High Court on appeal under s 54 of the Land Acquisition Act (I of 1894) *Pagoo Palahang Company Ltd v The Collector Bangalore*, 1 I R 49 *Calc* 21 followed *SPECIAL OFFICER, SALSETTE BUILDING STRIKE & DEMONSTRATION* (1913) 1 I L R 37 Bom 605

— *Order of rectification of compensation to be intended in Government securities if appealable—Award what is* An order under s 53 of the Land Acquisition Act by which the sum awarded as compensation is directed to be invested in Government securities is an integral part of the award made in the case and is open to appeal under s 54 of the Land Acquisition Act *TRINAYANI DAS v KRISHNA LAL DEB* (1910) 17 C W N 935

— *Bombay Civil Courts Act (XIV of 1869) s 15—Civil Procedure Code (Act V of 1908) s 96 (1)—Reference to Assistant Judge—Award not exceeding Rs 5,000—Appeal to the District Judge—Second appeal to the High Court not maintainable* A reference having been made in accordance with the provisions of the Bombay Civil Courts Act (XIV of 1869) to the Assistant Judge he tried the reference and made an award under the Land Acquisition Act (I of 1894) which did not exceed Rs 5,000 An appeal was presented against the said award to the District Judge and he having decided the appeal a second appeal was preferred to the High Court *Held* that under s 16 of the Bombay Civil Courts Act (XIV of 1869) the Court authorized to hear appeals from the Assistant Judge's Court where the value of the subject matter was less than Rs 5,000 was the District Court and not the High Court and no second appeal being expressly given by the Act the (second) appeal to the High Court was not maintainable *ARMEDSHOR HANIFHOY v WAMAN DHOUDU* (1913) 1 I L R 38 Bom 337

— *Order allowing withdrawal of money deposited under s 51, if appealable* Under s 54 of the Land Acquisition Act there is no appeal against an order of the District Judge allowing a Hindu widow to withdraw the compensation money deposited by the Collector under s 31 of the Land Acquisition Act. *BHAWA NATH SINGH v BIDHUMUKHI DAS* (1915) 19 C W N 1290

LAND ACQUISITION JUDGE

See LAND ACQUISITION

1 I L R 38 Calc 230

See MORTGAGE —INTEREST

1 I L R 42 Calc 1146

— order of—

See COURT FEE ACT 1870 s 8

1 I L R 39 Calc 806

— *Land Acquisition Judge, powers of—Order for discovery* The Court of a Land Acquisition Judge is a Court of special jurisdiction the powers and duties of which are defined by statute and it cannot be legitimately invited to exercise inherent powers and assume jurisdiction over matters not intended by the Legislature

LAND ACQUISITION JUDGE—*contd*

to be comprehended within the scope of the enquiry before it *Shyam Chander Mardraj v Secretary of State for India* 1 I R 35 Calc 595 *Gajendra Sahu v Secretary of State for India* 8 C L J 39 distinguished It was never contemplated by the statute to authorize the Land Acquisition Judge to review the award of the Collector to cancel it or to remit it to him to be re-assessed or reduced The Court of the Land Acquisition Judge is restricted to an examination of the question which has been referred by the Collector for decision under s 18 and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained or cannot obtain any order of reference *Promotha Nath Mishra v Rakhal Das Addy* 11 C L J 490 followed An order for discovery can be made in a case under the Land Acquisition Act under O A, R 1st Civil Procedure Code *BRITISH INDIA STRAM NAVIGATION CO v SECRETARY OF STATE FOR INDIA* (1910) 1 I L R 38 Calc 230

LAND CESS

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) ART 30

1 I L R 36 Mad 18

LAND ENCROACHMENT ACT (MAD III OF 1905)

See IRRIGATION CESS ACT (MAD VII OF 1863) s 1 PROVISIONAL 2

1 I L R 40 Mad 886

See MADRAS LAND ENCROACHMENT ACT 1133

LAND FOR AGRICULTURAL PURPOSES

See BOMBAY LAND REVENUE CODE s 48

1 I L R 34 Bom 239

LAND-HOLDER

See MADRAS ESTATES LAND ACT (I OF 1908) 1 I L R 38 Mad 33 1155

1 I L R 39 Mad 1018

1 I L R 44 Mad 677

— engagement by with Government—

See MADRAS IRRIGATION CESS ACT (MAD ACT VII OF 1863)

1 I L R 40 Mad 886

LAND IMPROVEMENT LOANS ACT (XIX OF 1883)

— s 7—

See DEKKAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)

1 I L R 40 Bom 483

— s 7 (1) (c)—*Sale under—Loan as first charge on the land—Sale free of prior encumbrances—Improvements effected before receipt of loan effect of—Non completion of improvements within time and extension of time effect of on further advance of loan—Proviso to a section as to use of to interpret the section* A loan advanced under the Land Improvement Loans Act (XIX of 1883) is subject to proviso to s 7 (1) a first charge on the land for the improvement of which the loan is advanced hence a sale under s 7 (1) (c) of the Act to recover the loan is free of prior encumbrances

LAND IMPROVEMENT LOANS ACT (XIX OF 1883)—contd**s 7 (1) (c)—contd**

Neither the fact that a portion of the loan was not repaid has been effected with the help of a private loan before the loan applied for was actually advanced nor the fact that the Government relaxed the rigour of its rules and allowed the borrower an extension of time to utilize the first instalment of the loan before the second was disbursed makes the loan any the less a loan under the Act if in effect the loan was utilized for the purpose for which it was borrowed. Though a proviso to a section cannot be used to extend its operation yet in case of doubt or ambiguity as to the meaning of the substantive part of the section the proviso can be looked to to ascertain its proper interpretation. *West Derby Union v. Metropolitan Life Assurance Society [1897] A.C. 617* followed. *SANKARAN NAMUDURIPAD v. RAMASWAMI AYYAR (1918)*

I L R 41 Mad. 691

LAND LAW IN BENGAL.See **MINEFALLS** L. R. 44 L. A. 246**LANDLORD**See **SPECIFIC RELIEF ACT** ss 9-47
I L R 33 Mad. 452See **TRANSFER OF PROPERTY ACT** s 107
L. L. R. 36 Bom. 500**Interest of—**See **SALE** I L R 45 Calc. 294**right of—**See **CHAUKIDARI CHAKRAY LAND**
I L R 37 Calc. 589**LANDLORD AND TENANT**

Colo

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I L R 35 All. 123

s 31 I L R 40 All. 300

ss 74-75 AND 76

I L R 32 All. 458

ss 79 AND 80

I L R 35 All. 299

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I L R 37 Calc. 57

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I L R 38 All. 228

s 116 I L R 40 Mad. 561

See **FAZENDARI TENURE**

L L R 39 Bom. 316

See **INTERPLEADER**

I L R 37 Calc. 552

See **KABULAT** 2 Pat. L. J. 40See **LAND ACQUISITION**

I L R 45 Bom. 725

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I Arts. 120 AND 144

I L R 42 Bom. 333

See **MADRAS ESTATES LAND ACT (MAD**

ACT 1 OF 1908) s 40 cl. (3)

I L R 41 Mad. 109

See **MINERAL RIGHTS**

I L R 38 Calc. 845

See **ORISSA TENANCY ACT 1913**

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See **PEVAL CODE (ACT XLV OF 1870)**

ss 341-100 I L R 43 Bom. 531

See **PROVINCIAL INSOLVENCY ACT (III**

OF 1907) s. 16 I L R 34 All. 121

See **RENT ACT (BOM. ACT II OF 1918)**

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LANDLORD AND TENANT—*contd*

See SECOND APPEAL.

I L R 39 Calc 241

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I L R 42 Bom. 333

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See TRANSFER OF PROPERTY ACT 1882

s. 111

I L R 35 All. 145

See EVIDENCE ACT 1872

s. 116

I L R 40 Mad. 516

ABANDONMENT

When a tenant having a non transferable occupancy right sells such right to a 3rd person and having obtained a sub lease remains in possession the landlord (in the absence of representation by the tenant of his landlord's title) is not entitled to receive possession as there has been no abandonment. *SEPARANG v PUMDER PAI* 24 C W N 117

ADVERSE POSSESSION

Adverse possession against landlord—Transfer of non transferable occupancy holding in possession for over 12 years—Payment of rent by him as *marfadar*—Suit for ejectment—*Limitation Act (IX of 1908)* Sch. I, Art. 140 Where a person recorded in the record of rights as a trespasser was in possession of the land in dispute for more than 12 years but had once during that period paid rent to the landlord on behalf of the old tenant and taken a rent receipt in which he was described as a *marfadar*. Held that the suit by the landlord for *khas* possession against the trespasser after 12 years was not barred by limitation. *Iskan Chander v Ram Ranjan*, 2 C I J 125 and *Baktoo Singh v Sudhram Ahar*, 8 C L J 557, referred to. *JADU NATH BELAL v RAJ NARAIN MUKHERJEE* (1912) 17 C. W. N. 459

Adverse possession by tenant—Suit for declaration of title to *jailar* and injunction against defendants—Plaintiff's title based on *darpul* lease—Defendants' possession as tenants for 12 years previous to lease—Knowledge, if necessary to constitute possession adverse. Where the plaintiff sued for a declaration of his title to a certain *jailar* and for an injunction prohibiting the defendants from catching fish in that *jailar* and it was admitted that the plaintiff was entitled to an eight annas share of the *jailar* and the plaintiff claimed the other eight annas share under a *darpul* lease granted to them by one R. the *putadar* of the said eight annas share who, it was found, had no possession at the time of granting the lease to the plaintiffs and no knowledge as to who was in actual possession and the defendants proved possession as tenants for 12 years previous to the granting of the lease by R. to the plaintiffs. Held, that the defendants by their possession gained

LANDLORD AND TENANT—*contd*ADVERSE POSSESSION—*contd*

title as against all the world and thus held good as against the person who was in fact their landlord, though he did not know and the defendants' possession was a good answer to the plaintiffs' claim which was equivalent to a claim for *khas* possession. *Iskan Chander v Ram Ranjan*, 2 C L J 125 *Iskharan Singh v Ailmoney Bahida*, I L R 35 Calc 740 s. c. 12 C W N 636, and *Gopal Krishna v Lalraia* 16 C W N 634, followed. *KALI CHARAN SAMA v DABISTUDIN AHMED* (1913) 18 C. W. N. 654

Adverse possession—Title—Under tenant—Purchase of tenancy by a co-purchaser—Incumbrance—Notice of annulment proceeded upon—*Bengal Tenancy Act (VIII of 1885)*, ss. 161 167 When a person has by adverse possession against a sub tenant, acquired a statutory title to a portion of the lands comprised in the sub-tenancy he has an interest in the sub-tenancy, so that when on a sale of the superior tenancy for arrears of rent, the purchaser seeks to annul the sub-tenancy as an incumbrance, such person stands in the position of an incumbrancer and is entitled to notice under s. 167 of the Bengal Tenancy Act. *BAHUSHAN CHANDRA GHONE v SHI KANTA BANERJEE* (1910) I L R. 45 Calc 756

Tenant selling up permanent right of tenancy by adverse possession—Specific notice of such right must be given to the landlord—*Limitation* If a person in occupation of land as a tenant wishes to set up a larger claim of permanent tenancy by adverse possession the landlord must have a specific notice of such a claim and until that is done time does not begin to run against the landlord. *Dudesh v Hanmantha* (1896) 21 Bom 509 discussed. *DABISTUDIN RAM CHANDRA v PADU* (1920) I L R 45 Bom 508

AGRICULTURAL LEASE

Agricultural lease—Days of grace for payment of rent—Forfeiture clause for non payment of rent after days of grace—Relief against forfeiture Courts in India have power to relieve against forfeiture for non payment of rent even in cases where a period of grace is allowed for payment by the lease deed and this rule applies equally to a lease (as in this case) for agricultural purposes. Whether relief against forfeiture should in any particular case be given depends on the facts of that case. *Per HISHADHI AYYAN J.* It is open to Courts to look at legislative provisions regarding the liability of other lessees and tenants as embodying the principles of justice, equity and good conscience. *Per NAYIER J.* When the statute specifically excludes one transaction of the same class as that which is being dealt with from its purview, the — cannot be applied. The Transfer of Property Act cannot be looked to for guidance in the matter of an agricultural lease. *APPAYYA SWAMY v MANIAM MAD BHANU* (1915) I L R. 33 Mad. 834

FLOODING BY SEA WATER—Land rendered unfit for cultivation—Right of leasees to abatement of rent—Duty to avoid lease in *lata*—Transfer of Property Act (IV of 1882) s. 108 cl. II (c)—Principle of the section applicability of it by an inundation of sea-water a portion of lands leased for agricultural purposes becomes unfit for cultivation and the landlord brings a suit to recover

LANDLORD AND TENANT—contd**AGRICULTURAL LEASE—contd**

the whole rent reserved in the lease, the tenant can plead as a defence that he is entitled to a proportionate abatement and is not bound to have avoided the lease *in toto*. The principle of proportionate abatement was recognized in India prior to the Transfer of Property Act, and is in accordance with natural justice. Neither s. 103-B (c), Transfer of Property Act, nor its principle is applicable to cases of flooding by sea water of lands leased for agricultural purposes. *Sheikh Enayutullah v. Sheikh Elahabullah*, (1884) 10 F.R. 469 (Act X Rulings), 42, followed. *SUBRAMANIAM PATTER V KATTANBALI RAMA* (1920)

[I. L. R. 43 Mad. 132]

Annual tenancy—Tenant building on a portion of the land to the knowledge of landlord—Suit in ejectment—Tenant bound to vacate—Landlord bound to compensate in equity for tenant's building. The defendant was for a number of years in occupation of plaintiff's land as an annual tenant. On a portion of the land, the defendant in 1882 erected a building to the knowledge of the plaintiff. The plaintiff after giving notice sued to eject the defendant in 1914 and prayed that the land be restored to him by removing the defendant's building. The trial Court ordered the plaintiff to get possession on paying Rs. 2,000 to the defendant. The appellate Court reversed the decree on the ground that the defendant being allowed without objection to build on a portion of the land, the agricultural lease for a year had become a building lease. On appeal to the High Court. *Held*, restoring the decree of the trial Court, that the plaintiff was entitled to get vacant possession at the expiration of the defendant's term of tenancy, but on the facts of the case he was in equity bound to compensate the defendant for retaining his building. *RAM CHANDRA RAOHUNATH V VISNU BABAI* (1920)

[I. L. R. 44 Bom. 950]

Hut built by tenant—On lands demised for agricultural purposes—Conversion of the hut into a substantial building—Use of the building by the tenant for agricultural purposes—Conversion allowed. A tenant, permanent or otherwise, of lands used for agricultural purposes is entitled to erect even a substantial building for himself to live in and for agricultural purposes. *BRHU MANADU V VITHAL DATTATRAYA* (1918)

[I. L. R. 44 Bom. 609]

ALIENATION**See SUB HEADING LEASE**

21 C. W. N. 117

Position of landlord purchasing rayats' interest. The position of the landlord purchasing the rayats' interest under a private alienation and of the landlord purchasing himself at a sale for arrears of rent, distinguished. *JANAKINATH HORE V PRABHASINI DAS* (1915)

19 C. W. N. 1077

When the landlord purchases at a sale held in execution of a decree possession is delivered to him by the Court as auction purchaser, i.e., on the footing that there is no longer any relation of landlord and tenant between him and the tenant and the possession of the landlord as purchaser cannot be challenged

LANDLORD AND TENANT—contd**ALIENATION—contd**

so long as the sale is not set aside or declared ineffective against the tenants. In the case of a private purchase such as the present there is a relation of landlord and tenant between the Plaintiff and the Defendants and the mere fact that he obtained a *kobala* from one of the heirs of the original tenants cannot take the case out of the purview of Art. 3, Sch. III. *NABIT CHANDRA SAHA V SHEIKH WAJID* 21 C. W. N. 382

BUILDING AND RESIDENTIAL LEASE

Building and Residential Lease—Heritability—Transferability—Transfer of Property Act (IV of 1882), s. 108 (j). Where there is a lease for building and residential purposes, in the absence of any intention to the contrary, indicated either in the terms of the grant or in the nature of the tenancy, the leasehold interest is heritable, and the tenancy does not determine by the death of the lessee, but vests in his legal personal representatives who are entitled to give or receive the usual notice to quit. Such a tenancy, in the absence and any custom or contract to the contrary, is governed by the provisions of the Transfer of Property Act, and is consequently *prima facie* transferable under s. 108 (j) of that Act. *KISHORI LAL ROY CHOWDHURY V KRISHNA-KAMINI CHOWDHURI* (1910)

I. L. R. 37 Cal. 377

CESSSES

1 Cesses, inclusion of, in patta—Payment of cesses for a long time—Effect on legality and enforceability of—Rules for determining whether cesses are legal and enforceable—Madras Estates Land Act (I of 1908), s. 143—Usage—Contract—Cesses called kanganam, kula vellu, tiruppan, etc., nature and legality of. Cesses paid for a long time by the tenant without objection are not necessarily legal and recoverable by the landlord. Such of them as have a direct or proximate bearing on the purposes for which the land was let are *prima facie* legal while those having no such bearing are only recoverable under a contract supported by consideration or under a usage proved or presumed from the nature of the case and long course of payments. *Held* accordingly on the facts of the case and the nature of the cesses in question, that the cesses, called kanganam, kudavettu, melvaram urai, kudivaram urai and swalantram, which were paid for a long series of years out of the gross produce before division thereof between the landlord and the tenant, were legal and recoverable by the landlord, that the cesses, called kangoo and tiruppan, paid out of the kudivaram for a long time were not legally recoverable, and that the cess for the use of the thrashing floor was recoverable unless the tenant had a thrashing floor, in which case the cess ought not to be levied. Rules for determining whether cesses paid for a series of years are legal and enforceable, pointed out. *VADAMALAI THIRUVANATHA SEYUGA PANDIA THEVAR V SANKARANMOORTHY NAIDU* (1918)

I. L. R. 42 Mad. 167

2 Charge for taking landlord's water "rent" within s. 3 (II), Estates Land Act (I of 1908)—Res judicata—Competent to try such subsequent suit in s. 11, Civil Procedure Code (Act V of 1908), meaning of. The words "competent to try such

LANDLORD AND TENANT—contd

CONFIDENTIAL

I L. R 43 Eom 119

LANDLORD AND TENANT—contd

CUSTOM

*Rights of tenant occupy-
ing a house in the abadi—Custom—Evidence—
Nature of evidence requisite to prove custom—
Second appeal.* The High Court, in second appeal,
has jurisdiction to consider the evidence given in
support of an alleged custom and to determine
whether or not that evidence is sufficient in point
of law to establish the custom set up. *Hashim
Ali v Abdul Khamin, I L R 23 All 638*, and
Ram Hils v Lal Bahadur, I L R 30 All 311,
followed. *GIRRA SINGH v HARBOOVIN SINGH*
(1909). I. L. R. 32 All. 125

DIGWARI TENURE

See DIGWARI TENURE.

*Landlord and Tenant—
Digwari Tenure in Manbhurn—Grant of Coal
Mines by Digwar—Grant of Mohiari lease—Mine
rights, right to, under the soil—Suit by zamindar
claiming mineral rights—Parties to suit—Govern-
ment—Digwar appointed and liable to dismissal
by Government.* Though the Digwari tenures in
Manbhurn are similar in some respects to Ghat
wall tenures in Birbhum, as having been originally
granted in consideration of the performance of
military service to which police duties were at-
tached, and as being hereditary and inalienable,
the two kinds of tenure are not analogous. The
Ghatwals had special rights under Regulation
XXIX of 1814 and as to minerals, under Act V
of 1859, and paid rent direct to Government, and
not to the zamindar. The Digwar of Tazra in
Manbhurn, appointed and liable to dismissal by
Government, was the holder of two mouzabs at a
fixed rent payable to the plaintiff (appellant) in
whose zamindari they were situated. He granted
a perpetual lease of the coal mines underlying the
two mouzabs to a coal company. He took possession
and mined and sold a large quantity of coal.
In a suit for a declaration of the zamindar's right
to the minerals under the soil and for an account
and an injunction—*Held* (reversing the decision of
the High Court), that there having been at the
time of the permanent settlement, no separate
settlement with the Digwar of Tazra (if the Dig-
wari tenure then existed which was doubtful
and the mineral rights not being vested in him at
that time, the presumption was that the mineral
rights remained in the zamindar in the absence of
proof that he had parted with them. *Hari Nar-
ayan Singh Deo v Surram Chakravarti, I L R 37
Calc 723, I L R 37 I A 136* followed. *Held*,
also, that it was not necessary to make the Govern-
ment a party to the suit. They had never claimed
the minerals under the mouzabs in suit, nor put
forward any claim inconsistent with the rights
asserted by the zamindar, and the rights of the
Government would not be prejudiced or affected
by the result of a suit to which they were not a
party. *DEBDA PRASAD SINGH v BRAJA NATH
BOSE* (1912). I. L. R. 39 Calc. 698

DISPOSSESSION BY LANDLORD

*Suit by tenant against
landlord for recovery of land—Rules of limitation,
general and special ones of proof as to—Limitation
Act (IX of 1908), Sch 1, Art 142—Bengal Tenancy
Act (VIII of 1882), Sch III, Art 3, ss 184, 550,
291—Character of tenancy, presumption as to—*

LANDLORD AND TENANT—contd.

DISPOSSESSION BY LANDLORD—contd

Area less than 100 bighas. In a suit by a tenant
for the recovery of land of which he had been dis-
possessed by the landlord, the tenant claimed the
land as tenure holder and the defendants con-
tended that it was an occupancy holding. Neither
the character of a tenure holder nor that of an
occupancy *raiyat* was established by positive evi-
dence. The question being what period of limita-
tion was applicable to the case. *Held*, that in the
circumstances of the case there was no statutory
presumption either way. That the general
rule of limitation in suits for recovery of
possession of property was twelve years and that
it is upon the party claiming the benefit of
a shorter period of limitation to establish
that the case fell within the special rule
limiting the period to a shorter time. The de-
fendants having failed to establish the occupancy
character of the holding so as to bring it within
the special rule of limitation under the Bengal
Tenancy Act and plaintiffs suit being within time
by the general rule, the suit was not barred by
limitation. A suit by a tenant to recover lands
from the landlord, of which he alleges he has been
dispossessed, is not a proceeding under the Bengal
Tenancy Act within the meaning of cl (7) of s. 20
of the Act. There is no provision in cl (5) of s. 5
of the Bengal Tenancy Act that when the area held
by a tenant is less than 100 bighas the tenant is to
be presumed a *raiyat* until the contrary is shown.
*TARA NATH CHAKRAVERTY v ISWAN CHANDRA
DAS SARKAR* (1911). 16 C. W. N. 393

EJECTMENT

See EJECTMENT

See LANDLORD AND TENANT (FORFEITURE)

See WAIVER. 2 Pat. L. J. 595

*Suit for ejectment—
Denial of landlord's title—Forfeiture.* Where de-
fendant in a suit for rent by the plaintiff, his land-
lord had denied his title and claimed to hold it under
a third party. *Held*, that in a suit by the landlord
for ejectment of the defendant as a trespasser the
defendant was debarred from pleading his tenancy
and claiming to hold possession on that ground.
*Nilmidhab Bose v Ananta Ram Bagdi, 2 C W N.
755, Fayy Dholi v Aftabuddin Sirdar, 6 C W N.
575, Ramgati Mahur v Prankari Seal 3 C L J.
201, Akater Mistri v Sadrudin Khan, I L R 34
Calc 922*, followed. *Malika Dassi v Malham
Lal Chowdhry, 2 C W N 928*, distinguished.
SHRIK MAIDHAR v RAJANI KANTA RAY (1909).

14 C. W. N. 339

*Co sharers—Notice to
quit.* A notice to quit by some only of the co
sharers, is not sufficient to determine a tenancy.
Gopal Ram v Dikeshwar, I L R 25 Calc 807,
followed. *Dad Aslu v Summersell, I B &
Ad 135* not followed. *SURENDRA NATH ROY v
KRISHNA SAKSHI DAS* (1910). 15 C. W. N. 239

*Presumption as to land-
holders right in the abadi agricultural village—
House site occupied by a person not an agriculturist
nor one of the customary village servants of artisans
—Adverse possession.* In a village which was not
a purely agricultural village, but in which, on the
contrary, some two thirds of the inhabitants

LANDLORD AND TENANT—*contd* EJECTMENT—*contd*

were non agriculturists, certain persons, father and son, were in possession of a house site in the *abadi*. They carried on the occupation of inn keepers and sellers of tobacco and there was no evidence of the origin of their possession or that they ever paid rent to the zamindar or acknowledged his title in any way. The site was sold by the son, and some time after such sale the house or shop thereon having fallen down the zamindar sued to eject the purchasers. *Held* that in the circumstances of the case the defendants and their predecessors in interest, were properly held to have acquired a title to the site by adverse possession. (*Kajju Singh v Kanthia*, *All Weekly Notes* (1931) 114 and *Bhaddar v Khar ud-din Hussain*, *L R 29 All 133* referred to *INCHA RAM v BANDI ALI KHAN* (1911) **I L R. 33 All 757**

Evidence Act (I of 1872) as 11, 13 32, cl (2) and (3)—*Deeds not inter partes, admissibility*—Description of boundaries in sales and mortgages of adjoining plots—Statements against pecuniary interest. In a suit to eject the defendants as trespassers the latter set up title as tenants in occupation of the land. *Held*, that recitals of boundaries in deeds of sales and mortgages executed by owners of adjoining plots of land and describing the disputed land as the tenanted land of the defendants or their predecessors were relevant s 32 (3) of the Evidence Act though not under s 32 (2) or 11 or 13 of that Act. (*Sheonandan Singh v Jeonandan Dasaad*, *13 C W N 71* *Singpuria v Harimappa* *I L R 23 Bom. 63* *Haji Bibi v Ali Khan* *11 Bom L R 499* *Abdul Aziz v Ibrahim* *I L R 31 Cal 985* referred to *ABDULLAH v AHMED BEHARI LAL* (1911) **16 C W N 252**

Suit for Ejectment—*Tenant's claim to hold more land than included in lease*—*Limitation—Onus—Limitation Act* (XV of 1877) s 41 Art 142. In a suit by the zamindars for ejectment the defendants claimed to hold seven *puras* of land as *mokurari chak* under a *sauad* of 1740 renewed in 1815 which purported to grant only two *puras*. The defendants also pleaded limitation. The boundaries of the *mokurari chak* on three sides were specified in the *sauad* and were identifiable but the other boundary was described as an *ail*. The plaintiffs failed to prove that they or their predecessors ever had possession of any portion of the seven *puras* since the *sauad* was originally granted and they also failed to show what was the eastern boundary if it was not the *ail* pointed out by the defendants. If it accepted would make the lands seven *puras*. *Held*, that the plaintiffs having failed to prove that the lands in suit were not covered by the *sauad* and that they had been dispossessed or that their possession had been discontinued within 12 years before the suit, it was properly dismissed. It lay upon the plaintiffs to prove not only *title in against the defendants* to the possession but to prove that the plaintiffs had been dispossessed or had discontinued to be in possession of the lands within 12 years of the commencement of the suit. (*DHARANI KASTA LABRI CROWDURI v BABAR ALI KHAN* (1912) **17 C W N. 389**

Tenancy termination of, by notice to quit—Tenancy outside Transfer of Property Act (IV of 1922)—*Sufficiency of notice*

LANDLORD AND TENANT—*contd* EJECTMENT—*contd*

Service by registered post—Proof—Endorsement of tender and refusal by postal officers, if sufficient—*Terminancy of tenure, question when one of law—Second Appeal*. The rule which has generally been applied to cases outside the Transfer of Property Act in connection with the sufficiency of a notice to quit is that the notice is not to be a reasonable notice. The tender to and refusal by the defendant of a cover sent by registered post and containing the notice to quit was sufficiently proved by the endorsement on the cover or envelope stating the defendant's refusal to receive the document. (*Jogendra Chander Ghose v Dwarka Nath Karmakar*, *I L R 15 Cal 631*, followed. A finding of the lower Appellate Court that a tenure is not permanent if and when open to be second Appeal dismissed. *DURGIA NATH PARAMANICK v RAJENDRA NARAYAN SAMA* (1913) **17 C W N 1078**

*Ejectment—Purchaser of non transferable occupancy holding, possession for more than 12 years—Rent payment as *marfadar*—Tenant, recognition by land lord—Possession, if adverse—Limitation, if would extinguish right or create limited interest and tenancy*. A plaintiff suing in ejectment a purchaser of a non transferable occupancy holding cannot succeed (unless he makes out a case under s. 18 of the Limitation Act) where his right to possession accrued long before 12 years of the commencement of the suit. Where the defendant had paid rent for more than 20 years and the rent had been received by the landlord from the defendant as *marfadar* of the original tenant who had no transferable right a Court would be slow to hold that a complete extinguishment of the plaintiff's right took place by adverse possession and prefer to hold that the statute of limitation created a limited interest and tenancy. The mere fact that in rent receipts the word *marfadar* is used is not conclusive to show that there was not recognition and the Courts should determine in each case whether on a consideration of all the facts, not merely by giving undue weight to words used a legal inference is or is not to be drawn that there has been a recognition establishing a relationship of landlord and tenant between one who has paid and another who has received rent for a number of years. (*PRABHAKARTI DASJI v TAIBATUNNESSA CROWDCHAKRI* (1913) **17 C W N 1088**

Landlord and tenant—Right of leasee after expiry of lease, to eject a trespasser. Where a lessee whose lease had expired prior to suit sued for possession of the land leased to him, from a trespasser. *Held* that the expiration of the lease did not necessarily imply the expiration of lessee's right of possession and the lessee was entitled to a decree for possession as against trespassers a fortiori where the landlord acquiesced in plaintiff getting a decree. (*Gibbons v Buckland* *L R 12 Exch 126*, and *Smith v Clarke* *25 Q B D 294* referred to *VENKAYYA v SATTEYYA* (1914) **I L R. 37 Mad. 281**

What was held in *Rajendra Kumar Das v Mohini Chandra Ghose* *3 C R. N 763* was that when a tenant has been in possession of land ostensibly as part of an admitted tenure it lies upon the landlord in a suit in ejectment to prove in the first instance that the land is his *khas* property. It

LORD AND TENANT—contd

EJECTMENT—contd

the law that because a defendant is found tenant of some land under the plaintiff, it is thereby cast upon the plaintiff to show that the land he seeks to recover is the tenancy of the defendant. The burden ordinarily is on the defendant to show tenancy under which he claims to hold. *da Lal Goswami v. Jaynagar Haldar, N. 105*, and *Skedoni Roy v. Chatterbhuj T. L. J. 376*, referred to. **PROFAR CHANDRAN JUDHISTIR DAS (1914)**

19 C. W. N. 143

Onus, of on landlord to prove tenancy. The mere fact defendant holds some land under the plaintiff would not be sufficient to shift the burden of showing proof of any other land in the zamindari defendant may be found to be in possession of, he has no right as tenant. The burden of proof in a case like this is on the tenant. The principle laid down in *Ritoyo Krista Mishra's case, 12 C. L. R. 457*, throwing the onus on the plaintiff should be held applicable to cases where the land sought to be recovered is admitted by the plaintiff to be contiguous to the holding of the defendant, or that it has come to his possessions by encroachment. **GORTI DEVI v. RAM TAPAR TEWARY (1911)** . 19 C. W. N. 140

Suit for—Lease of land for residential purposes—Law before the Transfer of Property Act (IV of 1882)—Onus to prove transferability—Presumption of transferability, if arises from long continued possession. The effect of the recent decisions is that when a landlord sues a person on the allegation that he is a trespasser and that person sets up a transfer from a tenant, it is for the latter to prove, first of all, the tenancy and, secondly, the validity of the transfer. With regard to tenancies of homestead land created before the Transfer of Property Act, the tendency of these decisions has been to establish that in the absence of evidence to the contrary, the burden of proof being upon the tenant, these tenancies are non-transferable. *Benee Madhab v. Joushassen, 12 B. F. 495*, and *Durga Pershad Misar v. Bindaban Sookul, 15 B. P. 274*, referred to and doubted. The only exception made to the above rule is when there has been an erection of pucca buildings or a standing by on the part of the landlord while the tenant spends a large sum upon the land. *Madhu Sudan Sen v. Damini Kanta Sen, I. L. R. 32 Cal. 1023*; s. c. *9 C. W. N. 895*, and *Nabu Mandal v. Cholim Mullik, I. L. R. 25 Cal. 896*, s. c. *2 C. W. N. 405*, relied on. Mere long continued possession cannot give rise to a presumption of transferability. **AMBICA PRASAD SINGH v. BALDEOLAL (1916)**

20 C. W. N. 1113

Suit for ejectment—

Notice to quit—Tenancy reserving an annual rent—When notice a tenant holding an annual tenancy is entitled to—Transfer of Property Act (IV of 1882) ss 106, 107. The defendant's brother, one Chandu, by a registered *kabulyat*, took a lease of 2 cottages of land from the landlord, at an annual rental of Rs 12 for residential purpose. On the death of Chandu, his heirs, including the defendant, continued to live on the land and, subsequently, the defendant's name was substituted in the landlord's *shewala* as tenant in respect of 2

LANDLORD AND TENANT—contd

EJECTMENT—contd

cottages of land at an annual rental of Rs 15. Thereafter, the landlord executed a registered *patta* and let out one bigha of his lands, including the defendant's portion, for a period of 30 years, to one Sheikh Fasilulla, who accepted the defendant as tenant of a portion of it. Fasilulla then transferred his interest to one Mamsa, who, subsequently, sold the same to the plaintiff. On the defendant's failure to pay rent for the 2½ cottages of land, the plaintiff on the 10th Kartick, 1318, corresponding with the 27th October, 1911, served the defendant with a notice to vacate the land within the 30th Kartick, 1318, corresponding with the 10th November, 1911. The defendant failed to comply with this notice. The plaintiff, thereupon, brought a suit for ejectment and *khaz* possession and for arrears of rent. **Held**, that the rent being an annual rent and there being nothing to rebut the presumption in such a case that the tenancy was of a character corresponding thereto, the presumption ought to be drawn that the tenancy was to be an annual tenancy. *Durgu Nikarasi v. Gokardhan Bose, 20 C. L. J. 448*, referred to. **Held**, also, that inasmuch as there was a contract of tenancy between the plaintiff and the defendant, but there was no registered instrument as required by s 107 of the Transfer of Property Act, this case came within s 100 of that Act. **Held**, further, that inasmuch as this was a lease of immovable property and not for agricultural or manufacturing purposes, but for some other purpose it must be deemed to be a lease from month to month terminable on the part of either lessor or lessee, by 15 days notice expiring with the end of a month of the tenancy. **SHEIKH AKLOO v. SHEIKH IMAN (1916)**

I. L. R. 44 Cal. 403

"Taluka" patta

if imports permanency—Covenant by tenant to relinquish land on grantor personally requiring it if runs with the land—Grant to be construed against grantor—Rule explained—Land encroached upon by tenant and treated by landlord as part of permanent tenancy—Tenant, if may be ejected therefrom. If there be nothing either in the surrounding circumstances or in the instrument which creates the interest, to show that it was intended to be otherwise, the inference is that a tenancy called "taluka" constitutes a permanent tenure. Where in a contract of tenancy *prima facie* purporting to be a permanent tenancy, there was a covenant that "if the grantor had a personal necessity, the grantee would relinquish the land" **Held**, that the covenant was in favour of the grantor personally and was not enforceable after his death by his heir. Scope of the rule that a covenant is to be construed most strongly against the grantor and most beneficially in favour of the grantee explained. The tenant aforesaid having encroached upon land belonging to the landlord, the landlord did not within the statutory period from the date of encroachment institute a suit to eject the tenant on the ground that he could not, without his consent, acquire the status of a tenant on the land encroached upon, but on the other hand treated it as part of the permanent tenancy; **Held**, in a suit for ejectment, by the heir of the grantor, that the land originally leased as well as the encroached land stood on the same footing and the tenant could not be ejected from

LANDLORD AND TENANT—contd

EJECTMENT—contd

other of them SARODA KRISHA LAHA v AKRIL
ANDHUR B SWAS (1917) 21 C. W. N. 993

Ejectment of tenant, effect—*Suspension of rent* The eviction of the tenant either from part of the demised premises or from the whole entails a suspension of the entire rent while the eviction lasts, whether the tenant remains in possession of the residue or not, the tenancy, however is not thereby terminated nor is the tenant discharged from the performance of his covenants other than payment of the rent such as a covenant to repair. It is not necessary for the application of the rule to find from how much land the tenant has been dispossessed if it is found that he has been dispossessed from some land. To constitute an eviction it is not necessary that there should be an actual physical expulsion by force or violence from any part of the premises. Any act of a permanent character done by the landlord or his agent with the intention of depriving the tenant of the enjoyment of the demised premises or any part thereof operates as an eviction. Therefore, whether the tenant is expelled by violence or is obliged from the exigencies of the situation to submit quietly to the high handed act of the powerful landlord, the result in either case is suspension of rent. DWILAK DEO NATH RAY v AFFARUDDI SARDAR (1916) 21 C. W. N. 492

Tenant resident at house with fruit bearing trees if governed by Bengal Tenancy Act or Transfer of Property Act—*Land with house and used for residential purposes with fruit-bearing trees*—*Nature of tenancy*—*Presumption of permanency when can be drawn*—*Dakhsalas stating tenant to be tenant at will, value of* The fact that a portion of a holding used for residential purposes is planted with fruit bearing trees does not alter the character of the holding and the case is governed by the Transfer of Property Act. Where in a suit for ejectment, the Plaintiff produced *dakhsalas* shewing that the predecessors in interest of the Defendant were tenants at will, and it was found that the tenancy held by the Defendant existed in 1884 and there was nothing to shew that it existed before that year, and the Defendant urged that under the circumstances there was a presumption that the tenancy was much older and in its origin it was intended to be permanent *Held*—That the evidence afforded by the *dakhsalas* was not to be regarded as conclusive, but the lower Appellate Court was right in holding that the Defendants' tenancy was created after the passing of the Transfer of Property Act, and that quite apart from the entries in the *dakhsalas* the circumstances of the case did not warrant the presumption that the tenancy was in its origin of a permanent character. *Surendra Nath Roy v Dhurukanath Chakravarti*, 24 C. W. N. 1 (1919), referred to *Moharam Chappam v Telamuddin Khan*, 16 C. W. N. 567 (1911) distinguished. *SRIMATI SAKUNALA DEBI v SRIMATI ANALA DEBI* 25 C. W. N. 378

When the Kalyan provides ejectment as a remedy for a breach of its conditions that is not the only remedy and damages can be claimed. *KRISHNA DAS ROY v MONENDRA CHANDRA* 25 C. W. N. 930

LANDLORD AND TENANT—contd

ENCROACHMENT

By tenant ensure for the benefit of the tenant during his tenancy and afterwards for the benefit of the landlord—*Adverse possession* Possession by a person will be presumed to be held in his own right and adversely to the true owner. This presumption will not apply when a special relationship exists between the parties, as tenants in common or members of an undivided family. The presumption in such cases will be that possession is held on behalf of all the co-owners or members of the family and it will lie on the possessor to prove that he held exclusive possession to the knowledge of those whose right he seeks to affect by such possession. Where a tenant taking advantage of his position as such, takes possession of lands belonging to his landlord not included in his holding, the presumption is that such lands are added to the tenure and form part thereof for the benefit of the tenant so long as the holding continues and afterwards for the benefit of his landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit. *Guroo Doss Poy v Issur Chander Bose* 22 W. R. 246 approved. It is not necessary that the tenant trespasser should prove that his trespass was known to his landlord to justify such presumption. *MUTHURAKKOO THEVAR v OMR* (1912) I. L. R. 35 Mad. 618

Encroachment by tenant—*Adverse possession of encroached land as tenant if creates title*—*Landlord's right to recover possession when barred*—*Limitation Act (XV of 1877), Sec. 11 Act 144*—*Interest acquired by tenant* While a tenant is bound to treat that which is an encroachment on his landlord's land as held by him under his landlord the landlord is not bound to treat the land on which his tenant encroaches as held under a tenancy. But the landlord's right to recover possession of the land encroached upon may be lost by the tenant having adversely to the landlord asserted his title as tenant to the land for more than twelve years. Under Act 144 of the Limitation Act there may be adverse possession not only of immovable property but of any interest therein, and tenant may claim to have been in adverse possession for 12 years of a limited interest in encroached land, viz., a tenancy commensurate with that in the admitted lease between the parties. *GOPAL KRISHNA JANA v LAKSHIRAM SARDAR* (1912) 16 C. W. N. 834

Encroachment by tenant upon land not his landlord's—*Tenant if may keep land in a suit by owner to recover*—*Bona fide possession under a de facto landlord*, what amounts to—*Possession by de facto landlord and settlement of encroached land with tenant to be proved* The principle of the Full Bench decision in *Binod Lal Palraski v Kala Pramanik*, I. L. R. 20 Cal. 703, only applies where raiyats are settled upon land by a person in *de facto* possession as landlord, who is afterwards found to have no title. It is not applicable in every boundary dispute or in every case where a question of parcel and no parcel arises. Where in a suit by the owner, D, to recover land from C, who held other lands as A's tenant, it was not found that the disputed land was ever in A's possession or that it was included in the area settled by A with C, but C appeared to have encroached upon the land in

LANDLORD AND TENANT—*contd.*ENCROACHMENT—*contd.*

such circumstances as to raise a presumption that the encroachment would enure to A's benefit and become an accretion to C's holding under A: *Held*, that though A might perhaps be described a *Cs de facto* landlord, it could not be said that the land was settled with C by A, and there is nothing in the Full Bench decision to prevent B from suing to recover possession from A and C. *TEPU MAHAMMAD v. TEPAJET MAHAMMAD* (1915)

19 C. W. N. 772

ENHANCEMENT OF RENT

Waiver—Enhancement of rent—Bengal Tenancy Act (VIII of 1885), ss 43, 108—Chur lands—Right of Occupancy A took a lease of a certain Government *has mehal* and executed a *labuliat* in favour of the Collector by which he (A) covenanted not to raise the rents of rayats beyond the amounts mentioned in the settlement *jumabandi*. The tenants, however, subsequently agreed to pay rent at an enhanced rate on the ground that the fertility of the land had been increased. Upon a suit for arrears of rent at the enhanced rate against the tenants, the defence was that A was bound by the *labuliat* executed in favour of the Collector, and as such he was not entitled to a decree at the rate claimed. *Held*, that, inasmuch as the tenants voluntarily agreed to an enhancement of rent, they deliberately waived the benefit of the said covenant, and they could not impeach the validity of their own agreement on this particular ground. *Zamir Mandal v. Gopi Sundari Das*, 1 L R 32 Calc 463 (note), referred to. Under s 180 of the Bengal Tenancy Act, a rayat holding a *chur* land, but who has not acquired a right of occupancy, is liable to pay such rent for his holding as may be agreed on between him and his landlord, irrespective of the provisions of s 43 of the Act. *JAHANDAR BAKSH MALLIK v. RAM LAL HAZRAH* (1910)

I. L. R. 37 Calc. 449

Rent in kind—Enhancement of rent by addition of a rent-in-kind—Bengal Tenancy Act (VIII of 1885) s 29 S 29 of the Bengal Tenancy Act applies even where a money rent is enhanced by the addition of a rent in kind. *KISHORI MONDOL BOSE v. SHEIKH USIR* (1910)

I. L. R. 37 Calc. 610

Prevailing rate of rent—Occupancy rayats—Enhancement of rent—Proof of rise in price of staple food-crops, how ascertained and Court's duty in the matter—Prevailing rate for similar land in same or neighbouring villages with same advantages—Bengal Tenancy Act (VIII of 1885), ss 29, 30, 32, 39 In a suit for enhancement of rent under s 30 of the Bengal Tenancy Act, it is the duty of the Court to refer to the price lists prepared under s 39, whether the parties to the suit produce these or not. It is right and proper that the Civil Court, in directing a local investigation under s 31 (d) should indicate to the officer holding the investigation what it is that the Court precisely requires. Where the Court is satisfied that all the rent in the village should be excluded from consideration in finding out the prevailing rate in the village, because it is fixed in a mode which contravenes the provisions of s 29 of the Bengal Tenancy Act, then an enquiry should be directed which will bring to light the prevailing rate of rent paid by occupancy rayats for lands of a similar

LANDLORD AND TENANT—*contd.*ENHANCEMENT OF RENT—*contd.*

description and with similar advantages in the neighbouring villages. *NABIN CHANDRA SHAN v. KULA CHANDRA DHAR* (1910)

I. L. R. 37 Calc. 742

Contract between landlord and tenant—Right to enhance rent—Expression "putai taluk" whether imports fixity of rent—Hereditary tenure whether implies fixity of rent—Evidence of conduct when admissible In a lease granted in 1823, there was a clause as follows— "I (tenant) shall pay the annual rent of Rs 175 8 as 12 gds year by year and month by month as per dowl in the *has taluk*." In another clause it was stated "I shall continue to be in enjoyment, down to my sons, grandsons, etc., on receipt of the *talukdars* rents according to custom on account of tanks, bheries, etc., lying in the village." The landlord in a proceeding under s 106 of the Bengal Tenancy Act alleged that the rent was enhanceable while the tenants contended that the tenure was not merely hereditary but was held on a rent fixed in perpetuity. *Held*—That unless the landlord is precluded from the exercise of the right of enhancing rent by a contract binding on him or the lands in question can be brought within one of the exemptions recognized by Bengal Reg VIII of 1793 he may be presumed to have the right of enhancing rents. *Bama Sundari v. Radhika Chowdhram*, 13 M I A 248 (1869), followed. *Held*—The expression *putai taluk* in the contract did not import that the tenure was not merely hereditary but was held on a rent fixed in perpetuity. The mere fact that a tenure is hereditary does not show that rent of the tenure has been fixed in perpetuity. In the present case although there were expressions which showed that the tenure was *mawrasli* there was nothing to show it was intended to be *makurisi*. *Tarnacev Watson*, 12 W R 413 (1869) and *The Port Canning and Land Improvement Co. Ltd v S M Kalyanas Deb*, 1 L R 47 Calc 280 s c 24 C W N 369 (P C) (1919), distinguished. *Held also*—If the terms of the contract are ambiguous the rights of the parties may be determined with reference to the conduct of the parties but in any case where the terms are unambiguous no evidence can be given of the conduct of the parties in contravention of the terms of the contract. *Hebbert v Purchase*, L R 3 P C 605 (650) (1871) and *N E Railway v Hastings*, [1900] A C 260 (263) referred to. *BRUPENDRA CHANDRA SIKOH v. HARINATH CHAKRA VARTY* 24 C. W. N. 874

In a suit for rent at an enhanced rate on the ground of additional lands it is sufficient if the landlord can establish that since the creation of the tenancy rent has been assessed and when last assessed it was on the basis of a certain area and that defendants are in possession of land on which no rent was assessed at the time. *DURGAPATTA CHOI DEVI v. NAYRA GAIN AND ORS* 25 C. W. N. 204

FORFEITURE.

See *BOMBAY RENT ACT*, 1918, ss 3, 9 AND 12. I. L. R. 45 POND. 535

See *LANDLORD AND TENANT (TITLE)*

See *TRANSFER OF PROPERTY ACT*.

Forfeiture clause contained in a decree—Execution proceeding—Power

LANDLORD AND TENANT—contd.**FORFEITURE—contd.**

of the Court to grant relief. The principle that Courts of equity will not forego their power to grant relief against forfeiture in the case of non payment of rent where the relations of the parties are those of landlord and tenant, merely on the ground that the agreement between them is embodied in a decree of the Court applies alike to a suit to enforce a decree and to proceedings in execution. *Krishnaiah v Hari* I L R 31 Bom 15 explained. *Balambhat v Vinayak Ganpatray* (1910)

I L R. 35 Bom. 239

Lease before Transfer of Property Act IV of 1882 forfeiture of—Suit for ejectment by landlord, maintainability of with out subsequent act evincing intention to forfeit—Waiver—Claim for rent in suit for ejectment does not amount to waiver. Under the law applicable to leases before the Transfer of Property Act forfeiture is incurred when the denial of title occurs, any subsequent act of the landlord electing to take advantage of the forfeiture is not a condition precedent to the right of action for ejectment. The bringing by the landlord of a suit for ejectment is simply a mode of manifesting his election. Where a tenant holding under a lease prior to the Transfer of Property Act denies the title of his landlord, the landlord can maintain a suit for ejectment without having done prior to the suit, any act evincing his intention to determine the lease. A claim for rent in the suit for ejectment will not amount to a waiver of the forfeiture. The election to forfeit is complete and irrevocable when the suit for ejectment is instituted. *Venkatarama Dhalu v Comandaras* I L R 31 Mad 403 considered. *Padmanabhaya v Ranga* (1910)

I L R. 34 Mad 161

Relationship of Landlord and tenant denied in previous rent suit, if can be urged in subsequent suit—Res in locata—Forfeiture of property for denial of landlord's title under Bengal Tenancy Act (VIII of 1885). Where in a suit for rent the defendants denied the existence of the relationship of landlord and tenant and got an adjudication to that effect, in a suit subsequently brought by the landlord for his possession of the land on a declaration of his title. *Held*, that the question as to the relationship of landlord and tenant between the parties was *res judicata* and the defendant could not assert his title as tenant in such suit. *Debiruddi v Abdur Rahim*, I L R 17 Cal 196, *Dhara Kaur v Ram Jewan*, I L R 20 Cal 101, *Mallika Das v Matham Lal Chowdhry* 9 C W N 923, distinguished. *Serikhi Abadkar v Rajani Kanta*, 14 C W N 339, referred to. *Ekambhar Shrinivasa v Hara Bawa* (1910)

15 C W. N. 335

Landlord and Tenant—Ejectment—Recorded Tenant—Effect of denial of tenancy by him on his unrecorded co sharer—Forfeiture. In a suit for ejectment based on the ground of forfeiture by reason of the denial of the landlord's title, it was found that the denial was by the recorded tenant and not by his unrecorded co sharer in the tenancy: *Held*, that a person representing the tenancy in the books of the landlord, was entitled to bind his co sharers for the purposes of the tenancy; but when he repudiated the tenancy, he must be taken to have acted beyond the scope of his authority; his disclaimer

LANDLORD AND TENANT—contd.**FORFEITURE—contd.**

consequently, could not operate as a forfeiture of the tenancy. *Pitendrabh Kichore Mahikya v Bhuraneswari* (1912) I L R. 39 Cal. 903

In order that a denial of landlord's title should work a forfeiture three things are necessary (1) the tenant must set up title either in himself or a third party inconsistent with the mutual relationship; (2) the denial must be direct and unequivocal and not casual and (3) it must be made to the knowledge of the landlord. *Kizhakkankuthi Kernaloot v Pulikkalakkuthi Mahamed* I L R. 41 Mad 629

Forfeiture of lease by non payment of rent—Relief against forfeiture only on payment of all arrears of rent though barred by limitation—Transfer of Property Act, s 114. Under s. 114 of the Transfer of Property Act a tenant can be relieved against forfeiture of lease incurred by non payment of rent only on payment of all arrears of rent, including such as may be barred by limitation, together with such interest as might be legally due thereon. *Example.* The arrears of rent so payable will probably be limited to twelve years. *Varaddeva Udaya v Krishna Udaya* (1921) I L R. 44 Mad. 629

A permanent tenancy governed by the transfer of Property Act, 1882, is determinable by denial of the landlord's title. *Bidyā Nath v Kumbhanda Koor*

1 Pat L J. 152

GROVE LAND**See GROVE LAND**

Rights of tenants with regard to groves—Custom—Hajib ul-arz—Construction of document—Malik. The Hajib ul-arz of a village contained the following provision as to grove land:—Persons who have planted a grove and who are in possession of a grove have the rights of an owner (*ikhtiyar mulikana*). If any trees fall down they can plant fresh trees without the permission of the zamindar. When the land becomes denuded of all trees the planter of the grove will have the first right to cultivate the land. *Held*, that these provisions implied a right of transfer in the possessor of grove land. *Muhammad Yasin v Ilahi Bakhsh* (1912)

I L R. 34 All. 545

HYPOTHECATION

Tenant in possession without a patta—Suit to enforce hypothecation of property as security for rent. *Held*, that a hypothecation of other property by certain tenants as security for their rent was none the less enforceable because, though the tenants had executed a *gubali* in respect of the land held by them, no *patta* had been executed by the landlords in their favour. *Sheo Karon Singh v Maharaja Parshu Narain Singh* I L R 31 All 276, referred to. *Emi Krishan Das v Yakub Khan* (1913)

I L R. 35 All 505

IMPROVEMENTS

Tenancy determination—Improvement, non removal of during tenancy—Right to them or their value after determination of tenancy—Transfer of Property Act (IV of

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1882), s 108 (A) The plaintiff's husband took a house site on lease from the predecessor in title of the first defendant in 1883. After 1883 and before 1st May 1898 the plaintiff built a house thereon to the knowledge of the landlord and the lease was renewed by the first defendant on 1st May 1898 in plaintiff's favour who thereby agreed to vacate the land on a month's notice. While the plaintiff was in possession under that lease, the first defendant filed a suit in ejectment in the Small Cause Court, Madras, and though the present plaintiff then set up the claim now advanced, viz, a right to the superstructure built by her or its value, she was ordered without the determination of the right set up by her, to deliver possession of the land on or before the 26th February 1907, and on her failure to do so the first defendant was put in possession on that date. On the 1st August following, the first defendant gave the plaintiff notice to remove the superstructure within a fortnight. She did not do so but in 1908 instituted the present suit for (a) a declaration that she was the owner of the house built by her and for its possession or (b) in the alternative to be paid compensation for it or (c) if that was not granted, to be allowed to remove the superstructure. *WALLIS, J.*, holding that the plaintiff was not entitled to any of the reliefs demanded the suit. *Held* on appeal, confirming the judgment of *WALLIS, J.* (*SANKARAN NAIR, J.*, dissenting), that the plaintiff was not entitled to any of the reliefs asked for. *Held* by the Court, that the landlord was not estopped from disputing the plaintiff's right if any by the mere fact that the house was erected with his knowledge and without any protest by him. *Held* (*WHITE, C. J.*, dissenting), that the tenant was, for the purpose of removing her superstructure, entitled to a reasonable time after the determination of the tenancy whether it is by act of parties or by the order of Court. *Held* by *MILLER, J.*, that the tenant having been given ample time to remove the building after giving up possession through the Court she was not entitled to any further time. *Per WHITE, C. J.*—s 108, clause (A) of the Transfer of Property Act governed the case and the tenant was not entitled to remove the buildings after the termination of the tenancy. *Per SANKARAN NAIR, J.*—s 108 of the Transfer of Property Act is only an enabling section and it did not take away the pre-existing right of the tenant to compensation or to remove building even after the termination of the tenancy if he is not given compensation. The new lease having recognized the tenant's ownership in the house the plaintiff's ownership thereto cannot be defeated by her failure to remove the house within a reasonable time and as such failure cannot effect a transfer of ownership, all that the landlord was entitled to was an option to retain the building and pay compensation for it or to restore the land to its old condition by removing the building and claim damages. *Per MILLER, J.* The recognition by the landlord for the period of the new tenancy, of the tenant's property in the building has no other necessary effect than to prevent the landlord from treating the building as having been surrendered to him at the end of the previous term and it was only a piece of evidence of a contract to allow the removable fixture to remain as such upon the land for the new term. *Ismael Awan Escheran v. Nazareth Sahib, I. L. R.*

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27 *Mad* 211 referred to English and Indian Case Law on the subject, considered *AKGAMMAL v. ASLAMU SAHIB* (1913). I. L. R. 38 *Mad*. 710

INAM LANDS

Inam Register—Object of mentioning the tax payable for the land—Inam authorities, duties of—Right of melvaramdor to trees in case of lands which were topos at the Inam Settlement In cases where the holding of a tenant was at the time of the Inam Settlement and has subsequently been a tope consisting of trees the melvaramdor has a right to a portion of the value of the trees and the ryot is not entitled to cut them down for his sole appropriation, the portion due to melvaramdor being determinable according to the evidence. The incidents of the tenure of a tenant under an inamdor are governed by the law applicable to landlord and tenant and not by the Inam patta or the Inam Register whose object in mentioning the tax payable by the tenant was only to enable the Inam authorities to fix the quit rent payable to Government by the Inamdor. *Bodda Godeppa v. The Maharaja of Vizianagram, I. L. R. 30 Mad* 155. *Rangayya Appa Rao v. Kadiyala Ratnam I. L. R. 13 Mad* 219. *Ayyarar v. Narathana I. L. R. 15 Mad* 47. *Narayana Iyyengar v. Orr I. L. R. 26 Mad* 252 and *Kalarla Abayya v. Raja Venkata Pappayya Rao I. L. R. 29 Mad* 24, distinguished. *SRI RAJAGOPALASWAMI TELLEP v. JAGANNADHA PAUDYAN* (1913). I. L. R. 38 *Mad*. 165

INJUNCTION

House in abeyance—Well sunk by tenant inside his house—Mandatory injunction—Discretion of Court In this the High Court refused to grant a mandatory injunction at the suit of the zamindar for the removal of a well recently constructed inside their lease by tenants of a house in a town the position of the tenant's being that they and their predecessors in title had paid no rent for generations and were only liable to ejectment in the event of the site occupied by them being cleared of buildings. *BRAGWAN DAS v. MOHAMMAD YAHIA* (1913). I. L. R. 35 *All*. 292

INTEREST

Oral agreement containing stipulation to pay excessive rate of interest—Assurance by landlord at the time of execution of kahalayat that contract would not be enforced, effect of, on the document—Evidence Act (I of 1872), s 52, prov 1 A kahalayat for a period of one year provided that on default of payment of rent the arrears would carry interest at 75 per cent per annum. The tenant held over after one year. On a suit for rent on the basis of the kahalayat the tenant pleaded that before the kahalayat was executed by him, the landlord assured him that the covenant for payment of interest at 75 per cent would not be enforced. This allegation was found to be true. *Held*, that under the circumstances the kahalayat was not the real agreement between the parties, having been induced by fraudulent misrepresentation, and the tenant was not liable to pay interest claimed on the basis of the kahalayat. s 52, Prov 1 of the Evidence Act referred to. *NADIA CHAND BAKA v. ERENDEBA CHANDRA DUTT* (1915).

20 C. W. K. 1067

LANDLORD AND TENANT—*contd* LEASE

1. ———— **Trees—Kaimi lease—Lease created before the Transfer of Property Act (IV of 1882)—Trees planted after lease—Right of removal of trees by tenant—Fixtures, doctrine of—Bengal Tenancy Act (VIII of 1885), s. 23—Transfer of Property Act (IV of 1882), s. 2, 108 (A)** In the absence of any special provision in a lease granted before the Transfer of Property Act (IV of 1882) came into force, the property in the trees planted by the lessee after a *kaimi* lease had been granted does not vest in the landlord. The rule laid down in s. 108 cl. (A) of the Transfer of Property Act (IV of 1882) has no application to such a case. The lease in the present case not being for agricultural or horticultural purpose s. 23 of the Bengal Tenancy Act has no application. The doctrine of the English Law of Fixtures cannot be appropriately extended to this country on equitable grounds. *Dain v Brand*, 1 App Cas 762, *Mears v Callender* [1901] 2 Ch 335. *Ehara v Mao*, 2 Smith's Leading Cases 189 3 Last 38. *Noss v Parard* 2 Piers 137, referred to. The Law of Fixtures is not recognized under the Hindu or Mahomedan laws. *Thakoor Chunder Paramanik v Ramdhona Bhattacharjee*, 6 W P 228, *R L R F B 595*. *Secretary of State v Charlesworth Pilling & Co* 1 L R 26 Bom 1. *Khadodee ram Serna v Trilochan*, 1 Mac. Sel Rep 35. *Jankee Singh v Bihloore Singh* (1856) 1 Beng 3 D A 761, *Pogose v Nymnatoolah*, (1855) Beng 8 D A 1517, *Brij Bhooluk v Dabee Dyal*, (1865) 2 Agr S D A 430. *Kalee Parashad Dutt v Gourree Parashad Dutt*, 5 W R 103 relied upon. Before the passing of the Transfer of Property Act, the doctrine of the English Law of Fixtures did not prevail in this country, and the provisions of that Act substantially reproduced the law on this subject as recognised by Hindu and Mahomedan jurisprudence. *Inna Kani Rautkhan v Nararah Sahib*, 1 I R 27 Mad. 211, referred to. *MORRIS SURIKHE RASIK LAL GHOSH* (1910) 1 L R. 37 Cal 815

2. ———— **Sarbarahari jamal lease—Construction—Intermediate tenure if can be created between proprietary and patta interests** Where a pottah recited that a *sarbarahari jamal* settlement had been taken from the zemindar at a certain annual rental and continued "I hereby confer upon you all the powers I had to realise the rents, etc., payable by the pottahdars. . . . By virtue of these powers you shall be competent to sue those pottahdars in my behalf and using my name. . . . I have executed *am mukar namahs* in your favour . . . lest your applications . . . be not accepted by the Collector." Held, upon a construction of the pottah, that it did not create any interest in land as that of a tenure holder but only a personal obligation between the grantor and the grantee. *Scoble*. A zemindar cannot create a permanent tenure between his own interest and *patta taluk* of the first degree. *BIDI JABAO KHAMBI SARABAR HANIFUDDIN ARAND* (1909) . 14 C. W. N. 389

3. ———— **Mokurnai pottah, construction of—Conflict between area and boundaries—Landlord and tenant.** It is only when the boundaries of a land can be ascertained with perfect certainty that an intention to convey all lands comprised within those boundaries can be inferred, if the boundaries are uncertain the intention should be taken to be to convey the specified quantity of

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land within those boundaries. *Held*, upon a construction of the pottah in the case, that the dimensions specified were an essential part of the description of the land conveyed and not a cumulative description of it which was to be governed by the boundaries. *Held*, further, that in the circumstances of the case the intention should be inferred to have been to pass the specified quantity of land only. *Daniel Herrick v Garret Surby*, L R 1 P & A 436, *Mellor v Holmesley*, (1905) 2 Ch. 161, referred to. *KUMAR RAMESHAR MAJIA v RAMTARAK HAZRA* (1909) . 14 C. W. N. 268

4. ———— **Rent in kind and in default a fixed price—Payable, if landlord can recover more than price specified—Money value put down for purposes of registration—Object of may be proved—Evidence Act (I of 1872), s. 92—Oral agreement to vary written contract, if admissible.** Where a *kabulyat*, provided for the payment of rent partly in money and partly in kind and further provided that if the tenant neglected to pay the rent the landlord would be entitled to recover a certain sum as the price of paddy deliverable. *Held*, that, upon a true construction of the *kabulyat*, the landlords would be entitled to realise only the amount stated in the *kabulyat* as the price of the paddy on the failure of the tenants to deliver it. Evidence to show that the money value was put in only for the purpose of registration and that thus the real intention of the parties was to realise the current price of paddy would be evidence of an oral agreement to contradict or substantially vary the terms of a written contract which is not admissible under s. 92 of the Evidence Act. *Lakshailala Sheikh v Bismambhar Roy* 6 Ind Cas 577 2 Ind Cas 169, referred to. *Nokhot Ali v Abdool Ali*, 3 C W N 151, *Dipra Charan v Suchand Roy*, 14 C W N 422211, *Baneswar Mukerjee v Umesh Chandra Chakravarti*, 14 C W N 422212, not followed. *Saikh Isahaf v Gopal Chandra Das*, 14 C W N 42210, referred to. *AFARI SURJIA KUMAR GHOSH* (1910) . 15 C W. N. 249

5. ———— **Raiyati surpesghi and others—Cultivation of Indigo—Acquisition for right of occupancy—Nature of holding—Zerast, khudkashi and private land of landlord—Notice to quit on expiry of lease—Suit to recover land leased—Bengal Tenancy Act (VIII of 1885), s. 5, cl. (5) and s. 116—Raiyat—Tenure holder.** The appellants (plaintiffs) were the proprietors of the village of Balipara Paraman and the owners of the Halibari Indigo Concern (the predecessors in title of the respondent, defendant) and the respondent himself had been their tenants under various leases (*raiya*it, *surpesghi* and others) since 1837 for the cultivation of indigo. To a suit brought to recover two areas of land of 155 bighas and 25 bighas respectively, on the ground that the latest leases (of 21st October 1891 and 10th February 1892) under which they were respectively held, had expired, the respondent pleaded as to the larger area that he had acquired occupancy rights, and that even assuming he had not acquired such right a notice to quit was necessary under s. 45 of the Bengal Tenancy Act (VIII of 1885) before he could be ejected. The latter defence alone was set up as to the smaller area. The Subordinate Judge held, on the construction of the various leases, that the larger area was the appellants' private land in respect of which

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therefore (within the meaning of s 116 of the Bengal Tenancy Act) the respondent, could not acquire a right of occupancy and (acting on the presumption under s 5, cl (5) of the Act, and on an admission that the smaller area was the private land of the appellants) be decided that the respondent was a tenure holder and not a raiyat in respect of all the land in suit, and that he could be ejected without notice to quit. The High Court on appeal reversed that decision, holding as to the larger area that the presumption under s 5, cl (5) of the Act had been rebutted, and that respondent was a raiyat and not a tenure holder, and (notwithstanding the admission) came to a similar conclusion as to the smaller area, and decided that the respondent had acquired rights of occupancy in both areas of land, and a notice to quit was necessary before ejectment. *Held* (by the Judicial Committee) that on the construction of the leases and under the circumstances of the case the High Court had rightly decided as to the larger area, but were wrong in going behind the admission made as to the smaller area. *Bengal Indigo Company v. Raghobur Das*, 1 L R 21 Cal 272, L R 23 I. A 158, distinguished, on the ground that in that case there was no finding of fact to rebut the presumption under s 5, cl (5) of the Bengal Tenancy Act. *DANODAR NARAYAN CHOWDHURI v. DALALISH (1911)*. L. L. R. 33 Cal. 432

8. ——— *Sub-lease—Avoidance of lease—Vacant possession—Holding over—Transfer of Property Act (IV of 1932), s 108* The plaintiffs were lessees of a godown for one year from 1st April 1909, at a monthly rent. From 1st May 1909 they sublet it on the same terms for the remainder of their lease to the defendant who used it for storing bags of sugar. On 5th December the godown was partially destroyed by fire, and a quantity of sugar therein considerably damaged. The defendant's insurers came in to take charge of the salvage, but soon after sold the remains of the sugar to G M, and the latter then took possession, and continued in possession, storing the sugar until 16th February 1909. Meanwhile on 10th December the plaintiff had written to the landlord advising him of the fire and of their termination of the lease in consequence. The landlord, however, insisted on their liability to pay rent until such time as vacant possession should be given to him. The defendant, in answer to a bill for rent, wrote to the plaintiffs to the effect that he had terminated his lease on account of the fire and would not pay more than the proportionate rent for the first 5 days of December. As however, vacant possession was not given until 16th February (on which day G M went out of possession), the plaintiffs sued the defendant for rent and for use and occupation. *Held*, that the plaintiffs could not exercise their option to terminate the lease until they put the landlord into possession. If the avoidance of the lease under s 108 (a) of the Transfer of Property Act (IV of 1932) was effectual without surrender of vacant possession, the plaintiffs by failing to give vacant possession were holding over after the termination of their lease and were liable for rent under an implied monthly tenancy on the same terms as before. If the avoidance was ineffectual, the lease continued until put an end to by mutual consent. *Held*, further, that the abandonment to the insurers by the defendant was effected for his benefit, and in the absence of evidence that the insurers and

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their vendee G M kept the sugar in the godown in spite of protest by the defendant, the latter (as between the plaintiff and the defendant) must be taken to have been in occupation either under his original tenancy or under a similar one resulting from his holding over. *SIDICK HAJI HOSEIN v. BRUEL & Co (1910)*. L. L. R. 35 Bom. 233

7. ——— *Amalnamah—Construction of—A present demise or an agreement to make a future demise, a question of intention—Bengal Tenancy Act (VIII of 1885), ss 10, 72, 155, 178, sub s (1), cl 8—Waste land—Notice if necessary to terminate a lease of—Lessee of waste lands if may be ejected except in execution of decree—Registered lease, omission of the landlord to give, if effects tenants' position* The question whether an instrument made a present or merely an agreement to make a future demise must depend upon the paramount intention of the parties. *Parmanan Das v. Dharey Virji*, 1 L R 10 Bom 101, *Jones v. Reynolds*, L R 1 Q B 506, 516, *Chapman v. Townner*, 6 M & W 100, 104, referred to. Where an amalnamah granted in 1313 recited that the defendant had applied for a *mowasi mohurari chuldari* lease from the plaintiff and that in anticipation of the execution of a proper lease the plaintiff had agreed to place the defendant in possession of the land on certain conditions viz. that out of Rs 2 000 payable as premium Rs 500 would be paid in Magh 1311 and the remainder by three equal annual instalments, that in default of such payment the amalnamah would stand cancelled and cease to be operative and that in 1312 and 1313 the lands should be held rent free and that rent at specified rates would be payable in respect of the lands in subsequent years and the instrument further provided that in 1312 the defendant would bring under cultivation 200 bighas of land and that the whole would be brought under cultivation in 1313 and that in the event of a failure to cultivate the lands in 1312 and 1313 the grantor would be at liberty to re-enter and settle the land with other tenants. — *Held*, that there was a present demise by the amalnamah and not an agreement to make a future demise. *See* *Semle*. The position of the tenant under such circumstances would not in substance be affected by the failure of the landlords to execute a registered lease in favour of the tenant. *Bibi Jawahar Kumari v. Chatterput Singh*, 2 C L J 343. *Singharam v. Iqbalat Harder*, 11 C L J 543 referred to. *Held*, that s. 178 of the Bengal Tenancy Act does not operate to make s 155 of the Act inapplicable to the case of a tenant of waste lands, who cannot therefore be ejected without notice under s. 155 being served on him. *Held*, further, that under s 178 sub s. (1), cl (8) read with s 89 and s 10, the landlord had no right to eject the tenant in the circumstances of the case except in execution of a decree. *CHAMPALATIKA MITRA v. NARAYAN CHANDRA PAL CHOWHRY (1910)*. 15 C. W. N. 538

8. ——— *"Protected Interests"—Transfer of Property Act (VIII of 1885), s 160 (g)* The plaintiff had under a sub-lease granted by G, who held under a permanent lease granted by B, a leasehold under a permanent lease granted by P. The lease given by P to B authorized B to grant sub-leases. *Held*, that the right and interest of G, and therefore of the plaintiffs, are "protected interests," and are not such

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as can be interfered with by a purchaser under the Bengal Tenancy Act *AFAZUDDI KHAN v PRASAD GAIN* (1911) I. L. R. 39 Calc. 138

9. — *Mistake in Lease—Landlord and Tenant* Where a comparatively small portion of the demised lands was found to have originally belonged to the lessee and to have been included in the lease by mutual mistake *Held*, that the whole lease should not be set aside but that there should be an apportionment of rent for the remaining land *RAMONI DAS v MATHEA MONON DEY* (1912) 18 C W N. 606

10. — *Denial of Title—Evidence Act (I of 1872), s. 116—Estoppel* A purporting to be *dhammarika* of a temple gave a lease of the temple properties to B. During the tenancy, C and not A was declared, in a separate suit, to be the rightful *dhammarika*. B had not attorned to nor been evicted by C. *Held*, that the tenancy had not been determined and that in a suit by A for rent, B was estopped by s. 116, Indian Evidence Act, from denying A's title *DEVALAJI v MAHAMED JAFFER SAKIB* (1913)

I. L. R. 36 Mad. 53

11. — *Tenancy at will—Lease until lease requires or wishes—Tenancy at will on both sides* A lease by which the lessee is to hold for such time as they require or wish is a tenancy at the will of the lessee which in law is a tenancy at the will of the lessor also *Coko on Littleton*, page 51 (a), and *Halsbury's Laws of England*, Vol. 18, page 431, referred to. *MAVIRA v CHINNAIPA* (1913) I. L. R. 36 Mad. 557

12. — *Lease of land for mining coal—Description in *kabulyat* given in bighas and boundaries specified in schedule—Area of land delivered found less than area stated in *kabulyat*—Claim to abatement of rent in respect of deficiency—Onus on tenant to prove right to reduction of rent—Construction of *kabulyat*—Negotiations leading to contract and other extraneous evidence inadmissible in evidence* This appeal arose out of a suit for Rs. 23,868 as arrears of rent, cesses and interest under a *mokarrari mauza khabulyat* dated 3rd December 1891 (1301) executed by the respondent on behalf of himself and his co-sharers (the other respondents) in favour of the predecessor in title of the appellant for the right of coal mining under "400 bighas of land" in *mauzah Dolari* in *Manbhumi* (the boundaries of the area leased being specified in a schedule to the *kabulyat*) at a rental of Rs. 2,800 a year which the *kabulyat* stated "shall never on any account be varied." The land within the boundaries specified in the schedule was not measured at any time, or if measured it was not shown what the measurement was in bighas. The defence, so far as material, was mainly that the respondents had been given possession of the mining rights under an area less than 400 bighas of land, and were therefore entitled to an abatement of the rent in respect of the deficiency; that by an injunction made in 1902 in a suit brought by the appellant, the rights of the respondents to work coal underneath the land leased to them was restricted to an area of 275 bighas, and they tendered rent at a reduced rate which the appellant refused to accept. The rent had been reduced in 1898 (1305) by the original

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lessor on the ground that the coal taken out was of inferior quality, and rent had been paid at the reduced rate for 2 years, but the document witnessing the reduction had not been registered, and was therefore inadmissible in evidence. On the construction of the *kabulyat* the appellant contended that the respondents were entitled only to the coal underneath such quantity of land as was contained within the boundaries given in the schedule, and the contention of the respondents was that they were entitled to the coal underneath the full quantity of 400 bighas of land. Both Courts below found that 400 bighas of land had been demised, but the Subordinate Judge, while finding that the respondents were in possession of only 316 bighas, held that they were not entitled to any abatement of rent in respect of the deficiency. The High Court disregarded the description of the land by boundaries, but found on the evidence in the former suit that the respondents had only been in possession of 275 bighas, and held that they were entitled to a proportionate abatement of the rent fixed by the *kabulyat*. *Held* (reversing the decrees of the Courts in India), that the question as to what had been demised in 1894 turned on the true construction of the *kabulyat* which could not be varied by extraneous evidence as to the negotiations which led up to the contract, or by evidence showing that within the boundaries specified in the *kabulyat* there was not 400 bighas of land. *Held* further, that there was no reliable and admissible evidence to prove that the original lessor ever bound himself permanently to accept a reduced rent, and the fact that he did so for some years was consistent with the reduction having been a mere voluntary and temporary abatement. It was for the respondents to make out a case for the abatement of the rent but they had not proved how many bighas were contained in the area of *mauzah Dolari* within the boundaries specified in the schedule to the *kabulyat*, nor had they proved the area in bighas within those boundaries of which they were put in possession. They had not proved, otherwise than by the action of the Subordinate Judge on the former suit in granting an injunction in the form in which it was granted and by their neglect to appeal from that decree that they had been deprived of the right to work any coal which otherwise they would have been entitled to work under the demise, and the injunction as granted gave them no right which they could enforce by suit or of which they could avail themselves as a defence to a suit for the fixed rent, they had in fact wholly failed to prove any facts which would entitle them to any abatement of the rent fixed by the *kabulyat*. The tenders based on a reduced rent were therefore not good, and were ineffective, and the appellant was entitled to a decree for the amount sued for, less the costs of the former suit. *DURGAPRASAD SINGH v RAJENDRA NARAYAN BAOGHI* (1913)

I. L. R. 41 Calc. 453

13. — *Clause allowing removal of fixtures—After expiry of lease, if a renewal clause—Not a lease—Notice of terms of a lease—Estoppel—Ouster* Terms in a lease giving the lessee, if unwilling at the end of the term to take a fresh settlement, the right to take away the fixtures put on the land cannot operate as a covenant under which the lessee could comp-

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the lessor to grant a fresh term. **SARAT CHANDRA MUKHOPADHYAY : RAJENDRA LAL MITRA (1913)**
18 C. W. N. 420

14. — **Nim-howla lease—Stipulation as, against voluntary alienation by tenant to person other than landlord—Purchase of tenure by stranger at sale in execution of money decree—Purchaser acquires good title—Landlord if can sue original tenant for rent and obtain decree binding on tenure** The plaintiff purchased at an execution sale the right, title and interest of the tenants in a *nim howla* tenure. Notwithstanding the purchase by the plaintiff which was duly notified to the landlord, the latter brought a suit for rent against the tenants and obtained a decree. The plaintiff brought a suit for declaration that this decree was not binding on him and that the tenure in his hands was not liable to be sold in execution thereof. The lease which created the *nim howla* provided as follows: "Let it be known that if you find it necessary to transfer the *nim howla* tenure, you will transfer it to me for proper price. You will not be at liberty to transfer it to any person other than myself. If you transfer it to any other person, such transfer will be invalid." Held, that there being no covenant against involuntary alienations and no covenant for re-entry, the plaintiff acquired a good title by his purchase and consequently it was not open to the landlord to sue the original tenants with a view to obtain a decree whereby he could proceed against the tenure in the hands of the plaintiff. **PROMODE KANJAN GHOSH v ASWINI KUMAR NAG (1914)**

18 C. W. N. 1138

15. — **Covenant against alienation—Permanent lease of agricultural land—Covenant against alienation, voluntary as well as involuntary, with proviso for re-entry, if enforceable—Purchaser, if must be notified by lessor of intention to determine lease, before suit—Bengal Tenancy Act (VIII of 1885), s. 155, Sch III, cl (1), if applies—Limitation—Mortgage by lessee, sale in execution, purchase by mortgagee—Mortgagee if trespasser. A permanent lease of agricultural land contained a covenant against sale, gift, mortgage, etc., by the lessees with a proviso for re-entry in case the land was transferred or sold by auction. The lessees having mortgaged the land, the mortgagees sued on his mortgage and in execution of the decree obtained therein had the holding sold and purchased it himself and got possession through Court on 23rd November 1898. The original lessees continued in possession of a portion of the land under a sub-lease from the purchaser. Plaintiffs who proved their right to a 12 annas share in the interest of the landlord sued the purchaser and the original lessees for ejectment on 20th March 1908. The lower Courts having decreed the suit, the purchaser only preferred this second appeal. Held, that the plaintiffs were entitled to recover (joint) possession to the extent of their 12 annas interest, the defendant being a trespasser and the suit which was governed by Art 142 of Sch I of the Limitation Act having been instituted within time. **Per SANDERSON, C. J.**—The assignment was not *ad inritum*, as the execution sale was directly due to the voluntary act of the lessees. **Per MOOKERJEE, J.**—A covenant for re-entry by the landlord upon an involuntary sale is valid in**

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India as in England. **Per CURHAM**—That in the absence of any act of the Plaintiffs recognising the purchaser as a tenant, he was in the position of a trespasser and neither s. 165 nor cl (2) to Sch III of the Bengal Tenancy Act applied to the case. **Per MOOKERJEE, J.**—Where a covenant against alienation is coupled with a proviso for re-entry, the landlord is not limited to the reliefs by injunction or damages. That as the tenancy was of agricultural lands, s. 111, Transfer of Property Act, did not apply, and the suit was not bad because the plaintiffs did not previously notify their election to enforce the proviso. The institution of the suit itself was a sufficient manifestation of the option to treat the lease as determined. **DWARKA NATH ROY CHOWDHURY v MATHURA NATH ROY CHOWDHURY (1916)**

21 C. W. N. 117

16. — **Option of renewal—Written notice in exercise of option to be given within time specified in Indenture—Oral arrangement—Modification or rescission of covenant for renewal—Admissibility of evidence—Waiver—Estoppel—Evidence Act (I of 1872), ss 91, 92 (proviso 4), 115** An Indenture of lease contained a covenant for renewal of the lease whereby if the lessee desired to renew the lease he should give 3 months' notice in writing of his intention to do so. The lessee, however, failed to observe this covenant and relied on an oral statement or agreement between himself and his lessors for renewal of the lease. Held, that there was no waiver. Held, also, that the oral statement or agreement amounted to either a modification or a rescission within the meaning of s. 92, proviso 4, of the Evidence Act, and evidence of such oral statement or agreement was not admissible. Held, also, that there was no representation of a thing with the meaning of s. 115 of the Evidence Act and consequently no estoppel. **MARK DEBEZ v JITENDRA NATH CHATTERJEE (1910)** . I. L. R. 48 Cal 1077

17. — **Non-delivery of possession of entire land demised—Rent, suspension of, for non delivery** Where the landlord, having let out a portion of a land to an earlier lessee, lets it out again with other lands to a subsequent lessee, and fails to deliver to the subsequent lessee possession of the entire land leased to him, the entire rent is suspended. **Neale v Mackenzie, 1 M & W 747, 46 R R 478, and Smith v. Raleigh, 3 Camp 513, 14 R R 829, followed Stoles v Cooper, 3 Camp 514n, 14 R R 829n, and Annada Prosad Mukhopadhyay v Mathura Nath Nag Mazumdar, 13 O W N 702, distinguished MANINDRA CHANDRA NANDI : NARENDRA CHANDRA LAHIRI (1919)**

I. L. R. 46 Cal. 956

18. — **Right of pre-emption—of leasehold right—Clauses of forfeiture of lease and right to re-enter on breach of covenant—Contract Act (IX of 1872), s. 74, applicability of—Transfer of Property Act (IV of 1882), ss 111 (g) and 117, applicability of—Relief against forfeiture, whether grantable** Where a *mutagen* lease provided for previous notice to the lessor in case of any intended sale or mortgage of the leasehold interest by the lessee and for forfeiture of lease and re-entry on breach of the covenant. Held, that s. 74 of the Indian Contract Act did not apply, that Courts had no power to relieve

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against the forfeiture and that the lessor was entitled to possession on breach of the covenant; *Held*, further, that by reason of the prohibition in s. 117 of the Transfer of Property Act, s. 111 (g) of the Act did not in terms apply but that the principles of the Courts of Equity embodied in s. 111 (g) applied to the case. *KALISHA SHETTY v. GILBERT LINTO* (1910).

I. L. R. 42 Mad. 654

MINERAL RIGHTS.

Permanent tenure of an agricultural character—Underground rights not mentioned in lease—Minerals under surface of land—Rights of Zemindar—Onus of proof—Transfer of Property Act (IV of 1882), ss. 103, 117. The question for decision in this case, whether certain Goswamis, the abhants of an idol and lessors of a village in the zamindari of the appellant, the Rajah of Pachete, had under their lease which had been granted by a predecessor in title of the appellant about 60 years ago, acquired any rights to the minerals beneath the surface of the village which they could have transmitted to the respondents who claimed to hold under them. There was no document or evidence defining the terms of the lease to the Goswamis. Two decrees in favour of the Rajah for the payment of an annual rent of Rs. 22 15 6 by the Goswamis were put in, in one of which they were described as "cultivators" and in the other as "british holders." There was no evidence whatever that the Rajah had ever granted mineral rights in the village to the Goswamis or to any other person. Both the Courts in fact found that the village was a *mof* (rent paying) village of the zamindari of the Rajah, and that no prescriptive right had been proved by the respondents to any underground rights in the village. The High Court held that the zamindar had created a permanent tenure of an agricultural character, and that the tenure-holder would possess all underground rights in the absence of express reservation by the zamindar. *Held*, by the Judicial Committee (reversing that decision), that the title of the zamindar Rajah to the village being established he must be presumed to the owner of the underground rights appertaining thereto in the absence of evidence that he had parted with them, and no such evidence had been produced. *Principles of Bengal Regulations, Introduction, page 36*, referred to. In the case of leases under the existing law of 1882 (the Transfer of Property Act, IV of 1882 s. 103), no right arises for a lessee to work mines not open when the lease was granted. *HARI NARAYAN SINGH DEO v. SRI RAM CHAKRAVARTI* (1910).

I. L. R. 37 Cal. 723

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terms of the lease should not be presumed to own the underground rights. *Atkaram v. Shyama (Atkaram, I L R 35 Cal. 1003, 14 C. W. N. 1; Shyam Choud v. Jam Karam, 15 C. W. N. 417; Shama Choud v. Atkaram, I L R 33 Cal. 511, 10 C. W. N. 735, 37 Leg. Lal v. Raj Kumar, I L R 34 Cal. 355; 11 C. W. N. 527. Proprietorship case v. Durga Prasad, I L R 34 Cal. 751; 12 C. W. N. 193. Sriman v. Hari Narain, I L R. 33 Cal. 51, 10 C. W. N. 425 referred to.* Where the original grant was that of a permanent tenure, the fact that subsequently the tenure was merely split up into more than one would not affect the permanent character of the tenancies. *Edy Chandra Agru v. Arjendra Narayan Bhup. I L R 36 Cal. 257, 33 C. W. N. 410 distinguished.* *JOTI KARNAD SINGH DEO v. GEORGE WATKINS DAWY* (1911).

16 C. W. N. 242

The grantee of a permanent or heritable tenure at fixed rent or rent free from a Zamindar is not entitled to the minerals in the absence of express provision to that effect. *RAGUNATH ROY v. PAJA OF JHERIA*.

23 C. W. N. 514

Mining lease construed—Provision for payment of royalties—Power to lessee to surrender lease on six months' notice without definite time fixed—Condition of surrender all royalties to be paid before lessee's right arises—Waiver of condition by lessee by his asking for surrender by deed on receipt of notice from lessor of intention to surrender and delay caused thereby. A lease for 999 years was granted by the appellant in favour of the respondent company, of coal land and mining rights in certain mouzahs in the zamindari. By cl. 1 of the lease certain royalties were fixed for each ton of coal, and cl. 2 provided that such royalties should be payable quarterly. By cl. 3 an annual minimum royalty was fixed until the expiration of the term with a provision that if the royalties paid were found at the end of the Bengali year to be less than the minimum royalty the lessees should be bound to make up the loss and pay the minimum royalty in full within the first two months of the following year. By cl. 6 the lessees were given power to take the necessary surface land, for the purpose of carrying on the colliery business, at a fixed rent per bigha to become payable at the end of each Bengali year. Cl. 9 gave the lessees a right "to surrender any or all of the mouzahs hereby leased to you by giving six months' written notice" and paying the minimum royalty for the said six months, i.e., a half of the annual minimum royalty. But I shall not accept any surrender for a portion or any of the mouzahs, no rent shall you be entitled to surrender so long as any rent or royalty remains unpaid." The respondent Company on 11th May 1912 sent to the appellant a registered letter giving him six months' notice of their intention to relinquish the mouzahs. The appellant handed the notice to his manager who requested the respondent Company to execute a formal deed of surrender. Admittedly no deed was tendered for execution nor was any amount ascertained as being payable for royalties before the expiration of the six months' notice. The respondent Company, on 23rd May 1913, paid the amount they calculated to be due, but the appellant objected that there had been no effectual surrender,

Mineral rights—Permanent tenures, grant of, of conveyed underground rights—Mogals Brahmins grants—Proof of permanency—Original tenure split up—Character of tenancy if altered. When certain tenures which were described as *Mogals Brahmins* were shown to have existed since before the permanent settlement and it appeared that the same rents had always been paid for them and that they were freely transferable. *Held*, that the tenures were at least permanent tenures. That it was not correct to view such tenure-holders as owners of the land subject to a rent charge. The holder of a permanent tenure in the absence of all evidence of the

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inasmuch as the notice did not expire at the end of the Bengali year, and no tender of the amount due had been made. In a suit brought by the appellant treating the lease as being still in force—*Held*, that there was nothing in the terms of the lease to fix the notice as one that must be given at any definite period, and therefore under cl 9 it had been rightly given, that cl 9 did not make it necessary to tender the amount due for royalties at the time when the notice was served; that when the manager asked that the surrender should be by deed it was not obligatory to pay the money until the deed was tendered; and that the lease was no longer subsisting on the expiry of the six months, and therefore the suit was not maintainable. *DURGA PRASAD SINGH v. TATA IRON AND STEEL COMPANY* (1918). I. L. R. 46 Cal. 552. L. R. 45 I. A. 275.

MULGENI TENURE.

— *Landlord and Tenant—Mulgeni tenure—Revenue assessment, who to pay—Revenue Pecuniary Act II of 1861, ss 1 and 35—Principles apart from Act—Under s 35, Revenue Recovery Act, a mulgenidar who pays revenue due on land held by him as a mulgeni tenant is entitled to recover the same from his landlord the mulgar by deducting the amounts so paid from any rent then or afterwards due from him to the mulgar. The fact that the mulgar's revenue assessment has been increased by Government does not make him the less liable to pay the whole assessment although the amount so to be paid may be in excess of or out of proportion to the rent to be received by him. To hold otherwise would be to deprive the mulgenidar of the right secured to him by s 35 of the Revenue Recovery Act. *Per BENSON, J*—Apart, however, from the Revenue Recovery Act which thus indirectly and as it were unintentionally imposes the whole burden on the pattidar it cannot be held that where an increased revenue assessment has been contemplated in the mulgeni chat either the mulgar or the mulgenidar is bound to pay the whole of the increase in assessment imposed by Government. Assessment is a burden imposed by Government on the land and where the rent has been fixed by contract and the imposition of a higher assessment by Government is a matter outside the terms of the contract altogether and is not provided for in it either expressly or impliedly, it ought in accordance with principle, to be shared by the mulgar and the mulgenidar in proportion to the benefit which each derives from the land. *VIDYAPURNA THIRTHASWAMI v. UGGANNU* (1910). I. L. R. 34 Mad. 231.*

— *The rights of mulgenidar do not escheat to Government on the death of the last owner dying without heirs but revert to the mulgar for whom the mulgeni was acquired—a mulgeni differs from a permanent lease. SECRETARY OF STATE FOR INDIA v. SHITARAM APPA*. I. L. R. 42 Mad. 327.

NOTICE TO QUIT

— *Principles to be observed in construing notices to quit—Inaccuracies in notice may be immaterial—Test of sufficiency though inaccurate—Interpretation affected by the fact*

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that the persons on whom they are served are conversant with all the facts and circumstances of the tenancy it is deemed to terminate—*Maxim Ut res magis valeat quam pereat—Mode of service—Transfer of Property Act (IV of 1882), s 106. The principles on which notices to quit containing errors honestly but mistakenly or inadvertently made are to be construed, are entirely inapplicable to notices containing inaccuracies deliberately inserted for fraudulent purposes. The principles laid down by the English authorities are equally applicable to cases arising in India. They establish that notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law, that the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to relate, but what they would mean to tenants presumably conversant with all those facts and circumstances, and, further, that they are to be construed not with a desire to find faults in them which would render them defective, but in accordance with the maxim "Ut res magis valeat quam pereat". *Doe v. Huntingtower v. Cullford, & Doe v. Ry 245, Doe v. Williams v. Smith 5 Ad & F 350, Wride v. Dyer, [1900] 1 Q B 23 and Doe v. Archer, 14 East 245* referred to. Applying these principles to the present case in their pleadings to which the defendants attributed fraudulent intentions to the plaintiffs—*Held* that the plaintiffs were not actuated by a desire to effect any fraudulent purposes in connection with the notice to quit or in bringing the suit, from all their action and on the evidence a contrary view was to be inferred that the earlier portion of the notice to quit correctly and clearly described the identity of the land it was intended to cover which the defendants admittedly knew was 2 bighas 2½ cottahs, and the erroneous statement in the schedule as to the area of the land being 6 cottahs did not predominate over the description of it already given in the notice but was merely an immaterial inaccuracy and that the pleadings and evidence in the case showed that the defendants were conversant with all the circumstances and facts relating to the land. The notice was sufficient to cover the entire area held by the defendants from the plaintiffs, and was therefore a good notice. *Held*, further that the notice to quit had been duly served on all the tenants and the conditions laid down in s. 106 of the Transfer of Property Act (IV of 1882) were complied with. Service on one joint tenant is *prima facie* evidence that it has reached the other joint tenants. *Macarney v. Crick, 5 Esp 196, Doe v. Bradford v. Wakins, 7 East 551, and Pollack v. Kelly, 6 Ir C L R 367, referred to. Service through the post was sufficient (Gresham House Estate Co v. Rossa Grande Gold Mining Co (1870), W N 119) and the presumption that the notice so served has been received is greater when the letter is registered as in the present case, and is not rebutted but strengthened by the fact that a receipt for it is produced signed on behalf of the addressee by some person other than the addressee himself. *Tanham v. Nicholson, L R 5 H. L. 361, referred to. MARIBAR BANERJI v. RAMSHASHI ROY* (1918). I. L. R. 46 Cal. 458.**

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OCCUPANCY RIGHT.

See OCCUPANCY RIGHT

Occupancy right, extinguishment of—New occupancy right in the same holding—Acquisition of adverse rights in two capacities—Non occupancy raiyat, if he can sub let and create incumbrance—Bengal Tenancy Act (VIII of 1885) ss 22 cl (2), 159, 160, cl (g) When an occupancy right is extinguished by the operation of s 22, cl (2) of the Bengal Tenancy Act a new occupancy right cannot be acquired in the same tenancy by the co-sharer proprietor or by whose action the occupancy right has ceased to exist. The owner of a holding cannot acquire a right adversely to himself in his other character as co-proprietor. A non occupancy raiyat is a raiyat and the land held by him is a 'holding', s 159 of the Bengal Tenancy Act applies to non occupancy holdings also. A non occupancy raiyat is not prohibited from sub letting and may have an under raiyat under him, and may create a protected interest under s 160 cl (g) if his landlord allows him so to do. An incumbrance may be created by a non occupancy raiyat on his holding, in limitation of his own interest however limited, by way of sub-lease. *RAM LAL SUKTL v BURELA GAZI* (1910) I. L. R. 37 Cal. 708

Purchase of raiyats in interest by sole Landlord—Occupancy holding and occupancy right—Transferability—Merger—Under raiyat—Notice to quit—Ejectment—Bengal Tenancy Act (VIII of 1885) as amended by Bengal Act I of 1907, ss 22, cl (2) 49, 85 and 167 The raiyats of certain lands in dispute executed a mortgage of their lands and put the mortgage in possession. Subsequently the mortgagee settled the lands with under raiyats. The superior landlord then brought a suit for rent against his raiyats and purchased the holding at a sale for arrears of rent. Thereafter the landlord sold the permanent raiyats to one Meenjan who, after having taken a lease from the landlord and after having redeemed the mortgage, sold the same to the present plaintiff. The plaintiffs, thereupon brought a suit to eject the under raiyats. *Held*, that the occupancy still continued to exist after the purchase by the landlord. *Akhil Chandra Dasgupta v Hasan Ali Sadagar*, 19 C W N 216, followed. *Held*, also that the landlord was able to transfer the holding to Meenjan, through whom it came to the plaintiffs. *Held*, also that the under raiyats continued to be under raiyats and were duly served with notice to quit and must be ejected. *YAKUB ALI v MEENJAN* (1915) I. L. R. 43 Cal. 164

PERMANENT TENANCY

See BOMBAY LAND REVENUE CODE, 1879.
ss 63, 216 I. L. R. 41 Bom. 566

Evidence of permanent tenancy—Contention that no permanent tenancy can exist in the Punjab, as there is no Permanent Settlement as there is in Bengal In this case the land in dispute was situated in a suburb of Delhi, and was covered by buildings of masonry occupied by the respondents. It was admitted that their predecessors were invited to occupy the land for building purposes by the predecessors of the appellants in 1852. No document showing the terms of occupancy is extant, nor is there any reliable evidence of what passed at that time. But

LANDLORD AND TENANT—contd

PERMANENT TENANCY—contd

the facts found (as to which there was no dispute) were that from 1859 onwards a uniform and fixed rent had been paid, that in some of the receipts given by the landlord the term "permanent" as applied to the rent was used, that the respondents and their predecessors in title have erected substantial buildings without the landlord's objection, that they have dealt with these properties, by way of sale and mortgage and that the properties has passed by succession. *Held*, that the evidence sufficiently showed that the respondents had a permanent tenancy, and the fact that there was no permanent settlement in the Punjab was not material as affecting this conclusion. *AFZAL U'N NISSA v ABDUL KARIM* (1915) I. L. R. 47 Cal. 1

Permanent heritable and transferable tenure—Liability to enhancement—Contract for rent at progressive rates—Inference when highest rate is reached and there is no further enhancement by law—Bengal Tenancy Act (VIII of 1885) ss 29 30 The defendant in this case was the tenant of the plaintiffs (appellants), and the tenure was admittedly permanent, heritable and transferable. The only question was whether the rent was fixed as the defendant alleged, or was liable to enhancement. Ordinarily, the admitted characteristics would create a presumption in favour of the tenant, and throw on the plaintiffs the onus of showing that the tenure was wanting in the characteristics of fixity of rent. But *held*, that, even if the onus lay on the defendant, she had fully discharged it. In the books of the plaintiff Company it was expressly stated that the tenure should not be liable to rent for the first four years. After that it carried rent on a progressive scale, until in 1298 it reached one rupee one anna per bigha. The contract as to progressive rent thus came to an end in 1298 and there was no further enhancement by operation of law. The clear inference from those facts was that the maximum rent reached in 1298 was the fixed rent of the tenure as long as it lasted. *Gulam Ally v Gopal Lal Thakoor & Co* in Privy Council. *Soorasondery Dubee v Golum Ally*, 15 B L R 125n, 9 Suth W R 65. *Dhanput Singh v Gooman Singh*, 11 Moo I A 435, and *Huro Prasad Roy Chowdhry v Chundia Churn Roychowjee*, 1 L R 3 Cal. 505, referred to. *PORT CANNING LAND IMPROVEMENT CORPORATION v KATTANI DEBI* (1910) I. L. R. 47 Cal. 280

*Raiyats holding created in 1845 and held at fixed rent—Recognized as heritable and transferable—Inference that holding permanent—Rent receipts stating tenant to be tenant at will, volvo of In a suit to eject the Defendants from a raiyat holding situated within the Calcutta Municipality, it was found upon the evidence that the holding was created somewhere in 1845, that it had been held ever since at a fixed permanent rent, and that the Plaintiff landlord had in the persons of another person taken a mortgage of the holding treating it as a permanent transferable heritable holding. *Held*—That the District Judge was right in holding that the holding was a permanent heritable one, and in refusing to attach any importance to a statement in the rent receipts granted to the tenants that they were "tenants at will," when there was nothing to show that the tenants consented to the insertion of these*

LANDLORD AND TENANT—*contd*PERMANENT TENANCY—*concl'd*

words in the receipts or were even aware of it
**SURENDRO NATH ROY v DWARKANATH CHAKRA-
 VARTI** 24 C. W. N. 1

RELIQUISHMENT

Joint tenants, *surrender* by one of her share, if operative against the other—*Relinquishment to take effect at a future date* if *inoperative* A relinquishment made in favour of the landlord by one of two co tenants so as to effect her share is valid A relinquishment is not *inoperative*, because it was to take effect at a subsequent date **KUBIR MUNSHI v BAIKUNTA CHANDRA SHANA** (1910) . 15 C. W. N 680

Occupancy tenant—*Usufructuary mortgage*—*Relinquishment of tenancy during the term of the mortgage* Held, that an occupancy tenant who has made a usufructuary mortgage of his holding and put the mortgagee in possession cannot during the subsistence of such mortgage relinquish his holding to the prejudice of the mortgagee's rights **RANNU RAI v RAJENDU**, 1 L R 27 All 82, followed **CHHOTU LAL v SAKOPAL SINGH** (1903)

I. L. R. 33 All 335

RENT

1. — *Presumption of permanency of rent*—*Record of Rights*—*Bengal Tenancy Act (VIII of 1885)*, as amended by Bengal Acts III of 1898 and I of 1903, as 50, 105, 115 When an application is made under s 105 of the Bengal Tenancy Act as amended by Bengal Acts III of 1898 and I of 1903 for settlement of rent after the final publication of the record of rights, the tenant is entitled, in view of the provisions of s 115 of the Bengal Tenancy Act to the benefit of the presumption under s 50 of the same Act **Radda Kishore Manikya v Umed Ali**, 12 C W N 904 approved *Secretary of State for India v Rajmuddi* 1 L R 26 Cal 617, distinguished **PATRICK LAL CHOWDHRY v BASARAT ALI** (1909)

I. L. R. 37 Cal 20

2. — One suit for rent of different tenancies, it maintainable—*Bengal Tenancy Act (VIII of 1885)*, ss 20, 29, cl (a) and (b)—*Presumption under s 20 when arises*—*Effect of division of tenancy* When there are several tenures held by the same tenant the landlord may institute one suit for the rent of all the tenures but if he does so he cannot put the tenancies to sale in execution of the decree so as to enable the purchaser to avoid incumbrances **Hriday Nath Das v Krishna Prasad Sircar**, 1 L R 34 Cal 298; see 6 C L J. 153 11 C W N 497, **Bailanta Nath Roy v Thakur Debendra Nath Saha**, 11 C W N. 676, **Janda Lal v Sadhu Charan**, 7 C L J 96, **Bipra Das v Rajaram**, 13 C W N 650 referred to No inflexible rule of law can be laid down that the division of a tenancy creates or does not create a new tenancy Whether it does or does not is a question of the intention of the parties to be decided on the evidence **Uday Chandra v Arupendra Narayan**, 13 C W N 410, **Sadhu Mala v Alfa zuddi**, 13 C W N. 962, referred to **MULIK CHAND DASS v SATISH CHANDRA DAS** (1909)

14 C. W. N. 335

LANDLORD AND TENANT—*contd*RENT—*contd*

3. — *Denial of lessor's right to sue*—*Estoppel* Held, that a tenant who had taken a lease from one of several trustees was not competent to deny his lessor's right to sue alone for the rent **Musammatt Purnia v Torab Ally**, 3 Wyman 14, and **Jainarayan Bose v Kad m bin Dan**, 7 B L R 723, referred to **KESHO DAS v MAKSUDAN DAS** (1910) I L R. 32 All 213

4. — *Suspension of rent*—*Substantial interference by landlord with enjoyment of holding by tenant*—*Tenant when entitled to suspension of rent*—*Bona fide interference, what is* Where there is substantial interference by the landlord with the tenant's enjoyment of his tenure even though there is no complete eviction, the tenant is entitled to suspension of rent for the period during which there was such interference **Kadumbari Dossai v Aashee Nath Biswas**, 13 W R 338, **Dhunpat Singh v Kasim Isphahani**, 1 L R 24 Cal 296, **Harro Kumar v Purna Chandra**, 1 L P 28 Cal 188, **Lalia Sundari v Surnomoyee Das** 5 C W. A 353, discussed J auction purchased a *durputas* with power to annual incumbrances and served notice to quit on the *seputnidars* who refused to yield possession On J attempting to take forcible possession, criminal proceedings ensued as a result of which the *seputnas* was attached under s 146 of the Criminal Procedure Code, on the 3rd October 1902 The land attached was subsequently let out to *garadar* who paid rent to the *putnidar* and deposited certain sums as *gyara* rent in the Collectorate Some of these sums deposited were withdrawn by J as *durputnidar* In 1906 the *seputnidars* obtained a decree establishing their *seputni* title and in pursuance of that decree withdrew some of the *gyara* rent that was deposited in the Collectorate In a suit for rent by J against the *seputnidars* for the period during which the property was under attachment Held that the circumstances constituted substantial interference by the landlord with the tenant's enjoyment of his tenure such as disentitled him to recover rent for that period Held on the facts of the case that it was not such *bona fide* interference without prejudice to the tenant as would entitle the landlord to receive rent **Ramee Surnomoyee v Shooakhee Moolhee** 12 Moo J A 244, distinguished **MAHOMED JEALUYYA MEAN v SUKHEANNESSA BINI** (1910)

14 C W N. 446

5. — *Co-owners*—*Receipt for rent collectively given to tenant by one co owner*—*Rights of the others to sue tenant and remaining co owner for rent* W and others were co owners of a shop which was let to U The other co owners, suspecting W's good faith, gave notice to U forbidding him to pay rent to W They then commenced proceedings for partition of the shop. Subsequently W executed in favour of U a receipt for arrears of rent and for a further sum alleged to represent rent paid in advance Held that in the above circumstances the co owners other than W were entitled to sue the tenant and W for their proportionate share of the rent their allegation being that the receipt referred to above was fictitious and collusive **Doorga Churan Surma v Jangra Dasree**, 12 B L R 289, referred to **ZIA UD DIN v MUHAMMAD UMAR** (1910)

I L R 33 All 308

6. — *Joint promise*—*Contract Act (IX of 1872)*, s 43—*Joint and several liability when*

LANDLORD AND TENANT—*contd.*RENT—*contd.*

arises—Joint heirs of original tenant, if jointly and severally liable—Where suit for rent dismissed against two of three joint tenants who did not admit the rate of rent, if landlord can recover entire rent from one who admits rate of rent Whether a promise is joint or several or joint and several is a question of construction depending upon the intention of the parties to a contract In cases of joint and several promises in addition to several persons joining in a promise to another there is a promise by each to the others and of each of them separately to the promisee It cannot therefore be affirmed as an inflexible rule that in every case where A lets out land jointly to B and C there is a promise that each of them will be responsible for the entire rent so that the landlord may recover against any one of them At any rate where several persons jointly inherit a tenancy any one of the heirs cannot be made separately liable for the entire rent Where out of three joint tenants who were representatives of one original tenant there was an admission by one in favour of the rate of rent claimed by the landlord, but the admission was held to be inadmissible against the other tenants and the suit against the other two was dismissed—*Held* that the landlord could not recover the entire rent from the tenant who admitted his rate of rent The suit was dismissed as against him also *Quære* Whether a landlord may make one of several joint tenants responsible for the whole rent *KALI KINKAR SEY v. SATYENDRA NATH BHADRA* (1910)

15 C. W. N. 191

7. ———— *Transfer of tenure—Bengal Tenancy Act (VIII of 1886), ss. 12, 13, 167—Suit for rent—Unregistered transferee of permanent tenure who has paid landlord's fee, if necessary party—Sale in execution of rent decree obtained against recorded tenant only—Decree, if money decree only—Beneficiaries of necessary parties—Notice to annual incumbrances signed by Deputy Collector—Validity The transfer of a permanent tenure is completed upon payment of the landlord's fee prescribed by s. 12 irrespective of its acceptance by the landlord and thereupon the landlord is bound to look to the transferee for payment of rent accruing due since that date. It is not necessary in such a case that the transferor himself should have had his name registered in the landlord's books Where the landlord sues for such arrears of rent without making the transferee a defendant, the decree obtained in the suit only operates as a decree for money The landlord is not bound to join in his suit for rent, as parties defendants, persons who are merely beneficiaries *GIRI CHANDRA GUPTA v. BHAGENDRA NATH CHATTERJEE* (1911)*

15 C. W. N. 64

8. ———— *Failure of tenant to raise crop—damages for. If rent—Suit by landlord for recovery of value of his share, if lost in Small Cause Court—Provincial Small Cause Courts Act (IX of 1887), Sec. 11, Art. 6—“Rent”—“Damages for use and occupation” Where a landlord brought a suit against his tenant claiming damages for wilfully omitting to raise crops whereby the plaintiff was deprived of his share thereof *Held*, that inasmuch as the share of the produce to be received by the landlord was ascertained before the commencement of the suit and the term for which the land was let out had not terminated, the claim was in*

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substance one for recovery of rent and the suit would not lie in the Small Cause Court *LALJI PANDAY v. BAHAMANDU PANDAY* (1911)

16 C. W. N. 89

See also post 2 Pat L. J. 97

9. ———— *Rent decrees, one decree for two different tenures—Consolidation of tenures* Where there are two different *darpuks* tenures in respect of 13 as and 3 as respectively of a *puksa*, with different assessments of rent held by the same tenant though it is competent to a landlord to bring one suit for both the tenures the mere fact that the total rent of the two tenures is claimed in the same suit cannot have the effect of consolidating the two tenures into one A decree obtained for arrears of rent in respect of two or more separate tenures cannot be executed as a rent decree under the Bengal Tenancy Act but must be executed as a money decree under the Civil Procedure Code *RASH MOHINI DAS v. DEBENDRA NATH SINHA* (1911)

16 C. W. N. 395

10. ———— *Tenant holding on after expiry of term—Amount of rent payable* When a tenant holds on after expiration of his lease he does so on the terms of the lease and at the same rate and on the same stipulations as are mentioned in the lease unless the parties come to a fresh settlement The mere fact that the rent for some years has been received at a reduced rate does not bind the lessor to accept rent at that rate *Durga Prasad Singh v. Pajendra Narain Bagchi*, 10 C. L. J. 576, followed *Quære* Whether variation of the *kobulyat* rent when the tenant is holding over can be established by oral evidence *Sheikh Fayyazullah v. Sheikh Elakee bakhsh* [1884] W. R. Art. X, 42, and *Sayyid bin Habsay v. Umayy bin Sadoqy*, 3 Bom. H. C. A. C. J. 27, followed *Mukund Chandra Sarma v. Arjan Ahl*, 2 C. W. N. 47, explained *BALNATH PRASAD SABA v. RAGHUNATH RAI* (1911)

16 C. W. N. 496

See also post 20 C. W. N. 347

11. ———— *Denial of relationship of landlord and tenant—Bengal Tenancy Act (VIII of 1886)—Suit for rent, dismissal of—Appeal by landlord, withdrawal of—Suit for ejectment, if maintainable* Mere denial of the relationship of landlord and tenant does not, in case to which the Bengal Tenancy Act applies, work any forfeiture unless the denial has been given effect to by a decree of the Court Where the landlord, after the dismissal of his suit for rent upon the tenant's denial of the relationship of landlord and tenant appealed, and pending the appeal withdrew the suit with liberty to bring a fresh suit and then brought an action to eject the tenant on the ground of such denial by the tenant *Held*, that the only decree that could be relied on here was a decree which ceased to exist owing to the withdrawal of the suit by the landlord and so the denial of the relationship of landlord and tenant by the tenant would not work any forfeiture suit was not given effect to by a decree of the Court *PTABIR LAL HALDAR v. HEM CHANDRA SARKAR* (1912)

16 C. W. N. 730

12. ———— *Settled raiyat—Settlement proceedings, tenant setting up rent free title in—Tenant entered as settled raiyat in Record-of Rights as such*

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published—*Suit to have rent assessed*—*Limitation* Where more than 12 years before the landlord's suit for assessment of rent the tenant in the course of settlement proceedings set up a title to hold the land rent free, but no actual decision of the question by the Settlement Officer was proved though the record of rights which was finally published within 12 years of the suit showed that the tenant was entered as a settled *raiyat* in the village. *Held*, that it was open to the landlord to rely upon the entry in the record of rights as a tacit recognition of his right to have rent assessed at any time within 12 years of the date of final publication and the suit therefore was not barred by limitation. *Maharaja Birendra Kishore Manikya Bahadur v. Rosan*, 15 C L J 203 s c 16 C W N 931, distinguished *AMAN GAZI v. BIRENDRA KISHORE MANIKYA BAHADUR* (1912)

16 C W N 929

13 ——— *Assessment of rent*—A suit for assessment of rent brought more than 12 years after an adverse title had been set up, is barred by limitation. *BIRENDRA KISHORE MANIKYA BAHADUR v. ROSAN* (1912)

I L R 39 Calc 453

16 C W N 931

14. ——— *Fixed-rate tenants—Liability*—*Contract Act (IY of 1872) s 43* *Held* that the liability of joint holders of a fixed rate tenancy of payment of rent is joint and several and not joint only. The failure therefore of the plaintiff in a suit for rent against several fixed rate tenants jointly to bring upon the record the representatives of a deceased defendant is no bar to the continuance of the suit against the remaining defendants. *Joy Gohand Lahri v. Monmotha Nath Banerji*, I L R 33 Calc 530 followed *Muhammad Askar v. Radhe Pam Singh* I L R 22 All 367 referred to *ABDUL AKIZ v. BASDEO SINGH* (1912)

I L R 34 All 604

15 ——— *Denial of landlord's title*—*Landlord, if entitled to rent for use and occupation where no such alternative claim is made in the plaint* In a suit for rent where no alternative claim is made for compensation for use and occupation, no rent can be decreed on that footing. Where in a suit for rent the defendant denied the landlord's title and the plaintiff failed to prove an alleged settlement with him and no alternative claim was made in the plaint for compensation for use and occupation, *Held*, that the landlord was not entitled to compensation for use and occupation. *Fulke Kant Doss v. Sumteroodda, Laskar* 13 B L R 241 *Saarendra Narayan v. Bhairi Lal* I L R 22 Calc 75, *Rachha Singh v. Upendra Chandra* I L R 27 Calc 232, and *Gobinda Sundar v. Srikrishna* 10 C I J 531 followed *Suremoyee v. Dhoo Nath* I L R 2 Calc 903, and *Anam Sundar v. Ramloh*, I L R 25 Calc 224 dismissed. *Fakir Chandra Singh v. Shama Charn Mahato*, 11 Moa, J A 7, 20 referred to *BURKHU HOXA v. RAM KHELWAN* 133 IND (1912), . . . 17 C W N 311

16 ——— *Ex parte decree for, if operates as res judicata*—*Notice under s 167 of the Bengal Tenancy Act (VIII of 1855) if laid out for rent* An *ex parte* decree in a suit for rent operates as *res judicata* upon the question of relation of landlord and tenant. *Fir Chander*

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v. Harish Chander, I L R 3 Calc 333, referred to *Madhu Sudan v. Brae* I L R 16 Calc 300, discussed and distinguished. Where a suit was decided in the presence of the defendant's pleader *Held*, that the decree could not be called an *ex parte* one merely because the defendant did not adduce evidence or submit any argument at the trial. *Held* also that the *ex parte* decree did not lose its conclusive character because it was not executed. The relation of landlord and tenant being once established the mere fact of non payment of rent is not sufficient to show that the relationship has ceased. If a landlord elects to treat the defendant as a tenant the mere fact of his having served a notice on him under s 167 of the Bengal Tenancy Act does not bar a suit for rent. *Raj Kumar Roy Chowdhury v. ALIMUDDI* (1912)

17 C W N 627

17 ——— *Agreement to deliver agricultural produce—Over and above cash rent*—*Cess—Agreement opposed to public policy* Certain tenants holding under a registered *gabul* at agreed therein to deliver to the landlord over and above the sum specified as a money rent, certain agricultural produce and further to supply the landlord with a cart and bullocks when necessary and in default the landlord might claim the cash value of the said dues along with rent. *Held* on suit by the landlord to recover the cash equivalent of such dues for several years at the covenant in question was for various reasons, non enforceable. *Abdul Ha v. Nathu* I All L J 537 *Sadanand Pandey v. Ali Jan* I I P 32 All 193 and *Sheoambar Ahir v. The Collector of Azamgarh* I L R 34 All 353, referred to *SIL LAM v. ANWAR ALI* (1912)

I L R 35 All 19

SPECIAL U P LAND REVENUE ACT 1901 s 66

I L R 38 All 266

18 ——— *Patni lease—Duties on easement by tidal river—Right to abatement of rent under patni lease—Disturbed land part of taluk re-forming a taluk—Claim by zamindars and patnidars*—*Bengal Act VIII of 1859 s 19—Limitation on by adverse possession—Failure to show relinquishment of submerged land by patnidar* The appellants were owners of a *zaminbati* with which was a *patni taluk* created in 1837 by one of the predecessors in title of the appellants; this *taluk* was owned by the first respondent as *patnidar* and a strong tidal river flowed close to the borders of the *taluk*. The *patni lease* covenanted that "if the land be found to be more in measurement by *as'* prevalent according to the custom of the *pargana* I shall separately pay the rent thereof at this rate if it be found to be less I shall get remission therefor." In 1843 the appellants obtained a decree in the Revenue Court for increased rent on the ground that additional land was found on measurement to be in the *patni dars* possession. In 1853 part of the *taluk* having been washed away by the river the respondent obtained a proportionate abatement of the rent. Subsequently the land so disturbed was formed in *as'*, whereupon both parties claimed it and each party attempted to exercise rights of ownership as evidence of adverse possession against the other but it was found that neither party had proved sufficient adverse possession to give him a title. In 1901 the appellants' suit for a declaration of

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their title to khas possession of the land reformed on the ground that it was part of the zamindari or in the alternative were entitled to receive a proper rent for it. The respondents pleaded that the land was an accretion to their taluk, and that the appellants were only entitled to rent and not to khas possession. *Held* that the High Court was rightly holding that the land reformed did not come within the provisions of s. 4 of Regulation XI of 1864 and that it could not be claimed by either party as an accretion to his lands, had laid too much stress on the terms of the lease and the evidence of intent to deduce from the proceedings respect of additional rent and abatement of rent. There was nothing to show that by claiming or accepting reduction of rent in respect of land washed away from time to time by the action of the river the respondent abandoned or agreed to abandon his rights to such land on its reformation in situ. The divided land formed part of a permanent heritable and transferable tenure and until it could be established that the holder of the tenure had abandoned his right to the subsoil and land remained intact. *Hemasoth Iyit v Achgar Sadar I L R 4 Cal 491* dismissed from *Ala Har Jo v Rangul Singh I L R 19 All 290* follow *Asix C. ANDRA BHOON v KAMINI KUMAR (1913)* I L R 41 Cal 893

19 ——— Execution of decree for rent — *Bengal Tenancy Act (1111 of 1943) ss 65 66 118(a) — Bengal Regulation (1111 of 1919) ss 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100* — *Right to bring tenancy suit on execution of decree for arrears of rent. Assignment of debt. A zamindar having parted with all his interest in the zamindari brought a suit for arrears of rent against the tenant and obtained a decree. Further arrears became due to recover which the purchaser of the zamindari took proceedings under Bengal Regulation VIII of 1819 (relating to patni tenures) and the darpa nidas deposited the amount of the arrears under s. 13 of the Regulation and was put into possession of the patni tenure. In a suit brought by him for a declaration that he had a first charge on the patni for the sum deposited by him and for an injunction to restrain the defendants (persons to whom the zamindar had assigned amongst other property the decree for arrears of rent) from executing the decree. *Held* (reversing the decision of the High Court), that the decree was not one for rent within the meaning of s. 65 of the Bengal Tenancy Act ss 66 and 66 taken together cover practically the remedy provided by law for the landlord to recover arrears of rent. One aspect is the exact corollary of the other. The right to proceed to sale in one case in the other to effect is dependent on the existence of the relationship of landlord and tenant at the time when the remedy provided by law is sought to be enforced. By s. 118(a) of the Act the right to apply for the execution of a decree for arrears of rent was attached to the status of decree holder and landlord. The prohibition on a sale in that act on referred to decrees obtained by the landlord under s. 65 and the right to bring the tenure to sale exists only so long as the relationship of landlord and tenant exists and is imparted exclusively to the landlord. A person therefore to whom rents are due and who obtains a decree for them after he has parted with the property in which the tenancy is situated has no such*

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right. *Ka Ira Lal Singh v Krishnamoni Das I L R 33 Cal 500* distinguished. *Held* also that the plaintiff by his deposit of the arrears for which the patni tenure was a first charge for sale at the instance of the purchaser of the zamindari, acquired the special lien expressly created by Regulation VIII of 1819 arising out of an implication of law. But under the express directions and declarations contained in ss. 11 12 13 and 13 sub s. (2) of the Regulation and the Bengal Tenancy Act is declared by s. 19 of that Act not to affect any enactment relating to patni tenures so far as it relates to those tenures. *Korasa v Mahanad Banaraj Sircar (1914)* I L R 41 Cal 928

20 ——— Abatement of Rent—*Form of Tenant deprives of a part of land by force of injunction erroneously decreed in landlord's suit to restrain encroachment by tenant on khas lands — Agreement to take reduced rent not registered — Adm as lessee — Infringement of encumbrance — The receipt by the landlord of a reduced rent for some years in the absence of reliable and admissible evidence to prove existence of an agreement was held to be consistent with the reduction having been a voluntary and temporary abatement. Where after a permanent lease had been executed the landlord sued the tenant for alleged wrongful entry upon a khas land by the tenant and a judgment for an injunction to restrain the tenant from committing such trespass was set aside by the Court instead of granting the injunction as prayed. *Held* that the tenant was restrained from dealing with property lying outside the demarcated mouzah as decreed. It in the map prepared by the Civil Court Amn and the tenant preferred no appeal against the decree. *Held* that it was not intended by that decree to reduce the area of the land which the tenant was entitled to deal with under his lease, and in a suit for arrears of rent he could not claim an abatement of the rent if in fact the injunction which was granted in earlier terms than were called for had that effect as he himself availed himself of his remedy by way of appeal and submitted to the decree. Where the tenant tendered a reduced amount of rent and interest on the plea that owing to his having not been given possession of the entire area demised, he was entitled to an abatement of rent but no ground was made out by the tenant for such abatement. The tender was not a good tender. It is for the tenant to make out a case if he has one for an abatement of the fixed rent. *Durga Prasad Singh v Rajendra Narayan Bagchi (1913)* 18 C W N 66*

21 ——— Eviction by title paramount — *If good defence to rent suit — Tenant's duty to show to superior landlord by offer of reduced rent — Action by title paramount would be a good defence to a suit for rent if the party evicted having a good title the tenant quitted against his will. The same result would follow where the party seeking to evict should claim the rent and the tenant on such notice of attornment to him. *Hir v Sanderia & B & C 599* follow. The doctrine of quittance cannot apply in this country but it does not apply to a case where the tenant is induced to attorn to the superior landlord by an offer to accept reduced rent. *A. ORIZAN SARDAR v BHOOLA SUNDARI GUPTA (1917)**

LANDLORD AND TENANT—contd

RENT—contd

22. ——— Abatement of Rent—Construction of *kabuliyat* In a *patti kabuliyat* there was the following provision for abatement of rent . . . 'If you obtain remission in the *saddar jama* from the Government in respect of lands taken up for culverts, embankments or roads, I shall also get from you reduction of *jama* on account of all the said remissions in the *jama* of this *patti*' Held, on a construction of the agreement, that the *pattidar* was to get the same amount of remission which the *ramindar* would get in the Government revenue Held, also, that the words 'culverts, embankments or roads' in the agreement were illustrative and not exhaustive *HIRENDBA NATH DUTT v. HARI MOHAN GHOSH* (1914) . . . 18 C. W. N. 860

23. ——— Adjustment of account—Between landlord and tenant—*Wasil baki*—Portion of amount due on adjustment, kept in deposit with tenant for payment to superior landlord—Such amount if continues to be rent and if recoverable as such—Limitation Act (IX of 1908), Sec. I, Art. 115 The plaintiff was the landlord and the defendant the tenant. There was an adjustment of accounts between them as regards rent in 1312 F. S., the adjustment being embodied in a *wasil baki*, and the defendant was found liable to pay as certain amount out of which Rs. 136.2 was left with the defendant as a deposit for payment to the superior landlord on account of rent payable by the plaintiff to the latter and the balance was stated as payable to the plaintiff. The defendant did not make the payment to the superior landlord who sued the plaintiff and obtained a decree against him for the amount due from him. The plaintiff thereupon sued the defendant to recover the rent for the years 1313 to 1315 and the amount which he had to pay to the superior landlord with interest Held, that the *wasil baki* showing that the amount which was to be paid to the superior landlord was left in deposit with the defendant it must be held that there was a discharge for this portion of the rent. The assignee was no party to the contract but if, as the contract showed, the amount was left in deposit with the defendant for payment to a third party and it amounted to a discharge so far as that portion of the rent was concerned, the amount so kept in deposit ceased to be rent and recoverable as such and Art. 115 of the Limitation Act was applicable to the case *LUCHMISSESSER v. DEORI KHAR* (1913)

19 C. W. N. 174

24. ——— Tenant never put in possession of entirety of demised land—*Acquiescence*—Payment of full rent—Suit for rent—Plea of suspension of rent, if sustainable—Abatement—Apportionment Where a tenant who had not been put in actual possession of a portion of the demised land, nevertheless went on paying the full rent agreed to in the lease, in a suit for recovery of arrears of rent by the landlord, Held, that the tenant cannot in such circumstances claim suspension of rent, but the rent payable to the landlord was liable to abatement *Annada Prasad v. Mathuramath, 13 C. W. N. 702*, followed *SARADA PRASAD BHATTACHARJEE v. RAJ MOYMATHA NATH MITTER* (1914) . . . 19 C. W. N. 870

25. ——— Non-occupancy raiyat—Leave for a term—Suspension of portion of rent during the term—Stipulation for payment of rent at full

LANDLORD AND TENANT—contd

RENT—contd

rate after expiry of term—Agreement if invalid—Acceptance of rent at reduced rate after expiry of the term, if deprives landlord of his right to claim rent at the stipulated rate—Waiver—Intention of parties Where in a *kabuliyat* for a term executed by a non occupancy raiyat a certain rent was settled out of which a portion was kept in suspension and the balance was stated to be the rent payable for the term, and it was further stipulated that if after expiry of the term of raiyat continued in occupation without taking a fresh settlement he would be liable to pay rent at the full rate, and after the expiry of the term the raiyat remained in occupation without taking a fresh settlement and rent was then realised from the tenant at the reduced rate for a few years and then upon the landlord sued, for rent at the full rate Held, that the agreement did not contravene the provisions relating to non occupancy raiyats and was not invalid Held, also, that the landlord by accepting rent at the reduced rate was not deprived of his right to claim rent at the rate stipulated in the *kabuliyat* and was entitled to recover rent at the full rate *Durga Prasad Singh v. Rajendra Varayan Bagchi, 1 L. R. 41 Cal. 493 a c 18 C. W. N. 66*, and *Lajinath Prasad v. Raghunath Rai, 16 C. W. N. 496*, followed. Held, further, that evidence that a new execution of the *kabuliyat* the tenant paid rent at a lower rate than that stated in the *kabuliyat* was inadmissible to shew the intention of the parties that the *kabuliyat* was not intended to be acted upon or that there had been a waiver of the terms of the lease *Bani Madhab Goran v. Lalmo Das, 6 C. H. A. 242* followed *KAILASH CHANDRA SANA v. DARBARIA SHEIKH* (1911)

20 C. W. N. 347

26. ——— Suit for Rent calculated on area under cultivation—On the basis of *kabuliyat*, by one co sharer only, making the other co sharer a defendant, if maintainable—Bengal Tenancy Act (VIII of 1885), ss. 52, 138 The plaintiffs as fractional owners sued to recover rent on a *kabuliyat* making their co sharer who refused to join them a *pro forma* defendant. The land was at the time of letting waste and jungle and was not measured but a certain area, was stated by guess and it was provided that the tenants would pay rent at a fixed rate per bigha when the lands would be reclaimed or the surrounding lands brought under cultivation Held that although as a general rule all co-contractors ought to be joined as plaintiffs, a suit by one would not be bad if the others were joined as defendants and if there was good reason for not joining them as plaintiffs, and one of several joint contractors may sue to enforce his share of the obligation if the other co-contractors are joined as defendants. That the present suit was not one for additional rent for excess land within the meaning of a 52 Bengal Tenancy Act, and was maintainable by the plaintiffs upon the *kabuliyat* under the general law and the provisions of a 138 are not applicable to the suit. *BHOOSAI v. AMIRUDDIN* (1916) . . . 21 C. W. N. 371

27. ——— Presumption of permanency of rent—Bengal Tenancy Act (1111 of 1885) as amended by Bengal Acts of 1893 and 1 of 1903, ss. 31A, 50 (2) 113 and 115—Effect of ss. 31 and 115 of the Bengal Tenancy Act—Prevailing rate—Ground for enhancement of rent. Where a Record.

LANDLORD AND TENANT—contd**RENT—contd**

of Rights has been finally published, in view of a 115 of the Bengal Tenancy Act, the presumption under s 50 (2) of the Act does not arise where the tenants have been recorded as occupancy raiyats and not raiyats holding at fixed rents. *Radda Kishore Manikeya v Umed Ali*, 12 C W N 304 not followed. *Priukhand Lall Chowdhury v. Essarant Ali* 1 L R 37 Cal 50, 13 C W N 1149, relied upon. By enacting s 31 of the Bengal Tenancy Act the Legislature never intended to alter the pre-existing law in districts to which that section has no application. Where each tenant holds at a different rate there is no prevailing rate. Even on the ground of prevailing rate, there can be no enhancement of rent for 15 years under s 113, of the Bengal Tenancy Act where rent has been settled under Chap V of the Act. *HARINAR PRASAD PAJPAI v. AJUB MISHRA* (1913)

I. L. R. 45 Cal. 930

28 ——— Conditions for rendering services when called upon—Denial of title and refusal to render services—Services, a subsidiary consideration and of a circumstantial nature—Forfeiture and resumption, right to. The suit which gave rise to this appeal was brought in 1903 by the appellant the Maharaja of Jeypora, against the husband of the respondent (now deceased and represented by his widow) for the possession and arrears of rent of a pargana called Bissam outtak on the allegation that it was part of the appellant's samindari, and had been held by the predecessors in title of the defendant under grants or leases on conditions of payment of kattiabadi or rent and of rendering services to the Maharaja. The latest was a patta, dated 1st August 1877, under which the possession of the defendant's father had been renewed by the then Maharaja on payment of an annual kattiabadi of Rs. 15,000 and the rendering of services stated in the patta as 'just as your father used to attend at Dasara for service, so now you should also present yourself with 500 palka for service whenever directed to do so.' In 1903 when directed to render such services, the defendant had not so attended the Dasara darbar, nor had he paid the proper amount of rent for that year or for 1901 but had asserted that the pargana was not held as a service tenancy, and had set up a title in himself to the pargana as an independent zamindar, and subject only to a payment of Rs. 2,200 to the Maharaja which sum he then paid as rent, but denied his liability as a tenure-holder under the appellant. He wrote a letter to the appellant, dated 26th November 1901, which was alleged to be a contumacious refusal to render services and to amount to a denial of the appellant's title causing forfeiture of his tenant's holding which the appellant claimed to be entitled to resume. Held, that denial of title in the suit would not work a forfeiture of which advantage could be taken in that suit, because the forfeiture must have accrued before the suit was instituted, and there was no denial by matter of record previous to the institution of the suit. *Nizamuddin v. Mamonuddin*, 1 L R 23 Cal. 135, and *Prasanna Shaha v. Madhu Khatu*, 1 L R 13 Cal 36, referred to. Held, also, that here there was no such renunciation by the tenant of his character as such, as to work a forfeiture. Held further, that in this case the rent received was the principal matter, and the rent was subsidiary, and that, under the circum-

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stances the refusal to render the services contracted for did not operate to create a forfeiture or give occasion for resumption. *MAHARAJA OF JEYPORE v. RUKMINI PATTAMANDEVI* (1919)

I. L. R. 42 Mad. 589

29 ——— Letting for cultivation of dry land at fixed rate—Improved cultivation thereafter effected solely at tenant's expense—Payment of higher rate of rent for a series of years—Presumption of consideration for and contract for payment of a higher rate from such payment. Where a tenant to whom dry lands were let for cultivation at a fixed rate and who cultivated them for a certain time, dug wells on the land at his own expense and thereafter raised garden crops for which he paid for a long number of years at rates higher than the dry rate. Held, by the full Bench (AYLING and SESHAGIRI AYYAR, JJ., dissenting) that a Court can presume a contract to pay the higher rate and a legal origin and consideration therefor from such long continued payment of higher rate, if that be the only evidence in the case to prove the rate payable, but that if there be other evidence, a Court cannot make any such presumption from such payment alone. *Per AYLING and SESHAGIRI AYYAR, JJ.*—Where, as in this case, the reason and origin of the payment of higher rate are known to be due to the raising of better crops by the aid of tenants' wells to which the landlord contributed nothing there is no consideration moving from the landlord and no scope for raising any presumption of a legal origin for the contract from the mere fact of a long course of payment of the higher rate. *PERIARABUPPA MOOR KANDAN v. RAJA RAJESWARA SETHUPATHI* (1918)

I. L. R. 42 Mad. 475

30 ——— Stipulation in kabulyat as to payment of rent in kind. Where a tenant executed a Kabulyat promising to pay as rent Rs. 4 in cash and 91 annas as the landlord's share of produce and it was stipulated that on the tenant's failure to pay the said rent and share of paddy the landlord would be competent to realise the said rent and Rs. 36 as price of the paddy. Held, that on the tenant making default in paying the landlord's share of paddy the latter was not entitled to recover the market value of paddy at the time but only the fixed amount of Rs. 36. *GURUDAS SEW v. GOBINDO CHANDRA SINGHA*

21 C. W. N. 85

31. ——— Permanent Tenure rent—Reclamation lease providing for progressive increase of rent up to a limit—Further enhancement, if may be made—Regulation Act (XVI of 1903), s 17—Lease not registered but possession given—Entry subsequently made of terms in landlord's book, if admissible. When a tenure is found to be permanent, heritable and transferable, there is a presumption in favour of the tenant that the rent is fixed and the onus is on the landlord to show that it is otherwise. Where the contract in respect of a reclamation lease of 1291 B. S. was that the tenure should not be liable to rent for the first four years, after which it was to carry rent on a progressive scale until 1298, when it reached 17 annas per bigha, and there was no reference to further enhancement by operation of law. Held—That the clear inference from those facts was that the maximum rent reached in 1298 was the fixed rent

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of the tenure so long as it lasted. **THE PORT CANNING AND LAND IMPROVEMENT CO. v. SREMATI KATAYANI DEBI** . . . 24 C. W. N. 369

32. — *Permissive tenant, suit against for damages for use and occupation whether as a suit for rent* Where, in a suit by a landlord for damages for use and occupation of land, the defendant claimed to be a tenant and the plaintiff admitted that he was a permissive occupant, *held* that the relationship between the parties was indistinguishable from the relationship of landlord and tenant and that the suit was, therefore, one for rent, and was not cognizable by a Small Cause Court. **MAHADEO RAI v. MAHARAJA KESHO PRASAD SINGH BAHADUR** 2 Pat L. J. 97

33. — *Suit for rent—plaintiff in possession under revenue sale—sale set aside—whether plaintiff entitled to recover rent from tenants* Where the plaintiff's purchase of an *umrah* share of an estate was subsequently set aside on appeal, *held*, that the plaintiff was entitled to recover rent from the tenants so long as he remained in possession until the original proprietors succeeded in recovering possession of the *umrah* share. **MUSHTI ABDUR RIZZAQ v. RAI BAHADUR RAJIVATH GOENKA** . . . 2 Pat L. J. 383

TITLE

See LANDLORD AND TENANT (LEASE) (TRANSFER)

Fetoppel—Tenant admitted into possession, if may deny landlord's title and set up a different title derived from stranger A tenant who has been let into possession cannot deny his landlord's title however defective it may be, so long as he has not openly restored possession by surrender to his landlord. **BILAS KUNWAR v. DESRAJ RAJIT SINGH** (1915). I L. R. 37 All 557 19 C. W. N. 1207

Onus of proof—*Zerai*, necessity of proving disputed land—*Khas* land other than *zerai*—*Tenure or holding*—*Lease to ticcadar to cultivate*—*Lands cultivated if rayats land of ticcadar*—*Ticcadar's possession of land outside ticcadar's possession of land outside ticcadar's possession of land* The owner of a *tanzim* is entitled to recover possession of lands within it, unless the defendants whom he sues can prove a subordinate interest that derogates from his title. The fact that he has failed to prove certain specific titles which he in addition asserted in the disputed lands, does not deprive him of this mutual presumption in his favour. The onus which is on the defendants must be discharged by them. The fact that the defendants were rayats holding other lands of the village would make them entitled rayats of the disputed lands if they prove that these lands were held by them as rayats but not if they fail to prove this. **Rajendra Kumar v. Mohim Chandra**, 3 C. W. V. 763 did not apply to this case, in which the defendants held a number of separate holdings and did not claim to hold the land in suit as part of any specific holding. Where a ticcadar took a lease of lands for exceeding 100 bighas in area to cultivate by sowing indigo or other crops either by means of *Khas* cultivation or through tenants. *Held* that it was a tenure. A tenure holder does not become a rayat with respect to all land that comes into his direct possession, because the lease authorises

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him to cultivate these lands. A proprietor may hold other lands besides *zerai* lands in *Khas* possession, and because he recovers possession of lands on the basis of the presumption arising from his proprietorship, it does not follow that the land is *zerai*; nor does the fact that he fails to prove the land to be *zerai* prevent him from claiming the land if the defendant fails to establish a subordinate interest in it. Where the proprietors having purchased certain holdings suffer them without any arrangement to be taken possession of by their ticcadars, the ticcadars' possession of such holdings does not become adverse to the proprietors. **MANNERS v. HANINAR KOER** (1914) 19 C. W. N. 149

Denial of landlord's title when entails forfeiture—*Power of Court to relieve forfeiture* In order that a denial of landlord's title should work a forfeiture of the tenancy, three things are necessary: (a) the tenant must set up title either in himself or in a third party inconsistent with their mutual relationship, (b) the denial must be direct and unequivocal and not casual and (c) it must be made to the knowledge of the landlord. A casual statement, uncommunicated to the landlord, made by a tenant in a sale, deed executed by him in favour of a third party in respect of other properties to the effect that the executant is the owner of the properties leased, does not amount to a disclaimer of the landlord's title. *Per SENAPATI AYYAR, J.* **Obher** A disclaimer of the landlord's title effects a forfeiture even if the tenure be for a specific term, and Courts have no power to relieve against it unless the disclaimer was occasioned by the fraud, mistake or accident of the landlord and the tenant was neither careless nor negligent. **KENALOOTI v. MENAMPUR** (1917) I L. R. 41 Mad. 629

"Sarkhat"—*executed by tenant in favour of a person with an imperfect title*—*Notice of ejection*—*Tenant not competent to deny the title of person to whom he had given the sarkhat* In execution of a decree against one of two joint owners of a house the decree holder caused the entire house to be sold. Whilst the house was under attachment the other joint owner filed his suit for partition and obtained a preliminary decree but the sale took place before this decree was made final. One M. P., who was a tenant of both the original owners then executed a *sarkhat* or acknowledgment of his tenancy, in favour of the auction purchaser, admitting that he was a tenant of the auction purchaser and liable to ejection by him under the conditions stated therein. *Held* that it was not open to M. P. to challenge the auction purchaser's right to eject him according to the terms of the *sarkhat* and to set up the *ius tertii* of one of the co-owners. **Lal Mohamed v. Kallias** I L. R. 11 Cal. 510, distinguished. **MATHURA PRASAD v. GOKUL PRASAD** (1919) I L. R. 41 All. 654

Denial of landlord's title—*Forfeiture of tenancy*—*Denial that landlord's title was subsisting*—*Adverse possession*—*Kuduma tenure, nature of*—*Part of future services*—*Resumption of lands*—*Right to eject on denial of title* A denial by the tenant of his landlord's title must, in order to work a forfeiture of the tenancy, be brought home to the knowledge of the landlord and it must be unequivocal and clear. The

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receipt and retention by the tenant of a document of sub lease in which he is spoken of as the jami of the lands demised, cannot operate as a denial of the landlord's title so as to cause a forfeiture of the tenancy. If a tenant denies subsisting title in the landlord and claims that the property became vested in him by adverse possession, such conduct amounts to denial of landlord's title prior to suit. Lands granted on *kudma* tenure for past services are not resumable. But if granted for future services they are resumable on a refusal to perform service. A denial by such tenant of the landlord's title is tantamount to refusal to tender service. **RAMAY NAIK v. MARIYOMMA (1923)** I L. R. 43 Mad. 480

stipulation in, against voluntary alienation by tenant to person other than landlord—Forfeiture of tenure by stranger at sale in execution of revenue decree—Purchaser if acquires a good title—Landlord if can sue original tenants for rent and obtain decree binding on tenure. The plaintiff purchased at an execution sale the right title and interest of the tenants in a *nim howla* tenure. Notwithstanding the purchase by the plaintiff which was duly notified to the landlord the latter brought a suit for rent against the tenants and obtained a decree. The plaintiff brought a suit for declaration that this decree was not binding on him and that the tenure in his hands was not liable to be sold in execution thereof. The lease which created the *nim howla* tenure provided as follows—Let it be known that if you find it necessary to transfer the *nim howla* tenure you will transfer it to me for proper price. You will not be at liberty to transfer it to any person other than myself. If you transfer it to any other person, such transfer will be invalid. *Held*—That there being no covenant against involuntary alienations and no covenant for re-entry the plaintiff acquired a good title by his purchase and consequently it was not open to the landlord to sue the original tenants with a view to obtain a decree whereby he could proceed against the tenure in the hands of the plaintiff. **PROMODE BANJAN GHOSH v. ASWANI KUMAR NAG** 18 C. W. N. 1138

Denial of landlord's title—Forfeiture of tenancy—Denial that landlord's title was subsisting—Adverse possession—Kudma tenure nature of—Part of future services—Resumption of lands—Right to sue on denial of title. A denial by the tenant of his landlord's title must in order to work a forfeiture of the tenancy be brought home to the knowledge of the landlord and it must be unequivocal and clear. The receipt and retention by the tenant of a document of sub lease in which he is spoken of as the jami of the lands demised, cannot operate as a denial of the landlord's title so as to cause a forfeiture of the tenancy. If a tenant denies subsisting title in the landlord and claims that the property became vested in him by adverse possession, such conduct amounts to denial of landlord's title prior to suit. Lands granted on *kudma* tenure for past services are not resumable. But if granted for future services they are resumable on a refusal to perform service. A denial by such tenant of the landlord's title is tantamount to refusal to tender service. **RAMAY NAIK v. MARIYOMMA (1923)** I L. R. 43 Mad. 480

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TRANSFER

Transfer of a portion of a non transferable jote—Joint possession—Transfer, validity of. The purchaser of a portion of a *raiyats jote* which is not transferable without the landlord's consent and where there is no finding of such consent, is not entitled to have joint possession of the jote. It is open to tenants in occupation of a portion of the jote to question the validity of the transfer. **AGARJAN BIBI v. PARATULA (1910)**

I L. R. 37 Cal. 657

See also, OCCUPANCY HOLDING

I L. R. 42 Cal. 172

Transfer of holding—Leasehold Mortgage of holding, effect of—Bengal Tenancy Act (VIII of 1885) s. 25—Abandonment—Forfeiture. An unauthorized transfer of a holding or the parting with possession of it, in whole or in part does not per se work a forfeiture under the Bengal Tenancy Act. Transfer by way of usufructuary mortgage stands on the same footing as other partial transfers. **Ashok Sardar v. Chandra Nath Vag Chowdhury, I L. R. 20 Cal. 520 Mathura Mandal v. Ganga Charan Gope, I L. R. 33 Cal. 1219** referred to **Barada Charan Dutt v. Hemlata Das, 13 C. W. N. 242**, commented on **Ram Lal Dutt v. Bidumukha Das, I L. R. 33 Cal. 1034, Rajendra Kishore Adhikari v. Chandra Nath Dutt, 12 C. W. N. 878, Arushna Chandra Ditta Chowdhury v. Ashraf Begum, 19 C. W. N. 499**, distinguished **BRUFENDE NATH BOSE v. BANSI TANTI (1913)**

I L. R. 40 Cal. 870

Non transferable occupancy holding—Occupancy holder transferring part of his holding without the knowledge or consent of the landlord—Transfer, validity of—Non payment of rent by tenant—Disclaimer—Suit by landlord for his possession of the transferred portion. The holder of a non transferable occupancy holding has no power to create by transfer a title good against his landlord. Where a tenant transferred by a deed of sale a portion of his non transferable occupancy holding without his landlord's knowledge or consent and subsequently refused to pay the rent of the transferred portion to the landlords on the ground that it was sold and relinquished in favour of the purchaser paying rent only for the portion of the holding which remained in his possession, and where such apportionment of the rent was accepted by the landlords. *Held*, that such an act on the part of the tenant amounted to a disclaimer to all right, title and interest to the transferred part and that the part transferred was at the disposal of the landlords unless any third person could make out a good title to possession as against them. **ARUN KISHORE PAL CHOWDHURY v. BAMA SUNDARI DAS (1913)**

I L. R. 43 Cal. 878

MISCELLANEOUS

1. — *Representation, principle of—Decree against recorded tenants, effect of—* When the recorded tenant represents a holding on behalf of all his co-shares, such holding passes by a sale in execution of a decree for arrears of rent obtained by the landlord against such tenant. **Ashok Bhugyan v. Korma Purohit, 2 C. W. N. 843** discussed **JAGATYAKA DAS v. DATTAJI BEWA (1909)** I L. R. 37 Cal. 75

LANDLORD AND TENANT—contd

MISCELLANEOUS—contd

2. ———— *Burgadar—Burgadar, if tenant—Suit for burgar rent, if maintainable in Small Cause Court—Small Cause Courts Act (IX of 1857), Sec 11, cl (8)* Settlement with a *burgadar*, under which he undertakes to cultivate the land for a half share of the produce, the remaining half going to the owner, does not by itself create the relation of landlord and tenant between the parties. A suit for recovery of the price of his share of the produce by the owner is maintainable in the Small Cause Court. *KADR MANDAL v AHADALI MOLLA* (1910). 14 C. W. N. 629

3. ———— *Non-occupancy riyat—Semble* Whether a tenant who enters upon a land held under a *de facto* proprietor, can acquire a riyat interest there in even though the *de facto* possessor ultimately turns out to be no real owner in case the tenant should have entered on the land in good faith. *Binad Lal v Kala*, 1 L R 20 Calc 703, *Peary Mohun v Radhika Mohun*, 8 C W N 315 sc 5 C L J 9, referred to. Where a tenant has acquired the status of a non occupancy riyat in respect of any land, he is entitled to possession of land which has accreted to his holding. *Cour Hari v Bha*, 1 L R 21 Calc 233, *Bani Pershad v Chatur*, 4 C L J 63, sc 1 L R 33 Calc 444, *Amyad Ali v Kaderjan*, 13 C W N 269, sc 8 C L J 537, *Ahmed Bipari v Tahi Mahomed*, 13 C W N 267, sc 8 C L J 534, *Msa Jan v Akromali*, 8 C L J 511 referred to. *MADHU L SABAR ALI* (1910)

14 C. W. N. 681

4. ———— *Suit for rent—Third party impleaded and ordered to institute a suit in the Civil Court for declaration of his title—Revenue* In a suit for rent instituted in a Court of Revenue the defendant pleaded that he had paid the rent in good faith to a third party. The party so named was impleaded in the suit and he stated that he was the sole owner of the property in respect of which rent was claimed and was entitled to the entire rent. The Court purporting to act under s 199 of the Agra Tenancy Act 1901, passed an order directing the third party to institute a suit in the Civil Court for determination of his title. Held that the High Court was not competent to entertain an application in revision from such order. *Dambar Singh v Srikrishna Dass* 1 L R 31 All 445. *Parbhhu Varain Singh Kashi Narain v Harbans Lal* 14 A I J 281 and *Jamna Prasad v Karam Singh* 1 L R 41 Ill 98, referred to. *MURAHMAD ENTISQAM ALI v LALEJI SINGH* (1918)

1 L R 41 All 226

5. ———— *Unconscionable bargain—Presumption from possession—Where an unconscionable bargain is entered into by a tenant for no apparent reason the Court is justified in presuming undue influence* When a tenant is found in possession of land adjacent to other lands admittedly under his cultivation and he has cultivated same to the knowledge of the Zamindar the Court may until the contra is proved presume that a part of his holding. *KASHI NATH ROY v RAJAH DEEPA PRASAD SINGH*

1 Pat L J 604

6. ———— *In a village not purely agricultural but about 1/3rd so a father and son were in possession of a house site in the abadi*

LANDLORD AND TENANT—contd

MISCELLANEOUS—contd

and carried on the occupation of inn keepers and sellers of tobacco and there was no evidence of the origin of their possession or that they ever paid rent or acknowledged the Zamindar. The son sold and the house fell down and the Zamindar sued to eject the purchasers. Held that in the circumstances of the case the defendants and their predecessors in interest were properly held to have acquired a title to the site by adverse possession. *YASHA RAM v BANDE ALI KHAN*

1 L R 38 All 757

——— *Lessee sub-leasing his right—to another for a term without obtaining possession—Trespass by stranger—Right of lessee to sue stranger for possession, mesne profits and damages* A lessee of certain lands who had not obtained possession from his lessor but subleased his right to others for a term with a stipulation that they should obtain possession, has no right to sue during the continuance of the term trespassers in possession either for mesne profits or for damages. *Per Wallis, C J* (*Sadasiva Ayyar, J, contra*) The lessee is also not entitled to sue the trespassers for possession. *DAYOD MORTIJEEN RAUTNAR v JAYARAMA AYYAR* (1921)

1 L R 44 Mad 937

LANDLORD AND TENANT ACT (BENG. VIII OF 1889)

See BENGAL RENT ACT.

See LANDLORD AND TENANT

1 L R 41 Calc. 633

See UNDER TENURE SALE OF

1 L R 37 Calc. 823

LANDLORD'S INTEREST

Bengal Tenancy Act (VIII of 1885), s 143 cl (h) By the term 'Landlord's interest' in s 143 cl (h) of the Bengal Tenancy Act is meant the interest of the person entitled to receive the rent from the tenant at the date of the application for the execution of the decree. *SHAMBHU NATH SINGH v SURESH PERSHAD SINGH* (1913) 1 L R 40 Calc 462

LAND REGISTRATION

Estoppel against Act of Legislature—How far ss 78 and 81 of the Land Registration Act (Beng VII of 1876) affect s 60 of the Bengal Tenancy Act—Estoppel—Land Registration Act (Beng VII of 1876) ss 78 81—Bengal Tenancy Act (VIII of 1885) s 60 There can be no estoppel against an act of the Legislature. *Jagabundhu Saha v Riddha Krishna Pal*, 1 L P 36 Calc 920, followed. S 60 of the Bengal Tenancy Act governs a suit for rent where the plaintiff claims rent as proprietor of an estate though rent is sought to be real sold on the basis of a contractual obligation. The restrictions imposed by s 81 upon s 78 of the Land Registration Act cannot be incorporated by implication into s 60 of the Bengal Tenancy Act. The plaintiff, an unregistered part proprietor of an estate is not entitled to succeed as against the defendant, who relying upon s 60 of the Bengal Tenancy Act has established that his debt has been discharged by payment of rent to the registered proprietor. *As DUL AZIZ v KANTHU MALIK* (1910)

1 L R 38 Calc 512

LAND REGISTRATION ACT (BENG VII OF 1878)

ss 42 53, 88—

See FALSE EVIDENCE

I L R 38 Cal 365

§ 78—*Resumed chauth dars chakran land—Effect of transfer to re-udar—Non registration under the Land Registration Act of 1878 to suit for rent—Village Chauth dars Act (Beng I of 1870) s 51* Where the plaintiff remander claimed rent for land which was originally chauth dars chakran and was upon resumption settled with his predecessor in interest and the defendant resented the claim on the ground that the name of the plaintiff was not registered in the books of the Collector until s 78 of the Land Registration Act of 1878. *Held* that under s 51 of the Village Chauthdars Act of 1870 the effect of transfer of resumed chakran lands to the remander was not to impart to such land the character of an estate for all purposes, and s 78 of the Land Registration Act was no bar to the plaintiff's suit. **TINKARI MEKHERJEE v SATYA NIRANJAN CHAKRABARTY (1913)** 18 C W N 158

Suit for rent—Dismissal for non registration of plaintiff's names under the Act—Registration pending appeal effect of—Costs Where a suit failed by reason of non registration of the plaintiff's names under Act VII of 1870 s 78 but registration was obtained during the pendency of the plaintiff's appeal the High Court on second appeal directed the case to be disposed of by the Trial Court on the merits it appearing that no portion of the claim was barred on the day when the land registration was really taken. The plaintiffs were directed to pay the costs of the defendants of the original trial and were not allowed costs of either Court of Appeal. **CHULLAN SINGH v MADHO SINGH (1915)** 19 C W N 794

ss 78 81—

See ISABADIAH.

I L R 48 Cal 1078.

See LAND REGISTRATION

I L R 28 Cal 512

LAND REVENUE

assignment for the office of Kul-karni—

See PENSIONS ACT (XXIII OF 1871)

s 4 I L R 42 Bom 257

LAND REVENUE CODE (BOM ACT V OF 1879)

See BOMBAY LAND REVENUE CODE

LAND TENURE IN BENGAL.

See BENGAL TENANCY ACT

Enhancement of Rent—Reservation of Progress vs Rent—Interference—Bengal Tenancy Act (VIII of 1885) s 30 When the agreement creating a permanent tenure provides that for a certain number of years the land shall be held rent free, and that for a certain number of years subsequently a progressively increasing rent be paid, the inference is that the maximum rent so provided was to remain the fixed rent and was not to be liable to enhancement. **PORT CANNING AND LAND IMPROVEMENT COMPANY v KATYANI DEBI (1910)** L R 46 I A 279

LAND TENURE IN BENGAL—contd

See *Wakals* 17

Khurda—Absence of her table or transferable Rights—Liability to demand for second class Sarbaraks in Khurda have no heritable or transferable right in the office or in the Sarbaraks Jagir lands. They are liable to dismissal for misconduct and upon dismissal lose all rights in the jagir lands. **SADDANANDA MAITI v VEDRATHI MAITI s B L R 280** discussed **PARANA NANDA DAS GOSWAMI v KRIPASINDHU ROY (1918)** I L R 46 Cal 378

L R 45 I A 246

Char acquired in 1833—Purpose of letting—Tenure holder—No accrued right as raiyat—Bengal Tenancy Act (VIII of 1885) s 19 The appellants' predecessors in 1833 acquired from the Government extensive Char lands in Bengal for the purpose of reclaiming them and then letting them at a profit to cultivators. There was some evidence that on occasions prior to 1885 the Board of Revenue and its subordinate bodies had regarded the holding as raiyati. *Held* that the appellants were tenure holders within s 5 of the Bengal Tenancy Act 1885 and that s 19 which saves occupancy rights accrued to raiyats prior to the Act did not apply as neither the appellants nor their predecessor had held a raiyati interest in the land. **RAJANI KANTA GHOSH v THE SECRETARY OF STATE FOR INDIA (1918)** L R 45 I A 190

LAND TENURE IN MADRAS

See MADRAS ESTATES LAND ACT

1 *Inam Grant—Kudavaram—Absence of Presumptio in Fatale—Madras Estates Land Act (I of 1908 Mad) s 3 sub s 2 (d)* In determining whether an inam village is an estate within s 3 sub s (2) (d) of the Madras Estates Land Act 1908 there is no presumption of law that an inam grant even if it was made to a Brahman did not include the Kudavaram. Each case must be determined upon the terms of the grant and all the circumstances so far as they can be ascertained. In 1783 in confirmation of a grant in 1748 which was not in evidence a village together with gardens, holy shrines, wells and tanks was granted as a *acres ayroharum* to be cultivated and enjoyed by the grantee hereditarily. The grantee was referred to in a document of 1788 as being resident in the place. The documents in evidence, including inam registers extending to 1865 and the subsequent dealings with the property were inconsistent with any person other than the inamdars having rights of permanent occupancy. In 1907 the inamdar let to tenants lands which at the time of the grant had been waste lands of the village and upon the terms expiring in 1908 sued to eject them. *Held* that the lands in suit were not an "estate" within the Madras Estates Land Act 1904 and that the appellant could eject the tenants by suits in the Civil Courts. **SURYANARAYANA v PALANAN L R 45 I A 219** followed **UPADRASHTA VENKATA SASTRULU v DIVI SEETHARAMUDU (1919)** L R 46 I A 123

2 *Occupancy Right—Inherently Settled Estate—Part of estate not on other Land—Estate—Madras Estates Land Act (Mad Act I of 1908) s 3 s 3 By s 3 of the Madras Estates Land Act, 1908 an estate*

LAND TENURE IN MADRAS—*contd.*

for the purpose of that Act includes "any permanently settled estate or temporarily settled zamindari. Land forming part of a permanently settled estate in Madras was taken by the Government under the Land Acquisition Act, 1870, and the revenue attributable to it ascertained. The Zamindar petitioned that, instead of a corresponding reduction being made in the revenue for the estate, he should receive as compensation other land which he already held under a Government ryoti patta. That land accordingly was transferred to him in 1893. In 1901 he let it to tenants who, upon the terms expiring after the Act of 1893 came into force, refused to give up possession—*Held*, that the land so transferred was not part of an "estate" within the Act, and that a suit to eject the tenants could be maintained in a Civil Court. **ZAMINDAR OF SAKIVARA PUPPT v. ZAMINDAR OF SOUTH VALLEU (1918)**
I. L. R. 46 I. A. 38

LANDS CLAUSES CONSOLIDATION ACT (8 & 9 VICT., C. 18).

ss. 63, 68—

See RECOUNTMENT.

I. L. R. 45 Calc. 343

LAPSE TO MONASTERY.

custom of—

See HINDU LAW—SUCCESSION

14 C. W. N. 191

LARCENY.*See* PENAL CODE (ACT XLV OF 1860)

s 379 . . . I. L. R. 34 All. 89

LATHI PLAY.*See* PENAL CODE, s 121A

18 C. W. N. 1105

association for, seditious—

See CONSPIRACY TO WAFF WAR.

I. L. R. 38 Calc. 559

16 C. W. N. 1105

LAW.

in part Repugnant—

See GOVERNOR GENERAL IN COUNCIL.

I. L. R. 1 Lab. 326

question of—*Decision* that there is no evidence to support finding. A decision that there is no evidence to support a finding is a decision of law. **HARENDRA LAL ROY CHOWDHURI v. HARI DASI DEBI (1914)** . . . 18 C. W. N. 817

LAWFUL APPREHENSION.

resistance to—

See RESCUE FROM LAWFUL CUSTODY

I. L. R. 43 Calc. 1161

LEADING QUESTIONS.*See* CHARGE . . . I. L. R. 42 Calc. 957*See* JURY. . . I. L. R. 37 Calc. 467**LEASE.***See* ADVERSE POSSESSION.

I. L. R. 38 Bom. 53

See BEMIANI PATTI. . . 21st L. J. 180**LEASE—*contd.****See* BOMBAY RENT ACT, 1918

ss 3, 9, 12 . . . I. L. R. 45 Bom. 535

See DISTRESS LAND

I. L. R. 41 Calc. 164

See CIVIL PROCEDURE CODE (ACT V OF 1908), O II, r 2

I. L. R. 38 Bom. 444

See CONTRACT . . . I. L. R. 46 Calc. 771*See* CUSTOMARY LAW OF SOUTH KANARA

I. L. R. 41 Mad. 118

See DEKHEAN AGRICULTURISTS RELIEF ACT (XVII OF 1879), s 3 CL (a) AND s 10A

I. L. R. 40 Bom. 397

See ESTOPPEL . . . I. L. R. 39 Cal. 513*See* KABULIYAT

I. L. R. 39 Calc. 1016

See KHOTI SETTLEMENT ACT (BOM I OF 1880), ss 9, 10

I. L. R. 38 Bom. 709

See LAMBANDAR AND CO SHAFER

I. L. R. 33 All. 17

See LAND ACQUISITION.

I. L. R. 45 Bom. 725

See LANDLORD AND TENANT (LEASE)*See* LAND REVENUE CODE (BOM I OF 1879), s 3 (19)

I. L. R. 35 Bom. 462

See LEASEHOLD PROPERTY*See* LIMITATION ACT (IX OF 1908), SCH I, ART. 92, 93 . . . I. L. R. 40 Bom. 22*See* MADRAS ESTATES LAND ACT (I OF 1908), s 42, CL (a) AND (b) AND 2

I. L. R. 38 Mad. 524

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MADRAS I OF 1900), s 19

I. L. R. 40 Mad. 603

See MINERAL RIGHTS

I. L. R. 38 Calc. 845

See MINOR . . . 3 Pat. L. J. 618*See* MINING LEASE*See* MOKARARI LEASE.*See* MORTGAGE . . . I. L. R. 35 Bom. 371*See* MULOONI LEASE*See* OCCUPANCY RAIYAT.

I. L. R. 40 All. 228

See PERMANENT LEASE*See* REGISTRATION LEASE*See* REGISTRATION ACT (XVI OF 1909), s 17,

I. L. R. 41 Bom. 458

I. L. R. 45 Bom. 8

See RENT . . . I. L. R. 41 Calc. 347*See* RES JUDICATA.

I. L. R. 37 Bom. 224

See STAMP ACT (II OF 1899), s 59, SCH. I, ART. 35, CL. (a), SUB CL. (iii)

I. L. R. 37 Bom. 434

LEASE—*contd*

See STAMP DUTY

I. L. R. 37 Calc. 629

I. L. R. 46 Calc. 804

See SURVEYS AND BOUNDARIES ACT 8
12 I. L. R. 34 Mad. 108See TRANSFER OF PROPERTY ACT (IV OF
1882)—

s 10 I. L. R. 33 Mad. 867

s 105 . . . 14 C. W. N. 73

s 107 . I. L. R. 39 Bom. 500

s 107, 107 I. L. R. 38 All. 178

s 108 (j) I. L. R. 37 All. 144

Agreement to not admissible if
unregistered—See REGISTRATION ACT 1908 s 49
28 C. W. N. 329

agreement to renew—

See SPECIFIC PERFORMANCE
I. L. R. 40 Calc. 665

by Collector—

See EMBARKMENT
I. L. R. 46 Calc. 825

by Mahomedan co-heirs—

See TENANTS IN COMMON
I. L. R. 39 Mad. 1049

by wife, repudiation of—

See TRANSFER OF PROPERTY ACT (IV OF
1882) s 10 I. L. R. 38 Mad. 867

construction of—

See RESUMPTION
I. L. R. 39 Bom. 279

determination of—

See EJECTMENT I. L. R. 45 Calc. 489

determined by one lessor—

See TENANTS IN COMMON
I. L. R. 39 Mad. 1049

document, varying terms of—

See REGISTRATION
I. L. R. 39 Calc. 284Ejectment of Tenant in arrears with
rent—See REGISTRATION ACT, 1908, s 17
I. L. R. 2 Lah. 300

for a term—

See LESSOR AND LESSEE
I. L. R. 39 Mad. 1042for a term of years, construction
of—See CONSTRUCTION OF DEEDS
I. L. R. 40 Bom. 74

forfeiture of—

See CIVIL PROCEDURE CODE (ACT V OF
1908), O XXII s 10
I. L. R. 39 Bom. 563

See EJECTMENT . I. L. R. 45 Calc. 469

From future date—

See REGISTRATION
I. L. R. 45 Bom. 8LEASE—*contd*.

Intention to determine—

See TRANSFER OF PROPERTY ACT (IV OF
1882), s 111, cl (j)

I. L. R. 42 Bom. 185

of mutt properties—

See HINDU LAW—ENDOWMENT
I. L. R. 40 Mad. 709

of palmyra juice—

See REGISTRATION ACT (III OF 1877),
s 17 (1), FC I. L. R. 38 Mad. 883

registration of—

See TENANCY AT WILL
I. L. R. 44 Calc. 214

repudiation of—

See LIMITATION ACT (XV OF 1877) SCH II
ART 91 I. L. R. 38 Mad. 321

surrender of—

See LANDLORD AND TENANT
I. L. R. 46 Calc. 552

Taraga Lease for reclamation—

See MALABAR LAW
I. L. R. 44 Mad. 509

Unregistered lease for six months—

See TRANSFER OF PROPERTY ACT, 1882,
s 4 . I. L. R. 44 Mad. 55

variation in the terms of—

See REGISTRATION
I. L. R. 39 Calc. 234

1. Solehnama—Unregistered Soleh nama, admissibility in evidence of—Registration Act (III of 1877) s 17, cl (d) and (8) A soleh nama, by which no immediate interest in immovable property is created, and whereby there has been no demise does not amount to a lease within the meaning of clause (d) of s 17 of the Registration Act, and is merely an agreement to create a lease on a future day. Such a document falls within clause (h) of s 17 of the Indian Registration Act and is admissible in evidence without registration. PANCHANAN BOSE; CHANDI CHARAN MISRA (1910) I. L. R. 37 Calc. 808

2. Multifarious document—One lease with several parties concurring to it—Stamp Act (II of 1899), s 5, 28 (3), 35, 57 (1) The concurrence of several parties to one and the same lease does not make it a multifarious document within the meaning of s 5 of the Stamp Act. The stamp-duty on such a lease is the same as on a conveyance for a consideration equal to the amount or value of the fine or premium for which the lease is granted. In re PANJARA (COLLECTORS, LTD. (1910) I. L. R. 37 Calc. 629

3. Letter containing all the elements of a lease, whether admissible in evidence without registration—Payment of rent at a reduced rate on the basis of that letter, effect of—Conflicting descriptions of the subject matter of a grant—Lease not put in possession of specific area mentioned in the lease, effect of—Mistake of fact—Statement of rent in a suit for rent at a certain rate, the lessee pleaded that by virtue of a letter addressed to him by the lessor, the latter was entitled to get rent only at a reduced rate. The letter contained a definition of the reduced rental, rented the area of the land demised under the

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lease the nature of the interest granted by the lease and the instalments in which rents were payable. *Held*, that the letter being a non-testamentary instrument which purported to limit in future a vested interest of the value of Rupees one hundred and upwards in immovable property, was not admissible in evidence without being registered. *Biraj Mohan Dasree v Kedar Nath Karmakar*, 1 L R 35 Cal 1010, referred to. *Held*, also that the mere fact that rent for some years had been received at the reduced rate did not bind the lessor to accept rent at that rate in future, inasmuch as, even if the letter had been treated as an agreement for reduction of rent it was not enforceable in law, having been made without consideration. Where there are two conflicting descriptions of the subject matter of a grant, or two conflicting parts of the same description, that which is the more certain and stable, and the least likely to have been mistaken or to have been inserted inadvertently, must prevail, if it sufficiently identifies the subject-matter. *Newson v Fryer's Lessee*, 7 Wheaton U S 7, referred to. But where these two elements—the boundaries and the quantity—are equally certain and exactly defined, or the boundaries are as precise and definite as the quantity is specific and exact and there is gross discrepancy between the quantity specified and the quantity found to be included within the defined boundaries, preference should be given to that element of the description of the subject matter which is more consistent with the intention of the parties to be collected from the other parts of the deed, illuminated, if necessary, by the surrounding circumstances and the subsequent conduct of the parties. *Lord v The Commissioners for the City of Sydney*, 12 Moo P C 473, 11 Eng R 991. *White v Juning* 93 U S 514, *Croghan v Nelson*, 3 How U S 287, and *Holmes v Trout*, 7 Pet U S 171, referred to. Where a lease is taken of a specific quantity of land within definite boundaries, both the lessor and the lessee being under a common mistake that such quantity exists within the boundaries while in fact it is much less, there is no valid contract and the parties are entitled to rescission thereof, but the defendant has the option to affirm the contract, and hold the lessee for the lesser quantity with proportionate abatement of rent. *Pogit v Marshall* 28 Ch D 255, *Harris v Pepperell* 5 Eq 1, and *Corrard v Frankel* 30 Fawc 115, referred to. *Durga Prasad Singh v Rajendra Narain Poochi* (1909).

I. L. R. 37 Cal. 293

4 ——— **Tarward—Lease by senior member alone—Validity of** A lease by the senior member of a tarward alone is valid. *Koroth Ammar Aulis v Perampattil Appu Nambiar* 1 L R 29 Mad 322, explained and distinguished. *CHAKKANTA VIDA CHAKKAN ABDULLA v THAPATH (H.K.K. KOOHI)* (1910). I. L. R. 34 Mad. 245

5 ——— **Oral agreement to lease—Petition of compromise—Matters extraneous to the suit in which the petition of compromise was filed—Specific performance—(bribe)** By a petition of compromise which was filed in a previous suit between the parties concerning certain lands, the plaintiff undertook to recognise the defendant as their tenant in respect of lands not included in that suit, and they further gave up their claim of relief for the recognition on the defendant's agreement to pay an additional sum to what was payable by the original tenant. Upon a suit

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brought by the plaintiffs for recovery of arrears of rent on the basis of this compromise, defence was that the petition of compromise was not admissible in evidence for want of registration. *Held*, that although the petition of compromise in so far as it related to properties which were not the subject-matter of the suit in which the decree was made, was not operative to affect such properties, it was admissible in evidence as indicating the existence of an oral agreement to grant a lease, which was specifically enforceable and the position of the parties was the same, as if a proper document had been executed and registered, and that, therefore, the plaintiff was entitled to a decree. *Birbhadra Nath v Kulpaluru Pan'a* 1 C L J 388, and *Gurdeo Singh v Chandrikh Singh*, 1 L R 35 Cal 193 referred to. The principle of *Walsh v Landale*, 21 Ch D 2, applied. *Held*, further, that the sum agreed to be paid by the defendant being in consideration of the land occupied by him, and also in view of the remission of the *selami*, was not an *ai'wab*. *SARAT CHANDRA GHOSH v SHYAM CHAND SINGH ROY* (1912).

I. L. R. 39 Cal. 663

6 ——— **Unexpired term of lease bequeathed to widow—Widow holding over—on expiry of lease—Grant by Government to widow of property the subject of the lease—Nature of estate taken by widow** A lease of a village in Kumaon was granted by the Government in 1844 for a period of twenty years. The lessee died in 1852, having left his interest in the village (without clearly specifying what it amounted to) to his widow for life and after her to her daughter for life with a reversion in favour of a certain temple. The widow, however, continued in possession of the village down to 1871, when the Government granted her proprietary interest in it, which she subsequently sold. *Held*, on suit for possession after the death of the widow and her daughter by a person claiming as reversioner to the original lessee that the estate which the widow acquired in 1871 as the grantee of the Government was her own personal estate and not merely an enlargement of the leasehold estate of her husband and that the plaintiff had consequently no right to succeed. *RAJ KISHORE DAS v JAGAT SINGH*. I. L. R. 38 All. 387

7 ——— **Rent if enhanceable beyond the maximum fixed—When land was let out for purposes of reclamation to be effected by the lessees at their expense, though the lessors also undertook to make a contribution thereto, and was to be held for the first four years without rent which was thereafter to be progressive till a maximum was reached, and there was no provision for a further rise, the reasonable inference to draw from these circumstances was that the parties intended that when the specified maximum was reached there would be no further increase.** *KATTANI DEBI v PORT CANNING AND LAND IMPROVEMENT CO* (1914). 19 C. W. N. 55

8 ——— **"Istemrari mokarari"—Meaning of the expression, lexicographical and customary—Tenor, propriety of—What covenants and circumstances favour the theory of perpetuity—Meaning of words in a document, whether a question of fact or law—Rights of parties to a contract how governed** The expression "istemrari mokarari" does not per se convey, either by connotation or by way of intension, an estate of inheritance, but an *istemrari mokarari gatta*, notwithstanding the

LEASE—could

absence of words indicative of heritability, such as *ba farzandun*, *nasab* *bad nasab* or *af aslad*, may indicate a perpetual grant, if the other terms of the instrument the circumstances under which it was made or the subsequent conduct of the parties, show such an intention with sufficient certainty. Clauses in a lease which impose a restraint on transfer or cutting down of fruit bearing or income-yielding trees by the lessee are not inconsistent with the theory of a perpetual lease. Clauses which throw the cost of improvement on the lessee indicate some measure of continuity, but not necessarily perpetuity. A lease in favour of two persons points to the conclusion that, though some measure of continuity was desired, perpetuity was not intended. A substantial premium for a lease is one of the surest indications of a permanent grant. *Tulsh Pershad Singh v Ramnarain Singh*, 1 L R 12 (alc 117 L R 121 A 205 analysed and followed. *Tule narain Sahu v Rahoo Mod narain Singh* (1844) S D A 752 101 D (U S) 532. *Amaranath Das Begum v Hitarain Singh* (1853) S D A 648. *The Government of Bengal v Nawab Jafar Hossein*, 5 Moo 1 A 467. *Sarobur Singh v Raja Mohendranarain Singh* (1860) S D A 577. *Raja Lillanand Singh Bahadur v Phalun Munorajun Singh* 13 D L R 121 L R Sup Vol 131. *Shen Pershad Singh v Kally Dass Singh*, 1 L R 5 (alc 543, *Bilamoni Das v Raja Shro Pershad Singh* 1 L R 8 (alc 601 L R 91 A 33. *Bras Pershad Kori v Duddanath Roy* 1 L R 27 Calc 156, L R 261 A 216. *Agar Dindh Upadhyay v Mohan Bikram Shah* 1 L R 30 Calc 20. *Narain Singh Sahu v Ram Narain Singh*, 1 L R 30 Calc 533 and *Choudhary Gridhari Singh v Maharny Ram Narain Singh*, 19 C B N *cellex* followed. *Munorajun Singh v Rajah Lellamund Singh* 3 W R 84. *Tekant Maharny Singh v Raju Lillanand Singh* 2 B L R A C, 125a. *Rajah Lellamund Singh v Thakoor Munorajun Singh*, 5 W R 191. *Lakhi Koor v Roy Hari Arulha Singh* 1 B L R A C, 226, 12 W R 3, and *Korunakar Mahat v Nidhar Choudhry*, 6 D L R 652 14 W E 107 overruled. *Walson v Mahesh Narain Roy*, 24 W R 176 referred to. The meaning of words in a document is a question of fact, though the effect of words is a question of law. *Chatterney v Brazilian Submarine Telegraph Company* (1891), 1 Q B 79, followed. The rights of parties to a contract are to be judged by that law by which they may justly be presumed to have bound themselves. *Lloyd v Guibert* 6 R & S 100 122 E R 1131, and *Abdul Aziz Khan v Appayamma Nasir* 1 L R 27 Mad 131 L R 311 A 1, followed. Where a lease is in favour of two persons and the lease would not terminate till the death of the survivor of the two lessees, no question of limitation can arise before the death of both the lessees. *Quere*. Whether the mode in which registration of a lease is effected is relevant to an enquiry as to the nature of the lease. *Dagbilla Mella v Nasir Mulla* 1 L R 7 Calc 198. *Jogindhar Narain Prasad v Brown*, 1 L R 33 Calc 1133 and *Indra Bibi v Jais Sardar Afari*, 1 P P 35 Calc 845. *Sartaj Kaur v Dewraj Kaur* 1 L R 10 All 272, L R 151 A 51, referred to. *RAM NARAY SINGH v CHOTA NAOPUR BANKING ASSOCIATION* (1915). . . . 1 L R, 43 Calc 332

9. ——— Limitation—lease of Government land in writing, registered—*Consent of part not given from reception of lease—Not for*

LEASE—could

damages—Time from which limitation begins to run—*Limitation Act* (XV of 1877), Art 116—*Failure to give possession whether a continuing breach—Equivocal or unambiguous acknowledgment, whether, a valid one under s 19 of the Limitation Act* (XV of 1877)—*Transfer of Property Act* (II of 1882), applicability of to crown grants. The plaintiff obtained in March, 1896 from the defendant, the Collector of Godavari district, acting as Agent to the Government, a lease, in writing registered, for five years, of a piece of land whose 'probable extent' was described as 777 acres. The plaintiff was given possession of only 168 acres and unsuccessfully demanded possession of the rest in July, 1896. After some correspondence the Tahsildar in 1898 communicated to the plaintiff the Collector's order that, 'pending the disposal of the dispute the collection of one third of the *kist* (rent) should be stopped and the remaining sum collected.' The plaintiff brought this suit in 1907 for damages for non delivery of possession of 100 acres. *Held*, (a) that the cause of action for breach of the covenant to give possession occurred at the inception of the lease, i.e., in March, 1896 and that as more than six years had elapsed from that date, the suit was barred under Art 116 of the Limitation Act, and (b) that breach of a covenant to give possession is not a continuing breach and such a covenant is not part of a covenant for quiet enjoyment which is a 'continuing covenant'. *Held*, further, that the Tahsildar's communication, which was as consistent with a temporary suspension or an *ex gratia* remission of a claim for rent as with an acknowledgment of liability, was not such an unequivocal acknowledgment as is required by s 19 of the Limitation Act. *Held*, also, that though the Transfer of Property Act is not applicable to Crown grants, like the one in question, the principle of its provision as to leases, e.g., s 108, etc., is applicable to them. *Quere* Whether the Tahsildar or Collector had authority to acknowledge. *PER SIVAYASA AYYANAR, J.*—The plaintiff was barred even if limitation was reckoned from July, 1896 when he demanded and failed to obtain possession from the Government SECRETARY OF STATE FOR INDIA V. VENKAYATTA (1915) 1 L R, 40 Mad 910

10. ——— Assignment of a lease—*Reputation of lessor's title*—*By the original lessor*—*Forfeiture*. A mere repudiation by the original lessor of the lessor's title will not work a forfeiture against the assignee of the lease. *PER HEATON, J.* The Transfer of Property Act does recognize that his interest in the property may be transferred by a lease to an assignee and thus may be done without the consent of the lessor and if that can be done it seems to me to follow as a matter of reason that when the entire interest is transferred by the lessee to the assignee, then the assignee is not responsible for acts done by the lessee. *GOPAL JAYVANT v SHREINWAS VITHAL* (1918) 1 L R 42 Bom 734

11. ——— Mokarari Lease—*Grant of Land "maas hak hakuk" (with all rights)—Mineral and other sub soil rights—Rights not expressly included in terms of lease*. *Held* (reversing the decision of the High Court), that the expression "*maas hak hakuk*" ("with all rights") in a mokarari lease of land did not add to the true scope of the grant nor cause mineral rights to be included within it. The essential characteristic of a lease is that the subject of it is one which is occupied and enjoyed,

LEASE—contd

and the corpus of which does not in the nature of things and by reason of the user, disappear. Unless there be by the terms of the lease an express, or plainly implied, grant of mineral rights they remain reserved to the zemindar, there being no evidence of his having parted with them. *Hors Narain Singh Deo v. Sriram Chakravarti*, 1 L R 37 Cal 723; L R 37 I A 136, *Durga Prasad Singh v. Braja Nath Bose*, 1 L R 39 Cal 696, L R 39 I A 133, and *Shashi Bhuvan Misra v. Jyoti Prasad Singh Deo*, 1 L P 44 Cal 585, L R 44 I A 46, followed. *Megh Lal Pandey v. Rajkumar Thakur*, 1 L R 31 Cal 358, overruled. By the terms of the lease trees on the land were expressly transferred to the grantee, but mineral rights were not so included in its terms, and the presumption was, therefore, that the zemindar had not intended to transfer them, and they did not pass under the lease. *RAJ KUMAR THAKUR GIR DRANI SINGH v. MEGH LAL PANDEY* (1917)

I L R 45 Cal 57

12 ——— *Darpatni—Conditions in—Bengal Tenancy Act (VIII of 1885), ss 159, cl (b), 179—Transfer of Property Act (IV of 1882), s 10—Receiver—Appointment of Receiver in administration suit—Civil Procedure Code (Act XIV of 1882), ss 503, 505 A, a patnidar, created a darpatni, in 1886 in favour of B, which contained the following terms: "like yourself we shall have full rights to grant leases or make settlements of land in the mofussil, but if these darpatni mahals be sold at auction for arrears of mahikana (rent) due to you, then all agreements entered into by us shall be extinct (stand annulled)." The common manager of B's estate granted to the defendants a permanent under tenure in 1901 B having defaulted to pay rent to A, the latter in execution of a decree for arrears of rent purchased B's interest on the 21st September 1904, the sale was confirmed in due course on the 20th March 1905. The Receiver of the estate of A, appointed by a decree in an administration suit without permission from the District Judge, granted a darpatni to the plaintiff in 1906. Held, that A and B were competent to enter into a contract of permanent tenancy subject to the restriction actually imposed, which was one of the incidents of the under tenure and ran with the land so as to be operative not only between the grantors and grantees but also their representatives in interest and the holders of derivative titles from them. Held, also, that the condition in the lease not being an absolute restraint on alienation and being for the benefit of the lessor, neither the provisions of s 159 of the Bengal Tenancy Act nor s 10 of the Transfer of Property Act had any application. Held, further, that the Receiver not being appointed under s 503 of the Civil Procedure Code of 1882 but by a decree in an administration suit the provision of s 505 requiring permission of the District Judge did not apply, and the darpatni granted by such Receiver was valid and unassailable. *MIDNAPUR ZEMINDARI CO v. MIDNAPUR ZEMINDARI CO* (1917)*

I L R. 45 Cal 640

13 ——— Lessee given the option of purchasing the land leased—Within a certain time for a fixed price—Assignment of the lease—Legal assignee of the lessee entitled to the benefit of the option to purchase—Conveyance—Under and purchaser—Purchaser to accept such title as the vendor possessed—Recitals about the title—Orig-

LEASE—contd

nating summons—Estoppel. By an Indenture dated 1st March 1913, the defendants leased to one B P M a plot of land for a term of ninety nine years. Under cl 7 of the Indenture the lessee obtained a right to purchase the premises demised at a price named within eighteen years from the date of the lease, the purchaser accepting such title as the vendors had. By an Indenture of Assignment dated 22nd May 1916, the lessee assigned the lease for the then residue of the said term to the plaintiff. The plaintiff intimated to the defendants by a notice in writing his intention of purchasing the said plot under the provisions of cl 7. The defendants called upon the plaintiff to submit for their approval a draft conveyance of the said plot. The draft conveyance forwarded by the plaintiff to the defendants contained certain recitals tracing the title of the vendors from the last purchaser of the property. The defendants objected to the insertion of the said recitals and sought on the one part to incorporate certain covenants in the draft. Correspondence between the parties showed that the dispute between them was solely confined to the insertion of the recitals and the covenants. The plaintiff took out an originating summons for the determination of the question whether the recitals and the covenants proposed by the respective parties should be embodied in the conveyance. The summons was a joined into Court for hearing. At the trial the defendants conceded that they could not at that stage insist on the covenants set out by them. The defendants, however, contended that the plaintiff was not entitled to the benefit of the option to purchase as he was not the original lessee but only an assignee of the lease and as the option to purchase was a personal covenant and not a covenant which ran with the land it did not ensue to the benefit of the assignee. Held (i) that the plaintiff being bound to accept such title as the vendors had the recitals set out by him in the proposed conveyance were unnecessary and should be struck out. (ii) that as the plaintiff was the legal assignee of the residue of the term of lease he was entitled to the benefit of the option to purchase. (iii) that as the correspondence between the parties proceeded on the assumption on that the plaintiff though an assignee of the lease was entitled to exercise the option of purchase under the lease the defendants having acquiesced in the same were estopped from disputing it. *Woodall v. Clifton*, 9 L T 292 distinguished. *Frary Hildrop and Hensley's Executors Limited v. Singleton*, [1899], 1 Ch 86, referred to. *LADHARAI LAKHMI v. NIK JAMSHETJI JATISHOY* (1917)

I L R 42 Bom 103

14 ——— Surrender or relinquishment of—If requires a dissent—Co-sharer working mines—The other co-sharer's remedy—Accounts or partition—Equities. A surrender or relinquishment of a lease does not require to be in writing but can be inferred from the acts of the parties. In the absence of proof of actual ouster or destruction of property one co-sharer cannot demand accounts from another co-sharer for minerals taken by him out of joint property unless it is shown that he had worked more than his fair share. No claim for account is maintainable where the co-sharer knowing that the other co-sharer had been spending large sums of money to develop the mines acquiesced. His remedy is by a suit for partition in which the other co-sharer should, if possible be maintained in possession of the portion

LEASE—contd.

of the property upon which he has spent money
MEER & MONORANJAN BANERJEE (1918)

22 C. W. N. 441

15. ——— Taluka pottah.—*meaning of*
—Enhancement of rent in cases of permanent lease
 The use of the words *Taluka pottah* would
prima facie show that the interest granted to
 the lessee was intended to be a permanent one.
 The rule has always been in this country that
 generally, when the lease is a permanent one the
 rent is liable to enhancement, unless the landlord
 has precluded himself by a contract or is by law
 precluded from claiming an enhancement.
UPENDRA LAL GUPTA v JOGESH CHANDRA PAK
(1917)

22 C. W. N. 275

16. ——— Holding over.—*Notice to quit*
 A tenant of homestead land within a town holding
 over on the terms of an expired ten years lease
 is not entitled to a six months notice ending with
 the end of a year of tenancy.
MANMATHA NATH
SANTRA & PRABHU MOHAN MUKHERJEE (1918)

23 C. W. N. 596

17. ——— Successive leases by the same
zemindar.—*Suit by first lessee for land alleged to*
be sold in his grant.—*Second lessee in possession*
—Muzah of which land in suit alleged to be part not
defined and not capable of definition.—*Defendant*
if may be made to give all land not shown to be
within his lease. Plaintiffs in 1903 sued the
 Defendants for recovery of certain lands as being
 parts of their Muzah Pinguldaha. Both parties
 claimed under leases granted by the zemindar,
 dated 1871 and 1833 respectively. The locality
 of Pinguldaha except as a *bel* was already un-
 known at the date of the Thalbast survey in
 1836 and the very name disappeared in 1880.
 The High Court in decreeing the Plaintiffs' suit
 determined its area not by any positive finding of
 its boundaries, but by conjecturing the boundaries
 of Defendants' land and giving the rest to the
 Plaintiffs. The Defendants being the parties in
 possession *Held* (reversing the High Court's
 judgment and restoring that of the Subordinate
 Judge)—That the Plaintiffs could not succeed.
GOPAL CHANDRA CHAUDHURI v RAJANIKANTA
GHOSE

24 C. W. N. 553

18. ——— Covenant not to assign
without consent of the landlord.—*Consent un-*
reasonably withheld.—*Assignee a Limited Company if*
a "person" under such a covenant.—*A respectable*
and responsible person "if a Limited Company
could be such a person."—*Or granting common-*
High Court Rules and Orders, Or. Genl. S. de, Ch
XIII, r. 9. Under a lease containing the clause
 that the lessee would not assign etc. without
 consent of Landlord just consent not to be
 unreasonably withheld. *Held* that it was not
 reasonable and without consent because assignee
 was a Limited Company. **F. H. DICKSON & F.**
V. D. COHEN

24 C. W. N. 1007

19. ——— Lease by Baigat.—*Lease granted*
by a Baigat representing himself as a tenant-
holder or raiyat at a fixed rent & secured. **CHAK**
DRAKANTA NATH AND OTHERS v ANJAN ADI HAZI

25 C. W. N. 4

20. ——— Restrictive covenant, breach
 of.—*A stipulation in a lease that the lessee shall*
not sublet the leased property without the con-
sent of the lessor, amounts, in the absence
of a provision for re-entry or forfeiture on breach

LEASE—contd.

of the condition to a covenant and not to a
 condition. A breach of such stipulation does not
 operate to prevent an assignment of the leased
 properties but on assignment without his con-
 sent the lessee would be entitled to damages
 from the lessee. **SITAL PRASAD v NAWAB OILDAR**
ALI KHAN

1 Pat. L. J. 1

21. ——— Partition.—*Lease for a term, suit*
by for partition of mines and minerals. A suit
 for partition of underground mines and minerals
 is maintainable by a lessee for a term of 999 years.
LALIT KISHORE MITRA & THAKUR (JEEHARI SINGH

1 Pat. L. J. 441

22. ——— Trespass.—*Appln. whether*
lessor may induce stranger on to land demised.
 A lessor cannot during the pendency of the lease,
 let the demised property to a tenant without the
 consent or concurrence of the lessee. A person
 induced on to the land by a lessor during the
 term of an existing lease is a trespasser and is
 liable to be ejected by the lessee. **KADIR BAKSH**
v SHEO PRASAD MISHRA

1 Pat. L. J. 713

23. ——— Permanent tenancy.—*Two de-*
faults in payment of rent.—*Forfeiture—Court's order*
to relieve against forfeiture.—*Equity—Transfer of*
Property Act (IV of 1882). s. 114. The land in
 suit had been leased to the defendant perma-
 nently under an agreement that if rent was not
 paid within three months of the time fixed,
 the landlord was to recover possession. The
 defendant having committed two defaults the
 lease was forfeited and the plaintiff landlord sued
 to recover possession. The Subordinate Judge
 made an order relieving the defendant against
 forfeiture under s. 114 of the Transfer of Property
 Act. The appellate Judge set aside the order
 as in his opinion on the forfeiture which was to come
 into operation not immediately but three months
 after the rent became payable could not be reversed
 against. On appeal to the High Court *Held*,
 reversing the decision of the lower appellate Court,
 that under the circumstances of the case the order
 made by the Subordinate Judge was a correct
 order as the general principle of equity was that
 the Court would relieve against forfeiture unless
 the tenant had done something to forfeit his right
 to bring himself within the principle of equity.
KRISHNADASI v BITHARAM (1920)

1 L. R. 45 Bom. 300

24. ——— Lease for a term.—*Covenant for*
renewal of lease from time to time, whether void
for perpetuity.—*Transfer of Property Act (IV of*
1882). s. 14.—*Covenants for renewal and for pre-*
emption & dissent between. A covenant in a
 lease for a term for its renewal from time to time
 at the option of the lessee is not void as being
 in violation of the rule against perpetuities, s. 14,
 Transfer of Property Act applies only to transfers
 and not to covenants such as covenants for re-
 newal of lease. Covenants for the renewal of a
 lease are not similar to covenants for pre-emption
 which, with regard to the right of the lessee, are
 perpetual. s. 14 of the Transfer of Property Act,
 (1915), I. L. J. 35, 3rd H. 115 distinguished.
PICHU NAIDU v JEEFERSON (1921)

1 L. R. 44 Mad 230

25. ——— A lessor cannot
 during the pendency of the lease let the demised
 premises to another lessee without the consent
 of the lessee in possession. **KADIR BAKSH v**
SHEO PRASAD MISHRA

2 Pat. L. J. 715

LEASE—contd.

26 ———— Oral agreement
to, when valid—Agreement to lease—Oral agreement,
if valid—Registration, whether necessary—Present
demise—Transfer of Property Act (I of 1882),
s 107—Registration Act (XVI of 1908), s 19—
Specific performance, whether obtainable—Rights,
of third party having knowledge of such agreement—
Transfer for value without notice—Possession,
if amounts to notice. An oral agreement to lease is
valid. S 107 of the Transfer of Property Act
refers to leases, i.e., actual transfers of property
and not to agreements to lease. *Semble*—Al-
though under the Registration Act "lease" in-
cludes an agreement to lease, under s 49 no un-
registered and registrable document shall affect
any immovable property comprised therein or be
received as evidence of any transaction affecting
such property. So what is precluded under both
s 107 of the Transfer of Property Act and the
Registration Act is the affecting of the property.
Quare—Whether an agreement to lease i.e.,
an obligation to transfer, is a transaction affecting
the property or whether an unregistered document
void as a lease may be used to establish an agree-
ment to lease. When in pursuance of an agree-
ment for a lease the intended lessee has taken
possession though the requisite document has not
been executed the position is the same as if the
document has been executed provided specific
performance can be obtained between the same
parties in the same Court and at the same time as
the subsequent legal question falls to be deter-
mined. When the tenant is in possession the
transfer from the landlord is presumed to have
knowledge of the rights of the tenant unless it is
proved that he is a bona fide transferee for value.
See *BARANASHI DASI v. PAPAT VELJI RAJDEY*
25 C W N 220

LEASE IN PERPETUITY.

See *HINDU LAW—ENDOWMENT*
I. L. R. 28 Calc. 526
See *MISCELLANEOUS*
I. L. R. 47 Calc. 95
——— validity of—
See *MILLS, HEAD OF*
I. L. R. 39 Mad. 356

LEASEHOLD PROPERTY.

See *MORTGAGE*. I. L. R. 44 Calc. 448

LEASE OF COURT.

See *HINDU SUTEN*
I. L. R. 40 Bom. 473
See *MORTGAGE, SUTEN FOR*
I. L. R. 44 Calc. 258
See *PRESIDENCY TOWNS INSOLVENCY*
Act (III of 1909) s 17
I. L. R. 39 Bom. 359
I. L. R. 40 Bom. 235
See *PRACTICE*
I. L. R. 46 Calc. 352, 432
——— for compromise on behalf of minor—
See *CIVIL PROCEDURE CODE 1908* 11
XXVII s 4
I. L. R. 44 Bom. 574

LEASE—contd.

——— in suit against guardian—
See *GUARDIAN AND WARD ACT, 1890*,
s 36 I. L. R. 44 Bom. 802
——— in suit against Receiver—
See *HIGH COURT*
I. L. R. 44 Bom. 903
LEAVE TO APPEAL.
See *APPEAL TO PRIVY COUNCIL*
23 C. W. N. 582
See *CIVIL PROCEDURE CODE (ACT V OF*
1908)—
ss 910 110 I. L. R. 38 Bom. 421
s 110 I. L. R. 43 Bom. 477
I. L. R. 44 Bom. 104
See *HIGH COURT, JURISDICTION OF*
I. L. R. 40 Calc. 955
See *LAND ACQUISITION ACT (I OF 1894)*
s 54 I. L. R. 37 Bom. 508
See *PRACTICE* L. R. 40 I. A. 241
See *PRIVY COUNCIL* 14 C. W. N. 872
I. L. R. 39 Calc. 510
S v *PRIVY COUNCIL, PRACTICE OF*
See *REVIEW* I. L. R. 39 Calc. 1037

——— Application—*Civil Pro-
cedure Code (Act V of 1908), s 110—Computation
of time—Limitation Act (I of 1908), s 12 whether
ultra vires—Legislative powers of the Governor
General in Council—Order in Council 1833—
Government of India Act, 1858 (21 & 22 Vict c
106), s 61—Ind. an. Councils Act 1861 (24 & 25
Vict c 67)—Letters Patent, 1863 ss 39, 41 s
12 of the Limitation Act of 1908 applies to appli-
cations for leave to appeal to His Majesty in Coun-
cil s 12, sub cl (5) which enacts that "in com-
puting the period of limitation prescribed for an
application for leave to appeal the time
requisite for obtaining a copy of the decree
appealed from shall be ex-
cluded" was within the legislative powers of the
Governor General in Council, not being in contra-
vention of s 64 of the Government of India Act
1858 and is not ultra vires. *Eastern Milkways and
Agency Company Limited v. Purna Chandra Sur-
bagan*, I. L. R. 39 Calc. 510 *Ishakmanan v. Perna-
san*, I. L. R. 30 Mad. 373, *Anderson v. Perna-
san*, I. L. R. 15 Mad. 103, *In re Sita Devi Kishor*,
I. L. R. 15 All. 14, *Thurston Rajah v. J. Anandaram
Jothan*, I. L. R. 15 Mad. 451, *Moroba Ram-
chandra v. Ghoshanram Nallath Neddiar*, I. L. R.
19 Bom. 301 *Mit Chand v. Gangra Parashad* s 40,
I. L. R. 24 All. 174 I. P. 29 I. A. 40, referred to
*ABDULHAQ HUSSEIN CHOWDHURY v. ABDELRAH-
MAN HUSSEIN HUSSEIN (1914)*
I. L. R. 42 Calc. 33*

LEAVE TO SUP.

See *WATKIN* I. L. R. 44 Calc. 10

LEAVE TO WITHDRAW.

See *JOHNSTON* I. L. R. 44 Calc. 347

LEGACY

- See IMITATION ACT 1877 Sec II Art
127 I L R 36 Bom 111
See WILL
I L R 40 Calc 192

depending on uncertain event—

- See SUCCESSION ACT (X of 1865)
I L R 37 Bom 644

vesting of—

- See SUCCESSION ACT (X of 1865) s 187
I L R 38 Mad 474

LEGAL INTEREST

- See DECLARATORY DECREE SUIT F R
I L R 43 Calc 694

LEGAL JUSTICE

as opposed to moral—

- See CONTRACT
I L R 37 Mad 385

LEGAL MISCONDUCT

- See ARBITRATION
I L R 41 Calc 313

LEGAL NECESSITY

- See HINDU LAW—ALIENATION
See HINDU LAW—DEBT
I L R 33 All 242, 255
See HINDU LAW—JOINT FAMILY
I L R 34 All 4 128, 135
See HINDU LAW—LEGAL NECESSITY
See HINDU LAW—MORTGAGE
I L R 41 All 571, 609

LEGAL OWNER

- See MAHOMEDAN LAW (ENDOWMENTS)
I L R 47 Cal 568

LEGAL PRACTITIONER

- See BARRISTER I L R 44 Calc 741
See CIVIL PROCEDURE CODE 1909 O III
n 4 2 Pat L J 259
See HIGH COURT DISCIPLINARY JURISDICTION
I L R 44 Bom 418
See LIMITATION
I L R 40 Calc 898
See LEGAL PRACTITIONERS ACT
See LETTERS PATENT (ALL) s 8
I L R 42 All 450
See PLEADER
duty of—
See LAND ACQUISITION ACT (I of 1894)
I L R 34 Bom 486

Lien of—

- See CLIENTS I L R 46 Calc 1070

admission by—As agent of client dis-
cussed In HINDU LAW (ALL) s 11
17 C W N 150

Compromise by—Without authority
discussed In HINDU LAW (ALL) s 11
I L R 34 Bom 408

LEGAL PRACTITIONER—contd

- Counsel to be instructed by attorney—
—Custom and etiquette discussed In re an Advoca-
TE I L R 44 Calc 741

Misconduct of—*Cheating client out of the a hybrid matter of suit—Penalty—Removal from practice—Suspension* Where it was found by the Chief Court before whom the appellant practised as a pleader that he had taken advantage of his position of trust in order to cheat his client out of the subject matter of the suit and obtain it for himself and on the appellant's application for a review of the finding he instead of pressing it deliberately admitted the charges made against him in the case in which those charges were understood by the Judges *Held* that the Chief Court was amply justified in passing orders removing the appellant permanently from the list of pleaders on the ground of misconduct and the subsequent order of the Court upon the application for review reducing the penalty to suspension from practice for three years went as far as the direction of mercy as it properly could go In the matter of CHANDRA MOHAN (1910)
14 C W N 521

Legal Practitioner dismissed for misconduct if may be reinstated Where a legal practitioner has been dismissed for misconduct of any description it is open to the High Court to readmit him afterwards if he satisfies the Court that in the interval he has borne an unimpeachable character and may with propriety be allowed to return to practice The test to be applied to such cases is whether the sentence of exclusion has had the salutary effect of awakening in the delinquent a higher sense of honour and duty and whether in the interval his conduct had been so irreproachable that he might be safely entrusted with the affairs of his clients and admitted to the profession without the profession suffering degradation Where there is a muktikar was dismissed upon conviction for a grave offence and it appeared that in a closely connected transaction he had sworn a false affidavit and where in the petition for reinstatement he had not made a full disclosure of his previous history the Court in the exercise of its discretion refused the application In re ABIRUDDIN AHMED (1910)
I L R 38 Calc 309
15 C W N 237

Legal practitioner dismissed for misconduct—Reinstatement on proof of good conduct Case in which a legal practitioner who when yet a comparatively young man had been dismissed from the rolls for misconduct was after five years reinstated on his furnishing certificates showing that during the interval his conduct has been so irreproachable that notwithstanding his previous delinquency he could be entrusted with the affairs of clients and admitted to an honourable profession without that profession suffering degradation In re Abiruddin 15 C W N 237 s c 12 C L J 675 followed In re HALA KUMAR CHATTERJEE (1911)
16 C W N 237

Witness—When her name appears for accused person The rule as to the exclusion of witnesses from Court until they have been examined does not extend to counsel for accused who is called as a present witness There may be circumstances which may make it

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*contd*

13-~~contd~~

that we or disciplinary powers conferred on the
court by earlier clauses or by statute. BIR
KISHORE LAL v. KING EMPEROR

4 Pat L J 423

Willful neglect of pleader to appear after service of full fees— Act onable claim purchase of by a pleader—transfer of Property Act (1) of 1882 ss 3 and 130—Pleader engaged in trade without maintaining to the High Court—R 27 of the Rules under Legal Practitioners Act Held by the full Bench The judgment and evidence given in a civil suit filed by a party against his pleader for refund of fees on account of non appearance of the pleader are admissible as evidence in an enquiry instituted for the purpose against the pleader under the Legal Practitioners Act but they are not conclusive proof in the enquiry Willful neglect by a pleader to appear without any justification on whatever ground at a case after receipt of full fees, a unprofessional conduct for which the pleader could be punished under s 13 of the Legal Practitioners Act *MUST REPORT*
• VENKATA ROW (1914) 1 L. R. 37 Mad. 238

appear in Court in pursuance of a resolution of the Bar Association to boycott that Court propriety of — Duties and obligations of pleaders — Proper course for pleaders when ill-treated by any Court. Some pleaders refused to appear in a certain Court in pursuance of a resolution of the Bar Association to boycott that Court as a protest against its ill-treatment of pleaders. Proceedings under s. 14 of the Legal Practitioners Act were drawn up against several pleaders for failure to appear in Court in matters which had been entrusted to them by their clients. The pleaders concerned have intimated their unqualified regret to the High Court for the course adopted by them. — Held: That having regard to their unqualified expressions of regret the proceedings should be dropped. In the matter of TARIK MOHAM BARARI

28 C W W 6.50

§ 13(b)—Gross negligence—appearance for both a des The conduct of a pleader in acting for both a des in the same case is grossly improper conduct with the meaning of a 13 (b) of the Legal Practice Act, 1939. When a pleader negligently or intentionally doles a the rules of his profession he is guilty of grossly improper conduct and a no excuse that he act on does not involve a moral stigma, or that it has not resulted in actual injury to his client. IN THE MATTER OF HIS HIS ONE RAL, PLEADER

3 Pat L J 320

§ 13 (F) - Mukhtar - Conduct rendering legal pro-
tutor amenable to disciplinary powers of the Court - Writing insulting letters to an officer -
A mukhtar practicing in the Criminal and Revenue Courts of a sub-division addressed certain grossly insulting letters to the Sub-divisional Officer in his character as officer in charge of the copy right department. Held that such conduct on the part of a mukhtar falls within the purview of s. 13 of the Legal Practitioners Act, 18 and rendered the writer amenable to the disciplinary jurisdiction of the High Court. IN THE MATTER OF A MUKHTAR. I. L. R. 42 ALL. 58.

L L R 42 ALL 86

LEGAL PRACTITIONERS ACT (XVIII OF
1879)—*contd*

§ 13 (f)—cont'd

I respected a fellow

—Words other reasonable cause assigned—
hij eden genera The words for any other
 reasonable cause in cl (f) of s 13 of legal practi-
 tioners Act (XVIII of 1899) include general
 misconduct and are not restricted to professional
 misconduct. Where two legal practitioners were
 the President and a Director respectively of a
 so-called Provident Society which was in some
 a Provident Society but a means of turning
 profit to the Directors by enabling those who so-
 desired to gamble in the lives of persons who were
 willing to become applicants to the society—
Held that there was reasonable cause under
 s 13 (f) for an order being made against the legal
 practitioners *Per MILLER J*—The principle
 of *ejusdem generis* cannot be applied to the words
 any other reasonable cause since the genus
 professional misconduct is not large enough
 to include the case of a 1st (where pleader may be
 suspended or dismissed for having committed a
 criminal offence implying a defect of character
 which unfits him to be a pleader *Tilman &*
Co v Kn Lyford Ltd [1908] 2 K L 385
 followed. The intent of the Legislature was
 to give to the High Court powers of control over
 pleaders and mukhtars as extensive as those
 which are given by the Letters Patent, a 10 over
 advocates and vakils *Per HAJIMANWALI*
AYYAR J—Cl (f) of s 13 is not confined to
 professional misconduct but may be interpreted
 so as to include any dishonest or dishonourable
 conduct whether or not a discharge of profes-
 sional duty. It is difficult to limit cl (f) to pro-
 fessional misconduct because cl (f) deals with
 grossly improper conduct in the discharge of
 professional duty and it is not possible to name
 any species of professional misconduct which does
 not fall within cl (f) itself. The fact that the
 Legislature has restricted the power of Subor-
 dinate Courts under s 14 of the Act is no reason
 for restricting the power of the High Court. *In re*
Ghahol Khan Mukhtar 7 B L R 179 approved.
In re SECOND-GRADE PLEADERS (1911)

ss. 13 14—

See *INACTIVE* I L R 37 Cal. 173

See **UNPROFESSIONAL CONDUCT**

I L R 43 Cal. 885

between for bringing put a false statement under a (S)—Enquiry commenced under (b) but ultimately declines acting with a (S) of the regular—S 13 cl (f) enquiry under a (S) can be made by subordinate Court Where a magistrate was found to have received a sum of money from a person against whom there were cases to respond for the purpose of influencing the police and acted as a go-between. Held that it is not a function of a subordinate Court to take proceedings under s. 13 cl (f) of the Legal Practitioners Act. A subordinate Court can take proceedings under s. 13 cl (f) of the Legal Practitioners Act and even if the High Court be the only Court which can order such an enquiry to open to the High Court to avoid itself of the enquiry already made by a subordinate Court and proceed to deal with the

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—*contd*ss 13, 14—*contd*

the case itself. An enquiry by the lower Court is not irregular on the ground that the act disclosed as the result of the enquiry is found to come under s 13 cl (f), and not under s 13, cl (b). *Re HARI PRASAD MUKHERJEE* (1917) 21 C. W. N 516

Specific charge

under s 13 (b) necessary.—*Taking instruction from unauthorised persons—Conduct improper.* In a reference under the Legal Practitioners' Act, the High Court confines itself to the charge framed by the Primary Court. The finding that the pleader was guilty of the fraudulent or grossly improper conduct in the discharge of his professional duty within the meaning of s 13 (b) of the Legal Practitioners' Act was disregarded as the pleader was not charged with that. Where a pleader was found to have received instructions from a person about whom he made no enquiries as to his right to instruct him on behalf of certain minors or their mother and also that he filed a written statement which was not prepared by him and that he accepted the *rakatsinama* at the instance of another party in the suit and that he filed a receipt which on the face of it was not genuine without even examining it, it was held that his conduct was most improper, although no injury resulted from it. The pleader was suspended for nine months. *In the matter of JUGAL CHANDRA MAZUMDAR* (1916) 20 C. W. N. 1016

20 C. W. N. 1016

In a case which arose out of certain Pleaders observing a brawl their status was fully discussed also the effect of filing a *Rakatsinama* KING EMPEROR v RAJANI KANTA BOSE 26 C. W. N. 589.

26 C. W. N. 589.

Mukhtear abusing Court's Officer if liable to disciplinary action—Contempt—Object of punishment—Subordinate Court, if may start enquiry under s 14 in cases other than under cls (a) and (b) to s 13—High Court if may accept report made by subordinate Court in a proceeding wrongly initiated but properly conducted. S 14 of the Legal Practitioners' Act invests a Subordinate Court with authority to inquire into any case of misconduct alleged against a pleader or Mukhtear practising before it, covered by s. 13 of the Act as amended by Act XI of 1879, and not merely cases covered by cls. (a) and (b) of s 13. *In the matter of Sothelal Krishna Rao*, L R 14 I A 151 a. c. I. I R 15 Cal 152, explained. *In re Purna Chandra Pal*, I L R 27 Cal 1023, a c. I C W N 359, commented on. Whether an enquiry is made by or under the orders of the High Court under s 13 or is instituted by the Subordinate Court of its own motion the final order can be passed only by the High Court. The law does not require an inquiry ordered under s. 13 to be conducted directly by the High Court. Therefore, even if it were incompetent for a Subordinate Court to initiate an inquiry into certain kinds of charges of misconduct if such an inquiry has been properly held after notice there is nothing to prevent the High Court from adopting it as one which could be directed under s 13. The Court at least when in session, is present in every part of the place set apart for its own use and for the use of its officers, jurors and witnesses, and it is

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—*contd*ss 13, 14—*contd*

orderly conduct anywhere in such place amounts to a contempt of Court. The power of suspension or removal is distinct from the power to punish for contempt but a contempt may be of such character as to warrant the exercise of the disciplinary powers of the Court. When the Court takes notice of a misconduct which consists in the obstruction of or an interference with one of its officers, the object of the discipline enforced is not so much to vindicate the dignity of the Court or the person of the officer as to prevent undue interference with the administration of justice. Where a mukhtear in the course of an altercation with the Court's accountant in the latter's office used abusive language which was heard by the Munsif from his Court. Held that for such conduct the Court could take disciplinary action against the mukhtear. *In re matter of RASIK LAL SAO* (1916) I. L. R. 44 Cal 639 20 C. W. N. 1284

I. L. R. 44 Cal 639

20 C. W. N. 1284

It is incumbent upon a Mukhtear to take his instructions directly from his client. If he takes them from an agent he must ascertain that the agent is duly empowered.

A Mukhtear is liable to be punished when he has acted in violation of his duty in circumstances which show gross negligence on his part even though he may be not guilty of fraud. *In re LEAKUT HUSSAIN, MUKHTYAR* 2 Pat L. J 35

s 14—

See CIVIL PROCEDURE CODE 1908 O 111 r 2

2 Pat. L. J 259

See PLEADER I L R. 47 Cal 1115

Transfer of enquiry

under s 14—*Nature of proceedings under the Act.* The procedure provided by the Legal Practitioners' Act, 1879, is self contained. It is neither criminal nor civil, but purely designed for the purpose of discipline in controlling the procedure and the conduct of practitioners practising in the subordinate Courts. The enquiry provided for by s 14 of the Legal Practitioners' Act, 1879, cannot be delegated or transferred to another officer who is not the presiding officer of the Court in which the malpractices complained of were committed. Disciplinary proceedings taken under s 14 of the Legal Practitioners' Act, 1879, are not proceedings in a Court of Civil Jurisdiction. The Code of Civil Procedure 1908 is not applicable to enquiries under s 14 of the Legal Practitioners' Act, 1879. S 141 of the Code of Civil Procedure, 1908, is controlled in its operation and effect by the concluding words of the section which limit its application to proceedings in Courts exercising Civil Jurisdiction. S 107 of the Government of India Act, 1915 did not alter the position. *In the matter of JANAK KISHORE ARJASU AND OTHERS* 1 Pat L. J. 578

1 Pat L. J. 578

Reference arising out of criminal charge against mukhtear—Proceeding under the Act should be distinct from criminal proceeding—Procedure for enquiry is strictly followed. Where in the course of criminal proceedings against the mukhtear, a reference, importing to be made under the Legal Practitioners' Act, was made against him to the High Court. Held that the procedure prescribed in s. 14 of the Act should have been strictly followed from

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—*contd*s. 14—*contd*

first to last, and that not having been done, the reference was bad. *Held*, further, that the proceeding under the Act must be separate and distinct and cannot be made part of the criminal proceedings. *In re PARALAR RAMANAN* (1914) 15 C. W. N. 761

Mukhtear—*See pension by District Magistrate, before report to High Court—Right to be heard before suspension—Order for prosecution—Criminal Procedure Code (Act I of 1895), s. 476.* A legal practitioner cannot be provisionally suspended pending investigation (under s. 14 of the Legal Practitioners' Act) of a charge of misconduct brought against him without being heard in defence under s. 40 of the Act and before a report has been submitted to the High Court in terms of s. 14. The "investigation" referred to in the section is investigation by the District Magistrate. Where upon a reference by the Sub-Divisional Officer relating to the conduct of a mukhtear in a case tried before that officer the District Magistrate suspended the mukhtear and on a perusal of the records directed his prosecution under s. 182, Penal Code. *Held* that the order of suspension was without jurisdiction. *Per WOODROFFER, J.*—That the order for prosecution could not be passed by the District Magistrate under s. 476, Criminal Procedure Code; as the proceeding not being properly before him was not a judicial proceeding. *Per CANNADY, J.*—The District Magistrate was not acting in the course of a judicial proceeding. *In re BASRANGI SANTAL* (1911) 15 C. W. N. 269

Rakulatanama altered after execution, by inserting name of mukhtear actually engaged at the request of party's agent—*conduct, if grossly improper.* A written *rakulatanama* for the purpose of engaging certain pleaders to conduct an appeal on behalf of a prisoner was taken by his maternal uncle to the prisoner in jail where it was executed by the prisoner by affixing his mark in the presence of a jail officer and was handed over to the maternal uncle, who brought it to the petitioner, a mukhtear, and instructed him to appear in the appeal. The petitioner pointed out to the uncle of the prisoner that he could not appear as his name was not mentioned in the *rakulatanama* and then at the request of the latter inserted his own and other names in it and made certain other alterations. *Held* that although the petitioner certainly acted improperly in altering the *rakulatanama*, the alterations were not made from improper motives and his conduct was not grossly improper within the meaning of s. 14 of the Legal Practitioners' Act. *In the matter of PURA CHANDRA CHATTERJI* (1912) 17 C. W. N. 323

Legal practitioners—

Prosecution ordered—Certificate not to be cancelled until result of prosecution is known—Practice. Where a District Judge, having the alternative to take action against a pleader practising in his judgeship under s. 14 of the Legal Practitioners' Act, 1879, or to initiate criminal proceedings against him, takes the latter, he ought to wait until the result of the criminal proceedings is known before refusing to renew the pleader's certificate. *In the matter of A. PRADER* (1918) 1. L. R. 33 All 182

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—*contd*s. 14—*contd*

Gross contempt of a Subordinate Court by a second grade pleader by unjustly attacking its impartiality in the discharge of its duties—Jurisdiction of Subordinate Courts to take proceedings under s. 14 for all cases coming under s. 13 cl (f), n.d. quodam genere. In the course of an enquiry before a District Munsif, a second grade pleader who appeared for one of the parties to the enquiry swore an affidavit and filed the same in Court requesting that Court should not proceed with the enquiry. The affidavit contained unjust aspersions, imputations and innuendoes couched in insulting language charging the District Munsif with rancour and prejudice against the pleader and with a desire to injure him both as a pleader and also as a public man. The Munsif thereupon took these proceedings under s. 14 of the Legal Practitioners' Act (XVIII of 1879) charging the pleader under s. 17 cl (f) of the Act with contempt of Court. *Held*, (i) that Subordinate Courts have jurisdiction to take proceedings not only under cls. (a) and (b) of s. 17, but also under all the other clauses of the sections (ii) that cl (f) is not confined to misconduct *under quodam genere* as those referred to in the previous clauses; and (iii) that the pleader was guilty of misconduct by his outrageous attack upon the Court in the exercise of its functions. Their Lordships accordingly suspended the pleader from practice for a period of four months. The decision of KAOX I in *the matter of the Estate of Mahomed Abdul Han I I R 29 All 61*, and *in the matter of a Pleader I I R 26 Mad 413*, followed. *The District Judge Kistna v HANUMALLI* (1917) 1. L. R. 39 Mad. 1045

s. 27, 28—*Pleader and client—Fees agreed for payment of, not in writing and no filed in Court, may be enforced—Pleader's lien on moneys realised on behalf of client—Quantum meruit.* An agreement by a client to pay certain amount to his pleader as fees for professional services cannot be enforced by the latter when it has not been embodied in writing signed by the client and filed in the proper court in the manner provided by s. 28 of the Legal Practitioners' Act, even when the amount agreed to be paid is not in excess of that prescribed under the rules framed under s. 27 of the Act for payment by any party to his opponent in respect of the fees of the pleader employed by his adversary. The language of s. 28 is comprehensive enough to include every agreement between a pleader and his client for the payment of fees for professional services and cannot be restricted by reference to s. 27 which does not apply to such agreements. *Quere* Whether in the absence of a written agreement, a pleader can claim remuneration compensation for his services. *KAMINI DEBI v KHEETA MOHAN GANGULY* (1911) 17 C. W. N. 45

s. 28—*Pleader and client—Lien on client's moneys for fees agreed upon, if enforceable when agreement is in accordance with s. 28, Legal Practitioners' Act (XVIII of 1879).* An agreement between a pleader and his client in regard to fees for professional services which the pleader cannot sue on, owing to its not conforming to the provisions of s. 28 of the Legal Practitioners' Act, cannot also be relied upon in defence to an action by the client to recover moneys deposited in Court

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—contd

s. 28—contd

by the client and withdrawn by the pleader. The plea of the pleader that he had a lien on the money to the extent of the fees agreed upon could not therefore be entertained. *Quare* Whether the pleader could claim reasonable remuneration for his services in view of s. 28 of the Legal Practitioners' Act. *KAMINI DEBI v KHETRA MOHAN GANGULI* (1910). 15 C. W. N. 681

See ALSO ANTI 17 C. W. N. 45

Pleader's suit for fees upon oral agreement, if maintainable. Where a suit by a Pleader for fees against his client is based on an agreement he cannot succeed unless the agreement is both in writing signed by the party to be charged and filed as provided in s. 28 of the Legal Practitioners' Act. Consequently no suit upon an oral agreement can succeed under the section. *BRACHARAY LAHARY v SUDESH DASL*. 26 C. W. N. 709

s. 35, 36—Tont, order declaring a person—Evidence to justify. Where witnesses merely proved that a person declared by the District Magistrate to be a tout had been seen in Court looking after cases, one witness only saying that he had heard that the mukhtears regarded him as a tout. *Held*, that the evidence was clearly insufficient to justify the order of the District Magistrate. *SUNDAR UPADHYA v THE PRESIDENT OF THE MUKHTEARS' ASSOCIATION, CHANPRA* (1911). 15 C. W. N. 1000

s. 38—Touts—Procedure to be followed by a Court taking action under s. 36—Revision—Statute 5 & 6 Geo V Ch 61, s. 107—Evidence—Criminal Procedure Code, s. 117 (3). It is competent to the High Court to entertain an application in revision against an order passed by a District and Sessions Judge under s. 36 of the Legal Practitioners' Act, 1879, and thus without invoking the aid of the Government of India Act, 1915, s. 107. *In the matter of the petition of Madho Ram*, 1 L. R. 21 All. 181; *In the matter of the petition of Kedar Nath*, 1 L. R. 31 All. 59; *Basa Sahib v the District Judge of Madura*, 1 L. R. 26 Mad. 596; and *Hari Charan Sarcar v the District Judge of Dacca*, 11 C. L. J. 513, referred to. In a proceeding under s. 36 of the Legal Practitioners' Act, 1879, the Court may properly apply, as regards the nature of the evidence admissible the provisions of s. 117 (3) of the Code of Criminal Procedure. Where a person's name has once been included in a list framed under s. 36 the mere fact that the exhibition of such list in any particular court room is discontinued has no effect on the validity of the original order. *In the matter of the petition of KALKA AND OTHERS* (1917). 1 L. L. R. 40 All. 153

An order under s. 36 declaring a person to be a tout can be made only by one of the authorities specified in that Section and upon evidence taken by such authority himself. *In the matter of NAFAR CHANDRA MANDAL*. 24 C. W. N. 1074

s. 40—

See s. 14. 15 C. W. N. 269

LEGAL PROCEEDINGS.

See AGREEMENT 1 L. R. 37 Mad. 408

LEGAL REMEMBRANCER.

See CONTEMPT OF COURT

1 L. R. 41 Calc. 173

See PUBLIC PROSECUTOR

1 L. R. 41 Calc. 425

1 L. R. 40 Calc. 544

LEGAL REPRESENTATIVE.

See APPEAL TO PRIVY COUNCIL

1 L. R. 3 Mad. 406

See BENGAL TENANCY ACT, 1883, SCH III, ART 6. 14 C. W. N. 971

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss 244, 252, 617

1 L. R. 34 Bom. 546

s. 373 1 L. R. 38 Mad. 643

See CIVIL PROCEDURE CODE (ACT V OF 1908) —

ss 2 (11), 53 1 L. R. 42 Bom. 504

s. 2 (11) O XXII r 1

1 L. R. 39 Mad. 382

s. 2 (11) O XXI r 22

1 L. R. 45 Bom. 1188

ss 47 and 50 1 L. R. 38 Mad. 1076

O XXII, rr 3 5

1 L. R. 43 Bom. 168

See DEFENDANT, DEATH OF

1 L. R. 38 Mad. 682

See GUARDIAN AND WARDS ACT, 1890

ss 34, 35 AND 36

1 L. R. 44 Bom. 552

See HINDU LAW—REVERSIONER

1 L. R. 33 All. 15

See MAHAMMADAN LAW

1 L. R. 42 All. 497

See SPECIFIC PERFORMANCE

1 L. R. 41 All. 515

— of the receiver—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XL, r 4

1 L. R. 39 Mad. 584

LEGAL REPRESENTATIVES' SUITS ACT 1855

See CIVIL PROCEDURE CODE O XXI r. 1

1 L. R. 44 Mad. 357

LEGALITY.

See SEARCH WARRANT

1 L. R. 45 Calc. 903

LEGATEE.

See ESTOPPEL. 1 L. R. 44 Calc. 145

See RESIDENCY LEGATEE

1 L. R. 41 Calc. 271

— disclaimer by—

See SUCCESSION ACT (X OF 1865), s. 187. 1 L. R. 38 Mad. 474

— right of, to sue—

See WILL. 1 L. R. 38 Calc. 327

— suit for maintenance against—

See HINDU LAW—MAINTENANCE

1 L. R. 39 Mad. 396

LEGISLATION

— when retrospective—

See ASSESSMENT L. L. R. 43 Cal. 973

— ultra vires—

See JURISDICTION OF CIVIL COURT
L. L. R. 40 Cal. 391**LEGISLATURE**

— object of—

See LAND ACQUISITION
L. L. R. 44 Cal. 219— Whether can oust jurisdiction of
Civil Court—See BORDAY REVENUE JURISDICTION ACT
1876 & 4 L. L. R. 45 Bom 1161**LEGITIMACY**

See ADMISSION OF LEGITIMACY

See DIVORCE L. L. R. 33 Mad. 466

See HINDU LAW—LEGITIMACY

See HINDU LAW (MARRIAGE)
L. L. R. 43 Cal. 826See MAHOMEDAN LAW—GIFT
L. L. R. 38 All. 627See MAHOMEDAN LAW—LEGITIMACY
L. L. R. 48 Cal. 259

L. L. R. 48 Cal. 838

See MAHOMEDAN LAW—MARRIAGE
L. L. R. 41 Bom 485

See MARRIAGE 18 C W N 494

— acknowledgment of—

See MAHOMEDAN LAW—ACKNOWLEDG-
MENT OF SONSHIP

L. L. R. 43 Bom 28

L. L. R. 1 Lah. 229

— presumption as to—

See HINDU LAW—MARRIAGE
L. L. R. 38 Cal. 700

— Son by wife of another man—

See HINDU LAW—LEGITIMACY
L. L. R. 2 Lah 207**LEGITIMATE PURPOSE.**See MORTGAGE—CONSTRUCTION OF
L. L. R. 40 Cal. 342**LENDER AND BORROWER**— *Suitor pro promissory note*

— Undue influence and want of consideration pleaded in defence—Ind an Contract Act not principles of English equity to be applied—Federal loans to the plaintiff intervals at intervals when unconscionable—Excessive amount of money due to a debtor's failure to pay to be regarded as oppressive—Contract Act (11 of 1872) s. 16—*Onus* Where a suit brought on certain promissory notes the defendant pleaded that he had received no consideration for the notes were procured by the exercise by the plaintiff upon him of undue influence, and that the whole transaction was an unconscionable bargain made with the defendant as an expectant heir *Held* that the question raised were to be decided on the provisions of the Indian Contract Act and on those alone the principles upon which English Courts of Equity deal with such questions being entirely inapplicable.

LENDER AND BORROWER—contd.

A borrower who obtains a loan secured by a promissory note on a quite reasonable basis, by neglecting to pay the note at maturity further neglecting to pay the accruing interest for the several years following and then giving a renewal note for the original debt plus the capitalised interest could produce a result which might at first sight appear oppressive and yet there would be nothing harsh or unconscionable in the creditor's demand since the added interest only accumulated while he forebore to enforce the payment of the same from time to time due to him. On the other hand it would be quite possible for a money lender by making loans for short periods on apparently fair terms and then making the capitalising the interest immediately on it become payable to pile up compound interest on the total debt at such a rate as would make the result after a few years most oppressive and unconscionable. But there is nothing inherently wrong or oppressive in a lender's proceeding for himself compound interest after the borrower has for a considerable time neglected to pay the debt to him or the interest accrued due upon it which he has contracted to pay. The borrower cannot acquire merit simply by breaking his contract. The promissory notes in this case so far from being renewed with undue frequency were frequently allowed to remain overdue for periods of from two and a half to four and a half years before the renewal was taken and the overdue interest capitalised in some instances the renewal being given after the period of limitation had run out. *Held*, that the transactions between the parties were not on the face of them unconscionable contracts within the meaning of s. 16 of the Contract Act as amended by the Act of 1899. To prove the unconscionable character of the bargain the defence was given to show that the defendant (who undoubtedly was a spendthrift of debt and notorious habits) was heavily indebted to several other creditors during the years covered by his transactions with the plaintiff. *Held* that it was legitimate to prove these facts in order to establish that the defendant was a person of weak and detached character unable to resist the pressure of creditors' money lenders to gratify his lusts, but it was wholly illegitimate to give any evidence as to the terms on which he succeeded in comprising with the creditors or then the plaintiff. *Held*, on the evidence agreed with the District Judge, (that assuming that the plaintiff was a person on whom the will of the defendant the latter had utterly failed to prove further that the plaintiff had in fact received undue influence upon him in any of the transactions out of which his liability for the debt sued for arose and that if the defendant had been an expectant heir the plaintiff was in consequence a person on whom the will of the defendant and therefore bound to prove that he had not used that position to obtain an unfair advantage over him the plaintiff had discharged that burden. *ALLA HIL ANAN SING* (1918)

23 C W N 233

LEPROSY

S s HINDU LAW—LEPROSY

— in anasthetes form.

See HINDU LAW—INHERITANCE.

L. L. R. 38 Mad. 250

LESSEE.

See LAND LORD AND TENANT

See LEASE.

See LESSOR AND LESSEE

See MADRAS LAND REVENUE ACT
(I OF 1870), s. 2.

I. L. R. 38 Mad. 1128

See MADRAS ESTATE LAND ACT

I. L. R. 39 Mad. 1018

See TENANTS IN COMMON

I. L. R. 39 Mad. 1049

See TRANSFER OF PROPERTY ACT (IV OF
1882), s. 10. I. L. R. 38 Mad. 867

s. 103 (J) I. L. R. 40 Mad. 1111

s. 6. I. L. R. 43 Bom. 28

See USUFRUCTUARY MORTGAGE.

I. L. R. 40 All. 429

dispossession of—

See LESSOR AND LESSEE

I. L. R. 39 Mad. 1042

for years or for life—

See MINERAL RIGHTS.

I. L. R. 38 Calc. 845

from Bombay Government—

See KASBATHS I. L. R. 39 Bom. 625

from Government in Firozapore—

whether land is ancestral—

See CUSTOM I. L. R. 2 Lah. 195

in perpetuity—

See MINERAL RIGHTS.

I. L. R. 38 Calc. 845

interest of—

See LIMITATION ACT (IX OF 1908) SCH I,
ARTS. 91 AND 120

I. L. R. 35 All. 149

liability of—

See BOMBAY MUNICIPAL ACT (BOM.
ACT III OF 1885), s. 305

I. L. R. 34 Bom. 593

right of, to elect trespasser—

See EJECTMENT I. L. R. 37 Mad. 281

right of—to give monthly tenant

notice to quit—

See TRANSFER OF PROPERTY ACT, 1882

ss 103 & 109 I. L. R. 1 Lah. 241

right of, to improvements—

See MALABAR TENANTS' IMPROVEMENTS
ACT (MAD I OF 1900), ss 3 AND 5

I. L. R. 38 Mad. 854

right of, to relief against forfeiture—

See TENANTS IN COMMON

I. L. R. 39 Mad. 1049

See TRANSFER OF PROPERTY ACT, 1882,
s 6. I. L. R. 43 Bom. 28

Transfer by lessee—

Liability of lessee to pay rent after transfer—Privilege
of estate—Transfer of Property Act (IV of 1882) s
103 The duration of liability of a lessee to payrent to the lessor lasts as long as his estate remains
in his possession and no longer, and after an**LESSEE—contd**assignment of the lease, the privilege of estate
between him and the lessor ceases, and the assignee
becomes liable for the rent METHA v GADADHAR
RAI (1910) I. L. R. 37 Calc. 683

Assignment by lessee—

Assignee's right to apportionment, as against
lessor—Transfer of Property Act (IV of 1882), ss
36 and 103—Apportionment in English Law, under
Statute Law in England and under the English
Common Law—Rent—Interest accrues *de die in
diem*, English Statute Law, principle of, to be
followed in India—No Statute Law in India—
Apportionment as between lessor and lessee's assignee
An assignee from a lessee is entitled to claim as
against the lessor apportionment of rent accru-
ing due after the date of assignment to him up
to the time of a transfer (if any) of his interest
as assignee to a third person There is privilege of
estate between the lessor and the assignee, and
the latter is bound to perform the covenants of
the lease after the assignment Possession is not
the ground of his liability but the privilege of estate
which is created by the assignment itself It is
settled law that the privilege of estate between
the lessor and the lessee's assignee is terminated
by an assignment by the latter of his interest to a
third person On principle there seems to be no
reason why an assignee should not be entitled to
apportionment as between himself and the lessor,
and why rent should not be deemed to accrue due
from day to day as between them In England
the Law of apportionment has long been regulated
by statutes, and all rents, etc., are like interest on
money lent, considered as accruing from day to
day and apportionable in respect of time accord-
ingly In India there is no reason for not apply-
ing to rent the principle adopted in England in
the case of interest KUNHI SOU v MULLORI
CHATHU (1912) I. L. R. 38 Mad. 86

LESSOR AND LESSEE.

See LANDLORD AND TENANT

See LESSEE.

Forfeiture for non-
payment of rent—Joint lessors—Separation of
their ownership in the lands—Receipt by one of
the joint lessors of his share of rent from the lessee—
Right of the other joint lessor to enforce the forfeiture
—No act done by the lessor previous to the institu-
tion of the suit to determine the lease—Election pre-
vious to suit not necessary—Waiver—Transfer of
Property Act (IV of 1882), s 111, cl (g)—Right
of re entry under the old English Common law.
One of several joint lessors who had become
separately entitled to his share of the lands leased,
is entitled to enforce the forfeiture clause in the
lease deed separately as regards his share of the
lands. SRI ROJA SIMHADRI APPA RAO v PRATYATI-
RAMAYYA, I. L. R. 29 Mad. 9, followed Gopal
Ram Mohan v Dhakeswar Prasad, I. L. R. 35
Calc. 807, disented from Mere breach by the
lessee of a covenant involving forfeiture contained
in a lease of lands executed for agricultural
purposes, gives a sufficient cause of action to
the lessor to bring the suit in ejectment, and it
is not necessary that the lessor should do some
act showing his intention to determine the lease
before he brings his suit in ejectment. VERTAB-
AROMANA BHATTI v. Gundarappa, I. L. R. 31 Mad.
403, distinguished Padmanabhayya v Ranga

LETTERS OF ADMINISTRATION.

See ADMINISTRATION BOND

I. L. R. 39 Calc. 563

See ADMINISTRATOR GENERAL'S ACT (II OF 1874), s 20, 52 AND 54.

I. L. R. 38 Mad. 1134

See COLT FEES ACT, s 18

I. L. R. 33 Mad. 93

I. L. R. 40 All. 279

See HINDU LAW—SUCCESSION

I. L. R. 37 Calc. 214

See PROBATE . I. L. R. 37 Calc. 224

I. L. R. 40 Bom. 666

See PROBATE AND ADMINISTRATION ACT, s 50 . 14 C. W. N. 119

I. L. R. 37 All. 380

See SUCCESSION ACT (V OF 1865), s 190

I. L. R. 38 Bom. 618

See SUCCESSION CERTIFICATE ACT (VII OF 1859), s 4 I. L. R. 38 All. 474

— application for—

See PARTIES I. L. R. 45 Calc. 862

Probate and Administration Act (V of 1861), s 23, 54—Hindu, death of, leaving widow who survived over 30 years—Application for letters of administration when no estate left to be administered It is no doubt not necessary for the Probate Court to decide what assets are likely to come to the hands of a petitioner for letters of administration, but it is also the duty of the Court in granting letters of administration to consider whether there is any estate whatever to be administered. *In the goods of Narain Chander Bysack, 3 C W N 635, Lakshmi Narain v Nanda Ram, 9 C L J 176, relied on Raghu Nath v Pale Aker, 6 C W N 345, distinguished* Where the object of the litigation appeared to be not to administer the estate of the deceased (a Hindu, who had died so long ago as 1875 and was survived by his widow in possession till 1907) but really to obtain a declaration of heirship so as to fortify the successful party in any regular suit that may be instituted. *Held*, that no grant should be made, although objection on this ground was taken for the first time upon appeal from the order of the District Court granting letters of administration. *LALIT CHAKRA CHOWDHURY v BAIKUNTHA NATH CHOWDHURY (1910)*

14 C. W. N. 463

Presidency Insolvency Act (III of 1909), s 108—Letters of administration, application by creditor—Debtor dying in insolvent circumstances Letters of administration may be granted to a creditor although the liabilities of the deceased debtor appear to be in excess of the assets. Application in the Insolvency Court is not the creditor's only remedy. *In the goods of MAHARAJ LALL CHATTERJEE (1911)* 15 C. W. N. 350

Revocation—Probate and Administration Act (V of 1861), s 50, Expl (4)—'Just cause'—'Useless or inoperative', meaning of—Disagreement between administrators whether a just cause for annulling letters of administration A mere disagreement between administrators is not a "just cause" for annulling the letters of administration under s 50, expl (4) of the Probate and Administration Act. The words "becomes useless and inoperative" is s. 50,

LETTERS OF ADMINISTRATION—contd.

expl (4) of the Probate and Administration Act imply the discovery of something which, if known at the date of the grant, would have been a ground for refusing it, e.g., the discovery of a later will or codicil, or subsequent discovery that the will was forged, or that the alleged testator is still living. *Bal Gangadhar Tyal v Sakwarbar, 1 L R 26 Bom, 792, and Annoda Prasad Chatterjee v. Kulkarni Chatterjee, 1 L R 24 Calc 96, followed GOUR CHANDRA DAS, v SARAT CHANDRA DAS (1912)* I. L. R. 40 Calc. 50

Practice—Colonial Probate Act (55 & 56 Vict., c 6)—Power of attorney, construction of The Colonial Probates Act and the procedure therein indicated, viz., to send an exemplification of the probate granted in any part of the United Kingdom to be resealed by the Court to which it is sent, has not been extended to British India, where the practice is to require administration with will annexed to the estate of deceased British subject leaving property there. Authority in a power of attorney granted by the executrix of a will which has been confirmed in Scotland to produce to the Supreme Court in India in the probate jurisdiction at Calcutta or elsewhere in India the said confirmation and to procure the same to be sealed with the seal of the Supreme Court in India in accordance with the laws thereof does not authorise the donee to obtain grant of Letters of Administration. *In the goods of WILLIAM RENNIE (1912)*

I. L. R. 40 Calc. 74

Probate and Administration Act (V of 1861) s 16—General citation, issue of—Special citation to executor to accept or renounce, not issued—Will, validity of—Proper procedure In a proceeding under the Probate and Administration Act general citation was issued to the executor to attend and watch the proceeding, but no appearance was entered by him, and letters of administration with a copy of the will annexed was granted to the applicant. *Held*, that the validity of the will was established, but letter of administration should not have been granted, without calling upon the executor by a special citation under s 16 of the Act to accept or renounce his executorship. *SAROJINI DAS v RAJLAKSHMI DAS (1920)*

I. L. R. 47 Calc. 838

Whether grant of, in respect of part of estate is valid—Probate and Administration Act (V of 1861), s 50—Compromise of probate proceedings, whether binding on minors—Bisulable cellopp Although an executor who has been appointed by the testator for the administration of a particular fund is competent to take out probate limited to that particular fund, yet where there is no direction as to any particular fund and where the applicants for letters of administration apply in their capacity as heirs, there is no provision of law which empowers the court to refuse administration of the whole estate and to limit it to a fractional undivided portion thereof. The only issue before a Probate Court is whether the Will has been proved to be genuine and duly executed, and the court has no concern with the devolution of property. Although it can record a contract or agreement made between the applicant for administration and a cavalier in consideration of the withdrawal of the latter's objection,

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the court a wholly powerless to enforce such contract or agreement SARADA PRASAD TRIPATHY CHANDAN ROY 3 Pat L J 415

Trustee—whether Court should go to question of—paranormal title—Irishate and Idm nstra on 1st (V of 1881) ss 3 of 60 and 73 The question as to whether an estate exists for the administration of which letters of administration can be granted must be decided upon the allegations in the petition. To effect the application to a grant of letters of administration to a person the petition shows that the applicant is according to the rules for the estate of the deceased entitled to the whole or a part of the property and alleges the fact that he is the person of that nature. A Court of Probate is bound to enter into questions of title if it is necessary to decide that question in order to determine which of the two contestants is entitled to a grant of letters of administration. It is not entitled to do so where one of the contestants asserts that no estate exists in the grant, e.g. where such party objects to a grant being made to his opponent on the ground that he has himself taken the entire estate of the deceased by survivorship as his adopted son. In such a case the question of the factum of the adoption would be so relevant to the inquiry only if the alleged adopted son claimed to be preferentially entitled to the grant of letters of administration. DEBENDRA PRASAD SUTHERVA PRASAD SUTHERVA 5 Pat L J 107

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See CIVIL PROCEDURE CODE 1858 s 115
15 C W N 848

cl. 10—

See PROFESSIONAL MISCONDUCT

I L R 41 Calc. 113

Appellate—Appeal from a decision judgment in an appeal under s 10—Irishate on—Huzbulars—Custom or contract—Partion of village—No new was bulars framed—Construct on of document—Huzbulars deh. Held that an appeal will lie under s 10 of the Letters Patent from the judgment of a Judge who has decided from his colleague in an appeal under the same section. The way bulars of an undivided village gave a right of pre-emption first to a near co-sharer (husband and wife) and then to a co-sharer in the village (husband and wife). Subsequently the village was divided by perfect partition into two mahals. No new way bulars was prepared. In a suit for pre-emption on by the co-sharers in one of the mahals consequent upon a sale of property situated in another mahal to a stranger. Held that the right might be enforced notwithstanding the partition. The meaning of the words deh and bulars discussed by LARAMAT HUSAIN J. Durgaj Singh v. A. K. Singh, I L R 22 All. Ind. Div. v. J. Ram Ram J L R 30 All 265 referred to. JIWAN RAM v. TONU SING (1911) I L R 34 All 13

cl. 10 39—

S. 4 APPEAL TO THE V. CO. L.

I L R 41 Calc. 734
I L R. 39 Mad 128

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—*concl.*

cl 12—

See ARBITRATION I L R 47 Calc. 611

See CIVIL PROCEDURE CODE (ACT V OF 1808) s. 11 I L R. 37 Bom 563

See CONTRACT I L R. 47 Calc. 583

See EQUITABLE MORTGAGE I L R. 38 Calc. 524

See HINDU SUIT OF I L R 40 Bom. 473

See JURISDICTION OF HIGH COURT I L R. 34 Mad. 257

See JURISDICTION I L R. 39 Calc. 739
I L R 40 Calc. 308
I L R. 42 Calc 942
24 C W N 552
I L R 48 Calc 882

See LETTERS PATENT (BOM) I L R 48 Calc 882

See MORTGAGE 24 C W N 633

See T. R. D. PARTY NOTICE I L R 45 Bom 24

See WAIVER I L R 44 Calc. 10

For damages against by action of may be brought in a writ of certiorari for India in Council—Jurisdiction of High Court (Cl. 10) Letters Patent (Calcutta High Court 1865) to file plan and to find defendant may question property when once granted Secretary of State for India in Council, for a body corporate and represents Government of India in all its matters. He is not Government s. 65 of 21 and 22 v. c. 106—Government carrying on business for State purposes there may be said Railway Company for a person carrying on his own and where it may be brought against the decision of a Bench of two Judges sitting on Original Side of the High Court. A servant of the Eastern Bengal State Railway was prosecuted at Rungpur on a charge of criminal breach of trust which resulted in his acquittal. He thereupon filed a plaint claiming damages for false and malicious prosecution against the Secretary of State for India in Council in the Calcutta High Court which he craved leave under cl. 12 of the Letters Patent of the High Court 1865 for the institution of the suit in the said Court and the Court granted his leave. He filed that as the cause of action had arisen wholly outside the jurisdiction of the Calcutta High Court the leave was not properly granted and that the fact of the leave having been granted did not preclude the defendant from questioning the jurisdiction of the Court at the trial. Under s. 65 of 21 and 22 v. c. 106 the Secretary of State in Council is a Body Corporate for purposes of a suit and as such represent the Government of India in all its matters as may be maintained against the Government by 21 and 22 v. c. 106 such right of suit as individuals had against the East India Company were continued as against the Secretary of State. A Railway Company is a person carrying on business with the meaning of s. 12 of the Letters Patent and it may be sued at the place of its principal office where the directors meet and the general business of the company is transacted or the brain power of the business is a Government may be presumed to dwell in its own capital and a Govern

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—*contd.*—*contd.*cl. 12—*contd.*

ment engaged in trades, though it may be for purposes of the State, carry on business there. *Doja Naran Tewary v Secretary of State for India*, 1 L R 14 Cal 256, dissented from. The judgment of Pigot, J., in *Dipiro Das Dey v The Secretary of State for India*, 1 L R 14 Cal 262n, approved. *Held*, that the former being the decision of two Judges sitting on the Original Side, presumably upon a reference by one of the Judges sitting singly on the Original Side, the decision is binding on a single Judge so sitting. *RODRICKS v THE SECRETARY OF STATE FOR INDIA* (1912)

18 C. W. N. 747

Leave asked for, granted by Registrar, but not ratified by Court—Leave, if may be endorsed as if granted on the date of presentation of plaint—Waiver of objection by defendant—Costs of unnecessary application Where leave under cl 12 of the Letters Patent as prayed for in the plaint was granted by the Registrar, subject to its ratification by Court, but it did not appear that the plaint was ever placed before a Judge. *Held*, on the matter being brought before the Judge on a later date after defendants had filed written statement and taken several other steps towards the trial and had entered on the cross-examination of the plaintiff who was being examined on commission, that the granting of leave was a judicial act performable only by the Judge and leave could not now be endorsed on the plaint as given on the date on which the plaint was presented before the Registrar. *Lalteswar Sing v Rameswar Sing*, 1 L R 24 Cal 619, 627. 11 C W N 649, followed. That by the steps they had taken in the suit, defendants had waived objection as to want of leave. *A J King v Secretary of State for India*, 1 L R 35 Cal 394. 12 C. W. N 705. The application being thus unnecessary, plaintiff was ordered to pay defendants' costs. *SARASWATI DASER v BIRAJ MORIK DASER* (1913)

17 C. W. N. 512

cls. 12, 14—*Cause of action arising partly within jurisdiction—Further cause of action arising wholly outside jurisdiction—Sunder—Time of application* An application under cl 14 of the Letters Patent to join a further cause of action arising wholly outside the jurisdiction, can be made in a case in which leave to sue has to be obtained under cl. 12, nor is there anything in cl. 14 to show that this application must be made before the plaint is filed. There is nothing to prevent the plaintiff making the application at any time before the hearing, but it would certainly be advisable for him to make it at the time the plaint is presented. *JOHN GEORGE DOBSON v. THE KRISHNA MILLS, LTD* (1910)

I. L. R. 34 Bom. 584

cls. 12 and 18—

See PRESIDENCY TOWNS INSOLVENCY ACT (111 OF 1909) ss. 7, 36 AND 90.
I. L. R. 40 Mad. 810

cls. 12, 15, 20—

See APPEAL. I. L. R. 47 Cal. 1104
See MINOR. I. L. R. 41 I. A. 314

ss. 13, 27 and 44—

See DEFENCE OF INDIA ACT, 1915, s. 4
3 Pat. L. J. 537

cl. 15—

See AMENDED LETTERS PATENT
I. L. R. 42 Bom. 260
See APPEAL
I. L. R. 42 Mad. 352
I. L. R. 45 Cal. 502, 818
I. L. R. 42 Cal. 735
I. L. R. 44 Cal. 804
See ARBITRATION—RIGHT OF APPEAL
I. L. R. 39 Cal. 822
See CRIMINAL PROCEDURE CODE, 1908—
ss 215 AND 478
I. L. R. 43 Mad. 361
ss 435, 439 AND 133
I. L. R. 39 Mad. 537
s 483
I. L. R. 39 Mad. 472
See LETTERS PATENT (BOM.)
I. L. R. 44 Bom. 272
See MISJOINDER
I. L. R. 45 Cal. 111
See REVIEW
I. L. R. 40 Mad. 651

Appeal under—Order of a single Judge in revision against order to give security to keep the peace—No appeal—“Criminal trial,” meaning of Proceedings taken for binding over persons to keep the peace under Ch VIII, Criminal Procedure Code are criminal trials within the meaning of s. 15 of the Letters Patent, and hence there is no appeal from the judgment of a single Judge disposing of a Revision Petition presented against an order of a Magistrate under s. 118 of the Code of Criminal Procedure. In the matter of Ramasamy Chetty, 1 L R 27 Mad 510, followed. Re DESIKACHARI (1915)

I. L. R. 39 Mad. 539

Order of Judge refusing to decide whether arbitrators are going beyond scope of their authority—Judgment—Appeal—Construction of submission to arbitration An order of a Judge dismissing a petition to revoke a submission to arbitration on the ground that the arbitrators are going beyond the scope of the reference is a judgment within the meaning of cl 15 of the Letters Patent and as such is appealable. Such an order compels a party to submit to the jurisdiction of arbitrators though he complains that no such jurisdiction exists. It decides a question of right, namely, whether or not he is by the terms of reference to arbitration deprived of his right at common law to have the dispute decided in the ordinary way in a Court of law. It goes to jurisdiction and is not passed as an exercise of discretion. *ATLAS ASSURANCE COMPANY, LIMITED v AHMEDABAD HAMBROH (1908)*

I. L. R. 34 Bom. 1

See ARBITRATION I. L. R. 38 All. 354

Judgment—Order of single Judge refusing to frame an issue not appealable as a judgment An order of a single Judge on the Original Side, refusing to frame an issue asked for by one of the parties is not a judgment within cl 15 of the Letters Patent and is not appealable. *Per ARYOLD WATTS, G J*—An adjudication is a judgment within the meaning of the clause if its effect, whatever its form may be and whatever may be the nature of the application in which it is made, is to put an end to the suit or proceeding so far as the

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—contd

cl. 15 —contd

Court before which the suit or proceeding is pending is concerned or if, its effect, if not conformed with, is to put an end to the suit or proceeding. It is not necessary that the decision must affect the merits by determining some right or liability. An objection based on a refusal to exercise discretion, is appealable if the effect of the adjudication is to dispose of the suit so far as the Court making the adjudication is concerned. *See V. KRISHNASWAMI AIRAN, J.* The word "Judgment" in cl. 15 must be so construed as to include the various kinds of judgments dealt with in other clauses of the Letters Patent. It must be understood as including preliminary or interlocutory judgment but not preliminary or interlocutory orders. *Prasanna v. Purnananda Bepum, I L R 4 Code 531 approved; Purnananda v. Cula, 3 Mad H C R 338 commented upon; Perakkadran (Hally v. Vadaraja) District I L R 23 Mad 28 not approved; Maruthamuthu Pillai v. Arishamachari, I L R 30 Mad 143 not approved; Appasamy Pillai v. Somasundara Mudaliar, I L R 26 Mad 437 dissented from; Chinnasamy Mudali v. Srinivasan Goundan I L R 27 Mad 432 dissented from; TELJANAM ROW v. ALAGAPPA (METTIAN) (1910).*

I. L. R. 35 Mad. 1

Dissenting judgment at the hearing of appeal under—Further appeal under cl. 15, if lies. Where in an appeal under cl. 15 of the Letters Patent from the decision of a single Judge the Judges having differed in opinion, the opinion of the senior Judge prevailed under a 30 of the Letters Patent: *Held*, that a further appeal lay under cl. 15 of the Letters Patent. *Barlow v. Cochran, 2 B L R (Or C. J.) 66, 115, and Juran Eum v. Tonda Singh, I. L. E. 34 All 13, referred to; JADIVATH DANDUPAT v. HARI KAR (1913).*

17 G. W. N. 308

Appeal from judgment of Judge of High Court affirming that of lower Court and dissented from by his colleagues—Appeal Court, if bound by findings on which differing Judges agreed—Judgment, meaning of. Where a Bench of two Judges of the High Court having differed as to the disposal of an appeal, the judgment of the lower Court was confirmed on a further appeal under cl. 15 of the Letters Patent: *Held*, that the Appeal Court was not precluded from reviewing points on which the two Judges were agreed though due regard would be paid to the concurrent findings of the two Judges and of the trial Court. "Judgment" in cl. 15 of the Letters Patent means "the sentence of law pronounced by the Court" upon the matter contained in the record and not the statement of the grounds thereof. *Nandepudi Mahto v. Urgachari, 13 B R 203, commented on. URENDA NATH BORA v. HINDRAI LAL (1910).*

20 C. W. N. 210

"Judgment," order of a single Judge rejecting—Provincial Small Cause Courts Act (15 of 1857), s. 23, a revision petition under—Applicability. The order of a single Judge of the High Court rejecting a petition to send for the records and to revise the judgment of the lower Court exercising Small Cause Court jurisdiction is a "judgment" within the

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—contd

cl. 15 —contd

mean of a 15 of the Letters Patent and is therefore appealable; it is immaterial whether before such refusal the records were called for or notice issued to the other side. *Choppan v. Mond v. Aul, I L R 22 Mad 62 and Thiruvannam I v. R. Rajappa (Hollow I L R 35 Mad 1, followed. Venkatarama Iyyar v. Madurai Tamil, I L R 23 Mad 147 and Puhut di Sida v. Purnika Kuchibettu I L R 27 Mad 310, overruled. In matters of jurisdiction such as that, the Court will not ordinarily interfere on appeal though it has jurisdiction to do so. *Indrag v. Haddon & Co. India Company I Q B 374, 375 and Srinivasa Iyer v. Iyengar (METTIAN) (1910).**

I L R. 39 Mad. 235

Judgment within the meaning of in order of a single Judge—Effect of an application for review of a judgment—Whether an appeal lies from such an order—cl. 15 of the Letters Patent whether contemplates appeals from such orders where the judgment of which review was sought was passed by two Judges. An appeal was allowed by a Division Bench consisting of two Judges, and an application for review of the judgment passed in the appeal was presented to one of the two Judges when the other Judge had ceased to be a Judge of the Court. The application was rejected by the same Judge sitting alone and against the said order rejecting the application for review a Letters Patent appeal was filed. *Held*, that it was not an appeal against the judgment of a single Judge within the meaning of cl. 15 of the Letters Patent because it was virtually directed against the judgment of two Judges, of which review was sought by the application. The intention of the Legislature was not to allow appeals from such orders. *KAILAS (N. SAMADHAN v. HIRATI) MOHUN LLOY (1917).*

21 C. W. N. 652

*Order of remand by single Judge setting aside decree in plaintiff's favour for further investigation on facts, if judgment of plaintiff having sued the defendants for accounts in respect of two wine shops, first on the footing of his being a servant and in the alternative as partner the first Court gave him a decree for dissolution and accounts on the finding that the defendant was partner. On appeal, the District Judge without going into the facts decided as a matter of law that defendant could not be a partner and accordingly set aside the first Court's decision and gave the plaintiff a decree for accounts against defendant as agent of one of the shops. On second appeal, a single Judge of the High Court ordered a remand to the District Judge in the view substantially that the facts must be investigated before the legal relation between the parties could be determined; *Held*, that the effect of the decision of the single Judge being to deprive plaintiff of the benefit of the decree made in his favour by the District Judge and to reopen the entire controversy between the parties it was a judgment within the meaning of a 15 of the Letters Patent and a further appeal lay under that section. The expression "some right or liability" in the definition of "judgment" by Sir Richard Couch in *The Justice of the Peace v. The Oriental Gas Co., 8 B L R 423*, (according to whom the judgment is to*

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—*contd.*cl. 15—*contd.*

either final, preliminary or interlocutory) is not restricted to the right in controversy in the suit itself. *BEHARI LAL SARKI v. JAGENDRO NATH BHATTACHARYA* (1917). 21 C. W. N. 921

Order under O XII, r 6, Civil Procedure Code [Act V of 1908] rejecting application for judgment on admission, if appealable—*Letters Patent, Calcutta High Court (1865), cl. 15—Government of India Act of 1915* An order rejecting an application for judgment on admission is a judgment within the meaning of cl. 15 of the Letters Patent and is appealable. *KORAMALL RAMBALLY v. MOGILAL DALUCHAND* (1910). 23 C. W. N. 1017

High Court rr 130 and 131—Third party notice—*Dismissal for directions to third party issued at the instance of defendant—Order refusing directions—Judgment—Typical—Practice—Procedure* An order refusing directions under rr 130 and 131 of the High Court Rules is not a "judgment" within the meaning of cl. 15 of the Letters Patent, and no appeal lies against that order. *The Justices of the Peace for Calcutta v. The Oriental Gas Co., (1872) 8 B L R. 433*, followed. *CHARANDAS (HATURNBILI) v. CHHAGANLAL PITAMBARDAS* (1920)

I L R. 45 Bom. 428

Appeal from order—*Judgment—Suit instituted in High Court—Order of the trial Judge allowing plaintiffs leave to withdraw suit with liberty to take such action as they might be advised against the defendants—Order made after recording evidence and delivering judgment on the points arising in the case—Order appealable—Civil Procedure Code (Act V of 1908), O XXIII, r 1, cl. 2—Practice* In a suit instituted in the High Court at Bombay, the trial Judge heard the evidence and delivered a written judgment dealing with all the points raised in the case, and he came to a conclusion that on the case as then presented by the plaintiffs, the plaintiffs must fail. The trial Judge ultimately made an order allowing the plaintiffs leave to withdraw their suit with liberty to take such action as they might be advised against the defendants. He made no order as to costs. The defendants appealed, and a preliminary objection was taken by the plaintiffs that no appeal lay from the order. *Held*, overruling the objection, that the order of the trial Judge was a "judgment" within the meaning of cl. 15 of the Letters Patent, and an appeal lay from the order. *The Justices of the Peace for Calcutta v. The Oriental Gas Co., (1872) 8 B L R. 433* at page 432, distinguished and explained. *NARAYAN RAGHUNATHAS v. BHANTILAL BHOLABHAI* (1920) I L R. 45 Bom. 377

Security not given in time—*Subsequent application to sue as pauper court, if bound to dismiss the appeal—Civil Procedure Code (Act V of 1908), ss 104, 117, 120, 121, 122, 123, 129—O XII, r 10, it applies to appeals under Letters Patent—Civil Procedure Code, it applies to proceedings in the High Court—Rule making power of the High Court—S 151, inherent power of Court* An appeal from the judgment of a single Judge of the High Court given by cl. 15 of the Letters Patent of the Calcutta High Court is expressly saved by the

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—*contd.*cl. 15—*contd.*

language of s 104 of the Civil Procedure Code of 1908 [*Quære* Whether the appeal expressly given by cl. 15, Letters Patent, was interfered with by s 558 of the Code of 1862] In the absence of any rule framed by the High Court in exercise of the power (saved by s 129 of the Code) to regulate its own procedure in its Original Civil Jurisdiction, O XII, r 10 of the Civil Procedure Code applies, by force of ss 117, 120 and 121 of the Code to the jurisdiction exercisable under cl. 15 of the Letters Patent, upon appeal from a judgment passed by a Judge of the High Court on its Original Civil Side. Where therefore upon such appeal, the appellant being ordered to give security for the respondent's costs under O XII, r 10 (2) failed to do so within the time fixed, and thereafter having applied for leave to continue the suit in *form d pauperis*, the Court of Appeal held that in view of the mandatory provisions of O XII, r 10 (2) of the Code, it was bound to dismiss the appeal and could not therefor grant permission to continue it in *form d pauperis*. *Held*—That the High Court acted rightly in the matter. That the ends of justice did not require that the leave asked for should be given in this case in the exercise of the Court's inherent power preserved by s 151 of the Code. *Quære*—Whether a general saving clause like that in s 101 gives power in effect to refuse to apply an appropriate rule made in the exercise of other powers of the Court and having statutory force. The Civil Procedure Code is framed on the scheme of providing generally for the mode in which the High Court is to exercise its jurisdiction, whatever it may be, while specifically excepting the powers relating to the exercise of Original Civil Jurisdiction to which the Code is not to apply. It confers a general rule making power saving only what is excepted in the body of the Code. *SABITHI THAKURAIN v. SAVA (P. C.)* 25 C. W. N. 557

Suit on behalf of a lunatic—*Benefit of the lunatic—Application to take the plaint off the file—Dismissal of the application—Right to apply at the hearing—Final decision* In a suit instituted on behalf of a lunatic one of the defendants applied for taking the plaint off the file on the grounds amongst other, that the suit was not for the benefit of the lunatic and was an abuse of the process of the Court. The Court dismissed the application on the ground that on the materials before the Court at that stage, the Court was not prepared to hold that these grounds were substantiated. The defendant appealed. *Held*—That the order dismissing the application was not a "judgment" within the meaning of cl. 15 of the Letters Patent, inasmuch as the said order did not finally decide any right between the parties, it being open to the defendant to substantiate the grounds by further materials at the hearing of the suit. *GOUR MOHAN MULLICK v. NARAYAN MUNDURI DASI*. 26 C. W. N. 242

cls. 15, 16, 39—

See APPEAL I L R. 41 Calc. 323

cls. 15, 26—*Appeal to High Court from order under Lord Acquisition Act (I of 1854)—Locus of two Judges—Difference of opinion—Appeal under cl. (15) of the Letters Patent, whether*

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—*concl.*— *cls 15 36—concl.*

ma nia nalle— 98 (2) Civil Procedure Code (V of 1908) and cl. (36) Letters Patent applicability of to appeals in Land Acquisition cases—It 2 of Appellate Side Rules applicability of to such appeals. The decision of the High Court in a Land Acquisition appeal is not a judgment within cl. (15) of the Letters Patent so as to enable a party to file a further appeal to the High Court under that article. *Rangoon Balaingy Co Ltd v The Collector Rangoon* 1 L R 40 Calc. 21 and *The Special Officer Sale the Land Revenue v Deasatha Balaingy* Notula 17 C W N 401 followed. S 48 of the Civil Procedure Code applies to Land Acquisition appeals and the bench of two Judges on an appeal differs as to the amount of additional compensation awardable the proper order to pass on the appeals to confirm the award of the lower Court under that section and not to give a decree up to the lower limit of additional compensation. *Akhen Deyal v Irshad Ali* 22 C J J 375 distinguished. An award is a decree or order of a Civil Court within 2 of the Appellate Side Rules of the High Court. *Per Deshaigri Ayyar* J S 98 Civil Procedure Code is not strictly applicable to the facts of the case. *MANAVIKRAMAN THIRUMALAI v THE COLLECTOR OF TAMILNADU* (1918)

1 L R. 41 Mad. 943

— *cls 15 36 39—*

See LETTERS PATENT APPEAL.

1 L R. 43 Calc. 90

— *cls 15 44—*

See APPEAL.

1 L R. 43 Calc. 857

See LIMITATION ACT (IX OF 1908) ARTS

11 AND 13. 1 L R. 39 Mad. 1106

— *cl 24—*

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) SS 17 187 506 AND 531.

1 L R. 42 Mad. 701

— *cls 25, 26—*

See EVIDENCE. 1 L R. 47 Calc. 671

See JURY TRIAL BY

1 L R. 44 Calc. 723

— *cl 26—*

See COUNTERFEIT COIN.

1 L R. 44 Calc. 477

Review of criminal case decided by High Court in Original Criminal Jurisdiction on certificate of Advocate-General KING EMPEROR UPENDRA NATH DAS (1914)

19 C W N 653

Advocate-General, f has power to grant fiat regarding misconduct on point of fact. On a conviction of kidnapping in the Criminal Sessions of the High Court the Advocate-General granted a fiat under 20 of the Letters Patent that the question whether the direct on to the jury was a sufficient direct on and whether certain alleged circumstances to direct the jury did not amount to a misdirection should be further considered by the High Court. At the hearing objection was taken to the competency of the fact. Held (on a consideration of the facts and circumstances of the case) that there was no misdirection and that view was

LETTERS PATENT (HIGH COURT 1865)

—*concl.*— *cl 26—concl.*

not necessary to decide as to the competency of the fiat. Duty of prosecuting counsel in Sessions trials in the High Court to take notes of the Judge's charge to the jury pointed out. KING EMPEROR UPENDRA NATH DAS (1914)

23 C W N 428

— *cls 27 28—*

See CONTENT OF COURT

1 L R. 41 Calc. 173

— *cl 30—*

See DEFAMATION. 1 L R. 43 Calc. 358

— *cl 32—*

See ARREST OF SHIP

1 L R. 42 Calc. 85

— *cl 36—*

See CIVIL PROCEDURE CODE (ACT V OF 1908) S 98. 1 L R. 43 Bom. 423

See HIGH COURT JURISDICTION OF

1 L R. 40 Calc. 955

Procedure—Bombay

High Court—Original Civil Jurisdiction—Appeal—Dwarka nath of Judges—Code of Civil Procedure (V of 1908) ss 4 and 98 sub s 2. Section 36 of the Letters Patent of the Bombay High Court which provides that the Judges composing a division bench are equally divided in opinion on the opinion of the senior or Judge is prevailed is not affected by s 98, sub s 2 of the Code of Civil Procedure 1908 which provides a different procedure in these circumstances. The Judicial Committee allowed an appeal where the procedure of s 98, sub s 2 had erroneously been followed without objection by the appellant but their Lordships expressed no opinion on the merits reserved for the ultimate decision on the question whether the appellant should not be ordered to pay the whole of the costs since the date when the mistake was first made. Decree of the High Court reversed. *BRADISH SRINIVAS v BAL GULAB* (1901)

1 L R. 45 Bom. 718

See REVISION. 1 L R. 47 Calc. 438

— *cl 39—*

See APPEAL TO PRIVY COUNCIL.

1 L R. 40 Calc. 685

1 L R. 41 Calc. 734

1 L R. 39 Mad. 128

See CIVIL PROCEDURE CODE 1908 S 115.

15 C W N 848

— *cls 39, 44—*

See LEAVE TO APPEAL TO PRIVY COUNCIL.

1 L R. 42 Calc. 35

— *cl 140—*

See LAND ACQUISITION ACT (I OF 1894)

S 34. 1 L R. 37 Bom. 506

LETTERS PATENT (ALL)

— *cl 3—*

Legal practitioner—

Disciplinary powers of High Court—Professional misconduct—Petition presented by a vakil purporting to be the petitioner of a case but which was in fact entered in the name of the vakil and contained elements made recklessly and without any reasonable grounds of belief. A vakil was

LETTERS PATENT (ALL.)—contd**cl. B.—contd.**

retained to defend in the Court of Session certain persons accused of murder. In the course of such engagement he prepared and put before the Sessions Judge a statement which purported to be a petition issuing from his clients and drafted on their instructions, whereas in truth and in fact it was a petition which originated with him and in respect of which he had received no instructions from his clients, and he put therein allegations which were made recklessly and without any reasonable grounds of belief. *Held*, that the vakil was guilty of professional misconduct, and in exercise of the powers conferred by s. 8 of the Letters Patent, the vakil was suspended from practising his profession. *In the matter of A VARIL* I. L. R. 42 All. 450

cl. 10—

See CIVIL PROCEDURE CODE, 1908—

ss 104 and 41, R 1

I. L. R. 39 All. 191

See CRIMINAL PROCEDURE CODE—

s. 195. I. L. R. 39 All. 147

LETTERS PATENT (BOM.)

See LETTERS PATENT, 1865

cls. 11 and 38—

See HIGH COURT ACT (24 & 25 Vict. c 104) I. L. R. 39 Bom. 604

cl. 12—

See HUNDI SUIT ON

I. L. R. 40 Bom. 473

See THIRD PARTY NOTICE

I. L. R. 45 Bom. 24

Ordinary original civil jurisdiction of the Bombay High Court—Suits for land and other immovable property—Title deeds—Suits to compel the delivery of title deeds to land outside the ordinary original jurisdiction of the Bombay High Court. In a suit to enforce, inter alia, the delivery to the plaintiff of the title-deeds of certain immovable property situated outside the ordinary original civil jurisdiction of the Bombay High Court, where it appeared on the pleadings that the substantial point to be decided in the suit was the title of the plaintiff to the property to which the title-deeds related. Held, that the suit, in so far as it related to such title deeds, was a suit for land or other immovable property and that the Bombay High Court had no jurisdiction to entertain the same. ZULKARAI v. ISRAHIM HAJI VYEDINA (1913) I. L. R. 37 Bom. 494

cl. 15—Judgment, meaning of—Order refusing injunction to restrain prosecution of suit in a foreign Court, not a judgment—No appeal lies against such order—Jurisdiction—Motion. An order refusing to grant injunction to restrain the defendant from prosecuting a suit filed by him in the Court of a Native State is not a judgment within the meaning of cl. 15 of the Letters Patent, and no appeal lies against that order. *The Justices of the Peace for Calcutta v. The Oriental Gas Co., (1872), 8 Ben. L. R. 433, referred to; Sonabai v. Tribhuvandas (1905) 32 Bom. 602, distinguished. VEERCHAND v. LAKHRICHAND MANERCHAND (1910) I. L. R. 44 Bom. 272*

LETTERS PATENT (BOM.)—contd**cl. 35—**

See DIVORCE ACT (IV OF 1869), ss 2, 4, 7 AND 45 I. L. R. 39 Bom. 125

LETTERS PATENT (CAL)

See LETTERS PATENT, 1865

LETTERS PATENT (MAD.)

See LETTERS PATENT, 1865

LETTERS PATENT (N-W. P.)

See CIVIL PROCEDURE CODE (1908),

s. 104, O XLIII, R 1; O XXJ R 90 I. L. R. 39 All. 191

See CRIMINAL PROCEDURE CODE, s. 195

I. L. R. 39 All. 147

See PROFESSIONAL MISCONDUCT

I. L. R. 40 Mad. 69

LETTERS PATENT (PAT.)**cls. 9 to 34—**

See LEGAL PRACTITIONERS' ACT, 1879, s 13 4 Pat. L. J. 423

cl. 10—

See DEFENCE OF INDIA ACT,

s 7 3 Pat. L. J. 581

Point not argued before single Judge if may be urged in appeal. The conduct of a case before a single Judge of High Court must not be regarded as a preliminary matter in which the parties and their legal advisers are not called upon to exert themselves. Ordinarily a point which had not been taken before a single Judge would not be allowed to be taken in appeal under cl. 10 of the Letters Patent. Saminatha Ayyar v. Venkataraba Ayyar, I. L. R. 27 Mad. 21, and Khub Chand v. Harmaulh Rai, I. L. R. 34 All. 41, referred to. The Tanjore Palace Estate v. Ando Hanmaha II I. C. 339, dissented from. Dani Madhub v. Matungini, I. L. R. 13 Cal. 104 and Bechi v. Ashanullah Khan, I. L. R. 12 All. 461, referred to. DEBI CHAND LAL v. SHERIF MEHDI HUSSAIN (1916) 20 C. W. N. 1303

Rules of the Patna High Court, 1916, Ch VII, rr 2 and 16 Ch VIII, rr 3 and 4. Letters Patent of the Patna High Court, L. 10—Appeal from decision of single Judge—procedure. The procedure in appeals under cl. 10 of the Letters Patent is laid down in Ch VII, rr 2 and 16, and Ch VIII, rr 3 and 4, which provide that the appeal must first be presented to the Registrar, whose duty it is to lay it before a Divisional Bench. The Bench hears the appellant and other witnesses the appeal or causes notice to be served upon the respondent. In dismissing an appeal under these rules without issuing notice upon the respondent the High Court does not act without jurisdiction. JAGDIS CHANDRA DAS v. CHANDRA MOHAN DAS

4 Pat. L. J. 695

Single Judge, whether question not raised before, can be raised before Division Bench. The plaintiff obtained a decree on the 27th September 1913. The decree was prepared and signed on the same day. The Court was closed from the 28th September to the 31st

LETTERS PATENT (PAT.)—contd

— cl. 10—contd.

October (both days inclusive) The defendants applied for a copy of the judgment on the 3rd November and for a copy of the decree on the 13th November. Both copies were ready and delivered on the 21st November. An appeal was filed on the 28th November. *Held* that the appeal was filed within time. The wording of s. 12 of the Limitation Act, 1908, does not warrant the view that the time requisite for obtaining a copy must be continuous. Where a Court, after considering all the circumstances of the case, has come to the conclusion that sufficient cause has or has not been established for not filing an appeal within time, the High Court in second appeal will not interfere. Thirdly a point which has not been taken before the single Judge cannot be taken in an appeal under cl. 10 of the Letters Patent. *DEBI CHAN N LALL v SURESH MANDI HUSSAIN*. 1 Pat. L. J. 485

— cl. 20 and 41—

See DEFENCE OF INDIA ACT 1915 s. 7

3 Pat. L. J. 581

— cl. 29—

See PATNA HIGH COURT RULES 1916

5 Pat. L. J. 719

Remand, appeal from decision of single Judge, ordering Under the Letters Patent of the Patna High Court no appeal lies from the order of a single Judge remitting an issue for trial, but the Judge before whom the case comes on for hearing after return of the finding may disregard the order remitting the issue and the finding of the lower appellate court thereon, and dispose of the appeal on the original findings. The executant of a *saala* sued to set aside the document on the ground that he had been compelled to execute it by coercion. The plaintiff in his plaint made definite allegations which amounted to a charge of coercion and pleaded and proved a number of facts and circumstances which showed that the defendant was in a position to dominate the will of the plaintiff. He also proved that the transaction was unconscionable. *Held*, that the plaintiff was entitled to have the document cancelled although he had failed to prove the definite allegations of coercion. *BARA ESTATE, LTD v ANUP-CHANDRA*

2 Pat. L. J. 663

— cl. 39—*Order in Council, application for execution of, appeal from decision of Calcutta High Court—whether Patna High Court has jurisdiction to execute Order in Council.* The High Court at Patna has no jurisdiction to execute an Order in Council passed in an appeal from a decree of the Calcutta High Court on appeal from a subordinate court in Bihar. An application for execution of such an order should be made to the High Court at Calcutta. *LALJI SANE v RAI BARADUT BALNATH GOENKA* 2 Pat. L. J. 684.

See ALSO CESS ACT, 1880

2 Pat. L. J. 653

— cl. 41—

See DEFENCE OF INDIA ACT, s. 4

3 Pat. L. J. 537

LETTERS PATENT APPEAL.

— period not extendable—

See LIMITATION. 1 L. R. 2 Lah. 117

LETTERS PATENT APPEAL—contd

True result of cancelling *thereof* of a judgment of several if a single Judge of the High Court—Leave to appeal to Privy Council—Letters Patent 1865, cl. 15, 38, 39—Civil Procedure Code (Act V of 1908), ss. 110, 115—Court immediately below. In an appeal under cl. 15 of the Letters Patent (for Charter) the cancelling of a judgment of several passed by a single Judge of the High Court results in an affirmation of the decision of the Court immediately below. Such a Judge sitting alone is not a Court subordinate to the High Court, and thus no decision of a single Judge can be revised under s. 115 of the new Code. *DEBENDRA NATH DAS v BHINDENDRA MANSINGH* (1915)

1 L. R. 43 Calc. 90

From order of a single Judge refusing to stay execution of a decree under appeal to the High Court whether competent—practice of Court to grant stay of execution in respect of immovable property. The defendant against whom a decree for pre-emption of a house had been passed by the lower Court presented an appeal to the High Court and prayed that execution of the decree be stayed pending decision of the appeal. The appeal was duly admitted, but stay of execution was refused by a single Judge of the Court. The appellant then presented an appeal under s. 10 of the Letters Patent against the order refusing stay of execution. *Held*, that the term judgment in s. 10 of the Letters Patent includes any interlocutory judgment which decides, so far as the Court pronouncing such judgment is concerned, whether finally or temporarily, any question materially in issue between the parties and directly affecting the subject matter of the suit, and that consequently the present appeal is competent. *Tuljaram Now v Alagappa Chettiar* (1 L. R. 35 Mad. 1, F. S.), followed. *The Justice of the Peace for Calcutta v The Oriental Gas Co.* (3 B. L. R. 433), *Maidura Sundari v Harna Chandra* (1 L. R. 48 Calc. 337), and *De Souza v Cole* (31 Ind. 11 C. R. 351), approved. *Srinivasa Durga Prasad v Srinivasa Mahalingam* (1 L. R. 24 Mad. 353), approving of *Mahabir Prasad Singh v Achilari Kewar* (1 L. R. 21 Calc. 473), dissenting from *Held* also, that in accordance with the practice of this Court the execution of decree should be stayed in respect of the house but not in regard to costs. *GOKAL CHAND v SATWAL DAS*

1 L. R. 1 Lah. 348

LETTERS PATENT JURISDICTION.

See PROCEDURE 1 L. R. 48 Calc. 482

LEVA KUNBIS.

See HINDU LAW—ILLEGITIMACY

1 L. R. 44 Bom. 168

LEVEL CROSSING.

See RAILWAYS ACT (IV of 1890), s. 7

1 L. R. 44 Bom. 705

LEX FORI

See HABEAS CORPUS.

1 L. R. 39 Calc. 164

LEX FORI—contd

See PROMISSORY NOTE

I. L. R. 42 Bom. 522

LEX LOCI CONTRACTUS.

See EVIDENCE I. L. R. 33 ALL. 571

See PROMISSORY NOTE.

I. L. R. 42 Bom. 522

LIABILITY

See BILL OF LADING

I. L. R. 38 Mad. 941

See VARTHAMANAM

I. L. R. 38 Mad. 660

— for loss—

See CARRIERS. I. L. R. 47 Calc. 1027

LIBEL

See DEFAMATION

— By Judge—

See JUDICIAL OFFICERS PROTECTION ACT,
1850. I. L. R. 45 Bom. 1089

— On Magistrate—

See PRIVY COUNCIL (PRACTICE OF)

I. L. R. 41 Calc. 1023

Words defamatory per se—Imputation of criminal offence—Fair Comment—Privileged occasion—Hansard's Parliamentary Reports, admissibility of—Statement of Newspaper Correspondent—Evidence of bad character—Proceedings in Parliament—Evidence Act (1 of 1872) ss 55, 57, 78 (2)—Malice—Plaintiff's political character—Deportation—Regulation III of 1873—Judicial notice—Issues—Reputation—Damages, assessment of The expression "That the plaintiff has been guilty of tampering with the loyalty of the Punjab sepoy" amounts to an imputation that he has been guilty of an offence under ss 124A and 131 of the Indian Penal Code and is punishable with transportation for life. A fair comment on matter of public interest is not libel. *Mier role v. Carson*, 20 Q. B. D 275, referred to. *Per HARRINGTON, J.* Imputing a criminal offence to a person is not fair comment, and that the fact that another person on a privileged occasion made a similar statement is no protection to the defendant. Publication of a fair and an accurate report of proceedings in Parliament is privileged even though the words are defamatory. *Hanson v. Haller*, L. R. 4 Q. B. 73, referred to. A libel, which is privileged when it appears as the report of a speech in Parliament, is not privileged when it appears as the statement of a newspaper correspondent. The proceedings of Parliament may be proved, under s 78 (2) of the Evidence Act, by the Journals of the House of Commons or by copies purporting to be printed by order of the Government. Where the gist of the action was damages to the plaintiff's character, the defendants were entitled to show that the plaintiff was a person whose reputation would not be damaged by a particular libel in question. The fact that the plaintiff was a man of considerable influence in the Punjab, and took part in a meeting calculated to influence the minds of the people against the Government, and that he was depicted seven weeks after the meeting under a Regulation empowering the Government to take that step for

LIBEL—contd

the purpose of preserving a portion of His Majesty's dominions from internal commotion, should be taken into consideration in assessing the damages. In mitigation of damages the defendants can give evidence of the plaintiff's bad character, but not evidence of rumours and suspicions of bad character. *Scott v. Sampson*, 3 Q. B. D. 491, referred to. *Per WOODROFFE, J.* Subject to certain well known limitations, that which has probative force is evidence. The deportation of the plaintiff was evidence as throwing light on the character of his agitation previous thereto and as thus affecting damages. The presumption of regularity required that it should be assumed that the deportation appeared to Government to be necessary. When the presumption had operated to this extent, the fact presumed might itself form the basis of a further inference that what had appeared to be necessary had so appeared because there was an actual cause in fact for such appearance. The subject of 'judicial notice' discussed, and the meaning of s 57 of the Evidence Act explained. *Hansard* is an appropriate book of reference in case of Parliamentary debates. Fair comment is not a branch of the law of privileged occasion. The law as to fair comment stated. The Code requires that issues should be settled on the Original Side of the High Court. Reputation includes both character and disposition and disposition is not the less proven because it appears on the face of the facts deposed to by the plaintiff himself, or is a proper inference from those facts. Assessment of general damages discussed. The English cases which deal with the question of the revision of damages by the Court of Appeal have no application in this country where the jury system, with respect to which the English decisions have been given, does not prevail. "THE ENGLISHMAN,"

ITD & LAJPAT RAI (1910)

I. L. R. 37 Calc. 760

— Statement in written statement

— *Privilege—Party to judicial proceeding, statement by, in written statement—Absolute privilege—Qualified privilege—Rules of English Law, if applies in India—Penal Code (Act XLV of 1860), s 499* Defamatory statements made in the written statements of a party to a judicial proceeding are not absolutely privileged in this country. *Royal Aquarium v. Flickin*, [1892] 1 Q. B. 451, not followed. *Aungda Lam Shaha v. Nemas Chand Shaha*, I. L. R. 23 Calc. 867, followed. Qualified privilege on the ground that the defendant had an interest in the subject-matter of the communication and that the person to whom it was made had some duty to perform in the matter cannot be claimed in respect of such statements unless they fall within the exceptions to s 499 of the Indian Penal Code. *RAJENDRA K. BHABA SUNDARI DEBI* (1910) 15 C. W. N. 895

— *Defamatory words spoken by a party in the course of a judicial proceeding, if absolutely privileged—s 499, Penal Code, exception 1 and 2, effect of—Distinction between civil and criminal cases for defamation—English law rule of absolute privilege, if to be followed—Distinction between witnesses and parties to a judicial proceeding. As to the application of the rule of absolute privilege in English law to words spoken by a party in the ordinary course of any proceeding before any Court or tribunal recognised*

LIFE INSURANCE—contd

See **MARRIED WOMAN'S PROPERTY ACT**,
1874, ss 2, 4 AND 8

18 C. W. N. 1335

See **TRANSFER OF PROPERTY ACT (IV
OF 1882 AS AMENDED BY ACT II OF
1900)**, s 130 I. L. R. 37 Bom. 198

— money payable under Policy of Life Insurance—Money payable under—Such money forms part of estate of assured and is recoverable by his representatives Where the assured does not, in his life time create any trust in respect of the money payable under a policy of Life Insurance for the benefit of his wife and children such money, in cases where the provisions of the Married Woman's Property Act do not apply, forms part of his estate and is recoverable by his legal representatives The contract between the Company and the assured gives no right of action to the beneficiaries named Where the Company refuses payment on the death of the assured, the legal representatives and not the beneficiary will be entitled to enforce the contract. The Company will be bound to pay the amount to a person who has obtained a Succession certificate under s. 16 of the succession Certificate Act *Chauhan v Mutual Reserve Fund Life Association*, [1892] 1 Q. B. 147, referred to. **ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE, LTD., v VASTEDDU AMMIRAJU** (1911)

I. L. R. 35 Mad. 162

— Policy holder—Alteration of rules—Effect on policy effected before alteration—Refund of premium paid A policy holder in a Life Insurance Company is not bound by any alterations in the rules made after the contract between himself and the company had become concluded If a policy holder, who is permitted by the rules of an Insurance Company to discontinue payment of premium after stipulated period does so after that period, the policy does not lapse and the company is liable to refund the sums actually paid **TANJORE LIFE ASSURANCE CO v KUTIPATTA RAO** (1920)

I. L. R. 43 Mad. 333

— Agent—Dismissal of agent—Commission—Renewals, meaning of—Premium paid by policy holders subsequent to dismissal of agent—Right of agent to commission on renewal or subsequent premium paid after dismissal—Express contract for such commission necessary for In the absence of a definite agreement to that effect, an agent of a Life Insurance Company who has secured policy holders for the Company and whose duties as agent do not cease with the first introduction of the customer, has no right to commission on renewals, that is, subsequent premium paid in by such policy holders, after he ceased to be its agent. *In re The Albert Life Insurance Arbitration (Lawrie's Case)* 15 S. J. 328 *Royd v Mallers* (1893) 9 T. L. R. 443, *Original Side Appeal No 42 of 1899*, and *Civil suit No 178 of 1903*, followed **EMPIRE OF INDIA LIFE ASSURANCE CO. LTD. v NANG AYTAH** (1921)

I. L. R. 44 Mad 170

LIFE INTEREST.

See **HINDU LAW—WILL**

I. L. R. 42 Calc. 561

LIGHT AND AIR.

See **EASEMENT** . I. L. R. 38 Calc 59

I. L. R. 42 Calc. 46

LIGHT AND AIR—contd

— Damages for infringement of light and air—Injunction, when to be granted. A mandatory injunction will be granted to remove an obstruction of an easement to light and air where the character of the obstruction is such that its consequence is to darken the plaintiff's house so as to make it uncomfortable and in part useless. In such a case damages would not be an adequate remedy. **NETRU KRISHNA AYTAH v SOMALINGA MUKUNAGAN-DRICKEN** (1913)

I. L. R. 36 Mad. 11

LIGHTERS OR BOATS.

See **BILL OF LADING**

I. L. R. 38 Mad. 941

LIMITATION.

See **ABHARI ACT (BOM ACT V OF 1878)**,
ss. 32, 67 . I. L. R. 37 Bom. 101

See **ACCOUNT, SUIT FOR.**

I. L. R. 40 Calc. 108

ACCOUNTS . 28 C. W. N. 61

See **ADMINISTRATION**

I. L. R. 40 I. A. 235

See **ADVERSE POSSESSION**

I. L. R. 32 All. 359

I. L. R. 45 Bom. 681

I. L. R. 33 All. 224, 229, 463

I. L. R. 35 Bom. 227

I. L. R. 44 Calc. 425

See **ALIEN ENEMY**

I. L. R. 46 Calc. 526

See **AMENDED LETTERS PATENT**, CL 15

I. L. R. 42 Bom. 260

See **AMENDMENT**

I. L. R. 43 Calc. 110

See **AMENDMENT OF PLAINT**

I. L. R. 36 All. 370

See **APPEALS, CRIMINAL.**

I. L. R. 1 Lab. 508

See **APPEAL TO PRIVY COUNCIL.**

I. L. R. 38 Calc. 766

See **ASSESSMENT** I. L. R. 43 Calc. 972

See **BENGAL TENACRY ACT 1835—**

ss 60 AND 70 . 2 Pat. L. J. 24

s. 111 A . 1 Pat. L. J. 73

See **BENGAL REGULATION (XV OF 1793)**

I. L. R. 34 All. 261

See **BENGAL ALLUVION REGULATION,**

1825 . 5 Pat. L. J. 632

See **BILL OF COSTS**

I. L. R. 46 Calc. 249

I. L. R. 48 Calc. 817

See **BOMBAY DISTRICT POLICE ACT (BOM**

IV OF 1890), ss 63 (b), 80 (3)

I. L. R. 41 Bom. 737

See **BOND** . I. L. R. 43 All. 38

See **CHUQUE, PAYMENT BY**

I. L. R. 42 Calc. 1043

See **CHAUHDARI CHAKRAMAN LAWS.**

I. L. R. 46 Calc. 173

LIMITATION—*contd*

See CIVIL PROCEDURE CODE (ACT XIV OF 1882)—

s 43 I L R 33 All 244

s 54 14 C W N 882

s. 230 I L R 37 Mad 186

I L R 32 All 136

I L R 34 All 396

ss. 230 AND 25 I L R 33 All 517

s. 315 I L R 35 All 419

s. 375-A I L R 46 Calc 183

See CIVIL PROCEDURE CODE 1908—

s 47 O XII R. 1

I L R 40 All 12

s 48 I L R 40 All 198

I L R 37 All 638

I L R 36 Bom 368

I L R 34 All 20

s. 48, SCH I O XXI

I L R. 35 Bom 103

s. 48 SCH III I L R 42 All 116

s. 50 I L R 33 All 529

s. 92 I L R 40 Mad. 212

s. 115 3 Pat L J 376

s. 120 I L R 40 All 1

O I R. 9 O 34 R 11 Pa L J 468

O XXI—

R. 3 I L R 38 All 204

R 58 I L R 40 All 325

I L R 41 All 623

RR 84 89 AND 92

I L R. 35 All 65

RR. 97 AND 103 I L R 1 Lah 57

O. XVII—

R. 4 I L R 39 All 551

R. 7 I L R 2 Lah. 164

R. 8 I L R. 43 All 621

O XXXIII R. 5

I L R 41 Mad. 620

O XXXIV—

RR. 4 5 AND 10 I L R 41 All 473

R. 5 I L R 38 All 21

I L R 39 All 641

I L R 40 All 203

R. 6 I L R 40 All 553

I L R. 41 All 581

O XXXIV R. 1

I L R 43 All 383

SCH II CLS. 17 AND 20

I L R 38 All 85

See COMPANIES ACT (VI OF 188) —

s. 169 I L R 33 A L 641

I L R 35 All 177

See COMPANY I L R 36 All 412

See CONTRACT I L R 34 All 429

I L R. 39 Mad. 509

See CONTRACT ACT 1872 ss. 18 AND 140.

I L R 42 All 70

See COURT FEES 3 Pat. L J 454

LIMITATION—*contd*

See CRIMINAL PROCEDURE CODE (ACT V OF 1898)—

s 105 I L R. 42 Bom 281

I L R 1 Lah 602

s. 46 I L R 37 All 344

See DECREE I L R 40 Bom 504

I L R 42 Bom 728

I L R 44 Bom 227 440

See DECREE, ASSENTMENT OF

I L R 43 Calc 990

See DECREE NISI I L R 39 Bom 175

See DEKKAN AGRICULTURISTS RELIEF ACT—

ss 39 48 I L R 36 Bom 183

s 48 I L R 42 Bom 367

See DISTRICT MUNICIPAL ACT (BOM ACT III OF 1901)—

ss 2 46 AND 167

I L R 59 Bom 600

See EJECTMENT SUIT IN

I L R 41 Mad 641

See EXECUTION OF DECREE

I L R 35 All 178

I L R. 36 All 452

I L R 37 All 527

I L R 39 All 193

I L R 40 All 211

I L R. 38 All 138

I L R 43 All 520

1 Pat L J 359

3 Pa L J 571

See EXECUTION PROCEEDINGS

I L R 37 All 518

See EX PARTE DECREE

I L R 39 Calc 506

See GUJARAT TALUKDARS ACT s 9C

I L R 35 Bom. 324

s 31 I L R 37 Bom 360

See HINDU LAW—ALLOCATION

I L R 40 Calc 966

I L R 43 Calc 417

See HINDU LAW—CONVERSION

I L R 33 All 356

See HINDU LAW—ENDOWMENT

L R 46 L A 204

See HINDU LAW—INHERITANCE.

I L R 42 Calc. 364

See HINDU LAW—JOINT FAMILY PROPERTY

I L R 38 All 126

I L R 47 Calc. 274

See HINDU LAW—MORTGAGE.

I L R 42 Calc. 1068

See HINDU LAW—REVERSIONER.

I L R 41 All 492

I L R 43 Bom 509

See HINDU LAW—SUCCESSION

I L R 38 All 117

I L R 1 Lah. 564

See HUSBAND AND WIFE.

I L R 37 Bom. 393

See IDOL I L R 33 All 725

I L R. 36 Bom 145

LIMITATION—*contd.*

- See INJUNCTION L. L. R. 42 Calc 550
 See IN SOLVENCY L. L. R. 47 Calc. 721
 See JUDICIAL DISCRETION
 4 Pat L. J. 381
 See LANDLORD AND TENANT
 I L. R. 45 Bom 508
 See LIMITATION ACT (XV of 1877)
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— suit to set aside compromise by guardian—

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I. L. R. 45 Bom. 503

— whether suspended by arbitration—

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— whether time can be extended or ground not shown in plaint—

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— whether plea of—can be raised at trial for first time—

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ss. 68 AND 79 I. L. R. 45 Bom. 920

1. — Endowment—Adverse possession—Dispute between senior and junior *chelas* as to succession to Hindu *maths*—*Ekrnama* allotting one *math* to senior *chela* in perpetuity and the other to junior *chela* as *adikars*—Suit instituted within twelve years from senior *chela's* death, but 27 years from date of *ekrnama*—Hindu Law The Mohant of the temple of a Hindu idol who was in possession of two *maths*, one at Bhadrak and the other at Bibisarai, died leaving two *chelas*, or disciples, between whom a controversy arose as to the right of succession to the *maths* and the property annexed to them. The dispute was settled by an arrangement embodied in an *ekrnama*, dated 3rd of November 1874, executed by the senior *chela* in favour of the junior *chela*, by which the *math* at Bhadrak was allotted in perpetuity to the senior *chela* and his successors, while the *math* at Bibisarai and the properties annexed to it were allotted to the junior *chela* (described therein as an *adikar*) and his successors for the purposes connected with his *math*, subject to an annual payment of Rs. 15 towards the expenses of the Bhadrak *math*. Less than twelve years after the death of the senior *chela*, but considerably more than that period after the date of the *ekrnama*, the appellant, the successor of the senior *chela*, brought a suit against the junior *chela* to recover possession of the properties annexed to the Bibisarai *math*, on the allegation that they were *debudar* property dedicated to the worship and service of the plaintiff's idol, and held by the respondent (representing the junior *chela*) as an *adikar* in charge of the Bibisarai *math* and

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asserting it to be a *math* subordinate to the Bhadrak *math*—Held (affirming the decision of the High Court), that the property dealt with by the *ekrnama* was, prior to its date, to be regarded as vested not in the Mohant, but in the idol, the Mohant being only its representative and manager, and consequently that from the date of the *ekrnama* the possession of the junior *chela*, by virtue of its terms was adverse to the right of the idol, and of the senior *chela* as representing that idol and that the suit was barred by limitation *DAMO DAB DAS v LAKHAN DAS* (1910)

I. L. R. 37 Calc. 885

2. — Adverse possession against Crown—Party relying on title by adverse possession against Crown must prove sixty years' adverse possession—Burden of proof shifted on Crown by proof of adverse possession for shorter period A party who rests his title on possession adverse to the Crown must prove such possession for sixty years *Secretary of State for India v Vira Royan*, I. L. R. 9 Mad. 175, explained Where lands have been notified as a reserved forest under the Madras Forest Act, a claimant desirous of establishing his title against the Crown by adverse possession must prove adverse possession for sixty years before the notification Where adverse possession for a shorter period is proved, it lies on Government to show that it has a subsisting title, by showing that such possession commenced within sixty years before such date In this part of India, it is a well established rule of common law that waste land, not being the property of an individual or community, belongs to Government Islands formed within 3 miles of the mainland vest in the Crown. *CHELIKANI RAMA RAO v SECRETARY OF STATE FOR INDIA* (1909)

I. L. R. 23 Mad. 1

3 (a) — Acknowledgment What is sufficient—Where an insolvent has written down a debt in his schedule as owing that debt to a person named and has signed the Schedule that is a sufficient acknowledgment under s. 19 of the Limitation Act to extend the period of limitation *CHHOTY SHRIGOPAL CHIRANJUL v DHANALAL GHASISAM*

I. L. R. 35 Bom. 383

2 (b) — Courts of Wards.—Act, 1879, does not contain any express power authorizing the Court to execute Promissory Notes But there can be no doubt on the authorities that the Court has power to give an acknowledgment so as to give a new period of limitation. *RASBEHARY LAL MANDAR v ASHOK RAM*

I. L. R. 43 Calc. 211

3. — Adverse possession—Rent-free tank—Setting up hostile title to the knowledge of the landlord—Lakshiraj rule In a suit for recovery of possession of a tank with its banks by establishment of plaintiff's zamindari title thereto, and in the alternative an assessment of rent, the defendant pleaded that the tank was rent free and that the suit was barred by limitation It appeared that the defendant more than twelve years ago, in the settlement proceedings, claimed the tank as rent free without any reference to any *sanad*, and the plaintiff's agent denied the claim Held, that, inasmuch as a complete hostile right was claimed by the defendant to the knowledge of the plaintiff, and as no suit was brought until more

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than twelve years after, the suit as framed was barred by limitation. *BIRENDRA KISHORE, MANIKYA v ROSEHAN ALI* (1912)

I L R 39 Calc. 453

4 ———— **Symbolical possession—Court-sale**
Symbolical possession by purchaser—Judgment debtor remaining in actual possession—Civil Procedure Code (Act XIV of 1882), ss 263, 264, 318, and 319—Civil Procedure Code (Act V of 1908), O XXI, r 5 (2) Merely formal possession of immovable property by a purchaser at a Court sale cannot prevent limitation running in favour of the judgment debtor where the latter remains in actual possession and the property is not in the occupancy of a tenant or other person entitled to occupy the same. Symbolical possession is not real possession nor is it equivalent to real possession under Civil Procedure Code except where the Code expressly or by implication provides that it shall have that effect. *Gopal v Arishnarao I L R 25 Bom 276*, and *Mahadeo v Parashram Bhawonchand, I L R 25 Bom 358*, overruled. *MAHADEV SAKHARAM v JANU NAMJI HATLE* (1912)

I L R 26 Bom 373

5 ———— **Conciliation—Delkhan Agriculturalists' Relief Act (XVII of 1879) ss 39 45—Time taken up in conciliation proceedings—Exclusion of time** The plaintiff sued on a promissory note dated the 12th of June 1905. He first applied on the 23rd May 1908 for a conciliator's certificate under s 39 of the Delkhan Agriculturalists' Relief Act, 1879 and obtained it on the 31st August 1908, then on the 10th September 1908, both he and the defendant made a joint application for conciliation. The conciliator held that the first certificate that he had granted had become useless and gave a fresh certificate on the 3rd December 1908. The suit was brought on the 11th December 1908. It was contended that the suit was barred by limitation. *Held*, that the suit was within time, inasmuch as the whole proceeding from the 23rd of May 1908 to the 3rd of December 1908, was one and continuous, and that period should be excluded under s 48 of the Act. *DEVIDAS v VITHALDAS* (1911)

I L R 38 Bom. 183

6. ———— **Suit for sale on mortgage—Period of limitation changed with provision for pending suits at passing of Act—Limitation Act (XV of 1877) Sch II, Arts 132, 147, Limitation Act (IX of 1908), s 31, sub s (1)—Order of His Majesty in Council holding applicable—Shorter period of limitation than provided by Act subsequently passed** The Limitation Act (IX of 1908) which came into force on 7th August of that year after providing by s 31, sub s 1 for a suit for sale by a mortgagee, "a period of 'sixty years from the date when the money secured by the mortgage became due' enacts that 'no suit instituted within the said period of sixty years and pending at the date of the passing of the Act shall be dismissed on the ground that a twelve years' rule of limitation is applicable.' In a suit for sale on a mortgage dated 22nd September 1883, instituted on 23rd September 1900, the defence was limitation which the plaintiff avoided by alleging payments of interest and settlement of accounts. The first Court found that part of the claim was barred by the twelve years' period of limitation provided by Art 132 Sch. II of the Limitation Act, 1877. The High

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Court in appeal held that the suit was governed by Art 147 which allowed a period of sixty years, and that no part of it was barred. On appeal to His Majesty in Council the decision of the High Court was reversed, and by an order in Council it was declared that Art 132 is the article which provided the period of limitation applicable," and the case was remitted to the High Court to be disposed of in accordance with such declaration." So remitted, the case came before the High Court on 16th August 1908 after the passing of the Limitation Act IX of 1908, and that Court holding that s 31 of that Act applied, disposed of the suit as they had previously done in favour of the plaintiff. *Held* by the Judicial Committee (affirming that decision), that the suit was "pending" at the time of the passing of Act IX of 1908. The judgment remitting the case did not end the suit, nor finally determine it. It was remitted for further procedure and enquiry on allegations of fact and at the passing of Act IX of 1908 that procedure was not concluded and the enquiry not entered upon. The suit in fact was neither adjudged upon nor ready for judgment. *VASUDEVA MUDALIAR v. SADAGOPA MUDALIAR* (1912)

I L R 35 Mad. 191

7 ———— **delay in filing process fees—** The question of granting time is always one of discretion and that discretion cannot be properly exercised until the general conduct of the party applying for time has been scrutinised. When a date is fixed for a case it is the business of a litigant to see that the processes for the attendance of witnesses are placed in the hands of the Court within reasonable time for the securing of their attendance upon the date fixed. If he files process fees only two days before the date fixed for hearing an order passed by the Court for the issue of the processes must be understood to have been issued at the risk of the party in fault, and the Court will not grant an adjournment when the case comes on for hearing. *JAGABANDHU CHOWDHARY v GOKERY LALL CHOWDHARY* 1 Pat. L. J 173

8. ———— **Hindu Datties—Suit for removal of Hindu Datties from one's custody to another—Limitation Act (XV of 1877) Sch. II, Arts 49, 120, 145** A suit by *Datties* (datties) themselves for removing themselves from the custody of the defendants to the custody of the plaintiffs other than themselves is not a suit for a moveable property. It would be a suit for which no provision is made in the Limitation Act and would therefore naturally come under Art. 120 of Sch II of the Act unless any other article also applied. Art. 49 has no application to such cases. *BALI PANDYA v JADUMANI PANTRY* (1910)

I L R 38 Calc. 234

9 ———— **Agreement between joint trustees—If one of several joint trustees barred, the others also barred—Agreement between joint owners or trustees, effect of** Two joint trustees A and B entered into an agreement, which recited that the families of A and B were entitled to the management of the trust and further provided that A's right shall after his death be exercised by his heirs and B's right shall after his death be exercised by his heirs. *Held*, that the effect of the agreement was to constitute the heirs of A and B joint trustees and not to create a right in severalty between the two branches. Where an adult joint trustee takes no steps to protect

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the trust and his right to take steps becomes time barred, the rights of other joint trustees, even though minors, become time barred. *THIRU-GARAJA PILLAI v. RATNASABAPATHI PILLAI* (1910)

I. L. R. 34 Mad. 284

10. ——— Execution of joint decrees—Decree set aside as against one of several joint judgment-debtors against whom it had been *ex parte*—Decree passed subsequently against the exempted party—Civil Procedure Code, 1882, s. 103—Order on a former application whether *res judicata*. A decree for sale on a mortgage was passed against several defendants jointly on the 25th August 1900 and made absolute on the 21st December 1901. As against one, defendant, however, the decree was *ex parte*, and it was set aside as against her on appeal on the 11th March 1902. Subsequently, a decree was passed on the merits against the defendant on the 15th August 1902 and her appeal was dismissed by the High Court on the 16th November 1904 and as against her that decree was made absolute on the 27th November 1905. An application for execution was made against all the defendants on the 21st December 1903, based on the decrees of the 25th August 1900, the 15th August 1902, the 16th November 1904, the 21st December 1901 and the 27th November 1905. The defendants filed an objection to the application on the 7th February 1906 alleging that they were no parties to the decrees of the 15th August 1902 and the 27th November 1905, and that, as to the decrees of the 25th August 1900 and the 21st December 1901, they were time barred. Held (affirming the decision of the High Court), that the decrees of the 25th August 1900 and the 16th November 1904 were steps in granting the plaintiff the relief to which he was entitled. The latter decrees supplemented and completed the former, and for the first time justified the plaintiff in applying for the joint execution of the decree. Time under the Limitation Act (XV of 1877) began to run from the date of the latter decree, or rather from the date it was made absolute—the 27th November 1905, and consequently the application was not barred. Held also that the plaintiff was not estopped in the present proceedings by the order of the 27th November 1903, dismissing his former application for execution of the 15th February 1905, which was based on the decrees of the 15th August 1902 alone; whereas the present application was based on the joint effect of the two orders absolute of the 21st December 1901 and the 27th November 1905 which were in effect one decree of the latter date. The applications therefore were different and the former did not operate as *res judicata*. *Ashraf Hussain v. Ghulam Sahar* (1911)

I. L. R. 23 All. 284

11. ——— Suit by an auction purchaser to recover the purchase-money—from a person who attacked money in deposit in Court as representing the surplus sale proceeds belonging to the judgment-debtor—Limitation Act (XV of 1877), Sch. II, Art. 170. Limitation applicable to a suit brought by an auction purchaser to recover a certain sum of money from one who had, after the sale and the deposit of money in Court, attacked that sum in execution of the decree against the judgment-debtor, as representing the surplus sale-proceeds belonging to the original judgment-debtor after satisfaction of the decree obtained against the debtor by the decree-holder.

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is that provided by Art. 120, Sch. II, of the Limitation Act (XV of 1877). *Nilkanta v. Imam Sahib*, I. L. R. 16 Mad. 351, relied on. *Hanuman Kamal v. Hanuman Manwar*, I. L. R. 19 Cal. 123, and *Ram Kumar Shaha v. Ram Gopal Shaha*, I. L. R. 37 Cal. 67, distinguished. *Amrita Lal Bagchi v. Jogendra Lal Crowhury* (1912)

I. L. R. 40 Cal. 187

12. ——— Suit for Conspiracy to maliciously prosecute—Conspiracy as a cause of action—Evidence Act (I of 1872) ss. 3, 114 id. (g), 125—Standard of proof—Claim of privilege, whether adverse inference can be drawn from—Disclosure of source of information by privileged person, duty of Court regarding—Presumption as to possession of article found in common room of joint family dwelling house—Arrest and Search—Professional conduct of counsel—Counsel making charges of misconduct, powers of Court regarding—Counsel's instructions, no privilege as against Court—Professional Etiquette affecting counsel—Bar Council, resolutions of—Counsel accepting retainer when likely to be witness—Counsel engaged in case, propriety of appearing as witness—Adverse inference where counsel not called as witness—Inspection by counsel of book produced by witness during cross-examination—Reference to medical works by Court, without knowledge of parties—Tort. *Per WOODROFFE AND COX, JJ.* On the question of the standard of proof there is but one rule of evidence which in India applies to both civil and criminal trials, and that is contained in the definition of "proved" and "disproved" in s. 3 of the Evidence Act. The test in each is, would a prudent man after considering the matters before him (which vary with each case) deem the fact in issue proved or disproved? The Court can never be bound by any rule but that which, coming from itself dictates a conscientious and prudent exercise of its judgment. There is a presumption against crime and misconduct, and the more heinous and improbable a crime is, the greater is the force of the evidence required to overcome such presumption. The English rule in these matters does not, as such, apply to India. *Jarat Kumar Das v. Bhadrinarayan Dutt*, I. L. R. 39 Cal. 245, explained. Where a document is privileged from production, no adverse inference can be drawn from its non-production. This rule applies as regards the party claiming privilege, and as far as it applies where the privilege is claimed by a third party. Although s. 123 of the Evidence Act does not in express terms prohibit a witness, if he is willing, from saying whence he got his information, the protection afforded by that section does not depend upon a claim of privilege being made, but it is the duty of the Court, apart from objection taken, to exclude such evidence. *A fortiori*, where privilege is claimed, no adverse inference can be drawn therefrom. Where articles are found in a part of a house to which several persons living in the house have access, such as a bathroom, there is no presumption that they are in the possession or control of any person other than the owner or head of the house. *Queen Empress v. Sangram Lal*, I. L. R. 15 All. 149, approved. *Semle*; It is immaterial in an action for malicious arrest, under what section of an Act an arrest is made, if in fact the circumstances are such that the Act justified arrest; and a person making a search is entitled to call in aid any statute which justifies his action,

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quite irrespective of whether it was present or not to him and when he made the search. The Court is entitled to ask a counsel who, during the conduct of a case makes charges of misconduct whether he waives the charges on instructions and, if so, on whose. It is not sufficient to give instructions. Counsel have a responsibility in the matter and are not justified in making serious charges of fraud and perjury unless they are personally satisfied that there are reasonable grounds for putting them forward. Instructions to a counsel are only privileged in the sense of being protected from disclosure to the opponent. There is no privilege as against the Court. The latter cannot use them as evidence in the case and for the purpose of the trial would have to treat them as confidential, but they could be called for then and there and be used after the trial for determining whether disciplinary action should be taken against counsel by the full Court. Whenever a Court relies on a book of reference such as a work on medical jurisprudence it should be made known at the trial to the parties so that they may have an opportunity of adducing evidence or argument on the point. *Durga Prasad & Puri v. Pam Doyal (Kashyap)* I L R 33 (C 155) referred to. The following resolution of the Bar Council approved:—(a) If counsel knows or has reason to believe that he will be an important witness in a case he ought not to accept a retainer there in. (b) If he accepts a retainer not knowing or having reason to believe that he will be such a witness, but at the opening or at any subsequent stage before evidence is concluded it becomes apparent that he is a witness on a matter at issue on fact he ought not to continue to appear in the case unless he can retire without jeopardising the interests of his client. (c) If counsel knows or has reason to believe that his own professional conduct on matters out of which the action arises is likely to be impugned in the case he ought not to accept a retainer. (d) If he accepts a retainer not knowing or having reason to believe that his own professional conduct in such matters is likely to be impugned but finds in the course of the case that it is so impugned he ought to adopt the same course of conduct as is mentioned in clause (b) ante. (e) In either of the cases mentioned in clauses (b) and (d) there is no rule of professional ethics which forbids counsel if he continues to act as counsel in the case, from going into the witness box and being cross-examined. Although the resolutions of the Bar Council are not binding on the Court, the Bar Council is the recognised authority on matters of professional conduct and etiquette affecting counsel, and its opinion is of the greatest weight and value. There is nothing necessarily unprofessional in counsel giving evidence in a case in which he appears as such. *Sethna v. Mirza Mahmood Shivan*, 9 Bom. L. R. 1044 *Collett v. Hudson*, I E and B 11, *Stones v. Byron*, 4 Dowl. and L. 393 *Deane v. Packwood*, 4 Dowl. and L. 395n, *Corta v. Parris* [1909] A. C. 549 34 C. W. V. 36 *Nundo Lal Loo v. Natar* 1 Dowl. I L. R. 27 C. 428 referred to. *Curry v. Walter* I Fep. 456 distinguished. As a general practice however it is undesirable when the matter to which counsel deposes is other than formal that they should testify either for or against the party whose case they are conducting. Under s. 118 of the Evidence Act counsel, although they may be engaged in the case, are competent to testify whether the

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facts in respect of which they give their evidence occur before or after their retainer. *Collett v. Hudson* I E and B 11 referred to. The rule laid down in s. 118 (2) of the Evidence Act that the Court may presume that evidence which could be and is not produced would, if produced, be favourable to the party who is liable is not to be applied to the case of counsel engaged in a suit who should not have been under the circumstances, counsel but should have been called as a witness. It is unprofessional for counsel to cross-examine a witness as to facts within his personal knowledge. In the matter of *Corta v. Parris* 4th Aug. 1908 (unreported), approved. Where counsel during the hearing of a case calls for the production of a book which is produced and handed to him by his opponent with certain pages marked as those only to which he may refer in respect of the subject matter of his cross-examination it is improper for counsel who calls for the book to inspect any of the other pages. If a suit on a tort is barred as against one person, the period of limitation cannot be extended because it happens to be against three persons who are alleged to have committed the tort in conspiracy. The same act of facts cannot constitute separate causes of action both for a tort, and for a conspiracy to commit a tort. Where there is a joint tort the proper action is on the tort against the joint tortfeasors and not on a cause of action to recover special damages by reason of a conspiracy to cause damage. A suit for damages for false imprisonment or malicious prosecution against joint tortfeasors, is governed by the one year rule under Arts. 10 and 22 of the Limitation Act. There are instances in which two or more persons can render themselves liable to civil proceedings by combining to injure the plaintiff although if one of them did the same act by himself and without any preconcert with others, he would escape liability. An action on such a conspiracy would lie in the country. In an action on conspiracy special damages must be proved. *PER CHATTERJEE, J.* There is no authority for holding that a tort when committed by several persons acting in concert is different from the same tort committed by a single individual. The combination in such cases may be an element of aggravation in the assessment of damages, but does not suffice to make it a different tort. *Quinn v. Leatham*, [1901] A. C. 495 referred to. Conspiracy or wrongful combination is not a material element in the constitution of a wrong. *Gillan v. National Amalgamated Labourers Union* [1903] 2 A. B. 600 referred to. *WALTON AND OTHERS v. PRARY MOHAM DASS* (1912)

L. L. R. 40 Cal. 898

13 ——— Land to support religious service.—*Lease—Adverse possession.* In the case of a lease for a term of years by the holder for the time being of lands assigned to support services rendered to a Mahan and religious community by successive holders, time begins to run not from the commencement of the tenancy of the person claiming to hold as a tenant, but from the date when the claims of the parties became openly and undoubtedly adverse. *Tekot Jam Chander Singh v. Srmati Madho Amari*, L. R. 12 I. A. 197, and *Trimlak Panchandra v. Sheikh Gulam Zaman*, I L. R. 34 Bom. 329 referred to. *MANA MADHATS v. RAJABAKSHA* (1912)

I L. R. 37 Bom. 224

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14. ——— Adverse possession—Title—Bombay Regulation I of 1827, s. 1—Rule of positive law—Limitation Act (XII of 1859), s. 2—Limitation Act (IX of 1871) s. 2—Repeal of s. 1 of Bombay Regulation V of 1827—Effect of repeal—Construction of statute—Rule of positive law not affected by law of limitation—Endowment of village for the purpose of performing *Karpar Mangalari*—Trustee—Lienation by trustee—Adverse possession on by alienee. In 1078 a village was given in *inam* to the then *Suami* of the *Uttaradhi Math* for the purpose of meeting the expenses of a religious service called the *Karpar Mangalari* at the temple of the *Math*. A successor of the *Suami* gave away the village in gift (*v. e. s. Krishnaravan*) to the defendants' predecessor in title who went into possession as proprietors. At first they paid *jad* on the land at the rate of Rs. 20 per year; but after 1810 this payment was stopped. The defendants continued to hold the village as before. In 1911, the present *Suami* of the *math* sued to obtain a declaration that the village belonged to him and to recover its possession from the defendants. The plea of the defendants was that the suit was barred by limitation. *Held*, that inasmuch as the original grant vested the legal property in the *Suami* and the equitable estate in the juridical person, the *Idol*, the original grantee took as a trustee and his successors held by the same title. *Hardoon v. Belhoo*, [1901] A. C. 118, 121, followed. *Held*, further, that since the defendants went into possession of the village in 1810, their title ripened in 1860 into ownership under the provisions of s. 1 of the Bombay Regulation V of 1827. *Held*, also, that the operation of s. 1 of the Bombay Regulation V of 1827 was not affected by the enactment of s. 2 of the Limitation Act (XIV of 1859) first, because the Act did not come into force till the 1st January 1862, and, secondly, because it being a statute of limitation did not affect s. 1 of the Bombay Regulation V of 1827, which was an enactment of positive prescription. *Sitarum Vasudev v. Akanderv Bhalvasha*, 1 L. R. 1 Bom. 260, and *Rambhat Singhbhai v. The Collector of Panna*, 1 L. R. 1 Bom. 592, followed. Where a later Act of Legislature does not purport or affect to supersede an earlier Act, the Court will endeavour to read the two enactments together and to avoid conflict if possible. *RANGACHARYA v. DASACHARYA* (1912) 1 L. R. 37 Bom. 231.

15. ——— Redemption of mortgage made in 1793—Act XIV of 1859 s. 1, cl. 10, and s. 4—Act IX of 1871, s. 20, and Sch. II, Art. 143—Act XV of 1877, s. 19, and Sch. II, Art. 148—Acknowledgment of title—Receipt by mortgagees—Interest after date of suit—*Damduput*—Discretion as to award or not of interest—Assumed exercise of discretion not interfered with. A suit was brought, by the predecessor-in-title of the respondents, for redemption of a mortgage, dated 4th November 1793, in favour of the predecessor-in-title of the appellants. The deed mortgaged with possession a certain *desaigri dastur* and certain *pawada* lands situate in the district of *Kioach*, and after that district finally came under British rule the *desaigri dastur* was commuted into a fixed money allowance payable from the treasury since which settlement the appellants had received that allowance in lieu of the *desaigri dastur*. The defence was that the suit was barred by the Indian Statutes of Limitation which provide

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a period of sixty years for redemption, and that more than that time had elapsed since the date of the mortgage. The respondents, however, put in evidence documents signed by the mortgagees by which they contended the period of limitation had been extended. *Held* (affirming the decision of the High Court), that an entry in a receipt book relating to the payment on 8th June 1843 of the fixed allowance from the treasury in respect of the year ending 1st May 1843, was an acknowledgment under the Indian Act of Limitation (XIV of 1859, s. 1 cl. 15 Act IX of 1871, s. 20, and Act XV of 1877, s. 19) made within the period of limitation, and sufficient to prevent the suit from being barred. The rights of the mortgagees were then vested in somewhat unequal shares in two persons named in the receipt, whose names had in the ordinary course been entered in the Collector's books as mortgagees under the mortgage in suit, as being entitled to the payment of the annual allowance into which the original rights had been commuted. The entry in the book of the Government agent entrusted with the payment stated that it was made to the two persons named. The amounts of the shares of each of them was set against their names, and against those shares the mortgagees had written their respective names in acknowledgment of the receipt of their shares. This acknowledgment created a new period of limitation from 8th June 1843, and consequently the suit was not barred. The appellants claimed to be allowed interest on the redemption money for the period between the date of suit and the actual date of redemption. Admittedly the rule of *damduput* applied, and therefore the amount of arrears of interest to be allowed was limited to an amount equal to the capital sum. The District Judge gave no interest from the date of suit. There was nothing to show that he had done so by an oversight or mistake. The High Court treated the matter as if the District Judge had exercised his discretion and had declined to give interest, and they thought that it had not been an unreasonable exercise of his discretion. No application was ever made to the District Judge to amend his alleged omission to give interest, and their Lordships agreed with the High Court decision on and the grounds on which it rested. *HIRALAL HIRALAL v. NARSHAL CHATUR SHUDAS* (1913) 1 L. R. 37 Bom. 329.

16. ——— Suit filed after limitation in wrong Court—Return for presentation to proper Court—Bar of limitation in spite of Limitation Act (XV of 1877), s. 14. If a plaint is returned for presentation to the proper Court on the ground of absence of jurisdiction in the Court to which it was originally presented, the suit when presented to the new Court is a new suit, and cannot be regarded as a continuation of the infructuous suit in the wrong Court. This is the basis of s. 14 of the Limitation Act (XV of 1877). Hence if the suit when originally filed in the wrong Court would have been ordinarily barred by limitation as by being barred during the holidays of that Court, after which alone it was filed, the suit when filed in the new Court must be held to be barred in spite of s. 14 of the Limitation Act. *Mahomed Rowshan v. Nollapervud Pillai*, 21 Mad. L. J. 1049 followed. *Talarawader Mahomed Ekam Choudry v. Avimboor Choudry*, 3 H. R. Cr. 20, *Abdul Chondar Ghore v. Nasrullah*

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Biber, 16 W R Cr 47, and Assan v Padmanabhi I R 22 Mad 494, distinguished SERRANHI HOW v VAJRA VELAYUDAM PILLAI (1913)

L. L. R. 36 Mad. 482

17 ——— Statute of, if affects procedure only—Amending statute when affects rights—Effect on causes of action previously accrued—Bengal Tenancy Act (VIII of 1885), s 181 Sch. III Art 3—Eastern Bengal and Assam Tenancy Amendment Act (P R and Assam I of 1908), s 61 cl (3)—Under *res jud*, if possessed by land lord before amending Act, suit to recover brought after—Limitation—Statute, construction of—Presumption against retrospective operation where amendment of procedure affects rights—Postponement of operation of statute, effect of—Procedure, statutes of retrospective operation of—The presumption against a retrospective construction of a statute has no application to enactments which affect only the practice and procedure of Courts even where the alteration which the statute makes has been disadvantageous to one of the parties. *PER MOUKHJEE J* agreeing with *N R CHATTERJEE J* (*GARNHUR, J contra*)—The statement that a statute of limitation embodies merely a rule of procedure is only generally and not universally true. Where if a statute of limitation is taken to effect pre-existing causes of action the effect is to absolutely bar all suits where the cause of action had accrued more than the limited time before the statute was passed; the statute ceases to be one of mere procedure and operates to the destruction of existing and enforceable rights. In such cases the presumption against a retrospective construction of the statute by courts applicable unless the coming into operation of the statute has been postponed so as to allow reasonable time for enforcement of existing causes of action. No suit has a vested interest in the course of procedure or a right to complain, if during the litigation the procedure is changed provided no injustice is done. S. 61, cl (3) of the Eastern Bengal and Assam Tenancy Amendment Act of 1908 which provides a two years period of limitation for suits by *raiyats* and under *raiyats* for recovery of possession (when dispossessed by or through the agency of the landlord) has no retrospective operation on suits by under *raiyats* or non-occupancy *raiyats* in which the cause of action arose before the passing of the Act. *MAKHOORI BIR v. AKEL MAHMOED (1913)*

17 C. W. N 839

18. ——— Hereditary office—Hereditary office—Limit on Act (IX of 1906) Arts 121 and 140. In 1310 the *sebai* of a Hindu temple instituted a suit for a declaration that he was entitled to a 3 annas 6 pies share in the daily surplus offerings to the idol, that share being attached to the office. The defendant had been in possession of the share since 1892 having bought upon its sale in execution of a decree obtained by him against the widow of a former *sebai*. She died in 1900. The defendant was proclaimed by his suit from holding the office of *sebai*. *Held*, that the suit was not to recover an hereditary office, within the meaning of the Limitation Act, 1908, Sch. I Art 194, and that it was not barred since a fresh actionable wrong arose upon each occasion when the defendant received the share in question. *JALANDBAR THAKUR v JHARULA DAS (1914)*

L. L. R. 41 L. A. 267

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19. ——— "Dispossession"—Possession—recovery of suit for—Dispossession of auction-purchaser of tenant's right by a subsequent auction-purchaser—Bengal Tenancy Act (VIII of 1885), Sch III, Art 3. By the word "dispossession" in Art. 3 of Sch. III of the Bengal Tenancy Act is meant dispossession by the landlord as landlord. *REDBA NARAIN MAITI v. NATORAN JAYA (1913)*

L. L. R. 41 Calc. 52

13(a) ——— Mortgage—Certain immovable property was mortgaged on 21st May 1887 to the appellants and on 19th September 1887 by the same Mortgagee to the Respondents (the money being repayable on 18th November 1888) and again on 19th July 1889 to the appellants. On 8th October 1890 appellants in a suit in which the Respondents the high made parties did not appear obtained a decree on their mortgage of 21st May 1887 in execution of which the mortgage property was sold and after satisfying the decree the sale proceeds fell into Court. On 14th July 1891 appellants obtained a decree on their mortgage of 19th July 1889 in a suit in which they did not make the Respondents parties and without notice to them drew the money out of Court in execution. Respondents brought a suit in November 1909 against appellants for surplus sale-proceeds and it was contended that the suit was one for money governed by Art 129 of Sch. II of Limitation Act 1877 and barred because not brought within 6 years from 18th November 1888. *Held* (affirming High Court), that the suit was one "to enforce payment of money charged upon a 'reversible property'" within the meaning of Art 139 and that a 29 of Civil Procedure Code 1892 was not applicable. *BARTAMORE PHADAT TARA CHAND*

L. L. R. 41 Calc. 654

20 ——— Suit, right of, how far affected by amending Act—Vested right—Bengal Tenancy Act (VIII of 1885 as amended by Bengal Act I of 1907) s 184 and Sch. III Art 3. Where the application of the provisions of an amending Act makes it impossible to exercise a vested right of suit the Act should be construed as not being applicable to such cases. Though procedure may be regulated by an Act for the time being in force still the intent on to take away a vested right without compensation or any saving is not to be imputed to the Legislature in any case unless it be expressed in unequivocal terms. *Commissioner of Public Works (Cape Colony) v Logan, (1903) A C 355 and Colonial Sugar Refining Co. v Irving, (1906) A C 369* followed. A right of suit is a vested right. *Jackson v Woolley 8 Bl & Bl 784* referred to. The decision of the majority in *Mayhew v Bibb v Akel Mahmood, 17 C W N 49* has not been affected by the judgment of the Privy Council in *Soni Ram v Kankhaya Lal I I R 35 All 227 L R 40 I A 74* in cases where the effect of the application of the amended law would be to confiscate a vested right. *GOPESWAR PAL v JIBAN CHANDRA CHAKRAVARTY (1914)*

L. L. R. 41 Calc. 1125

21 ——— Exclusion of time—Excuse of delay—Time taken up in proceedings before a conciliator—Non-granting of certificate owing to Government ending the conciliation system. The plaintiff advanced money on a bond which became due on the 31st May 1910. He applied to the conciliator for a certificate on the 28th March 1913, but before the certificate could be had Govern-

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ment abolished the conciliation system with effect from the 30th May 1913. The plaintiff filed a suit to recover the money on the 30th June 1913: and he claimed to exclude from the period of limitation the time between the 23rd March and 30th May 1913: *Held* that though the plaintiff was not entitled to do so, he was entitled to such extension of time as might be necessary to give him a reasonable opportunity to enable him to file the suit in time. *SATTANANATH v GOVERNMENT* (1914) I. L. R. 38 Bom. 653

22. — *Limitation Act (1 of 1908), s. 4—Exclusion of time—Certificate of conciliator—Time taken up in obtaining conciliator's certificate—Intention by Government of the conciliation system—Closing of the Court during vacation—Suit filed on the opening day is not filed in time—Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 43. The plaintiff advanced money on two bonds which became due on the 24th February 1910. He applied for a conciliator's certificate on the 13th February 1913 and obtained it on the 26th April 1913. From the 23rd April to the 8th June 1913 the Court was closed for the Summer Vacation. In the meanwhile Government abolished the conciliation system with effect from the 30th May 1913. The plaintiff filed the present suit to recover the money on the 9th June 1913 and claimed to exclude the time taken up in the conciliation proceedings: *Held*, that the suit, though filed on the 9th June 1913 when the conciliation system was abolished, was substantially one to which the provisions of Ch VI of the Dekkhan Agriculturists' Relief Act were applicable throughout the period of limitation which expired during the vacation, and the plaintiff was, therefore, entitled to deduct the period between his application and the grant of the certificate. *Held* also, that assuming that s. 43 of the Dekkhan Agriculturists' Relief Act did not apply, as the plaintiff's suit would be strictly in time up to a certain date during the vacation, on which day he could not file it as the Court was closed, he could file it on the re-opening of the Court under s. 4 of the Limitation Act. *Held*, further, that when the law had created a limitation, and the party had been disabled from conforming to that limitation without any default in him and he had no remedy over, the law would ordinarily excuse him. *RUPCHAND MAKUDRAS v MAKUDRAS MANADAV* (1914) I. L. R. 33 Bom. 658*

23. — Application out of time, entertained by Court—Without adjudication of question of limitation—Reason by High Court. Where the Court entertained an application which on the face of it was time-barred without a adjudication of the question of limitation it acted with material irregularity in the exercise of its jurisdiction, and the High Court could in such a case interfere in revision, though it might not do so if the Court had considered the question of limitation and decided it erroneously. *TARA SANKAR GHOSH v BASIRUDDIN* (1915) 19 C. W. N. 970

24. — Admission in a previous suit of liability for a debt—Debt barred at the date of admission—No estoppel from pleading, in a subsequent suit—Plea of limitation, agreement against or waiver of—Estoppel against an act

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of the legislature—Difference between the English and the Indian law—Limitation Act (Act IX of 1908), s. 3, arts. 74, 75, 82 and 120—Instalment bond—Default in payment of instalments, meaning of—Tender by debtor—Refusal of acceptance by creditor, no default—Waiver. The plaintiff released his interest in a certain business in favour of the defendants for a consideration of Rs. 30,000, for which the defendants executed to the plaintiff on the same date (12th December 1904) a promissory note payable by monthly instalments of Rs. 1,000, the whole sum being recoverable in the event of three successive defaults. After sixteen instalments were paid, the plaintiff refused to receive further instalments tendered by the defendants but brought a suit in August 1903 to set aside the release deed on the ground that it had been obtained by fraud. The suit was dismissed, and, on appeal, this dismissal was confirmed on 19th January 1910. In the Appellate Court an oral application was made on behalf of the plaintiff that a decree might be passed in that suit for the amount of the balance of the instalments. The defendants stated in the Court of Appeal that they were always ready and willing to pay the amount but pleaded that no decree would be passed in that suit for the amount and the Appellate Court refused to pass a decree for the same. The plaintiff then made a demand on the defendants on 23rd January 1910 for the balance of the instalments due on the promissory note and on refusal by the defendants brought the present suit. The defendants pleaded the bar of limitation. The Trial Judge held that the defendants who had admitted their liability for the amount in releasing the plaintiff's application in the previous suit were estopped (though not under s. 115 of the Indian Evidence Act) on general principles of law and equity from pleading that the suit for the amount of the instalments was barred by limitation. The defendants appealed. *Held* (on appeal) that the defendants were not estopped from pleading that the suit was barred by limitation. *Rangappa Appa Rao v Varaswami Appa Rao*, I. L. R. 19 Mad. 416, *Khetra Mohan Chatterjee v Mohan Chandra Das* 17 C. W. N. 518, referred to. *Sankarala Vacker v Varada Chariar*, I. L. R. 25 Mad. 55, and *Ba v Vaid Ram Gopal v Hem Chander Bose*, 10 C. W. N. 959, distinguished. *Mohammad Zahoor Ali Khan v Mussammat Thalooran Raita Koer*, 11 Mo. I. 468, explained. There can be no estoppel against an act of the legislature. *Jagadishu Saha v Radhakrishna Pal* I. L. R. 35 Cal. 929 and *Abdul Aziz v. Kashin Vaidik*, I. L. R. 38 Cal. 512, referred to. Under the Indian law parties cannot waive or contract themselves out of the law of limitation. Art. 75 of the second schedule of the Limitation Act (Act IX of 1908) is not applicable to the case because there was no default within the meaning of the article on the part of the defendants in the payment of the instalments but there was only a refusal on the part of the plaintiff to receive the instalments tendered by the defendants. Art. 74 of the Limitation Act, and not art. 120 was applicable to the case and accordingly the suit as to nine out of the fourteen instalments was barred by limitation. Difference between the English and the Indian law as to the plea of limitation pointed out. *Per WHITE C. J.*—Assuming there was default, the plaintiff waived the benefit of the provision when he repudiated

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the agreement which gave him the benefit of the Provision. *SITARAMA v. KRISHNASWAMI* (1913)

I L R. 38 Mad. 374

25 ——— Hereditary office of shebat — Successor of shebat when bound by decree against predecessor—Decree holder and purchaser of sole interest on who by reason of law could not be competent to hold office of shebat—Adverse appropriation of temple income by trespasser incompetent to be shebat—Wrongful possession of consulting wrongful holder shebat—Res judicata. This was an appeal from the decision of the High Court in the case of *Jharala Das v. Jalandhar Thakur* I L R. 39 Cal. 567 in which the widow of the shebat of a temple (the shebats of which were Brahmans Pandas) who succeeded her deceased husband in that office mortgaged land together with her interest in the income of the temple to the defendant (who was not a Brahmin). The defendant obtained a decree on his mortgage on 24th September 1880 in execution of which he put up for sale the share of the temple income purchased by himself and got delivery of possession in 1892. The widow died in May 1900. In a suit brought on 28th January 1910 for the land and income profits, and for a declaration that the plaintiff was entitled to receive the share of the temple income as it was malenable the defence was that the suit so far as it related to the temple income was barred as being *res judicata*, and by limitation. Held by the Judicial Committee (reversing the decision of the High Court) that Art. 124 of the Limitation Act was not applicable. The suit was not one for an hereditary office which could not be held by a person who was not a Brahmin and the defendant was therefore not competent to hold the office of shebat and had not taken possession of it. By adversely taking and appropriating to his own use a share of the surplus daily income from the offerings, the defendant acquired title and no right to a share of that income. On each occasion on which he received and wrongfully appropriated to his own use a share of the income to which the shebat was entitled the defendant committed a fresh actionable wrong in respect of which a suit could be brought against him by the shebat, but it did not constitute him the shebat for the time being, or affect in any way the title to the office. Held also that the defence (which had been upheld by the High Court) that the suit was barred as *res judicata* by the decision in a former suit brought by the widow to set aside the sale of the temple income, was not maintainable. *JALANDHAR THAKUR v. JHARALA DAS* (1914)

I L R. 42 Cal. 244

26 ——— Mortgage suit—Civil Procedure Code (Act V of 1908) O XXIV, rr 3 and 6—Limitation Act (IX of 1908) Sch I, Art. 131—Transfer of Property Act (IV of 1882) s 99—Personal covenant. The plaintiff in a mortgage suit, who has his personal remedy at the date of the institution of the suit would not lose his personal right by reason of his not having made the application for personal decree under O XXIV, r 6 within three years of the date of the confirmation of the mortgage sale since applications under O XXIV, r 6, are not governed by Art. 131 of the Limitation Act any more than an application for order absolute under O XXIV, r 3. *Rafmat Aram v. Abdul Karim*, I L R. 34 Cal. 612, and

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Maddabenus Dora v. Pandita Lambert 12 C L J 378, referred to *BISWAMENAR SUDHA v. PANDU SUNDAR KANDANTA* (1914) I L R. 42 Cal. 294

27 ——— Suits under special Acts—Limitation Act (IX of 1908) s 16 (2) applicability of—Madras Revenue Recovery Act (II of 1864) s 59 suits under s 15 cl (2) of the Limitation Act (IX of 1908) which excludes from the computation of the period of limitation the time occupied by the notice legally necessary to be issued before instituting criminal actions is applicable to suits brought under s 59 of the Madras Revenue Recovery Act (II of 1864). *Vealela v. Cienegodo* I L R. 12 Mad. 168 and *Isvara Lal v. Karapann*, 3 Mad. L J 255 followed. *Abu Baker Sahib v. Secretary of State for India*, I L R. 34 Mad. 590 distinguished. The question whether the general provisions of the Limitation Act should be applied to cases where a special period of limitation is prescribed by a special or local Act depends on whether the provisions of such Act should be regarded as enacting a complete body of provisions with regard to limitation of suits coming within the purview of the Act. In other words the question is whether the special or local Act should be construed as excluding the applicability of the general provisions of the Limitation Act. *BRISIVASA AYYANGAR v. SECRETARY OF STATE* (1912)

I L R. 38 Mad. 62

28 ——— Madras Estates Land Act—(I of 1908) ss 210, 211 cl (2) Art. 8 of Sch I Art A—Suit for rent under registered agreement, more than three years but less than six years of the Act coming into force—Statutes—Constructive—Retrospective operation on when—Limitation Act (IX of 1877) Art. 116 applicability of suits for rent in a Revenue Court. A suit to enforce an immanus right to rent under a registered agreement which accrued due more than three years but less than six years before the Estates Land Act came into force is not barred by the Limitation of three years enacted by its provisions but is governed by Art. 116 of the Limitation Act. Ss. 210 and Art. 8 of Part A to the schedule of the Madras Estates Land Act (I of 1908) have no application to cases where the period of three years thereby provided had expired before the 1st July 1908 when the Act came into force and where to apply them would be to deprive the plaintiff of a right of action which was then vested in him. The rule regarding vested rights is not confined to substantive rights but extends equally to remedial rights or rights of action not being rights of appeal. Retrospective operation of statutes considered. *Colonial Sugar Refining Company v. Irving* (1906) A C 369 applied. *RAMAKRISHNA CHAITTY v. SUBBARAYA IYER* (1912) I L R. 38 Mad. 151

29 ——— Preliminary Mortgage-decree—Limitation Act (IX of 1908) Sch I, Art. 130 133—Application for sale of mortgaged property under decree—Transfer of Property Act (IV of 1882) ss 85 to 89—Civil Procedure Code (Act V of 1908) O XXIV, r 4 s. In this case their Lordships of the Judicial Committee affirmed the decision of the High Court in *Amlook Chand Purkait v. Surat Chander Mulwary*, I L R. 38 Cal. 913 that an application for an order absolute for sale under a mortgage decree is an application to enforce a judgment or decree within the

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meaning of Art 183 of Sch I of the Limitation Act (IX of 1908), and is therefore barred if not made within the period prescribed by that Article. *MUNNA LAL PARRACK v SABAT CHUNDER MUKERJI* (1914) . . . I. L. R. 42 Calc. 776

30. ———— **Registration Act—(XVI of 1908), s. 77—Thirty days after passing of decree, under Constitution, for the purpose of that section—Civil Procedure Code (Act V of 1908), O XX, r 7** For the purposes of s 77 of the Registration Act (XVI of 1908) the period of thirty days within which a document has to be presented for registration after the passing of a decree of Court directing its registration, is to be reckoned not from the date the decree bears but from the time it was actually drawn up and signed by the Judge. *Per CURRIAM*. It is desirable that in decrees of this nature the Judge should put the date on which they are signed by him under O XX, r 7, Civil Procedure Code (Act V of 1908) *MUTHIA CHETTI v SUFFAN SENAVAL* (1913) . . . I. L. R. 38 Mad. 291

31. ———— **Court of Wards—Competency of, to acknowledge debt—Effect of acknowledgment of pre-existing debt by the Court as regards limitation—Court of Wards Act (Beng IX of 1879), s 18—Limitation Act (IX of 1908), s 19** The Court of Wards Act, 1879, does not contain any express power authorizing the Court to execute promissory notes. But there can be no doubt on the authorities that the Court has power to give an acknowledgment so as to give a new period of limitation under a 19 of the Limitation Act. *Bets Maharani v Collector of Etawah*, I L. R. 17 All 193, *Kam Charan Das v Gaya Prasad*, I L. R. 30 All 422, and *Kondamolala Linga Reddi v Alluri Saravayudu*, I L. R. 34 Mad 221, applied. *RASHBERRY LAL MANDAR v ANAND KAM* (1915) . . . I. L. R. 43 Calc 211

32. ———— **Executor—Accrual of right to sue—Testator domiciled abroad—Probate—Capable of instituting suit?—Devolution of interest—Substitution of plaintiff—Straits Settlements Ordinance No 6 of 1896, ss 17, 22—Straits Settlements Ordinance No 31 of 1907, ss 233, 196** Straits Settlements Ordinance No 6 of 1896(1), which deals with the limitation of suits, provides as follows—s. 17, subs (1) 'When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application' s. 22 'When, after the institution of a suit a new plaintiff or defendant is substituted or added the suit shall as regards him be deemed to have been instituted when he was so made a party' *Held*, (i) that the executor of a will capable of probate in the Straits Settlements is a legal representative capable of instituting a suit, within the meaning of s. 17, subs (1), from the date of the testator's death and not only from the date when he obtains probate. *Quere* as to an executor who renounces probate (ii) that, according to the English practice (which is made applicable in the Straits Settlements in the absence of any other provision), the will of a testator domiciled in British India, or elsewhere outside the Straits Settlements, although not proved in the place of the testator's domicile, is capable

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of probate in the Straits Settlements if (a) it is valid according to the law of the testator's place of domicile, and (b) if there are assets of the testator in the Straits Settlements, (iii) that s. 22 contemplates cases in which a suit is defective by reason of the right persons not having been made parties, but not cases in which the suit was originally properly constituted but has become defective owing to a devolution of interest, in the latter circumstances a carrying on order should be made under s. 169 of the Civil Procedure Ordinance No. 31 of 1907 *MEYATTA CHETTY v SUPRAMANIAN CHETTY* . . . I. R. 43 I. A. 113
20 C. W. N. 833

33. ———— **Suspension of cause of action—Limitation Act (XV of 1877), s 14—In this appeal the Lordships of the Judicial Committee affirmed, on the question of limitation, the decision of the High Court in the case of Lalkhan Chandra Sen v Madhusudan Sen, which is reported in I L R 35 Calc 269** *NRITANONI DAS v LAKHAY CHANDRA SEN* (1916)
I. L. R. 43 Calc. 660

34. ———— **'Valuable Consideration' and 'Transfer'—If grant of permanent lease is—Sut to recover possession of property from lessee, if maintainable without making mortgagee of same property, party—Limitation Acts, (XV of 1877) s 10, Sch II, Art. 134, and (IX of 1908), ss 10, 30, Sch I, Art. 134** In a suit by a *shebait* to recover possession of *debutter* property vested in the *shebait* in trust for the deity, which had been transferred more than 12 years before the institution of the suit by the plaintiff's predecessor-in-title, who had granted a *patta* lease of the property for consideration of a considerable fixed annual rent, but without receipt of any bonus—*Held*, that the suit was barred by limitation under Art 134 of Sch I of Act IX of 1908 *Abhiram Gowami v Shyma Charan Nanda*, I L. R. 36 Calc 1003, I L. R. 36 I. A. 148 *Ishkar Shyam Chand Jiu v Ram Kanai Ghoer*, I L. R. 38 Calc 526 I L. R. 38 I. A. 76, and *Danodhar Das v Lalkhan Das*, I L. R. 37 Calc 885, I L. R. 37 I. A. 147, distinguished. *Held*, further, that the grant of the permanent lease in this case was a transfer for valuable consideration *Currie v Misa*, I L. R. 10 Exch 153, followed. *Held*, also, that no period of limitation was prescribed for a suit of the present nature under the Act of 1877, and therefore s. 30 of the Act of 1908 has no application in this case. Where in this case the plaintiff had granted a valid usufructuary mortgage of the property in suit to a third person for a term which did not expire before the institution of the suit, it is not open to him to determine the lease to the defendants, the benefit of which had been expressly assigned by the plaintiff to the mortgagee *RAMESWAR MALIA v SRI SRI JIU THAKUR* (1915)
I. L. R. 43 Calc. 24

35. ———— **Adverse possession—Claim by person to lands notified by Government as reserved forest lands under Madras Forest Act (Madras Act V of 1882)—Onus of proof—Islands formed in bed of sea at mouth of tidal navigable river—Right of the Crown to such Islands—Limitation Act (XV of 1877), Arts 144 and 145—Right of appeal to High Court from decision of District Court under Madras Forest Act—Right under general provisions as to appeals in Civil Procedure Code. In this appeal the question for deter-**

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question was whether the Secretary of State in Council (an, plant) was entitled to incorporate the lands in dispute into a reserved forest under the Madras Forest Act (Madras Act V of 1852), such lands being islands formed in the bed of the sea near the mouth or delta of the river Godavari, a tidal navigable river, and within 2 miles of the mainland. *Held*, that such islands were the property of the Crown which was not bounded in its dominion of the bed of the sea by the rise or fall of the tide. The Crown is the owner, and the owner in property of islands arising in the sea within the territorial limits of the Indian Empire. The cause of establishing title to property by reason of possession for a certain requisite period lies on the person asserting such possession. Objectors to aforesaid preferring claims under the Forest Act against the Secretary of State for India are in the same position as persons bringing a suit in an ordinary Court for a declaration of right to which Art 144 of Sch. II of the Limitation Act, 1877, is applicable, the period of twelve years however being extended to sixty years by Art 149, and the cause of establishing possession for the required period is upon the claimants. *Radha Gobind Roy v. English, T. O. L. R. 366*, followed. *Secretary of State for India v. Feroz Noyan, I. L. R. 9 Mad. 175*, distinguished. In this case *held* (reversing the decision of the High Court), that on the evidence the claimants had not proved adverse possession for a period sufficient to establish a right against the Crown. Though an appeal from the District Judge to the High Court is not provided for in the Madras Forest Act in a claim to lands which have been notified as reserved forest lands under the Act such an appeal will lie under the provisions of the Civil Procedure Code. Where in such proceedings the District Court is reached, that Court is appealed to as one of the ordinary Courts of the country with regard to whose procedure, orders and decrees the rules of the Civil Procedure Code are applicable. In such a case the ordinary incidents of litigation could only be excluded by specific provisions to that effect. *Kannur v. Secretary of State for India, I. L. R. 11 Mad. 309*, approved. *Angoon Stationing Company v. Collector of Kangan, I. L. R. 10 Cal. 21, L. R. 22 I. A. 127*, distinguished. **SECRETARY OF STATE FOR INDIA v. CHAKRABARTI RINA RAO (1915)**. I. L. R. 23 Mad. 617

28. ———— **Suit for contribution—Discrepancy between—Exonerations of defendants by the decree on the ground of limitation—Plaintiff paying the whole debt—Cause of action for contribution only after payment.** The plaintiff and the defendant having each borrowed a certain sum of money from a stranger executed a joint promissory note in 1903 for the total amount in favour of the stranger. After receiving some amounts from both the promisors, the promisor sued them both in 1911 but the decree was for the balance due, only against the present plaintiff, the present defendant being exonerated on the plea of limitation. After paying the decree amount in March 1912 the plaintiff immediately sued the defendant for contribution *held*, (i) that the right to sue for contribution arises on plaintiff's payment, (ii) that the defendant was liable to contribute in spite of the fact that he was exonerated under the previous decree on the ground of limitation, and (iii) that the suit was not barred by

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limitation, the cause of action having arisen only on the date of plaintiff's payment. *See v. Brookes, 2 Ir. R. 6*, and *Radhakrishnan v. Girdhik, [1923] 2 Ch. 514*, followed. The liability to contribute is based on an equity arising at the co-debtor's payment and it has no reference to the original liability to the common promisor. The *other* decision in page 311, *Subramanyam v. Gopala Aiyar, I. L. R. 32 Mad. 368*, not followed. **ABRAHAM BERVAT v. RAPHAEL MONTAGNA (1915)**. I. L. R. 29 Mad. 553

27. ———— **Appeal—admitting when time barred—Judicial Discretion—thorough approach for review—Stilled Rule of Procedure—abatement of suit—Ex parte order—substitution of Party to Interlocutory Appeal—Limitation Act (IX of 1908), s. 5—Civil Procedure Code (XIV of 1907), ss. 366, 368, 371.** The judicial discretion given by s. 5 of the Indian Limitation Act, 1908, to admit an appeal after the prescribed period of limitation should be exercised if the appeal has been prosecuted with due diligence; the time occupied by an application in good faith for review, although made upon a mistaken view of the law, should be deemed as added to the period allowed for presenting the appeal. The above rule being one of procedure laid down by full Bench decisions in India, and acted on for many years, their Lordships will not interfere with it. When in the exercise of a judicial discretion a judge fails to apply a rule laid down for its exercise, the Appellate Court should either remit the case, or itself exercise the discretion. The remedy by revision given by s. 371 of the Code of Civil Procedure, 1902, when a suit has been ordered to abate, applies whether the abatement has been ordered under a 366, consequent upon the death of the plaintiff, or under a 368, consequent upon the death of the defendant. An order for abatement should not be made ex parte and without notice to the plaintiff. The substitution of a new plaintiff or defendant for one stage of a suit, for instance upon an appeal as to an interlocutory order, is effective for all future stages of the suit. *Pratt Isaac Syon v. Habib Khan (1917)*. I. L. R. 45 Cal. 94 [L. R. 44 I. A. 218]

28. ———— **Suit for Royalties—Due under a registered lease of land with the right to dig coal—Point not allowed to be taken which was not raised in the lower Court nor in grounds of appeal to High Court or Privy Council—Form of decree where a party has refused to join as a plaintiff and has been made a defendant—Power to alter decree without an appeal.** To a suit for royalties due under a registered lease of certain land with the right to dig coal Art 116 of Sch. II of the Limitation Act, 1877, "for compensation for breach of a contract in writing executed" and providing a six years' period of limitation, and not Art 110 for "a sum for arrears of rent," and giving only three years, was held to be applicable. There is a long established distinction in the Limitation Acts in favour of registered instruments and a long course of decisions in the Indian Courts in support of this interpretation of the Acts. *See Baran v. Ramji Singh, I. L. R. 26 All. 124*, distinguished. A point as to the royalty for one bit was in any case barred the amount of the decree should be reduced was

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held not to be open to the appellant to take, it not having been raised in either of the lower Courts, nor in the grounds of either the appeal to the High Court, or that to the Privy Council. One of the parties on refusing to join as a plaintiff was made the second defendant and included in his defence a claim for a decree against his co-defendant which the first Court gave him separately from the decree in favour of the plaintiffs. The High Court on appeal altered the form of the decree by giving a decree for the entire amount in favour of the plaintiffs, and declaring that for a named portion it was for their share, and as to the residue it was for the share of the second defendant. The second defendant did not appeal, but the principal defendant by his appeal brought the entire decree before the High Court, disputing it *in toto*. Held, that in the absence of any provision in the Civil Procedure Code or in any other enactment which showed clearly that the High Court had no power to make the decree it had passed, and the whole decree being before it, the High Court had jurisdiction to make the decree which should have been made by the first Court. **TRICONDAS COOVERJI BHOJA v. GOPINATH JIU THAKUR (1916)** . . . I. L. R. 44 Calc. 759

39. ——— Suit to recover Land diluviated and re-formed in situ—Dispossession—Adverse possession—Continuation of possession of land while diluviated—Definition s 3 of Limitation Act—Continuous possession of successive owners when it cannot be combined. The appellants sued to recover *khas* possession of a 10 anna share with mesne profits in portions of certain mauzas which after being diluviated had reformed in situ. The question was whether the land in suit belonged to the plaintiffs' mahal, or to the principal respondents' (defendants') mahal. The suit was brought on 6th September 1904. The Subordinate Judge found in favour of the plaintiffs' title and that the suit was not barred by limitation. It was common ground that the period of limitation applicable was twelve years, the main contest being as to whether Art 142 of Sch II of the Limitation Act, 1877, was applicable, or Art 144. The High Court decided the case on limitation alone holding that the suit was barred by Art 142. Held, by the Judicial Committee (upholding the decision of the first Court both on title and limitation), that there had not been down to September 1892 any dispossession of the plaintiffs within the meaning of Art 142. An owner of land does not discontinue his possession of it whilst it is diluviated. Constructively it continues until he is dispossessed, and upon the cessation of the dispossession before the statutory period of limitation has elapsed, constructively it survives. **Leigh v Jack, L. R. 5 Exch D 264, per Cotton, L. J.** followed. It seemed to follow that there can be no continuance of adverse possession when the land is not capable of use and enjoyment, so long as such adverse possession must rest on *de facto* use and occupation. **Secretary of State for India v Arushaunoni Gupta, I. L. R. 29 Calc. 513, L. R. 29 I. A. 104**, approved. In the present case beyond temporary *whanda* cultivation there was nothing down to 1892 to show an exclusion of the plaintiffs by the Revenue authorities, whether the land cultivated was the same each year or not does not appear at any rate it was annually submerged, and there were no circumstances to link together various portions of ground

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so as to make the possession of a part, as it emerged, amount constructively to the possession of the whole. **Mohani Mohan Poy v Promoda Nath Roy, 1 L. R. 24 Calc 256**, referred to. No dispossession having occurred (except possibly within twelve years of the commencement of the suit) Art 144 and not Art 142 was the article applicable. Whether or not in the circumstances of the case conduct which was insufficient to evidence dispossession can be used to evidence adverse possession available to the defendants, they failed on the ground that the period of time necessary to bring them under the protection of Art. 144 could not be made out unless to the period during which they were in possession there was added, out of the prior period when it is contended the Revenue authorities had possession, a number of years going back to 1892, and that could not be done in this case for the reason shown in the definition s 3, that the defendants did not derive their liability to be sued "from or through" the Revenue authorities in any sense of the words. They had in fact advanced a claim adverse to those authorities and had succeeded in it. **BASANTA KUMAR ROY v. SECRETARY OF STATE FOR INDIA (1917)** . . . I. L. R. 44 Calc. 858

40. ——— Payments towards debt—Court, if it can find out whether it is for principal or interest—Limitation Act (IX of 1908), s 20. Where payments are made towards a debt, but there is nothing to show whether they had been made in respect of principal or interest, the Court is entitled to find out on the evidence for what purpose the payments were made. **HEM CHANDRA BISWAS v PURNA CHANDRA MUKHERJI (1916)** . . . I. L. R. 44 Calc. 567

41. ——— Attachment in execution—Claim proceeding—Claim rejected for default at without investigation—Subsequent title suit—Limitation Act (IX of 1908), Sch I, Art 11—Civil Procedure Code (Act V of 1908), s XXI, rr 58 and 63. Where a claim is preferred under O XXI, r 58 of the Civil Procedure Code and an order is passed either allowing or rejecting, the party against whom the order is made, may, irrespective of whether any investigation took place or not, bring a suit in the language of O XXI, r 63, "to establish the right which he claims to the property in dispute" or in the language of Art. 11 of Sch I of the Limitation Act, 1908, "to establish the right which he claims to the property comprised in the order," and the suit must be brought within the year allowed by Art 11. **Sardhari Lal v Ambika Pershad, 1 L. R. 15 Calc 321, L. R. 15 I. A. 123, Jugul Kishore Marwari v Ambika Dasi, 15 C. W. N. 652, and Umacharan Chatterjee v. Heron Noyes Dasi, 15 C. W. N. 770**, referred to. **Narasimha Chetti v. Vijayalaya Nair, 27 Ind Cas 244, and Ponnusami Pillai v. Samu Ammal, 31 Mad. L. J. 247**, approved. **CHANDRA LAL CHOWDHURY v. FANI BHAUSA DAS (1918)** . . . I. L. R. 45 Calc. 725

42. ——— Bengal Tenancy Act, 1855—s 104H, 111A—Scope of a 104H—Limitation governing suits under s 104H—Reliefs outside s 104H but within proviso to s. 111A. S. 104H of the Bengal Tenancy Act only refers to suits by a person aggrieved by an entry of rent settled in a Settlement Rent Roll prepared under s. 104F to 104H or by an omission to settle such a rent.

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and suits falling under that section are governed by the special limitation provided in that section. Where relief claimed is outside the scope of the said limitation, the provisions of Art. 113A, of the Limitation Act, 1908, apply. It is that provided by Art. 113 of the said Act is applicable to the Limitation Act, 1908. *See* **Prasad v. Anand**, 1950 C.L.J. 1001. **RAJANI KANTA MUKHERJEE**
SECRETARY OF STATE FOR INDIA (1917)
I L R. 45 Cal 645

43. ———— **Admission of appeal—Period of limitation expired without notice to respondent—Power of Court to grant reconsideration of order admitting it at instance of respondent—Practice of Courts in India—Specimen by Privy Council that such practice should be altered by the Indian Courts with the view of securing final determination of any question of limitation at time of admission of appeal—Limitation Act (IX of 1908) as amended—The admission of an appeal after the period of limitation has expired deprives the respondent of a valuable right by putting in peril the finality of the order in his favour. When an order admitting an appeal has been made in the absence of the respondent, and with notice to him, to proscribe him from questioning its propriety would amount to a denial of justice. Such an order so made, should therefore be treated as open to reconsideration at the instance of the respondent. This view is sanctioned by the practice of the Courts in India. *Held*, also, that the Court was not exceeding its jurisdiction in permitting the question of limitation to be re-opened when the appeal came before it for hearing and under the circumstances it had power to reconsider the sufficiency of the cause shown for the delay. That practice was not peculiar to Madras, but prevailed in other Courts in India. Such a practice, however, was in their Lordships' opinion open to grave objection and it was urgently expedient that in place of such a practice, a procedure should be adopted by Courts in India which would secure, at the stage of the admission of an appeal, the final determination (after due notice to all parties) of any question of limitation affecting the competence of the appeal. **KALSHANRAO PARIKHAR v. RAMASWAMI CHETTIAR (1917)**
I L R. 41 Mad. 412**

44. ———— **Execution of money-decree—Part payment—Uncertified payment or adjustment—Civil Procedure Code (Act V of 1908) O. XXI, r. 2, sub r. (3) Limitation Act (IX of 1908), s. 21, Sch. I, Art. 182 Where a decree for money was made on the 24th November 1909 and an application for execution of the same was presented on the 7th June 1918 and where two payments were alleged to have been made in 1912 and 1913, respectively, neither of which was certified to the Court. *Held*, that the application was *prima facie* barred by limitation under Art. 182 of the Limitation Act. *Held*, also, that an uncertified payment or adjustment could not operate to prolong the period of limitation for an application for the execution of a decree under the Limitation Act. *Held* further that under the Hindu Law, in the absence of the father, the mother was entitled to be the guardian of her infant sons in preference to their brother and was the "lawful guardian" under s. 21 of the Limitation Act. **Jogendra Nath Sarkar v. Ipratish Nath Chatterjee**, 1908 L. J. 126. **Kulabala Sarkar v. Durga Charan Rudra** 13 I C**

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423, **Thappa Lal v. Chela Lal**, 1917 I J 575, and **Mahabon v. Chanchal Lal** (1917) 8 D. A. 372, 11 N. D. **HIGGINSON MINERJEE & ANIRIA CHARRAN LAL CHARRAN (1917)**
I L R. 45 Cal 630

45. ———— **Application for execution—Civil Procedure Code (Act V of 1908), O. XXI, r. 18 and 19 of (2) Application in accordance with law—Proviso to (2) of the said provision under O. XXI r. 18 is to be construed to be governed with an execution being of supply money (1) of property (2) to be taken in part (3) the original application under the provisions of O. XXI r. 17 (2)—Fresh application for execution of a decree—Such application is to be treated as made in continuation of the original application for execution—A decree was passed on the 28th November 1911 and on the 2nd November 1914 an application for execution was made in which, on the face of it, was in accordance with law. Subsequently on the 16th January 1915 the decree-holder made an application to the Court for a certificate of a further list of properties with a prayer that the execution should proceed by attachment and sale of those properties and the lower Appellate Court allowed the prayer and held that the application for execution having been admitted and registered the proposed amendment could not be accepted and the decree-holder was to make a fresh application in execution. *Held*, that the supplementary list should be taken as part of the original application under the provisions of O. XXI r. 17 (2), or if a fresh application were at all necessary then the subsequent application furnishing a supplementary list of properties should be treated as one made in continuation of the application first presented on the 23rd November 1914 that in this view no question of limitation arose and that the decree-holder would be at liberty to proceed in execution as on his application dated 23rd November 1914. **GHANENDRA KIMAR ROY CHOPDRI v. RISHINDRATMAH ROY CHOPDRI (1918)**
22 C. W. N. 540**

46. ———— **Acknowledgment after attachment—Effect of as against auction purchaser—An acknowledgment by the judgment-debtor may save limitation against the auction purchaser, but such acknowledgment if made after the attachment cannot prevail against the auction purchaser who is entitled to have the property purchased by him in the condition in which it was at the time of attachment. **RAJESWAMI DAS v. BINODA SUNDARI DAS (1916)**
22 C. W. N. 278**

47. ———— **Adverse possession—Hindu Widow—Public Assertion of Ownership—Concurrent Findings—Inference from Documents—Limitation Act (IX of 1908) Sec. 11, Art. 146 Concurrent opinions of the Courts in India that the possession of properties by a Hindu widow was merely in lieu of maintenance and not adverse to the plaintiffs reversed on the ground that the question being one of inference from documents, not one of fact, a wrong conclusion had been arrived at. The widow of one of two joint Hindu brothers, after the death of the surviving brother**

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and his widow, successfully applied for mutation of names in respect of property of which she was in possession, alleging that she was owner of it as heir to her husband's separate property, subsequently she put forward the same claim in written statements in suits she also made a gift of part of the property to religious uses. *Held*, that the abovementioned acts were public assertions by the widow of a right to exclusive possession and ownership, and made her possession adverse within Sch II, Art 144 of the Indian Limitation Act, 1877. **CHAUDHRI SATGUR PRASAD v KISHORE LAL** (1919)

L. R. 48 I A 197

48. — *Adverse possession—Gift—Unregistered Document—Evidence—Quasi—Subsequent Joint Ownership—Transfer of Property Act (IV of 1882), s 123—Limitation Act (IX of 1908), Sch I, Art 144* (i) A petition by which the petitioners recited that they had made a gift of two villages and prayed that the villages might be transferred into the name of the donees is admissible as evidence that the subsequent receipt of the rents by the donee was in the character of owner of the property so as to make her possession adverse to that of the petitioners, although by reason of the Transfer of Property Act, 1882, s 123, and the Indian Evidence Act, 1872, s 91, the petition is not admissible to prove a gift. (ii) Where a person has had such possession of land as to amount to an ouster of the two owners, each being owner of a moiety, and before the expiration of the statutory period of limitation succeeds to one moiety upon the death of its owner, his possession continues to be adverse to the owner of the other moiety, although he has become jointly interested with that other Quasi whether the rule that the possession of one of several joint tenants or tenants in common is not adverse to the others applies to joint sharers in a village who are not members of a joint Hindu family. **VABATHA PILLAI v JEEVABATHAMMAL** (1918)

L. R. 48 I A 285

49. — *Bengal Tenancy Act—s 104H, cl (2) suit under—Limitation Act (IX of 1908), Parts II, III, ss 3 to 25, 29 (1) (b)—Civil Procedure Code (Act V of 1908), s 89* A instituted a suit under s 104H of the Bengal Tenancy Act against the Secretary of State for India in Council. The latter pleaded limitation. The Courts below overruled this plea on the ground that A was entitled under s 15, cl (2) of the Limitation Act to a deduction of two months in respect of notice which s. 80 of the Civil Procedure Code, 1908, required. *Held*, that the Bengal Tenancy Act being a Local Act, the saving clause in s 29 (b) of the Limitation Act applied, and s 15, cl (2) thereof did not extend the limitation period of six months provided under s 104H of the Bengal Tenancy Act. **Secretary of State for India v Gangadhar Nanda**, **I L R 45 Cal. 934**, followed. **Droopda v Ilra Lal**, **I L R 34 ILJ 495**, distinguished. *Held*, also that the provisions of Part III of the Limitation Act did affect periods of limitation prescribed in the Act itself by s 3, which was the first and enacting section in Part III. *Held*, further, that the language of s 104H of the Bengal Tenancy Act was not ambiguous and in interpreting the words of a positive enactment such as this, any suggestion of hardship was out of place. **SERAZ**

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TARY OF STATE FOR INDIA v SHIN NARAY HAJRA (1918)

I L R. 46 Cal. 199

50. — *Part-payments in satisfaction of Execution of decree—Within three years of date of decree—Application for execution within three years of such part payments if within time—Limitation Act (IX of 1908) Sch I Art 182 (5)* Application for execution of decree within three years of the date of part payments in satisfaction of the decree if the part payments were within three years of the date of the decree is within time within the meaning of Art. 182 (5) of the first schedule of the Limitation Act. **Rahhal Das Maumdar v Jogendra Narain Maumdar**, **10 C L J 467**, **Lakhs Narain Ganguli v Pelamam Das**, **29 C L J 131**, and **Khalidunnissa Bibi v Sancho Lal Nakata**, **20 C W N 279** referred to. **JAT NARA KUMAR DAS v GAGAN CHANDRA PAL** (1918)

I L R 48 Cal. 22

51. — *Execution of Joint decree—Decree set aside against one of several joint debtors, if it gives a fresh starting point of limitation against others* A joint ex parte decree against several judgment debtors if set aside against only one of them, without notice to others, will not give a fresh starting point of limitation against others. **Kharayat v Daim**, **I L R 32 Cal. 298**, **L R 32 I A 23**, **Suresh Chander Wam Chowdhry v Jugul Chander Deb**, **I L R 14 Cal. 294**, and **Hanuman Prasad v Muhammad Isba**, **I L R 23 All 117**, followed. **Malluram v Narhari**, **I L R 25 Bom. 317**, **L R 27 I A 216**, **Kali Prasunno Basu Roy v Lal Mohan Guha Roy**, **I L R 25 Cal. 258**, **Amar Chandra Kundu v Anad Ali Khan**, **I L R 32 Cal. 908**, **Gopal Chander Manna v Gopin Das Kalay**, **I L R 25 Cal. 594**, **Abdul Khadir v Ahommed Shauwa Rasulkar**, **I L R 35 Mad. 670**, **Vydvansha Asyar v Subramana Patter**, **I L R 36 Mad 104** and **Ashfaq Husain v Gauri Sahai**, **I L R 33 All 241**, **L R 33 I A 37** distinguished. **UMRAK CHANDRA ROY v AKHUR CHANDRA SINGAR** (1918)

I L R 48 Cal. 25

52. — *Account suit—Limitation Act (IX of 1908), Sch. I, Art 7—Civil Procedure Code (Act V of 1908), O VI r 17, O XXIII, r 1 leave under* In a suit for the recovery of money alleged to be due on accounts between the parties, Art 78 of the Limitation Act has no application. **Raman v Vasaram**, **I L R 7 Mad 392**, distinguished. Where a plaintiff sought to recover a sum of money upon certain allegations which were found untrue by the Trial Court and on appeal the District Judge came to the same conclusion, but held that the plaintiff might be permitted to abandon his claim with liberty to institute a fresh suit under O XXIII, r 1 of the Civil Procedure Code 1908; *Held*, that in such circumstances the order under r 1 of O XXIII should not have been made. Where in second appeal the plaintiff, respondent applied for leave to amend his plaint, the object being to abandon the claim deliberately put forward in the Trial Court and persistently reiterated in the Appeal Court below. *Held*, that such application could not be entertained. **Koklasari v. Mohini Rudranand Gorwani**, **15 C. L. J 327**, referred to. **PAIMA LOCHAN PATAR v GRISH CHANDRA KIT** (1917)

I L R 46 Cal. 168

53. — *Court of Wards—Limitation Act (1908), Sch. I, Arts 142, 144—Fate of decr-*

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qualified proprietor under management of Court of Wards—*Suit by proprietor to recover possession of property sold by Collector during Court of Wards management*—*Courts of Wards Act (Bengal IX of 1819)*—*Purchaser's possession became adverse when obtained*—On 20th July the appellant was declared to be a disqualified proprietor, and her estate was taken charge of by the Court of Wards under Bengal Act IX of 1819. By a deed of transfer dated 12 June 1860 part of the estate was sold by the Collector as manager to the father and predecessor in title of the respondent, and the purchaser obtained possession on 20th April 1861. On 1st August 1911 the Court of Wards withdrew from the management of the estate. In a suit brought by the appellant on 12th May 1912 to recover possession of the portion sold—*Held*, that before the transfer and until the respondent acquired possession, the estate was in possession of the appellant notwithstanding it was in the charge of the Court of Wards. Limitation, therefore, ran against her not from the release of the estate from management by the Court of Wards, but from the date when the respondent obtained possession adversely to the appellant, and the suit consequently became barred after twelve years of such adverse possession. *MANI SINGH MANDHATA v. NAWAB BAHADUR OF MURSHIDABAD* (1918) *I L R 46 Cal 694* *L R 46 I A 60*

54. ——— *Mortgage—Limitation Act (IX of 1908), Sec 1, Art. 148—Transfer of Property Act (IV of 1882) ss 55, 100* *A B and C mortgaged a taluk in 1867 to X. Thereafter in 1890 Z purchased the taluk in execution of a decree against A and B, and subsequently in 1892, redeemed the mortgage of A and obtained possession of the same through Court. In 1893 Z obtained from the superior landlord a settlement of the whole taluk in his favour. In 1902 Z's sons granted a riyazt lease to G, and in 1907 sold the superior right to F. In 1907 K purchased the right of G which did not pass at the sale in execution, and in 1911 instituted a suit claiming the right to redeem F and recover possession of the lands. *Held*, that as the Transfer of Property Act drew a clear distinction between a charge and a mortgage and the suit having been brought more than twelve years after both from the date when the charge came into existence, and also when exclusive possession had been obtained by Z, the provisions of Art 148 of the Limitation Act did not apply, and the suit was barred by limitation. *Varadar Bhatia v. Balaji Arishna*, *I L R 28 Bom. 509*, followed. *Ashfaq Ahmad v. Huzar Ali*, *I L R 18 All 1*, *Khalid Ham v. Tark Ram*, *I L R 33 All 640*, discussed. *PURNA CHANDRA PAL v. BARADA PROSAD BHATTACHARYA* (1918) *I L R 46 Cal 111**

55. ——— *Pala or turn of worship—Whether movable or immovable property—Limitation Act (IX of 1908), s 3, Sch. 1, Arts 120, 132* *A pala or turn of worship is not an interest in immovable property and consequently governed by Art. 120 and not by Art 132 or the first schedule to the Limitation Act.* *Eshan Chunder Roy v. Monmohan Das*, *I L R 3 Cal 633*, *Jay Agr v. Mukunda Das*, *I L R 39 Cal 227*, referred to. *NARASINGHA BAX GOSWAMI v. PHULADHAN TAWARI* (1918)

I L R 46 Cal 455

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56. ——— *Premature rent—Suit, effect of—Limitation Act (IX of 1908), s 14—Decree for rent obtained by ex-landlord, whether a money decree—Bengal Tenancy Act (VIII of 1885), s 65—Construction of solamnam decision on, whether a question of law* *Where the Court had refused to entertain a claim for rent because it was premature in a subsequent suit for the same, and rent the plaintiff could not rely upon the provisions of s. 14 of the Limitation Act and say that time did not run against him while those proceedings were being prosecuted.* The decision in *Forbes v. Maheswari Lalasw Singh*, *I L R 41 Cal 526*, did not decide anything more than that by virtue of the provisions of s. 65 of the Bengal Tenancy Act a person who had ceased to be the zemindar at the time he sued for rent could not enforce his decree in accordance with the provisions of s. 65 of the Bengal Tenancy Act. A decree obtained by a landlord against the tenants who had ceased to be tenants, cannot be called a decree for rent. A question of the construction of a solamnam must be of the legal effect of the terms and provisions of the solamnam and is a question of law. *DWANNA YATH CHAKRAVARTI v. ATUL CHANDRA CHAKRAVARTI* (1919) *I L R 46 Cal 670*

57. ——— *Money paid consideration which fails—Suit by purchaser at sale for arrears of rent of patta taluq which is subsequently set aside by darpatadar—Sale under Bengal Patta Taluq Regulation (VIII of 1819), s 14—Right of purchaser to indemnity—Duty of Court on reversal of sale to see if purchaser has sustained loss—Limitation Act, 1877, Sch. 1, Arts 62, 97* *The appellant on 14th September 1908 brought a suit against a zamindar to recover certain sums he had had to pay (inter alia the amount of arrears of rent due and paid by the Collector to the zamindar out of the purchase money) as purchaser of the patta taluq of a defaulting patta dar at a sale for arrears of rent under the Bengal Patta Taluq Regulation (VIII of 1819) the sale having been subsequently set aside in suits by the darpatadars, under s. 14 of the Regulation, to which the appellant was a party, by decrees of the District Judge on 24th August 1909 which were affirmed by the High Court on 3rd August 1906. No indemnity under s. 14 was given to the appellant in those suits. On August 28th 1908 the appellant gave up possession of the taluq to the darpatadar. The appellant's suit was throughout treated as governed by Art. 97 of Sch. 11 of the Limitation Act, 1877, is a suit for money paid on an existing consideration which afterwards fails and both Courts below had held that it was barred by that article as having been brought more than three years from 24th August 1909, the date of the decree of the District Court setting aside the sale, at which time it was found the consideration failed. The appellant contended that limitation only ran from the decree of the High Court of 3rd August 1906, or from 28th August 1906 when possession was given up, and the suit was therefore not barred. *Held*, that owing to the particular course the litigation had taken, and the way the suit had been treated here, the case ought to be dealt with on the assumption, made for the purpose of this present appeal alone, but without affirming its correctness that the present suit is competent, and that it comes within the terms of Art. 97, and that it is barred*

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by lapse of time. S 14 of the Regulation authorises a suit against the zamindar for the reversal of a sale under it, and provides that "the purchaser shall be made a party in such suit, and on decree passing for the reversal of the sale, the Court shall be careful to indemnify him against all loss at the charge of the zamindar or person at whose suit the sale may have been made." *Held*, the provision was unambiguous and imperative and imposes a duty on the Court without qualification. To discharge such duty a distinct issue should be framed as between the purchaser and the person chargeable under the section whether in case the sale is reversed the purchaser has suffered any and what loss against which he ought to be indemnified by that person. On that issue there ought to be a finding and a decision subject to such right of appeal as there might be. Whether, and if so how far, the remedy provided by s. 14 in a purchaser's favour excludes all other remedies was not decided *Radha Madhub Samanta v Sastri Ram Sen*, 1 L R 26 Cal. 828, and *Brojo Kishore Rukhi v Bashi Mandal*, 21 Suth W R 252, referred to. *JUSCUN BOID v PIRICHAND LAL CHOUHURY* (1918) L. R. 46 Cal. 670 L. R. 46 I. A. 52

58. — **Timber Rights—Limitation Act (IX of 1908), Sch. I, Art. 116—Bengal Tenancy Act (VIII of 1885), ss 184, 193, Sch III, Part I, Art 3—Payment by authorised agent through messenger, but entry made by agent, if good under Limitation Act, s 20—"Punyaka" payment, if for arrears or for new year—Selling off of barred claims by Court, if legal—Interest pendente lite, Court's discretion as to.** Under a registered document the plaintiff Bhawal Raj granted to the defendant the right to fell, remove and sell all trees of specified kinds growing within certain local limits in so far as he might be able to do so within a period of five years, and the grantee was further given the right to sublet and in certain circumstances to re enter and make other arrangements for the remainder of the term setting off the sums thereby realised against the sums due from the lessee but if the trees were not cut down or being cut down were not removed before the expiration of the term, the grantee was to have no rights or interests or were to be divested of any such rights. *Held*, that the grant in this case was of forest rights within the meaning of the Bengal Tenancy Act, and the rule of limitation applicable to a suit to recover the Raj's dues under it is governed under ss 184 and 193 of the Bengal Tenancy Act, by the special rule of three years' limitation provided by Art. 2, Part I to Sch. III of the Bengal Tenancy Act. The General Manager of the defendants having general authority to make payments made a payment of Rs. 15 through a Mohurrir and followed it up by an entry of such payment with his own hand in his account book. *Held*, that the Mohurrir merely acted as a messenger, and the payment being by the Manager out of monies in his hand, the Manager should be regarded as the person who made the payment for the purposes of s. 20 of the Limitation Act. A payment made on the punyaka was made not on account of a general arrear balance but on account of a special instalment, that is, the first of the newly opened year. The Raj and the defendant having both sued upon the terms of the grant, the former for

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rent and the latter for damages, it was found that the Raj's demand for arrears was to a large extent barred by limitation and that the dues of the Defendant for damages fell far short of the arrears barred. *Held*, that the defendant having thus recouped himself, the lower Court was right in refusing to make a decree for damages in his favour. Though interest pending suit is in the discretion of the Court, such discretion should be exercised on sound judicial principles. *SARAJUBALA DEBI CROWDHURY v SARADA NATH BHATTACHARJEE* (1918) 23 C. W. N. 338

59. — **Appeal—Time to file an appeal from an order—Time requisite for obtaining a copy of the order—Indian Limitation Act (IX of 1908), ss 5, 12, Art 151—Application to obtain copies after the expiry of the period, effect of—Duty of drawing up the order—Calcutta High Court Original Side Rules, Ch XVI, r 27, Ch XXXII, r 22 (b)—Memorandum of Appeal filed without a copy of the order, effect of—Laches on the part of the appellant—Sufficient cause.** An *ex parte* decree was made on the 14th of February 1918 as the defendant (appellant) failed to comply with an order of the Court. On the 23rd of March an order was made on the application of the defendant that on the defendant's giving security for the amount of the claim within a certain date the *ex parte* decree would be set aside. The defendant failed to give security though the time to supply the same was extended from time to time. On the 20th of July the defendant again applied for further extension of time and to have the *ex parte* decree set aside which was refused on that day. On the 5th of August the plaintiff (respondent) applied to have the order drawn up. On the 7th of August the defendant was served with the order which was returned approved by his solicitor on the 16th of August. On the 30th of August (which was the last day of the term) the Memorandum of Appeal was filed without a copy of the order of the 26th of July. On the 3rd of September the order was filed by the plaintiff. On the 9th of September the defendant applied for a copy of the order and the copy was supplied to him on the 12th of September. *Held*, that the time to file the Memorandum of Appeal expired on the 15th of August and as the defendant had failed to satisfy the Court that the period from the 15th of August to the 30th of August was requisite for obtaining a copy of the order appealed from, the appeal was barred by the law of limitation. *Held*, also, that the appeal could not be admitted under s. 6 of the Limitation Act as there was no sufficient cause for not preferring the appeal within the prescribed period. *PER CHITTY, J.*—"On principle, an appellant who has not within the period of limitation applied for a copy of the order appealed from, and who has within that period taken no steps whatever towards procuring such copy, cannot be allowed after the period of limitation has run out to claim exclusion of time requisite for procuring such copy." *PRAMATHA NATH ROY v. W. A. LEE* (1919). 23 C. W. N. 553

60. — **Uncertified payments—If can save limitation, Civil Procedure Code (Act V of 1908), O. XXI, r 2 (3). O. XXI, r. 2 (3) of the Code of Civil Procedure expressly provides that the executing Court shall not recognise any payment that has not been certified. The decreeholder can certify the payments made at any**

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time, but the certification must take place within such time as is required to save the application for execution from being barred by limitation
BAHUBALLABH ROY v JOGESH CHANDRA BANERJEE
 (1918) . 23 C W N 320

61. ———— Execution of decrees—Application for execution of original decrees—Commencement of period of limitation, whether date of original decree or of appellate decrees—Execution against judgment-debtor not joined in the appeal Where an appeal has been preferred against a decree the period of limitation for an application to execute the original decree runs from the date of the appellate decree, though the appeal was against one defendant and the application for execution was against the other
Hrinama Chavari v Mangammal 1 L R 26 Mad 91, and **T S Ari Chetty v Theerthimala Chetty**, 34 Ind. Cas 791, followed **Lav v Benarashy Prasad Chowdhury** 19 C W N 287 **Lokenath Singh v Gayu Singh** 20 C W N 173, **Umaiah Chandra Roy v Alur Chandra Sildar**, 1 L R 48 Cal 25, and **Hur Prasad Roy v Enayal Hassan**, 2 C L R 471, distinguished **Gopal Chander Manna v Goman Das Kalay**, 1 L R 25 Cal 594 and **Abdul Rahaman v Meudia Saibai**, 1 L R 22 Bom. 509, referred to. **SATISH CHANDRA CHOWDRU v GIRISH CHANDRA CHAKRAVARTY** (1920) 1 L R 47 Cal. 513

62. ———— Mortgage—Order of sale for sale—Application to enforce the order more than twelve years after the date of the order—Limitation Act (IX of 1908) Sch. I, Art. 133 A suit was brought in 1904 for the enforcement of a mortgage security The usual preliminary decree under s. 88 of the Transfer of Property Act, 1882, was made on the 30th June 1904, and on the 22nd March 1904 the decree-holder applied for and obtained an order absolute for sale under the provisions of s. 89 of the same Act. The order was drawn up and signed on the 25th May 1907, but was not otherwise completed, and no steps whatever had been taken under it. The present application was made on the 18th May 1919 by the representative of the decree-holder (who had died in the meantime), asking that the representatives of the parties deceased be substituted on the record, and that thereupon the order absolute for sale may be completed and the sale proceeded with.—*Held*, that a present right to enforce the judgment or order having accrued to the decree-holder on the 22nd March 1907 when the order absolute for sale was pronounced, the present application to enforce the said order is barred by Article 133, Sch. I of the Limitation Act, 1908 **ATREKA KRAISHNA SEIT v RASH BEHARI DUTY** (1920) . 1 L R 47 Cal 746

63. ———— Suit instituted in wrong Court—in time, but in proper Court beyond time—Registration Act (XVI of 1908) s. 77—Limitation Act (IX of 1908), ss. 14, 29 (b) The provisions of s. 14 of the Limitation Act, 1908, cannot be applied in computing the period prescribed under s. 77 of the Registration Act, 1908 **Abdul Hakim v Lalipunneta Khatun**, 1 L R 30 Cal. 532, approved. **Nagendra Nath McRack v Matkura Mohan Parki**, 1 L R 18 Cal 368, referred to. **Khetur Mohan Chakraborty v Dinababai Shaha**, 1 L R 10 Cal 283, overruled. **HAJIMUDDIN MOLLAN v SAHIBUDDIN MOLLAN**, (1919) . 1 L R 47 Cal. 300

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64. ———— Accord and satisfaction—Annulment of satisfaction on the ground of coercion, effect of—Fresh cause of action for original claim, on annulment. A debtor who satisfied, by payment, his creditor's claim for balance of money due, sued to annul the satisfaction on the ground of coercion and obtained a decree for refund. *Held*, that the annulment gave the creditor a fresh cause of action upon the original claim, and time began to run from the date of annulment **Musammat Banee Surno Major v Shookhee Moolhree Burmanis** (1885) 12 M I A, 244 and **Huro Perahad Roy v Gopal Das Dutt** (1883) 1 L R 9 Cal. 235, at 259 (P C) followed. **VEYHU VEERAPPA CHETTY v ADARAPPA CHETTY** (1920) 1 L R 43 Mad. 845

65. ———— Attorney's claim and set off—R 69 Cl 58 of the High Court Rules (Cal., original) is technically free from limitation—Defendant can prosecute a set off if the claim is not barred at time of issue of plaint. **RAJAN NARENDRA LAL KHAY v TARUBALA DAS** 25 C W N 860

66. ———— Suit started on insufficient court fee—Balance paid after expiration of period of limitation. Where a suit was instituted on the last day of limitation on an inadequately stamped plaint and the balance of court fee was subsequently paid after the period of limitation had expired and the court accepted such payment, *Held*, that the suit was not barred by limitation **GAYA LOAN OFFICE, LTD v AWADH BEHARI LALL** 1 Pat. L J 420

67. ———— Adverse possession—Gift, invalidity of as not following the requirements of s. 123 of the Transfer of Property Act (IV of 1882)—Evidence as to possession only under it, not of the gift—Joint ownership following intended gift—Limitation Act (IX of 1908), Sch. I, Art. 144—*Overr* The suit from which this appeal arose was brought to establish the title of the appellants to a moiety of a mita or estate, consisting of two villages which belonged at one time to the ancestor of the parties, and eventually became vested in G and P his two younger sons. On the death of G in 1879 his share vested in his widow R and he left also a daughter D P died in 1887 leaving a will which the High Court held gave an absolute interest in the moiety to his widow A and the Lordships of the Judicial Committee upheld that construction On 10th October 1893, R and A who were then the registered owners of the two moieties of the mita, presented to the Collector a petition, which after reciting that they had on 8th October given the two villages of which the mita consisted to D prayed that an order be made transferring the villages into her name. On the same date (10th October) D presented a similar petition to the Collector reciting the gift of the villages to her, and asked for the transfer of them to her on the register, and the Collector thereupon, on 8th May 1896, registered the two villages (being the whole mita) in the name of D, "to hold and enjoy them with power to alienate them by way of gift, mortgage, sale, etc." and from that date D retained possession until her death in 1911, after which the mita descended to the respondent as her successor *Held*, that the gift was invalid as not being made by a registered deed as required by s. 123 of the Transfer of Property Act (IV of 1882), that the recitals in the petitions could not be used as

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evidence of a gift, but might be referred to as explaining the nature and character of the possession thenceforth held by D, and that the evidence proved that she in fact took possession of the mita in her own right when it was transferred into her name, and retained such possession with receipt of the rents until her death, when the plaintiff's claim was barred by more than twelve years' adverse possession. Even if the rule of English Law, that the possession of one of several co-parceners, joint tenants, or tenants in-common, is the possession of the others so as to prevent limitation affecting them, was applicable to sharers in an unpartitioned agricultural village in India not holding as members of a joint family, which is doubtful, it had on the facts of the case, no application. *Held*, therefore that during the life of B the possession of D was adverse to both the co-owners R and A, and this being so, when on R's death she became legally entitled to a moiety of the mita, the character of her possession of the other moiety as against A was not changed. There having been an ouster of A before R's death this ouster continued after her death, and the possession of D was adverse to A throughout. *VARADA PILLAI v. JEEVARATNAMMAL* (1920). I. L. R. 43 Mad 844

68. ——— End of adverse possession by the passing of decrees. *Possession prior to decree cannot be tacked to possession after decree—Party wishing to acquire good title by adverse possession must start afresh after the decree—Execution—Execution time barred—Right to recover possession not barred.* The defendants had brought Suit No 96 of 1893 against the plaintiff for a declaration that they were entitled to a half share in the right to manage a Devasthan property. The plaintiffs then pleaded that they were solely entitled to the management as they were in adverse possession for over twelve years prior to the suit. It was however held that the plaintiffs' adverse possession commenced only from 1885 and a decree declaring the joint management of the plaintiffs and the defendants was passed on the 7th July 1898. After the decree, the plaintiffs remained in possession and the defendants took no active step to execute the decree in their favour until they were let into possession by the Collector's order, dated the 1st August 1903. The plaintiffs, thereupon, brought a suit in 1912 to establish their sole right to manage the Devasthan property alleging hereditary right and ancient and immemorial custom, and contended that by non execution of the decree in Suit No 96 of 1893, they became entitled to tack on the period of adverse possession before the date of that decree to the period after the decree thereby acquiring an absolute title by adverse possession. *Held*, (1) that the decree in Suit No 96 of 1893 put an end to adverse possession on 7th July 1898, (2) that although the execution of that decree was barred the right remained and therefore the plaintiff could not get absolute title by adverse possession. *Bala v. Abas* (1903) 11 Bom. L. R. 1993, *reversed*. The period of adverse possession is calculated for the benefit of the party setting up adverse possession and if he loses, then there is an end of that period, and he must, if he wishes to acquire a good title by adverse possession, start afresh after the decree. *MIR AKBARALI v. ABDUL AJIZ* (1920). I. L. R. 44 Bom 934

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69. ——— Rent suit—Suspension of the period of limitation—Pendency of a suit for ejectment. It is established as a general principle that the right to demand the rent which falls due during the pendency of a suit for ejectment is not in suspense during the pendency of a litigation. *Surnamoyee's Case*, 11 B. R. 5 (P. O.), was one of exception to this general rule. *NAJENDRA NATH SEN v. SADHU RAM MANDAL* (1920). I. L. R. 48 Cal 65

70. ——— Contribution by co-mortgagors—One paying off mortgage decree in excess of his share. *Held*, that the position of such co-mortgagor was that of an assignee of the original security and therefore the period of limitation is that within which the original mortgagee could have brought his suit on the mortgage had he not been redeemed and that the suit having been brought more than twelve years after the due date of the original mortgage under Art 132 of the Limitation Act and having been brought more than six years after the dates of payments was barred whether Art 60, 99 or 120 applied. *SREEMATI RAJ KUMARI DEBI v. MUKUNDALAL BANDOPADHYAYA* (1920). 25 C. W. N 283

71. ——— Letters Patent Appeal—Whether any extension of time can be granted under Indian Limitation Act (IX of 1908), s. 4 et seq. An appeal was filed on the 27th August 1920 from the judgment of a Single Judge dated 6th July 1920. The vacation of the Court began on 17th July 1920 and ended on the 27th September. Under the rules framed by this Court an appeal under s. 10 of the Letters Patent cannot be entertained if presented after the expiration of thirty days from the date of the judgment appealed from, unless the Division Bench in the discretion for good cause shown extend the said period. *Held*, that the Letters Patent together with the rules framed thereunder as to limitation for filing appeals are a complete Code in themselves and therefore the general provisions of the Limitation Act, including s. 4, do not apply to appeals filed under s. 10 of the Letters Patent. Letters Patent Appeal No 107 of 1920 (unpublished) followed. S. 29 of the Limitation Act, referred to *Held* also, that the fact that appellant was under the impression that the limitation was ninety days and the holidays could be deducted was no reason for extending the period, and that the appeal was consequently barred by limitation. *DYAL SINGH v. BUDHA SINGH*. I. L. R. 2 Lab 127

72. ——— Execution, application for—Objection on the ground that decree had been satisfied out of Court—Objection and application both dismissed for default—Subsequent application for execution, if in continuance of previous application. A decree holder after applying for execution filed processes and process fees as directed by the Court. Thereafter the judgment debtor objected to the issue of execution on the allegation that the decree had been satisfied out of Court. On a subsequent date on which both the application for execution and the objection had been fixed for hearing the latter case was dismissed for default, and the Court recorded the further order 'the decree-holder has no objection to his case being dismissed provided he gets his costs. The execution case is dismissed for default. The decree-holder will get his costs.' *Held*, that the order dismissing the

LIMITATION—contd

execution case must be treated as equivalent to an order for striking off the case or removing it from the file for the convenience of the Court, and a subsequent application for execution made more than three years after the date of the first application was therefore to be regarded as one in continuation or revival of the previous application. **CHOWDHURY AJODHYA NATH FAKIR v CHOWDHURY S C FAKIR** 28 C W. N 323

72. — Adverse possession—Plaintiff proving title—Both parties having uncertain possession.—*Ind an Limitation Act (IX of 1908), Sch. I, article 144* Adverse possession in order to bar by limitation a suit for the possession of land must be adequate in continuity in publicity and extent so as to show that it is possession adverse to the competitor. When a person establishes his title to land and proves that he has been exercising during the currency of his title various acts of possession then the quality of those acts even though they might have failed to constitute adverse possession against another may be abundantly sufficient to destroy that adequacy and interrupt that exclusiveness and continuity which is required from any person challenging by possession the right of title. **Rodhamona Diba v The Collector of Khairat, (1900) 1 I. L. R. 27 Cal.**, 913 (P. C.) **L. R. 27 I. A. 140**, and **Secretary of State for India v Chikilams Rama Rao, (1915) 1 I. R. 39 Mad** 617 (P. C.), **L. R. 43 I. A. 192** applied. [Judgment of the High Court reversed.] **RUTHALI MOOTHAVAR v BHUHANAN KUTTY** (1912)

1 I. L. R. 44 Mad (P. C) 853

74. — Suit to recover value of paddy charged upon immovable property, nature of.—*Limitation Act (IX of 1908) Sch. I, Art. 132.* A suit to recover value of paddy charged upon immovable property is a suit to enforce payment of money charged upon immovable property within the meaning of Art. 132 of the Limitation Act. **RAMCHAND SUR v ISWAR CHANDRA GIRI** (1920) **1 I. L. R. 48 Cal** 625

LIMITATION ACTS.

See CIVIL PROCEDURE CODE (ACT XIV OF 1908), s. 230 **1 I. L. R. 37 Mad** 188

See HINDU LAW—ADOPTION
1 I. L. R. 40 Mad 846

LIMITATION ACT (XIV OF 1939)

s. 1 (12)—

See BENGAL REGULATION XV OF 1783
1 I. L. R. 34 All 281

s. 1 (15)—

See LIMITATION ACT (XV OF 1877), s. 19, SCH. II, ARTS. 120 AND 148
1 I. L. R. 32 All 33

ss. 1 (15) and 4—

See LIMITATION (14)
1 I. L. R. 37 Bom 231

LIMITATION ACT (IX OF 1871).

s. 20 and Sch. II, Art 148—

See LIMITATION **1 I. L. R. 37 Bom** 231

s. 21—Act No IX of 1908, s. 31—*Limitation—Mortgage with possession—Realization of rents and profits equivalent to receipt of interest as such under the terms of the mortgage.*

LIMITATION ACT (IX OF 1871)—contd

s. 21—contd

Under the terms of a mortgage-deed executed in 1850 the mortgagee was to take possession of the mortgaged property and appropriate the rents and profits in lieu of interest. The mortgagee remained in possession up to 1889 when he was dispossessed. In 1910 he brought a suit for sale. Held, that the realization of rents and profits in lieu of interest was equivalent to the receipt to interest as such under the terms of the mortgage and therefore under s. 21 of Act IX of 1871 the mortgagee was entitled to compute limitation from the year 1889. Act XV of 1877 having by that time come into operation, the plaintiff was in 1910 entitled to bring his suit within the limitation provided by s. 31 of Act IX of 1908. **INDARJIT v GAGADHAR SAHAI** (1912)

1 I. L. R. 35 All 270

Art 129 and s. 29—

See HINDU LAW—ADOPTION
1 I. L. R. 40 Mad 846

LIMITATION ACT (XV OF 1877)

See HINDU LAW—ADOPTION
1 I. L. R. 40 Mad 846

s. 2, Sch. II, Art 35—

See LIMITATION ACT (IX OF 1908) s. 29
1 I. L. R. 34 All 412

s. 3, Sch. II, Arts. 13, 14—Civil Procedure Code, 1882, s. 310 A—*Execution of decree—Suit involving the cancellation of an order setting aside a sale—Limitation.* A Civil Court acting under s. 310-A of the Code of Civil Procedure, 1882 set aside a sale on an application made about 14 months after the sale. The auction purchaser more than a year after this order sued for possession of the property and for a declaration that the order under s. 310 A was passed without jurisdiction. *Held*, that the order whether passed rightly or wrongly was not a nullity, and that the order having been passed in a proceeding other than a suit, Art. 13 of the second schedule to the Indian Limitation Act, 1877, barred the present suit, inasmuch as the plaintiff could not obtain a decree for possession without first having the order set aside. **KIRBORI LAL v KUNAR SINGH** (1910)

1 I. L. R. 33 All 93

s. 4, Sch. II, Art 179 (2)—*Limitation—Application of execution of decree—Practice of Privy Council—Order of dismissal for want of prosecution of appeals to Privy Council—Order of 15th June, 1853, r. V—Dismissal of appeal for want of prosecution without order made in the appeal.* Under r. V of the Order in Council of 15th June 1853, (1) where for a period specified in the order the appellant to His Majesty in Council, or his agent, has not taken any effectual steps for the prosecution of the appeal, it stands dismissed without further order. Such a dismissal for want of prosecution is not the final decree of an Appellate Court within the meaning of Art. 179, cl. 2, of Sch. II of the Indian Limitation Act, 1877, from which a period of limitation can be reckoned under that article in support of an application for execution of a decree. In this case the application for execution having been made more than three years after the decree of the High Court was therefore barred by lapse of time, and should

LIMITATION ACT (XV OF 1877)—contd.**s. 4, Sch II, Art. 179 (2)—contd.**

have been dismissed on that ground under s. 4 of the Limitation Act. *BARUK NATH v. MUKUN DEI* (1914). I. L. R. 36 All. 284

s. 5—Suit for order directing registration of document—3 days expiring during a Court holiday—Suit instituted on re-opening day if barred. The provisions of s. 5 of the Limitation Act apply to suits under s. 77 of the Registration Act (III of 1877). When, therefore, the period of limitation provided in that section for a suit for an order directing the registration of a document expired during the X'mas holidays *Held*, that the suit if instituted on the day the Court re-opened would not be barred by limitation. *AYALATOLLAH v. WARIR ALI*, I. L. R. 8 Cal. 910, followed. *MATAB BAR MOILLAH v. SASI BHUSAN GHATAK* (1911).

18 C. W. N. 20

ss. 5 and 7—Application to file an appeal in formā pauperis—Delay in making the application—Minor applicant—Excuse of delay—Probate—Grant of probate—Question of title not affected by the grant—Res judicata—Civil Procedure Code (Act V of 1908) s. 11. A suit filed in formā pauperis was decided on the 10th February 1908. An application for leave to appeal in formā pauperis was presented to the High Court on the 13th April 1908, but as it was beyond time it was rejected. On an application to excuse the delay, it was excused on the ground that the applicant having been a minor, s. 7 of the Limitation Act, 1877, applied. At the hearing, it was objected that the application for permission to appeal in formā pauperis must be treated as an appeal, and that s. 5, and not s. 7 of the Limitation Act, applied to it. *Held* overruling the contention, that whether the application was treated as falling under s. 5 or under s. 7 of the Limitation Act, 1877, the result was the same. If it fell under s. 5 as an appeal, then under the second paragraph of that section, which applied to appeals, the Court had jurisdiction to excuse delay after the period of limitation prescribed for the presentation of an appeal had expired. If, on the other hand, it be treated as an application and fell under s. 7 of the Limitation Act, it was clearly within time and there was no need of excusing delay because the section provided that a minor could apply after he had attained the age of majority within a certain period. The probate is conclusive only as to the appointment of executors and the validity and the contents of the will, and on the application for probate it is not the province of the Court to go into the question of title with reference to the property of which the will purports to dispose or the validity of such disposition. *CHINTAMAN VYANKATRAO v. RANCHANDRA VYANKATRAO* (1910). I. L. R. 34 Bom. 589

ss. 6, 12—Appeals under Indian Forest Act (V of 1882)—In calculating period of limitation for appeals under the Indian Forest Act, time for obtaining copy of judgment not to be excluded. The provision in s. 12 of the Limitation Act of 1877 that in computing the period of limitation prescribed for an appeal the time requisite for obtaining a copy of the order appealed against should be excluded does not apply to appeals under s. 10 of the Madras Forest Act, 1882. The express power given to the Governor in Council by s. 10 of the Forest Act to extend the time for appeal under this section shows that the Legisla-

LIMITATION ACT (XV OF 1877)—contd.**ss. 6, 12—contd.**

ture did not intend that the general provisions of the Limitation Act should apply to such cases. The Madras Forest Act is a special and local enactment and the application of s. 12 of the Limitation Act to appeals under that Act affects the period prescribed by that Act, within the meaning of s. 6 of the Limitation Act. The provisions of s. 6 of the Limitation Act exclude the applicability of s. 12 of the Act in the case of appeals under s. 10 of the Madras Forest Act. *Reference under the Madras Forest Act, 1882, I. L. R. 10 Mad. 210* dissented from. *Pecaram v. Abbaiah*, I. L. R. 18 Mad. 99, followed. *VATTA-KULAKARAN SOWDAKER ABU BACKER SAHIB v. THE SECRETARY OF STATE FOR INDIA* (1909).

I. L. R. 34 Mad. 505

ss. 7 and 8 and Art. 44—Alienation by guardian of the property of two wards members of an undivided Hindu family—Suit by both more than three years after elder's majority but within three years of the younger attaining majority—Limitation. According to ss. 7 and 8 and Art. 44 of the Limitation Act (XV of 1877) a suit brought by two brothers of an undivided Hindu family to set aside an alienation by their guardian, more than three years after the elder attained majority is barred by limitation not only as regards the elder brother's share but also in respect of the younger brother's though the latter attained his majority within three years prior to the institution of the suit. *DORASAMI SUBRAMAYAN v. NONDASAMI SALUTAY* (1912).

I. L. R. 38 Mad. 118

s. 8—Putni Regulation (Reg VIII of 1819), s. 14—Suit to set aside sale—All co-sharers if must sue jointly—Parties—Right of minor co-owner to sue separately—Limitation—Limitation Act (XV of 1877) s. 8 Sch II, Art. 12—Ground of exemption from limitation if must be specified in plaint when plaintiff minor—Amendment—Civil Procedure Code (Act XIV of 1882) s. 51. The decision in *Jogeshwar Roy v. Raj Narain Miller* I. L. R. 31 Cal. 195 s. c. 8 C. W. N. 168, did not lay down that under s. 50 of the Civil Procedure Code (Act XIV of 1882), a plaintiff could not take advantage of any ground of exemption not set up in the plaint. Nor did it lay down that in no circumstances should the plaintiff who has omitted to set up such a ground be allowed to amend his plaint. When the plaintiff or all the plaintiffs is or are a minor or minors it is not usual for them to plead exemption from the law of limitation as prescribed by that section. So, too, where one or more of several plaintiffs is or are a minor or minors, if the provisions of s. 8 of the Limitation Act (XV of 1877) apply, time would not have commenced to run against any of them and it would not be necessary to expressly claim exemption. One of several co-owners of a putni taluk, can alone institute a suit to set aside a putni sale as contemplated by s. 14 of Reg VIII of 1819, provided the purchaser is made a party and the whole sale is sought to be set aside. *Ananda Perard Roy v. Erakine*, 12 B. L. R. 370, referred to. S. 8 of the Limitation Act (XV of 1877) has no application to such a suit, and a minor co-owner would be entitled to bring such a suit even though the adult co-owners have allowed their right to be time barred. *GANGADHAR SAKKAN v. KHAJA ABDUL AJI NAHAR SALINGUEA PARADAT* (1909).

14 C. W. N. 123

LIMITATION ACT (XV OF 1877)—*contd.*

— s. 8, Sch. II, Art. 179, expl. I—*Limitation Act (IX of 1908) s. 7—Minor decree-holders—Applications for execution by guardian—Attainment of majority by one decree-holder—Application by guardian takes effect in favour of all—Right of the major decree holder to give discharge to the judgment-debtor in respect of the judgment-debt* Two minor sisters, who were born in the years 1881 and 1887, obtained a decree against the defendants in May 1900. The minor decree holders were represented by a guardian appointed by the Court. The said decree was confirmed by the High Court in appeal in March 1901. Subsequently the guardian presented applications for the execution of the decree in 1904, 1905 and 1908, and while the last application was pending the guardian died. Thereupon the decree holder presented an application for execution as majors in 1908. The defendants contended that as the elder decree holder had attained majority, the application by the guardian was, as to her, unauthorized and the execution of the decree was barred as against her. It was further contended that as the elder decree holder could from the time of her attaining majority make an application and give a good discharge to the judgment-debtor to the decretal debt without the concurrence of the minor, time had, therefore, run against both under s. 8 of the Limitation Act (XV of 1877) or s. 7 of the Limitation Act (IX of 1908). *Held* that by reason of the first explanation of Art. 179 of the Limitation Act (XV of 1877) an application made by a representative of one of joint decree holders takes effect in favour of all. Therefore, though the elder decree holder had attained majority, the applications made by the guardian as the next friend of the minor decree holder took effect in favour of both. *Held*, further, that the contention under s. 8 of the Limitation Act of 1877 or s. 7 of the Limitation Act of 1908 was inconsistent with the decisions in *Gomandram v. Jatai*, 1 L. R. 20 Dom 353, and *Zamir Hasan v. Sunder*, 1 L. R. 22 All 192, the applicability of which had not ceased owing to any change in the words of s. 7 of the Limitation Act of 1908. *MAY CHAND PANACHAND v. VESARI* (1910)

I L. R. 34 Dom 672

— s. 9—

See LIMITATION ACT (XV OF 1877), s. 10 AND SCH. II, Art. 148

I L. R. 35 All. 227

— s. 10—Will—Trustees—Suit by testator's sister for declaration of heirship and ownership of the residue of testator's estate—Resulting trust arising by operation of law—Limitation One Jethabhai died on the 17th December 1889 after having made a will dated the 20th February 1889. The will gave certain legacies, including one of Rs. 300, to the plaintiff, testator's sister. Under the will five trustees were appointed and it provided as follows:—"Out of these five (trustees), Dave Gatturahankar Keshaji and my nephew (plaintiff's son) Desai Mojilal Premanand should both join and take possession of my properties after my death in accordance with the above will, and with the consent of the remaining trustees, they are to dispose of the properties in accordance with what is written in the above will, and should any outstandings have to be recovered for giving effect to the said dispositions, they are to do the same and I do by this will give them power to do

LIMITATION ACT (XV OF 1877)—*contd.*— s. 10—*contd.*

whatever also they may have to do to carry out the will." In the year 1908 the plaintiff having brought a suit for the declaration that she was the heir of the testator, her brother, and as such owner of the residue remaining after administering his property under the will and for the recovery of the residue, a question arose as to whether the suit was time barred on the ground that there was no trust declared with regard to the residue and no direction given to distribute it among heirs at law. *Held*, that the suit was not time-barred, and that once the testator's property was vested in the trustees for a specific purpose, it was not necessary that any resulting trust of the residue, which necessarily arose by operation of law, should be specified in words in the will in order to bring it within the scope of s. 10 of the Limitation Act (XV of 1877). *MOJILAL PREMANAND v. GATTAURAHANKAR KESHAJI* (1910)

I L. R. 35 Bom. 49

— s. 10 Sch. II, Art. 134—

See LIMITATION I L. R. 43 Calo. 424

— s. 12—Limitation Act (XV of 1877), s. 4 12—*Appeal—Exclusion of time for taking copies—Decree signed after application—High Court—Practice—Rule treated as appeal.* An appellant is entitled to the deduction of the time between the delivery of the judgment and the signing of the decree. Where the intending appellant having applied for certified copies of the judgment and decree, the copy of the judgment was delivered to him and at the same time an unused folio and the Court fee filed for the copy of the decree were also returned because the decree had not been signed, and the applicant had to make a fresh application for a copy of the decree after it had been signed. *Held*, that the first application for a copy of the decree should be treated as pending all the time so that the applicant would be entitled to a deduction of the time between the signing of the decree and the date when the copy of the decree was ready to delivery. When application for copy is made before the decree is signed, the applicant is not entitled to a deduction of the time between the date of the application and the signing of the decree twice over when the same has been already excluded by reason of the decree not having been ready. *Bens Modab Nutter v. Matangini Dasari*, 1 L. R. 13 Cal. 104 followed. *Kali Sarilar Bajpai v. Baidanda Doh Sen*, 7 C. W. N. 109 and *Dulsh Beva v. Sarada Kinkar Pahi*, 3 C. W. N. 55, referred to. The rule in this case was treated as an appeal subject to the condition that the order passed would take effect on payment by the successful applicant of proper Court fees. *Mahomed Wabiduddin v. Hakimian*, 1 L. R. 25 Cal. 757, referred to. *TARAKATI KUTUB v. LALA JASBULO NARAIN* (1911)

15 C. W. N. 787

— s. 12, Sch. II, Art. 152—*Party, applying for portions of the record, entitled to deduct time spent in obtaining them.* Where a party appealing from the decree of a lower Court applies for copies of the judgment and decree at different times, the time which he is entitled to exclude in computing the period of limitation for such appeal is the aggregate of the periods required to grant the copies after the applications were made. *Raman Chetty v. Kadircelu*, 8 Mad. L. J. 142.

LIMITATION ACT (XV OF 1877)—*contd*

— s. 12, Sec. II, Art. 162—*contd*

referred to and approved *SILANBAN CHETTY & RAMANADHAM CHETTY* (1909)

I. L. R. 33 Mad. 256

— s. 14—

See LIMITATION. I. L. R. 43 Calc 600

I. L. R. 36 Mad 482

1. ——— "Court"—*Interpretation*—Court in British India—Court in a Native State in India not included. The word "Court" as used in s. 14 of the Limitation Act (XV of 1877) means a Court in British India, and not a Court in a Native State of India. *CHANNALAPA CHENNA SARA & ABDUL VAHAB* (1910)

I. L. R. 35 Bom. 139

2. ——— *Plaint returned for presentation in proper Court*—Power of Court to fix a period of time for such presentation—*Exclusion of time*. For the purposes of determining limitation as governed by the provisions of s. 14 of Act XV of 1877, the date of instituting the suit must be held to be the date on which the plaint was filed in the Court having jurisdiction to try it, excluding only, for the purpose of calculating limitation, the period excluded under s. 14. Where a plaint which had been presented on the last day of the period of limitation, was subsequently returned by the Court for presentation within a week in the proper Court and was so presented five days later: *Held*, that the suit when so presented was barred by limitation as only the period during which the suit was pending in the Court without jurisdiction would be excluded under s. 14 of the Limitation Act. *HARI DAS RAY & SARAT CHANDRAN DEY* (1913)

17 C. W. N. 515

— s. 19—

See LEASE. I. L. R. 40 Mad 910

1. ——— *Acknowledgment—Step in aid of execution*—Compromise—Have part of decree executed at a later date. Whereupon a previous application for execution, the case was compromised by a joint petition stating that a part of the decree had been satisfied and that the rest will be satisfied at a future date: *Held*, that this was an acknowledgment of the judgment debtor's liability which gave a fresh start to limitation under s. 19 of the Indian Limitation Act. *Held*, further, that s. 19 of the Limitation Act applies to applications for executions of decrees. *Rakhai Chander Tewari & Hemangani Debi*, 3 C. L. J. 347, *Ram Kumar Sur & Jakur Ali*, I. L. R. 8 Calc 716, and *Toree Mahomed & Mahomed Akhmed*, I. L. R. 9 Calc 730, referred to. *Quere*. Whether a compromise made upon an application for execution, reciting that the decree has been executed in part and that the rest of it would be satisfied hereafter and containing no reference to any further proceedings to be taken in execution, is not a step in aid of execution. *Ghansham v. Mulla*, I. L. R. 3 All 320, referred to. *BINDES WARI KOB & AWADH BEHARI LALL* (1910)

13 C. W. N. 82

2. ——— *Acknowledgment of debt by Collector or Deputy Collector as agent for Court of Wards since limitation under—Regulation V of 1804, s. 2, Collector's powers under—Court of Wards, powers of Under Regulation V of 1804 as amended by Madras Act IV of 1899 the duties of the Court of Wards are not limited to the educa-*

LIMITATION ACT (XV OF 1877)—*contd*

tion of the minor but include the due preservation of the estate. The Court of Wards has power to make an acknowledgment of a debt which would bind the ward and give a new starting point for limitation within the meaning of the Indian Limitation Act IX of 1877, s. 19. By the power of delegation given in s. 2 of Regulation V of 1804 the Collector has power to give such an acknowledgment as agent of the Court of Wards. *Suryanarayana v. Narendra, Thattar*, I. L. R. 19 Mad. 255, distinguished *Bais Maharaja v. The Collector of Etawah*, I. L. R. 17 All. 198, commented on. No distinction can be drawn between the powers of a Collector and those of Deputy Collector. *KONDAMODALI LINGA REDDI & ALLIES SARIKARAYUDU* (1910). I. L. R. 34 Mad. 221

3. ——— *Contract Act (IX of 1872), ss. 208 and 209—Suit to recover money—Acknowledgment by defendant's Gumasta (agent) after his death—Death of the defendant not known to plaintiff—Limitation*. Plaintiff's firm had dealings with one Haji Usman from the 6th January 1901 till the 25th October 1903. Haji Usman's business was managed by a gumasta (agent) Haji Usman died in or about March 1903, and the plaintiffs had no knowledge of his death. On the 2nd June 1903 the gumasta wrote to the plaintiffs a post-card stating, "you mention that there are moneys due, as to that I admit whatever may be found on proper accounts to be owing by me, you need not entertain any anxiety." On the 30th May 1906 the plaintiffs brought a suit against the managers of Haji Usman's estate to recover a certain sum of money on an account stated. The defendants pleaded the bar of limitation on the ground that there was no acknowledgment of the debt by a competent person. *Held*, that the suit was not time barred. The gumasta's letter of the 2nd June 1903 was an acknowledgment within the meaning of s. 19 of Limitation Act (XV of 1877). The case fell within the provisions of ss. 208 and 209 of the Contract Act (IX of 1872). The termination of the gumasta's authority, if it did terminate, did not take place before the 2nd June 1903 as the plaintiffs did not know of the principal's death, and the gumasta was bound under s. 209 to take, on behalf of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him. *EBRAHIM HAJI YAKUB & CHUNILAL LALCHAND* (1911)

I. L. R. 35 Bom. 302

4. ——— *Acknowledgment—Judgment-debt, acknowledgment of—Debt specified in insolvency petition*. An application for execution of a decree was not time-barred though made more than three years after a previous application, where it appeared that the judgment debtor had in the meanwhile filed a petition of insolvency in which the judgment-debt in question was specified. The petition, though it might not have been addressed to the creditors, was nevertheless an acknowledgment within s. 19 of the Limitation Act. *Mansaram Seli & Seli Rupchand*, I. L. R. 33 Calc. 1047, 10 C. L. N. 374, relied on. *RAMPAI SINGH & NAND LAL MARWARI*. 16 C. W. N. 346

5. ——— *Mortgage—Redemption—Limitation—Acknowledgment*. *Held*, that an acknowledgment of the title of the mortgagor made by only one of two mortgagees would not avail to save the mortgagor's right to redeem being barred by limitation where the mortgage

LIMITATION ACT (XV OF 1877)—*contd.*

was a joint mortgage and incapable of being redeemed piecemeal *Dharma v. Balmainland, I L R 18 All 458*, followed *JWALA PRASAD v. ACUBEY LAL (1912) I L R. 34 All. 371*

6. *Acknowledgment*—*Suit for redemption*—*Admission in plaint that a certain person had a right to redeem as a co-mortgagor*—Where in a suit for redemption of a mortgage the plaintiffs, who were purchasers of a portion of the mortgaged property, admitted in their plaint the right of a representative of one of the original mortgagors to redeem, it was held that this was a good acknowledgment within the meaning of s. 19 of the Indian Limitation Act, 1877, and entered in favour of the representatives of the person so mentioned *Sulhamoni Choudhram v. Isahan Chander Roy, I L R 25 Calc 844, I L R 25 I + 95*, referred to. *BALSHAM v. RAM DEO (1914) I L R. 36 All 408*

7. *Limitation*—*Acknowledgment*—*Authority of managing partner to acknowledge a debt as due by the firm*—*Receiver, Held*, that the manager of a firm who has power to borrow and repay money on behalf of the firm has power also to acknowledge a debt by either immediately giving a promissory note, or subsequently, upon an adjustment of accounts or in any other way in the course of business, making *bona fide* admissions in writing. *Held*, also that where in the course of a suit for dissolution of partnership a receiver has been appointed to discharge the debts and liabilities of the firm, the mere fact that a claim which was within time when made is not adjudicated upon by the Court until after the expiration of more than three years, does not render the claim a bad claim against the partnership assets *LALTA PRASAD v. BABU PRASAD (1909) I L R. 32 All. 51*

ss. 19, 20—

See EXECUTION OF DECREE.

I L R. 43 Calc. 207

ss. 19, 20, 21—

Acknowledgment by one partner binding on others—The mere fact that one of the partners of a going concern is in charge of a branch of such concern cannot lead to the inference that such partner has authority to bind the firm by an acknowledgment when pressed for payment. A letter by one of two partners to a creditor acknowledging the debt due and asking such creditor to correspond with, and supply goods to, the other partner on behalf of the firm, cannot be construed as authorizing such other partner to make an acknowledgment which will bind the firm for the purposes of limitation. *SHAIK MOHAMED SAHIB v. THE OFFICIAL ASSIGNEE OF MADRAS (1911) I L R. 35 Mad. 142*

s. 19, Sch. II, Arts. 120 and 148—*Acknowledgment by widow in possession of husband's estate not binding on reversioners*—*Limitation*—*Act No XIV of 1859 (Limitation), s. 1, cl. 15* *Held*, that the widow and daughter of a mortgagor in possession as such of the mortgaged property are not competent to give an acknowledgment of the title of the mortgagor so as to save limitation, within the meaning of the Indian Limitation Act, 1877, in respect of a suit for redemption brought by the representative in interest of the original mortgagor against the reversioners. *Bhogwanta v. Suthi, I L R 22 All. 33*, and *Chhadda*

LIMITATION ACT (XV OF 1877)—*contd.*

s. 19, Sch. II, Arts. 120 and 148—*could*

Singh v. Durga Dei, I L R 22 All 362, referred to. *Held* also, that, unless there is a distinct provision to the contrary, the validity of an acknowledgment set up by a plaintiff as saving limitation in his favour must be decided with reference to the law in force when the suit is brought, and not with reference to that in force when the acknowledgment was made. *Gurupadaya Basaya v. Furkadraps Irangaga, I L R 7 Bom. 439*, referred to. *BNIN SHANKAR LAL v. SONI RAM (1900) I L R. 32 All. 33*

s. 19, Sch. II, Art. 148—

See LIMITATION (15)

I L R. 37 Bom. 326

Acknowledgment, effect of—*Acknowledgment by widow in possession of husband's estate*—*Suspension of limitation*—*Act XV of 1877, s. 9—Act XIV of 1859, s. 1, cl. 15—Res judicata*—*Contentions raised for the first time on appeal to His Majesty in Council—Practice of Privy Council*—In a suit brought by the appellant on the 4th of March, 1907, against the respondents for the redemption of a mortgage, dated the 2nd of January, 1842, made between the respective predecessors in title of the parties and in which no date for redemption was specified, acknowledgments of the mortgagor's right had been made by the widow and daughter of a former mortgagee, a predecessor in title of the respondents, which, the appellant contended, extended the period of limitation. *Held*, that the law of limitation applicable to the case was not Act XIV of 1859, the law in force at the date of the acknowledgments, but Act XV of 1877, which was in force at the time of the institution of the suit. Under Art. 148 of Sch. II to that Act the period of limitation prescribed for a suit to redeem a mortgage was 60 years from the time when the right to redeem accrued, and by s. 19 an acknowledgment to be effective must be "signed by the party against whom such right is claimed or by some person through whom he claims title." *Held*, that the respondents derived title through the last male owner, and not through his widow and daughter, who were therefore not competent under s. 19 to make an acknowledgment of the right of redemption so as to bind any interests except their own. To hold otherwise would be to extend the power of a Hindu female in possession of a limited interest to bind the estate to an extent which was not sanctioned by authority. An acknowledgment of liability only extends the period of limitation within which the suit must be brought, and does not confer title, and, with reference to s. 2 of Act XV of 1877, was not a "thing done" within the meaning of s. 6 of the General Clauses Consolidation Act (I of 1858). There was nothing in Art. 148 of Sch. II of Act XV of 1877 to justify a holding that by reason of the fusion of the interests of the mortgagor and mortgagee (which, it was alleged, took place between the years 1883 and 1898) the period of limitation, which began to run on the 3rd of January, 1842, was suspended, which would be deciding contrary to s. 9 of the Act; this suit not being one to which the proviso to that section applied. *Burrell v. Earl of Egremond, 7 Beav. 203*, distinguished. The present suit was not barred as *res judicata* by a former suit in 1904. With regard to contentions raised on this

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appeal which had not been raised before at any stage of the case, and consequently had not been considered by any of the Courts below, nor were even suggested in the reasons in the case of the appellant to England, their Lordships adhered to the established practice of the Board not to allow new cases to be made for the first time on appeal to His Majesty in Council. *SORT RAM v. KANTHAIYA LAL* (1913). I. L. R. 35 All. 227

s. 20—*Payment of interest on behalf of minor by manager of a joint Hindu family, effect of—* "Duly authorised Agent." A payment of interest by the manager of a joint Hindu family consisting of himself and his minor brothers, is a payment by the "duly authorised agent" of the minors within the meaning of s. 20 of the Limitation Act, 1877. *SARADA CHARAN CHAKRAVARTI v. DURGARAM DE SINGHA* (1910). I. L. R. 37 Cal. 461

s. 22—

See MORTGAGE. I. L. R. 38 Cal. 342

See NEGOTIABLE INSTRUMENT.

I. L. R. 33 Mad 115

See PARTIES. I. L. R. 37 Cal. 229

I. L. R. 33 All. 272

Assignment of original plaintiff's rights—Addition of assignee as plaintiff— S. 22, inapplicable—*Jungle or forest lands in zamindari—Presumption of ownership of ludivaram in the zamindar—Onus of proving contrary, on ryots* The presumption, as regards waste land, jungle or forest land in a zamindari, is that the zamindar is the owner not only of the melicaram but also of the ludivaram and the onus is on the ryots to show that the ludivaram right is vested in them. S. 22 of the Limitation Act (XV of 1877) does not apply to a case where a plaintiff is added in the course of a suit, in consequence of assignment of rights from the original plaintiff, but is confined to cases where the new plaintiff is added or substituted in his own right so that he may himself be considered to be instituting a suit to enable him to litigate a right for himself independently of the rights of the original plaintiff. *ARUNACHELLA AMBALAM v. ORR* (1914). I. L. R. 40 Mad. 722

ss 22, 28—*Civil Procedure Code (Act XIV of 1882), s. 31—Civil Procedure Code (Act V of 1908) O 1, r 9—Lands attached to vatan—Joint owners—Lease—Lease good till the death of the surviving joint owner—Gordon Settlement of 1864—Suit by representatives of one joint owner to recover possession—Representatives of the other joint owner joined as co-defendants with the representatives of the lessee—Plaintiff's claim allowed to the extent of their share—Appeal by plaintiffs and co-defendants claiming their share—Limitation—Treatment of co-defendants as co-plaintiffs—Amendment of plaint and decree. Certain lands attached to a vatan belonged jointly to two brothers V and D. In the year 1872 the lands were let by V under a perpetual lease which was attested by D. D predeceased V. In the year 1905 within twelve years from the death of V, his representatives brought a suit for the recovery of the lands let by V. They sought to recover the entire lands on the ground of eldership. The suit was brought against defendants 1a, 1b and 1c as the heirs of the*

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mortgagee of the lessee (the original 1st defendant), against defendants 2 and 3 as the heirs of the lessee and against defendants 4 and 5 as the heirs of D. The heirs of defendant 1 and defendants 2 and 3 defended the suit on the ground, *inter alia*, of limitation, the suit not having been brought within twelve years from the date of the lease. Defendants 4 and 5 did not contest the plaintiff's claim. The first Court allowed the plaintiff's claim to the extent of their share, namely, a moiety on the ground that their claim to that extent was not time barred. On appeal by the plaintiffs and defendants 4 and 5, the latter of whom in appeal claimed their share, namely, the other moiety, the Appellate Court awarded the other moiety to defendants 4 and 5. On second appeal by the heirs of the mortgagee—*Held*, affirming the decree, that the whole claim was within time. A Vatan-dar is entitled to alienate vatan lands for the term of his natural life and his children although not separate in interest from him have no right to object to such alienation until after his death. Where a lease of vatan property is effected by one joint owner with the consent of the other joint owner the time for the recovery of the vatan property from the lessee runs from the date of the death of the survivor of the joint lessors. Defendants 1 and 5 having sought to recover in appeal their share which they had not asked for in the first Court. *Held*, allowing their claim, that they being parties to the suit instituted within the twelve years during which their right to a share in the vatan property could be effectually determined, the Court must deal with the matter in controversy so far as regards the rights and interests of the parties actually brought before it by the institution of the suit. A party transferred to the side of the plaintiff from the side of the defendant is not a new plaintiff to whom the provisions of s. 22 of the Limitation Act (XV of 1877) apply. *Nagendrabala Debba v. Tarapada Acharjee*, I. L. R. 35 Cal. 1066, concurred in. *Plaint and decree of the lower Appellate Court amended by entering defendants 4 and 5 as co-plaintiffs*. *NARSINGH v. VAMAN VENKATRAO* (1909). I. L. R. 34 Bom. 91

s. 23, Sch. II, Parts 36, 115, 116—*Transfer of Property Act, ss 76, 92—Mortgagor's right to compensation for property not delivered to him is based on a continuing obligation and time does not run till redemption—Time runs under Art. 36 of Limitation Act from date of tort and not from date of knowledge* Under s. 92 of the Transfer of Property Act, the mortgagor on paying the mortgage debt is entitled to be put in possession of the mortgaged properties and the obligation to do so is a continuing obligation on the mortgagee which cannot cease so long as the right of redemption is not barred. The right of the mortgagor under s. 76 of the Transfer of Property Act to have accounts taken and to debit the mortgagee with the loss caused to the mortgaged property, is cumulative and does not take away the remedy under s. 92 of the Act. Where the mortgagee in possession who is bound by the terms of the mortgage deed to pay the Government revenue due on the land neglects to do so and the mortgaged land is sold, a suit for compensation by the mortgagor, brought more than six years after such sale and less than six years from the date of the decree in the redemption suit brought by the

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— s. 23, Sch. II, Parts 38, 115 118

—*contd*

mortgagor, is not barred under Arts 115 and 118 of the Limitation Act read with a 23 of the Act. The express covenant in the mortgage deed by the mortgagee to pay the Government revenue only states in words the liability of the mortgagee under s. 78 of the Act and does not curtail the general obligation of the mortgagee under the Act. In suits for compensation for tort to immovable property, the period of limitation prescribed in Art 36 of Schedule II of the Limitation Act runs from the date of the tort and not from the time when the plaintiff has knowledge of such tortious Act. SIVACHIDAMBARA MUDALIAR v KAMATCHI AMMAL (1909) . . . I L R. 33 Mad 71

— s. 26—

See FISABERY I L R. 39 Calo. 53

— s. 28, Sch. II, Arts 124, 144—

See RELIGIOUS FOUNDATION

I L R. 35 Mad. 92

— Sch. II, Arts. 2, 61, 62, 120—
Limitation—*Suit to recover from a Municipal Board money alleged to have been illegally levied as octroi duty—Municipal Board's powers of taxation.* A Municipal Board, in disregard of certain lawful orders of the Government of India, levied upon a Company trading within the municipal limits certain sums by way of octroi duty over and above what they were legally entitled to levy. *Held*, on suit by the Company to recover from the Board the sums so levied, that (i) the suit would lie and (ii) that the suit was one for money had and received to the use of the defendant within the meaning of Art. 62 of the second Schedule to the Indian Limitation Act, 1877 *Morgan v Palmer, 2 B & C 729 20 R R 537, and Neate v Harding, 6 Exch 349 86 R R 323* referred to. *Seth Karimji v Sordar Karpal Singh, Punj Rec. 1886, 283*, dissented from *RAJPUTANA MALWA RAILWAY CO-OPERATIVE STORES, LD v THE AJMER MUNICIPAL BOARD (1910)*

I L R. 32 All 491

— Sch. II, Art. 11—*Civil Procedure Code, Act XIV of 1882, ss 278, 281, 283—Art 11 of the Limitation Act not applicable where judgment debtor no party to proceedings under s. 278 of the Civil Procedure Code.* Where, in a claim proceeding under s. 278 of the Civil Procedure Code the judgment-debtor has not appeared and there has been no adjudication between him and the claimant, the period of limitation prescribed by Art. 11 of Sch. II of the Limitation Act will not apply to a suit brought by the defeated claimant to establish his right against the judgment debtor *SADAYA PILLAI v AMURTHACHARY (1910)*

I L R. 34 Mad. 533

— Sch. II, Art. 12—

See MUTT, HEAD OF

I L R. 38 Mad. 358

— Sch. II, Art. 14—*Order—Suit to set aside order—Collector—Order ultra vires—Land Revenue Code (Bom. Act V of 1879), s. 37.* Art. 14 of the Second Schedule of the Indian Limitation Act only applies to orders passed by a Government Officer "in his official capacity." The article does not apply to orders which are ultra vires of the officer passing them. When a Collector passes an order, under the provisions of s. 37 Revenue Code (Bom. Act V of 1879)

LIMITATION ACT (XV OF 1877)—*contd*— Sch. II, Art. 14—*contd*

with reference to land which is *pro rata* the property of an individual who has been in peaceful possession thereof and not of the Government, he is not dealing with that land in his official capacity, but is acting *ultra vires* *MAIRAJEPPA v. SECRETARY OF STATE FOR INDIA (1911)*

I L R. 38 Bom. 325

— Sch. II, Art. 35—

See HUSBAND AND WIFE.

I L R. 37 Bom. 393

— Restitution of conjugal rights, suit for—*Where, after demand and refusal differences are made up, time will not run until there is a fresh demand and refusal—Agreement between husband and wife, providing for future separation how far valid under Hindu and English law—The Madras Civil Courts Act, III of 1873, s. 16.* Where after demand by the husband and refusal by the wife to return to cohabitation, the parties make up their differences limitation will not run under Art. 35 of Sch. II of the Limitation Act of 1877 until there is a fresh demand and refusal. *A*, a Hindu Brahmin, after refusal by his wife *B* to return, brought a suit for restitution of conjugal rights in 1903. The suit terminated in a compromise between *A* and *B* in July 1904, by which it was agreed that *B* should return and live with *A* and that if at any time thereafter she should desire to live apart from *A*, she was to be paid Rs. 350 by *A*. *B* never returned to live with *A*, who on 6th July 1907, brought a suit for restitution alleging a demand and refusal in February 1907. *Held*, that the suit was not barred under Art. 35 of Sch. II of the Limitation Act and that the demand and refusal prior to 1903 did not furnish the starting point for limitation—*Held*, also, that the agreement between *A* and *B* in July 1904 providing for a future separation was invalid. It was forbidden by the Hindu Law, which ought, under s. 16 of Madras Act III of 1873 to be applied in determining the marital obligations between the parties *Tekait Mon Mohsin Jemadai v Banarsi Kumar Singh, I L R. 28 Calo 751*, referred to. Such agreement must also be considered as opposed to public policy and unenforceable. *Meharally v. Sakerkhanooobai, 7 Bom L R 602* referred to. Even under the English law, the agreement, providing for a future separation was invalid and would not operate as a bar to a suit for restitution of conjugal rights. *KRISHNA AITAR v BALAMMAL (1910)*

I L R. 34 Mad. 392

— Sch. II, Arts. 36, 115 and 120—*Contract to sell another's goods without authority, breach of—Caveat of action only in contract and not in tort as on misrepresentation—Contract Act (IX of 1872), s. 235.* A suit against a person for breach of contract to sell to the plaintiff certain goods of another on the implied representation that he had authority from his principal to sell them, when in fact he had done, is not one arising in tort or independent of contract but one arising out of and incidental to a contract and is governed by Art. 115 of the Limitation Act (XV of 1877) and not by Art. 36 or 120. S. 235 of the Contract Act, discussed *VATHAYAN v AVITHA (1913)*

I L R. 38 Mad. 275

— Sch. II, Arts. 39, 109—*Art 109 not applicable where profits not received by defendant—Claim for mere profits when plaintiff kept out of*

LIMITATION ACT (XV OF 1877)—*contd.*—Sch. II, Arts. 39, 109—*contd.*

possession is a suit for damages and falls within Art. 39—Judgment for possession, effect of. A suit for mesne profits by a plaintiff who had been kept out of possession by the defendant, does not, for purposes of limitation, fall within Art. 109 of Sch. II of the Limitation Act, when no profits have been actually received by defendant. Such a suit is one for damages for trespass on immovable property and falls under Art. 39 of Sch. II. *Albas v. Pasukh-ud-Din*, 24 Calc. 463, not followed. A judgment for possession against a defendant must be deemed to decide that the defendant was in possession at least at the date of judgment. *Ramasani Reddi v. Auppi Lakshmi Ammal* (1900).

I. L. R. 34 Mad. 502

—Sch. II, Arts. 44, 91—

See EXECUTOR, DE SON TORT.

I. L. R. 36 Mad. 575

See MAHOMEDAN LAW—ALIMINATION

I. L. R. 34 All. 213

—Sch. II, Arts. 48, 49—*Illegal distraint and consequent removal and misappropriation of crops—Suit for damages.* Where in execution of an illegal distraint, the defendant cut the crop standing on plaintiff's land and removed the same: *Held*, that a suit by the plaintiff for damages in respect of these acts was a suit in respect of "specific moveable property" within one or other of the two Arts. 48 and 49 of Sch. II of Act XV of 1877. *Hari Charan v. Hari Kar*, 9 C. W. N. 367; I. L. R. 32 Calc. 469, distinguished. *Sripati Sarkar v. Hari Kar*, 12 C. W. N. 1090, reversed. *Jadu Nath Dandapat v. Hari Kar* (1913).

17 C. W. N. 308

—Sch. II, Art. 49—

See LIMITATION (8).

I. L. R. 33 Calc. 284

—Sch. II, Arts. 49, 120, 145—

See LIMITATION I. L. R. 38 Calc. 284

—Sch. II, Arts. 49, 145—*Where depository refuses on demand to return thing deposited, Art. 145 and not Art. 49 applies.* Where moveable property is deposited and the depository on demand by the depositor refuses to return the thing deposited, the period of limitation applicable to a suit to recover such property is that provided in Art. 145 and not that in Art. 49 of the Limitation Act. The fact that the possession after demand and refusal is wrongful does not make Art. 49 applicable. *Obiter*: Where a thing is deposited for safe custody, the depositor has the right to demand the return of the thing at any time, although the deposit might have been for a term. *Gangenni Kondiah v. Gottipati Pedda Kondappa Naidu* (1909).

I. L. R. 33 Mad. 56

—Sch. II, Arts. 61, 83, 116, 120—

Contract Act, IX of 1872, ss. 70, 222—Suit by agent against principal to recover moneys spent by him for account of principal. A suit by an agent against principal to recover moneys spent by him for account of principal under Art. 61 of Sch. II of the Limitation Act and not under Art. 116 or 120. The duty of the principal under s. 222 of the Contract Act to indemnify the agent is an obligation imposed by law and is attached to the relation of principal and agent constituted by act of parties. Where a registered contract of agency does not provide for such indemnity, such obligation cannot be treated as a term or part of such contract and a suit by

LIMITATION ACT (XV OF 1877)—*contd.*

—Sch. II, Arts. 61, 83, 116, 120—

—*contd.*

the agent for recovering moneys spent by him on account of his principal will not for purposes of limitation fall within Art. 116 of Sch. II of the Indian Limitation Act. Art. 83 of Limitation Act will not apply; and even if it did, limitation will begin to run from the date of such payment and not from the termination of the agency. The fact that the agent has under s. 217 a right of retainer out of sums received on account of his principal and a right of lien under s. 222 will not deprive the right of action until the termination of the agency. The right of the agent to recover is conferred by s. 70 of the Contract Act and there is nothing to prevent his making his claim immediately after he expended his own moneys. The article applicable to such cases is Art. 61 of Sch. II of the Limitation Act. That article is not confined to cases where the defendant is under a legal liability to make the payment but is also applicable to cases falling under s. 70 of the Contract Act. *Kandawany Pillai v. Avayambal* (1910).

I. L. R. 34 Mad. 167

—Sch. II, Arts. 62, 97—

See LIMITATION I. L. R. 46 Calc. 670

—Sch. II, Art. 85—*Limitation—"Current mutual account"* *Held*, that a "mutual" account within the meaning of Art. 85 of the second schedule to the Indian Limitation Act, 1877, is an account of dealings between two parties which are such as to create independent obligations in favour of one party against the other. *Ganesh v. Gyanu* I. L. R. 22 Bom. 606, and *Ram Pershad v. Harbars Singh*, 5 C. L. J. 158, followed. *Bhawan Singh v. Tika Ram*, All. Weekly Notes (1896), 186, referred to. *Chittar Mal v. Binari Lal* (1909).

I. L. R. 32 All. 11

Mutual account, test of. Where the course of dealing between A and B was that A should finance B and that B should keep II secured in respect of such advances by consignments of coffee of a value equal to his indebtedness, the account between A and B though current and open is not "mutual" within the meaning of Art. 85 of Sch. II of the Limitation Act. Although the balance may shift from one side to the other, such shifting balance is not conclusive as a test of mutuality. Payments made on account by one party and credited by the other whether in money or goods do not render the account mutual. There must be independent obligations on both sides, to make the account mutual. *Hirada Basappa v. Gadugi Muddappa*, 6 Mad. H. C. R. 162, referred to. *Sivvi Gowda v. Fernandes* (1910).

I. L. R. 34 Mad. 513

—Sch. II, Art. 89, s. 8—

See ACCOUNTS, SUIT FOR.

I. L. R. 44 Calc. 1

—Sch. II, Arts. 89, 115—*Suit for accounts against collecting agent—An express stipulation to account yearly.* In the absence of an express contract that account should be rendered at the end of each year, a suit by a landlord for accounts against his collecting agent, is governed by Art. 89 of Sch. II of the Limitation Act (XV of 1877). *Mats Lai Dose v. Amin Chand Chatterjee*, 1 C. L. J. 211, distinguished. *Jogendra Nath v. Deb Nath*, 8 C. W. N. 113, and *Shri Chandra*

LIMITATION ACT (XV OF 1877)—*contd.*Sch. II, Arts. 89, 115—*contd.*

v. Chandra Varasi, I L R 32 Cal. 719, followed.
DEBENDRA NATH GHOSH v. SHRIKISH ESHA HUG
MISTRY (1908) 14 C W N 121

Suit against gomasta for account—Hypothecation of immovable property to secure agent's liability—Limitation—Registered contract—Disputation to furnish periodical accounts. Ordinarily speaking, a suit by a principal against his agent for an account is governed by Art. 89 of the Limitation Act (XV of 1877) and the period is three years from either the demand for and refusal of such account or the termination of the agency. Where, however, there is a definite contract to account at the end of each year the appropriate Art. would be 115 as the contract would be broken by the failure of the agent to account at the end of each year. In either case if the contract be registered, Art. 116 applies and the period is 6 years. *Mah Lal Bose v. Amin Chand Chatterpadiy I C L J 211*, relied on. The fact that the agent had executed a *hukumat* whereby he had hypothecated certain immovable properties to secure his liability would not alter the nature of the suit so as to make Art. 132 of same Schedule applicable. *JOGESH CHANDRA v. BETODE LAL ROY CHOWDHURY (1909) 14 C W N 122*

BUT SEE PRINCIPAL AND AGENT

I L R. 43 Cal. 248

Sch. II, Art. 91—Undue influence—Lease, suit to set aside, on the ground of—Applicability of the Article—Suit for possession—Whether setting aside lease by decree of Court necessary—Revocation of lease by the plaintiff, if sufficient—Suit for setting aside lease, if barred, suit for possession also barred—Trusts Act (II of 1928), ss. 86, 89, 90, 91 and 96—Transfer of Property Act (IV of 1882), s. 126—Contract Act (IX of 1872) ss. 64 and 66—Custom of inalienability in a zamindars, onus of proof as to—Evidence, nature of. Where the plaintiff sued in 1904 to recover possession of certain lands which had been leased by his deceased father under two registered lease-deeds dated 5th November 1892 and 2nd June 1893, respectively to the deceased father of the defendants, on the ground that the leases were obtained by undue influence exercised by the father of the defendants on the plaintiff's father, and the father of the defendants had died in 1899: *Held*, that the suit was barred by limitation under Art. 91 of the Limitation Act (XV of 1877). A transfer which is voidable and which can be effected only by a registered instrument can be avoided only by a formal re-transfer or by a decree of Court. *Jasbir Kumar v. Ajai Singh, I L R 15 Cal. 58* explained and applied. S. 84 of the Indian Trusts Act, even if it were applicable to the case, is not available to the plaintiff because there was no allegation in the plaint that a notice of rescission was given to the defendants or their father before the suit, and the suit itself can operate as a notice to the defendants only when a copy of the plaint was served on them after the suit was duly instituted. The defendants therefore were not trustees as the date of the suit, and the right to immediate possession had not then vested in the plaintiff by virtue of the said section. ss. 86 and 89 of the Indian Trusts Act are not applicable because s. 96 of the said Act will operate to prevent their

LIMITATION ACT (XV OF 1877)—*contd.*Sch. II, Art. 91—*contd.*

application as it enacts that no obligations under Chapter IX of the Trusts Act (which contains ss. 86 and 89) can be created in evasion of the provisions of any law. The onus of proving inalienability in the case of a zamindar lies on the person who alleges it. *Sundaram v. Siammal, I L R 16 Mad 311*, dissented from. A perpetual lease, reserving no rent to the Zamindar except a sum which was payable wholly to the Government towards the revenue due on the leased lands, is really an absolute conveyance of the property. The case law on the subjects reviewed. *RAJA RAJESWARA DONAI v. ARUNACHALLAN CHETTIAR (1913) I L R 38 Mad 321*

Sch. II, Arts. 91, 141—Limitation—Suit to recover property sold by guardian during minority of plaintiff—Cancellation of sale deed ancillary—Decree for possession conditional upon restoring such portion of the consideration as was for the minor's benefit. *Held*, that in the case of a suit to set aside an alienation of the plaintiff's property made during his minority by his guardian, the limitation applicable is that prescribed by Art. 141 of the second Schedule to the Indian Limitation Act, 1877. *UNAI v. Kanchamma, I L R 14 Mad. 26* followed. *Abdul Rahman v. Sukhdayal Singh, I L R 23 All 30* *Jhannam Kunwar v. Tulshi, I L R 25 All 435* and *Ram Das Kunwar v. Abu Jafar, I L R 27 All 491* referred to. When, however, such a sale is in part for the benefit of the plaintiff, he is in equity liable to make good to the purchaser (i.e. portion of the consideration by which he benefited and he would be entitled to recover the property only on condition of his paying to the purchaser that portion of the consideration. *Gulab Singh v. Baldeo Singh, I L R 25 All 330* referred to. *BACHCHAN SINGH v. KANTA PRASAD (1910) I L R 32 All. 392*

Sch. II, Art. 95—

SEE PRINCIPAL AND AGENT

I L R. 37 Cal. 81

Sch. II, Arts. 95, 141—

SEE HINDU LAW—REVERSIONER.

I L R 45 Cal. 390

Sch. II, Art. 98—

SEE HINDU LAW—DEBTS

I L R. 33 Mad. 308

Sch. II, Art. 104—Muhammadian law—Dower—Wife put into possession of husband's property in his lifetime and subsequently dispossessed—Suit by her heir for balance of dower debt—Limitation. *Held*, that Art. 104 of Sch. II of the Indian Limitation Act, 1877 (Art. 104, Sch. I, Act IX of 1908) does not apply to a suit by one of the heirs of a Muhammadian widow, who, having been put into possession of her husband's property during his life time in lieu of her dower is dispossessed thereof subsequently by his death. *HANIF-ULLAH KHAN v. NAJJO (1911)*

I L R. 33 All. 568

Sch. II, Art. 106—Suit for partnership account—Presumption of dissolution of partnership from facts of case—Cessation of annual accounts rendered yearly for many years and rendering of final account showing division of capital and reserve. The question in this appeal which arose out of a suit brought in 1902 for a partnership account and to recover the plaintiff's share in the

LIMITATION ACT (XV OF 1877)—*contd*Sch. II, Art. 106—*contd*

Properties of a business carried on by them and the defendants, was whether the suit was barred by limitation, the defendants contending that there had been a dissolution of the partnership in 1891 which the plaintiffs denied: *Held* (affirming the decision of the High Court), that when annual accounts of the partnership business which had been rendered year by year from 1868 to 1891, ceased in the latter year and, on 12th April 1891, a final account showing the division of both capital and revenue was made out, the defendants afterwards carrying on the business without any interference from the plaintiffs, the presumption was in favour of the dissolution of the partnership as at the definite date of the year when the account was thus closed. And their Lordships were of opinion that these facts taken with the other acts and conduct of the parties, and the whole circumstances of the case which greatly strengthened the presumption made the inference in favour of the dissolution having occurred at the above date substantially conclusive. The suit, therefore, not having been brought within three years from that date was barred by Art. 106 of Sch. II of the Limitation Act (XV of 1877). JOOPOOBY SABAYYA v. LAKSHMANASWAMY (1913)

I. L. R. 36 Mad. [P. C.] 185

Sch. II, Art. 109—*Suit for meane profits of putni taluk sold under Reg. VIII of 1819* Art. 109 of the Limitation Act (XV of 1877) which prescribes a three years' rule of limitation is applicable to a suit for meane profits where possession of the property in suit, viz., a putni taluk, was obtained by the defendant under a sale held under Reg. VIII of 1819, which was subsequently set aside. SABAY RANJAN CHoudhury v. FRENCHARD CHoudhury (1917)

22 C. W. N. 263

Sch. II, Art. 110—*When arrears become due—Limitation runs under Art 110 only from date when rent is ascertained by proceedings under Rent Recovery Act.* In the case of rents recoverable under the provisions of the Rent Recovery Act, such rents become ascertained only when they have been ascertained by means of the procedure provided by the Act. In a suit brought by the tenants against their landlord for a declaration that the latter was not entitled to vary the terms of previous pattaas, judgment in favour of the tenants was given by the High Court in August 1902. Prior to that date the landlord had instituted summary suits under the Rent Recovery Act against the tenants to enforce acceptance of pattaas by them in respect of the same lands and the decision in those cases was given by the Sub-Collector in May 1904. The landlord tendered pattaas as directed in the summary suits and brought suits for rent within three years from the date of the summary decisions but more than three years from the date of the High Court judgment.—*Held*, in the circumstances, that the rent was ascertained and the arrears became due within the meaning of Art. 110 of Sch. II of the Limitation Act on the date of the judgment in the summary suits and not on the date of the Act on judgment of the High Court. *Arumachalam Chelliar v. Kader Eswaran*, I. L. R. 29 Mad. 555, distinguished. *Pargayya Appa Rao v. Balas Srinivasulu*, I. L. R. 27 Mad. 143, reversed. BYED GULAM GHOSIA SRA SAHIB v. SAHIB-UD-DIN PILLAI (1910)

I. L. R. 34 Mad. 428

LIMITATION ACT (XV OF 1877)—*contd*

Sch. II, Arts. 110, 116—

See LIMITATION I. L. R. 44 Calc. 759

Suit to recover rent on a registered lease—Limitation. *Held*, that a suit for the recovery of rent based upon a registered lease, is governed as to limitation, not by Art. 116, but by Art. 110, of the Limitation Act, 1877. *Ram Narain v. Kamla Singh*, I. L. R. 26 All. 138, followed. JAGGI LAL v. SRI RAM (1912)

I. L. R. 34 All. 464

Sch. II, Arts. 113, 144—

See CHAKIDARI CHAKARAY LANDS.

I. L. R. 46 Calc. 173

Sch. II, Art. 116—

See CONTRACT I. L. R. 34 All. 429

See LEASE I. L. R. 40 Mad. 910

Sch. II, Art. 118—

See CUSTOMS I. L. R. 39 Calc. 418

Sch. II, Art. 120—

See CIVIL PROCEDURE CODE 1882, s. 103.

I. L. R. 33 Mad. 31

See LIMITATION (8)

I. L. R. 38 Calc. 284

See LIMITATION (11)

I. L. R. 40 Calc. 187

See MAHOMEDAN LAW—ENDOWMENT

I. L. R. 37 Calc. 263

Vatan—Suit by reversioner for declaration as nearest heir—Widow of the last male holder—Vested right. The right to sue for a declaration of heirship to a vatan does not accrue until the death of the widow of the last male holder of the vatan, the widow having a vested interest in it as the nearest heir. *RAVZI VALAD MAHADU v. SAKUZI VALAD KALOJI* (1909)

I. L. R. 34 Bom. 321

Limitation Act (XV of 1877), Sch. II, Arts. 120, 123—Suit by widow of Mahomedan for share against son who got order for grant of letters of administration but did not take out same—“Representative”—Time from which limitation runs. Where on the death of a deceased Mahomedan, a contest amongst his heirs as to who should take out letters of administration was decided in favour of the defendant No. 1, but he did not furnish security and the order for grant of letters of administration was thus never completed. *Held*, that, if Art. 120 of Sch. II of the Limitation Act applied to a suit by one of the other heirs to recover her share from the defendant No. 1 who was in possession, limitation ran at the earliest from the date of the decision of the Appellate Court affirming his right to take out letters of administration. *Quere* The other members of the family of the deceased having also been joined as defendants, whether defendant No. 1 could be allowed to obtain for himself any advantage by urging that he never in fact became the legal representative of the deceased within Art. 123 of Sch. II of the Act, not having actually taken out letters of administration. *FATMA ALI KHAN v. SITARA BACHAN* (1910) 13 C. W. N. 10

Attachment of wrong man's property—No suit filed—Subsequent sale of property under attachment—Fresh cause of action.

LIMITATION ACT (XV OF 1877)—*contd*Sch II, Art. 120—*contd*

from a sale of sale—Art 120 applicable—Absence of suit questioning attachment no bar to subsequent suit on sale. Though attachment of a person's land as if it belonged to another, gives the owner a cause of action on which he could have brought a suit, but did not yet the sale of the same at a later date is a fresh and greater invasion of his right and gives him a fresh cause of action on which he could sue within six years from the date of sale under Art. 120 of the Limitation Act. Though he might have sued after the attachment he was not bound to sue. The sale though held in pursuance of the attachment was not a necessary consequence of it. *Robert Skinner v Shanker Lal* I L R 31 All 10 (note) followed. *PER CURIAM*. The attachment gives the judgment-creditor certain rights in execution, but the title to the property continues in the owner notwithstanding the attachment and it so continues even if the owner's object on to the attachment be disallowed. *Varasimha Rao v Gangaram*, 18 Mad. L J 590 referred to. *ANANTHARAO v NARAYANARAO* (1913) I L R 36 Mad. 383

Suit by an executor for reimbursement, governed by—Rights of bono fide de facto trustees for bond fide expenses. A trustee of a public trust has a first charge on the trust properties for the purpose of reimbursing himself advances properly made for the trust and Art. 120 and not Art. 132 of the Limitation Act (XV of 1877) is the one applicable to a suit for recovery of monies so spent, and the right to sue does not accrue before the date on which he judicially declared to be no longer a lawful trustee (though it may well be that it does not accrue till he is dispossessed of the trust estate in pursuance of the judicial declaration). *Pearry Mohun Mukerjee v Varendra Nath Mukerjee*, I L R 37 Cal. 229, followed. The expenses of a suit in which a person posing himself to be a trustee unsuccessfully resists another's right to be the trustee cannot be allowed as a proper charge on the trust property. *Obiter*. The time occupied in defending such a suit as the rightful trustee when no counter claim is made therein for reimbursement of the expenses made by him but only a claim to remain in possession on for such expenses cannot be deducted in his favour under a 14 of the Limitation Act. *Maharajah Jagatinder Bhawanee v Das Dayal Chatterjee*, I W R 309 followed. *ABRAHAM SAULIB v SORAN BIVI SAINA AMMAL* (1913) I L R 38 Mad 260

Sch II, Arts 120, 127 144—*Period of Limitation applicable to suit by Muhammadan to recover his share of his deceased wife's estate*. Art 123 of Sch. II of the Limitation Act of 1877 applies only when the suit is for a share of an estate which it is the legal duty of the defendant to distribute. *Umairatun Ali Khan v Mubayat Ali Khan* I L R 29 All 169 followed. Where a Muhammadan dies intestate his estate at once vests in his heirs as tenants in common and there is no one charged by law with its distribution. In a suit by one of the heirs to recover his share, Art 123 of the Limitation Act does not apply. *Azmi v Ayskhan*, I L R 15 Mad 69, disavowed from. Art. 144 will apply in the case of immovables and Art 120 when the property sought to be recovered is moveable. *Khadura Hajar Bai v R. Puthen Vettill Aiyasa Umman* (1910) I L R 34 Mad. 511

LIMITATION ACT (XV OF 1877)—*contd*

Sch II, Arts 120, 125—*Applicability of—Suit by one adopted later to set aside his maternal grandmother's alienation after her death—Attestation and ratification by next presumptive reversioners to a female's alienation, effect of*. A Hindu widow sold the suit properties in 1881 and 1889 and died in 1899. Her daughter adopted the plaintiff in 1903 and he sued in 1907 to set aside the sales during the life-time of his adoptive mother. *Held* that (a) the suit was not barred, (b) Art. 120 and not 125 of the Limitation Act was applicable and (c) the cause of action for the plaintiff to question sales arose only from the date of his adoption when alone he became a reversioner. Of the two sales in this case, the first was assented to by the daughters and attested by the next male reversioner, the second was assented in by the daughters and in 1894 ratified by the then presumptive male reversioner. *Held*, that the plaintiff was estopped under the circumstances from questioning the sales as a reversioner. For the application of Art 125 of the Limitation Act, (a) the suit must be one brought during the life time of the alienating female and (b) the plaintiff must be the person entitled to the possession of the land if the female died at the date of the institution of the suit. *Chirundu Pannamma v Chirundu Perazh*, I L R 29 Mad 390, explained and distinguished. *Gajjala Veerayya v Gajjala Gangamma*, 1912, Mad W. N 912, *Alinaksh Chandra Mazumdar v Harinath Shah*, I L R 32 Cal 62 71, and *Gowinda Pulai v Thayammal*, I L R 23 Mad. 57, followed. *PER SADAIVA ATYAR J*. Consent to an alienation by the next reversioner and a ratification of past alienations stand on the same footing. Effect of attestation by a reversioner to a female alienation considered. *NARAYANA v RAMA* (1913) I L R 38 Mad. 396

Sch II, Arts. 120, 131—*Right of tenant to sue in respect of excess collections arises on every occasion when excess collection is made—Art. 120 and not Art. 131 of Sch. II of the Limitation Act applies to such suits*. A landlord had been collecting excess rents from his tenant from 1872. In respect of the excess collection made in October 1898 the tenant brought a suit in December 1909 for a declaration that the landlord was not entitled to collect such excess. *Held*, that the right to sue for such declaration arose on each occasion the excess was collected, that the period of limitation was six years from the date of collection under Art. 120 of Sch. II of the Limitation Act and that Art. 31 of the schedule did not apply to such suits. *SRIKANT MADHABUSHT AGHAMMA v GORISETTI NARAYANASWAMY NAIDU* (1909) I L R. 33 Mad. 17

Sch. II, Arts. 120, 132—
See HINDU LAW—MORTGAGE.

I L R. 42 Cal. 1068

Second mortgages for surplus proceeds after sale by first mortgagee—Sale proceeds wrongfully withdrawn from Court in execution of decree on later mortgage suit for money—Suit to enforce mortgage—Civil Procedure Code, 1882, ss 214 and 295 cl. (c). Certain immovable property was mortgaged on 21st May 1897 to the appellants and on 18th September 1897 the same property was mortgaged by the same mortgagor to the respondents (the mortgage money being repayable on the 18th November 1898), and again

LIMITATION ACT (XV OF 1877)—*contd.*Sch. II, Arts. 120, 132—*contd.*

on 19th July 1889 to the appellants. On 8th October 1890 the appellants, in a suit in which the respondents though made parties did not appear, obtained a decree on their mortgage of 21st May 1887 in execution of which the mortgaged property was sold; and after satisfying the decree the sale-proceeds were deposited in Court. On 14th January 1891 the appellants obtained a decree on their mortgage of 19th July 1889 in a suit to which they did not make the respondents parties, and in execution of that decree, without giving any notice to the respondents, they drew out of Court the surplus proceeds of the former sale, though they were aware of the respondents' mortgage of 19th September 1887, and of its priority to their own. In a suit brought on 17th November 1900 by the respondents against the appellants for the surplus sale-proceeds, it was contended that the suit was one for money governed by Art. 120 of Sch. II of the Limitation Act of 1877, and barred as not having been brought within 6 years from the 18th November 1888 when the money became due. *Held* (affirming the decision of a majority of a Bench of the High Court), that the suit was one "to enforce payment of money charged upon immoveable property" within the meaning of Art. 132 of Sch. II of the Act, and having been brought within 12 years from the date when the money became payable was not barred by limitation. The surplus sale-proceeds represented the security which the respondents had under their mortgage of 19th September 1887, and did not cease to represent that security by the fact of the appellants having wrongfully withdrawn the surplus sale-proceeds from the Court where they were deposited. Under the circumstances of the case *a. 295, cl. (c)* of the Civil Procedure Code, 1882, was not applicable. *BARHANDEO PRASAD v. TARA CHAND* (1913)

I. L. R. 41 Cal. 654

Sch. II, Arts. 120, 144—*Suit by Mahomedan for partition of immoveable property governed by Art. 144 and not 120* Where a Mahomedan sues for partition of moveables and immoveables, his claim as regards immoveables falls within Art. 144 and not 120 of Sch. II of the Limitation Act. *SYED NOORDEEN SAHIB v. SYED ISRAHIM SAHIB* (1910)

I. L. R. 34 Mad. 74

Sch. II, Art. 123—*Suit to recover legacy—Legacy not assented to by executor—Probate and Administration Act (V of 1881), s. 112—Mahomedan Law—Shiakh—Waf—Request for Gadi khum feast—Fattiah dinner—Valid bequest—Cy pres* Art. 123 of the Second Schedule of the Limitation Act, 1877, applies to a suit where the substantial claim is to recover a legacy, even though not assented to by the executor, and whether or not the suit involves the administration of the whole estate. A Shiakh Mahomedan directed his executors by his will to spend a portion of the income of his property upon the following charitable or religious objects:—(i) the Gadi khum feast at Mecca; (ii) the Gadi feast at Rehmanpura in Surat; and (iii) a Fattiah dinner on the testator's and his wife's account. The Gadi feasts were to celebrate the appointment of Ali as successor of the Prophet. *Held*, that the first two bequests were valid, but the validity of the third bequest was doubtful. *Kaleelulla Sahib v. Nur-uddeen Sahib*, I. L. R. 13 Mad. 201, *Zoolka Bibi v. Zyulfi Abedin*, I. L. R. 6 Bom. L. R. 1088, and

LIMITATION ACT (XV OF 1877)—*contd.*Sch. II, Art. 123—*contd.*

Biba Jan v. Kalb Husain, I. L. R. 31 All. 136, followed. Where the testator has indicated a general charitable intention in the bequest made by him and if these bequests fail, the Court can devote the property to religious or charitable purposes according to the cy pres doctrine. *SALEBAH ANDUL KADER v. BAI SARIABU* (1911)

I. L. R. 36 Bom. 111

Sch. II, Art. 124—

See *SHEBAIT* I. L. R. 39 Calc. 887See *LIMITATION* (25)

I. L. R. 42 Calc. 244

Sch. II, Art. 126—

See *HINDU LAW—JOINT FAMILY PROPERTY* . . . I. L. R. 38 All. 126Sch. II, Art. 127—*Joint property*

—*Exclusion of a co-parcener—Knowledge of exclusion—Decree by another excluded co-parcener for share by partition does not prevent time from running* Certain joint family property was in the possession of some of the co-parceners (defendants Nos. 1 to 3), who began to hold it adversely to the remaining co-parceners from 1890. In 1895, defendant No. 5, one of the excluded co-parceners, sued all the co-parceners to recover his share in the property by partition. His share, which was one sixth in the property, was decreed to him in 1903, and he recovered possession of it in due course. In 1907, another of the excluded co-parceners brought a suit to recover his share by partition of the property. He sought to bring his suit within time by alleging that the possession of defendants Nos. 1 to 3 became adverse only after 1898. The lower Courts held that the plaintiff was excluded to his knowledge from enjoyment of the property from 1890, and that his suit was barred under Art. 127 of Sch. II of the Limitation Act. On appeal—*Held*, by CHANDAVARKAR, J., that the decree of 1898 gave a sixth share to defendant No. 5, and left the remaining five-sixths untouched, the mutual relations of the defendants in the first suit with reference to their five-sixths having been left to continue as before, the property in their hands remained joint, and that the judgment and decree of 1898 did not disturb as between them the previous state of things and stop the limitation that had begun to run as against the plaintiff from 1890. *Held*, by BATCHELOR, J., concurring, that the finding of fact against the plaintiff that he was excluded to his knowledge from enjoyment of joint property by defendants Nos. 1 to 3 from 1890, was wholly independent of, and unaffected by, the decree of 1893 which only decided that the family and the property were joint and that the property was consequently partitionable. *BASAJI AKORA v. DATTU LAJMAN* (1912)

I. L. R. 37 Bom. 64

Sch. II, Arts. 127, 142—*A co-parcener in possession of joint lands on behalf of all co-parceners—Alienation by the co-parceners without knowledge of the rest—Adverse possession of his vendee* Certain lands belonging to the joint family of plaintiff and defendant No. 1 were in the possession of defendant No. 1 on behalf of the family. In 1880, he alienated them to defendant No. 2 but retained in possession on executing a rent note in favour of the vendee. The plaintiffs brought a suit in 1906 to recover by partition their

LIMITATION ACT (XV OF 1877)—*contd*Sch II, Arts. 127, 142—*contd*

share in the lands. The defendant No. 2 pleaded in defence his adverse possession of the lands from 1880. *Held* that the possession by defendant No. 1 before the alienation being for himself and his co-parceners and being thus of a fiduciary character, it could not begin to be adverse to the co-parceners in the absence of intimation conveyed by him to them that he intended to exclude them. *MALKAPPA V MUDKAPPA* (1912)

I L R 37 Bom 84

Sch II, Arts. 132, 147—

See LIMITATION I L R. 35 Mad. 191

Sch II, Arts. 131, 182—*Cash allowance—Tashi—Arrears of cash allowance, suit to recover*. The plaintiff the manager of the temple of Shri Laxmi Narayan Dev at Ilukkal sued to recover from the defendants the managers of the temple of Shree Madhukeshwar at Banawasi a sum of Rs. 90 as arrears of a cash allowance (*tashik*) which the former was entitled to receive from the property of the latter. The defendants admitted the title of the plaintiff to the allowance but pleaded limitation as to the arrears for two out of the six years. The lower Courts applied Art. 131 of the Limitation Act, 1877, and allowed the whole of the claim. On appeal, *Held*, that the claim was properly allowed. A cash allowance of the nature as in the present case is, according to Hindu law, *nubandha* or immovable property, where it is annually payable the right to payment gives to the person entitled a periodically recurring right as against the person liable to pay. The right to any amount which has become payable stands as to such person on the same footing as the aggregate of rights to amounts which are to become payable and which have become actually due. But where there are more than one person entitled to the payment as co-sharer and the payment is made to one of them by the person liable to pay, the co-sharer receiving the amount holds it, minus his share, on behalf of the rest as money had and received for their use, though as to him with reference to the aggregate of rights, it is *nubandha* or immovable property, in the nature of a periodically recurring right. The important question is who is the person sued and what is it that is sued for? If what is sued for is the establishment of a title to the right itself then Art. 131 applies, whether the defendant is the person originally liable to pay or is a co-sharer who has received payment from that person. If, on the other hand, what is sued for is the amount of arrears, which has become actually payable to the plaintiff, then there is a distinction between the person originally liable to pay and a co-sharer of the plaintiff, who has actually received payment from that person. Art. 131 applies in that case to the person originally liable to pay, and Art. 62 applies to the co-sharer who has received the payment. *SAKHARAM HARI V LAKSHIPRITA TIRTHA SWAMI* (1910) . I L R 34 Bom 349

Sch. II, Art. 133—

See MORTGAGE. I L R. 39 Calc 527

Sch. II, Arts. 132, 134, 148—

See MORTGAGE . 14 C. W N 439

Sch II, Arts. 132, 144—*Mortgage—**Third person redeeming the mortgage at mortgagor's*LIMITATION ACT (XV OF 1877)—*contd*Sch II, Arts. 132, 144—*contd*

decrees—Sale by mortgagor of his rights—Sale-deed unregistered—Sale deed could be looked at for evidence of payment of money—Suit by mortgagor to redeem ignoring sale—Lienor's rights—Adverse possession by lienor—Registration Act (11 of 1877), s. 17—Evidence Act (1 of 1872) s. 91. The plaintiff mortgaged certain property with possession with defendant No. 1 for Rs. 601 on the 4th April 1873. On the 25th November 1878 defendants Nos. 2 to 4 at the request of the plaintiff, paid off the mortgage to defendant No. 1, and for the sum so paid and for a further payment of Rs. 50, the plaintiff sold the property to defendants Nos. 2 to 4. The document as to the sale was not registered but ever since the purchase the defendants Nos. 2 to 4 were in possession as owners. In 1907, the plaintiff filed a suit to redeem the mortgage of 1873. The defendants Nos. 2 to 4 set up in reply the sale of 1878 and contended that the suit was barred by limitation. *Held*, that the sale-deed being unregistered could not be looked at for proving the sale, but it could be looked at as evidence of payment of money. *Mahadappa bin Danappa v Dori bin Bala*, (1875), P J 249, and *Waman Ramchandra v Dhondiba Krishnay*, I L R 4 Bom. 126, followed. *Held*, further, that the redemption having been made by the defendants for the plaintiff with his knowledge and consent, they became entitled to hold the property as lienors and the plaintiff could not recover it from them without paying the amount of Rs. 601. *Mahomed Shamsool v Shewkrum*, L R 2 I A 17, followed. *Held* further, that the defendant's lien was alive for twelve years after 1878, that is, up to the year 1890 (Art. 132 of the Limitation Act of 1877), that when that period expired, the lien was gone and their possession after that was without any right; and that their title by adverse possession was perfected in 1902. *Ramchandra Fashwant Sirpoldar v Sadaashibhai Sirpoldar*, I L R. 11 Bom. 422, explained. *Held*, therefore, that the plaintiff's suit was barred by limitation. *SANSHU BIN HANMANTA F NAMA BIN NARAYAN* (1911) . I L R. 35 Bom. 428

Sch. II, Art. 134—

See HINDU LAW—ENDOWMENT

I L R 38 Calc 526

Sch II, Arts. 134, 148—*Mortgage—Redemption by one mortgagor—Nature of possession—Subsequent sale under another mortgage decrees—Suit by another representative of mortgagor for redemption—Limitation G, in 1860, mortgaged certain property and died leaving a son, a daughter and a widow. The son obtained a decree for redemption of the whole, which was sold to M H, G M and A, who redeemed the mortgage. After the passing of this decree G's son and widow mortgaged certain shares in the villages affected by the original mortgage, and in 1891 these shares were sold in execution of a decree for sale and purchased by M H and the representatives of G M and A. *Held* on suit by the representative of G's daughter to redeem her share, that Art. 148 and not Art. 135 of the second Schedule to the Indian Limitation Act, 1877, applied and the suit was not time barred. *SATU UD DIX KHAN V. RATAN LAL* (1909)*

I L R. 32 All. 160

LIMITATION ACT (XV OF 1877)—*contd.*

Sch. II, Arts. 137, 142, 144—*Adverse possession*—"Defendant"—*Successors but independent trespassers* Plaintiffs purchased certain property at an execution sale on the 20th November 1891, the property being at the time of purchase in the possession of trespassers and formal possession was given to them on the 25th November 1892. In 1897 other persons, also trespassers, obtained possession of the property, against and not through the persons originally in possession. In 1908 the plaintiffs sued the second set of trespassers for possession. *Held*, that Art 144 of the second schedule to the Indian Limitation Act, 1877, applied and the suit was not time barred. *Ram Prasad Janna v Lakh Narain Pradhan*, 1 L R 12 Calc 197, followed. *RAM LAKHAN RAI v GAJADHAR RAI* (1910)

I L R. 33 All 224

Sch. II, Art. 139—

See GRANT . I. L. R. 37 Calc. 674

Lease of endowed land for a term by Mohunt—No rent paid for over 12 years after the expiry of lease—Successor of Mohunt, if may sue to recover possession. The Mohunt of a math granted a lease of land belonging to the math for a term which expired in 1880. It was found that no rent was ever paid since the expiration of the lease, more than 12 years after which the succeeding mohunt sued to recover the land from the successors of the lessee. *Held*, that the High Court was right in holding that the suit was barred under Art. 139 of Sch. II of the Limitation Act of 1877. *MOHUNT BHAGWAN RAMANUJ DAS v RAM KRISHNA BOSH*, [P C] 26 C W N. 722

Sch. II, Arts. 139, 144—*Suits aga not representatives of deceased tenant governed by Art 139 and not 144* A suit against the representatives of a tenant after the determination of the tenancy to recover the property leased is governed by Art. 139 and not by Art 144 of Sch. II of the Limitation Act. Such a suit would be barred against the representatives if it would be barred against the tenant if alive. *Vadapalli Narasimham v Dronanarayana Seetharama Murthy* 1 L R 31 Mad 163, 167 doubted. *SUBRAVETI RAMIAH v GUNDALA RAMANNA* (1909)

I L R. 33 Mad 260

Sch. II, Art. 141—*Hindu law—Suit by reversioner for possession—Adverse possession by widow of predeceased son of last wife owner—Limitation* A separated Hindu died leaving him surviving two widows and a daughter in law, the widow of his predeceased son. Upon the death of the survivor of the two widows the daughter in law took possession of the property and remained in possession thereof for more than twelve years, adversely to the reversioners. *Held*, on suit by the reversioners to recover possession, that their claim was time barred, their cause of action having commenced from the death of the survivor of the two widows of the last owner. *Sham Koer v Dab Koer*, L R 29 I A 132, referred to. *GAJADHAR PANDE v PARBATI* (1910)

I L R. 33 All 312

Sch. II, Arts. 142, 144—

See LIMITATION (39)

I. L. R. 44 Calc. 558

LIMITATION ACT (XV OF 1877)—*contd.*Sch. II, Arts. 142, 144—*contd.*

See MUTT, HEAD OF

I. L. R. 33 Mad 316

Suit to recover possession—Dispossession—Discontinuance of possession—Possession as an agent of minors—Decree by the minors on attaining majority against the agent for possession of the property—Decree not executed and barred by limitation—Agent wrongfully dispossessed by a third person—Money decree against the original owners—Decree holder seeking to attach property—Adverse possession—Civil Procedure Code (Act XV of 1882), s. 283 A died in 1879 leaving behind him two minor sons R and D and a mistress A. The latter looked after the minors and managed their property. When they arrived at the age of majority they found that A claimed the property in her own right. In 1891, R and D sued A for the possession of the lands and obtained a decree on the 30th of August 1892 which was confirmed on appeal on the 15th June 1894. This decree was sought to be executed on the 26th June 1897, but the application was dismissed as barred by limitation. A was then wrongfully deprived of the possession of the property by I, who sold it to B in 1898. B mortgaged the property to E in 1900. In the same year, the plaintiff obtained a money decree against R and D and in execution of it he had an attachment placed on the property, but the attachment was removed in 1904 at the instance of B and E. In 1905, the plaintiff brought a suit for a declaration that the property was liable to be attached and sold in execution of his decree against R and D. The defendants B and E contended that the suit was barred under Art. 142 of the Limitation Act, 1877, inasmuch as neither the plaintiff nor his predecessors in title R and D were in possession of the property within twelve years preceding the suit. *Held* that the suit having been brought by the plaintiff, under s. 283 of the Civil Procedure Code of 1882, to establish his right to attach and sell the property in dispute as that of his judgment debtors R and D in execution of his money decree all that he had to prove was that on the date of attachment the judgment debtors had a subsisting right to the property and that the suit must, therefore, be tried as if it were a suit for possession by the judgment-debtor. *Held* also that as A's possession must be deemed to have begun in 1879 as that of half or agent for the minors R and D and to have continued as such until after they had arrived at the age of majority, and as there had never been any dispossession by A of R and D while they had been in possession, in a suit against A her plea of limitation would be decided by the application, not of Art. 142, but of Art. 144 of the Limitation Act, 1877. *Morgan v Morgan*, 1 All 459, followed. *Taylor v Hyde*, Sm. L C Vol II (10th Edn), 644, 645, followed. *Lallubhai Bapubhai v Manikchand*, 1 L R 2 Bom. 338, at p. 413, followed, and *Dadoba v Krishna*, 1 L R 7 Bom 34, followed. *Held*, further that though the decree for possession, obtained by R and D against A had become incapable of execution by reason of their failure to apply to the Court for its execution within the period prescribed by the law of limitation, the right established by it remained and though that right could not be enforced as against A by execution through the Court, the decree holders could enter by ousting any trespasser, A included. *Bandu v. Daba*, I. L. R. 15 Bom 238, followed.

LIMITATION ACT (XV OF 1877)—*contd.*Sch. II, Arts. 142, 144—*contd.*

Held, therefore, that there having been no allegation of possession in B and D lost by dispossession or discontinuance of possession, but the case put forward having been a title in them established by their decree against A and a wrongful possession obtained from her after the decree by V under whom B and E claimed, the limitation applicable to the suit was that provided by Art. 144 not Art. 142 of the Indian Limitation Act (XV of 1877). *Fali, Abdulla v Bahay, Gungay, I L R 14 Bom 453*, followed, and *Gangayal Nagu Karal Mahira v Nago Dhaya Mahira, (1837) P J 242* followed. *VASTUJO ARMAHAM JOSHI v KAVATH BALKRISHNA THIRU (1910)*

I. L. R. 35 Bom. 79

Sole owner permitting another, under mistake to hold joint possession for more than 12 years—Suit to recover exclusive possession—Limitation—Consent—Act—quiescence—Estoppel—Mistake—Co-sharers, adverse possession as between—Unity of possession of tenants in common, consequences of Where A is the owner of an estate in which the disputed land is situated and A and B are joint owners in an adjoining estate, and the land in dispute has been held by A and B by mutual consent as part of their joint estate for a period of more than 12 years before suit in ignorance of their rights, limitation arises either by discontinuance of possession by A under Art. 142 or by adverse possession of B under Art. 144 of the Limitation Act. *Vasudeva v Magusu, I. L. R. 24 Mad. 337*, referred to. *Per JENNINGS, C. J.*—The mere fact of consent does not prevent possession being adverse. The test is whether the person who sets up adverse possession is able to show that he held for himself and if he did, the mere fact that there was acquiescence or consent on the part of the other person concerned would in circumstances like these make no difference. *Purshottam v. Sagay, I L R. 23 Bom 37*, referred to. *Per CHAPMAN, J.*—Art. 142 rather than Art. 144 of the Limitation Act applied to the case. *DWARAKA NATH CHOWDHURY v ATUL SHIB BAKER JEE (1913)*

Sch. II, Art. 144—

See HINDU LAW I. L. R. 34 Mad. 402

See LIMITATION I. L. R. 48 L. A. 197

I. L. R. 39 Mad. 617

See REGISTRATION ACT, 1877, ss. 17 AND

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I. L. R. 47 Cal. 238

Summary Cases—In-

effect in immovable property The right to levy summary costs, whether it originated in agreement or in unlawful exaction, is an interest in immovable property and is governed by twelve years' limitation under Art. 144 of the Limitation Act (XV of 1877). *RANKMALSINGH v MAHADEWANKAR (1911)*

I. L. R. 36 Bom 174

Adverse possession—

"Possession of the defendant," meaning of, if includes possession of—Defendant's lessee—Nature of adverse possession which can be set up—Effect of s. 3 The words "possession of the defendant" in Art. 144 cannot by reference to the definition in s. 3 be held to include the possession of another person, a co-defendant, still in possession under a different title. *Padayras v. Ram Rao, I. L. R. 13 Bom. 160*, distinguished. The adverse posses-

LIMITATION ACT (XV OF 1877)—*contd.*Sch. II, Art. 144—*contd.*

sion of a defendant must be of the same nature as that sought by the plaintiff and the defendant cannot set up his possession as a permanent lessee as adverse in a suit by the plaintiff for possession as proprietor. *Umrannessa v Md. Yar Khan, I L R 3 All. 24*, followed. Where the plaintiff brought a suit for possession of certain property purchased by him at an auction sale within 12 years from the date of sale, but after the expiry of 12 years brought the defendant appellant on the record on the ground that subsequent to the plaintiff's purchase he had been granted a permanent lease of the property by the original defendants, the previous owners who had wrongfully retained possession since the plaintiff's purchase. Held, that the defendant appellant was not entitled to add the period of his lessor's adverse possession to his own, in answer to the plaintiff's suit. *LAHRI BIRSE v BEJOY CHAND MAHATAF (1913)*

17 C. W. N. 784

Possession of Hindu widow—Assertion, in public documents, of ownership—Questions decided on inferences from documents—Nature of possession of widow, whether in lieu of maintenance or adverse Where a question as to the nature and effect of the possession of property by a Hindu widow, i.e., whether the possession is only in lieu of her maintenance, and not adverse possession, is one decided by legal inferences drawn from documents, opinions of the courts, though concurrent, are not findings of fact and where wrong conclusions from such inferences have been formed they are open to be reversed by the Judicial Committee on appeal. When the widow asserted that she was entitled as full heir to the separate share held by her husband, when in a written statement in a suit brought against her she asserted that she and her co widow were the heirs of their husband and had all along been in possession, and it was only as an alternative pleading that she set up a title to possession as a right to maintenance, when in an application to the court she made an assertion publicly that she and her co widow were the heirs and the only heirs to the property, from which assertion mutation of it to her name followed, and when the widow made an absolute gift of part of the property—when she made such public assertions of a right to exclusive possession from 1859 to her death in 1895—the true inference was that her possession was adverse and the plaintiff's (respondent's) title was barred by limitation under Art. 144 of Sch. II of the Limitation Act (XV of 1877). *SATOUR PRASAD v RAJ KISHORE LAL*

I. L. R. 42 All. 152

Sch. II, Art. 146-A—

See MUNICIPAL COUNCIL.

I. L. R. 38 Mad. 6

Sch. II, Art. 148—*Limitation—Suit for redemption—Mortgage by conditional sale—Specified period for redemption—Payment of mortgage debt within specified time—Accrual of cause of action.* Ordinarily, and in the absence of a special condition entitling the mortgagor to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period. But there is nothing in law to prevent the parties from making a provision that the mortgagor may discharge

LIMITATION ACT (XV OF 1877)—*contd.*Sch. II, Art. 148—*contd.*

the debt within the specified period, and take back the property. Such a provision is usually to the advantage of the mortgagor. The father of the plaintiff executed a mortgage by way of conditional sale on the 6th of January, 1830, in respect of 12 villages in favour of the predecessor in title of the principal defendant, and there was at the time of execution a contemporaneous agreement "that the sale would be cancelled on payment of the amount of consideration in nine years." In a suit brought on the 6th of January, 1899, for redemption the High Court held on the construction of the contract that the suit was not barred, as the right to redeem only arose on the expiry of the nine years. *Held*, by the Judicial Committee, that the case must be decided, not on the construction of the contract, but on the case made by the plaintiff on the pleadings, which was that she was entitled under the agreement to redeem the property within the period of nine years, and by the statement of account produced with the plaint which showed that the mortgage debt was actually satisfied under the contract on the 4th of September, 1838, and that being so, the right to redeem then accrued, and the whole suit was therefore barred, not having been brought within 60 years from that date (Art. 148 of Sch. II of the Limitation Act, XV of 1877) *BAKHTAWAR BEGAM v. HUSAINI KHANUM* (1914)

I. L. R. 36 ALL. 195

Sch. II, Art. 164—

See EX PARTE DECREE

I. L. R. 39 CALC. 506

See LIMITATION ACT (IX OF 1908), SCH. II, ART. 164. I. L. R. 37 ALL. 597

See SUBSTITUTED SERVICE.

I. L. R. 38 CALC. 394

Sch. II, Art. 170—

See CIVIL PROCEDURE CODE, 1882, s. 234

I. L. R. 32 ALL. 404

Sch. II, Art. 178—

Limitation Act (IX of 1908), s. 15—Execution of decree—Limitation—Execution stayed by injunction In execution of a decree certain property was attached by the decree holder by means of an application made on the 8th of July 1904. Objection was taken to the attachment, which was disallowed on the 10th of March 1908. This was followed up on the 5th of April, 1905, by a declaratory suit against the decree-holder. An injunction was also granted on the 6th of April, 1905, whereby the sale of the property in suit was stayed. The suit terminated on the 26th of June, 1907, but the injunction lasted until January 1909. The next application for execution was made on the 14th of April, 1910. *Held*, that this last application was within time whether the Limitation Act of 1877 or that of 1908 applied. It was not relevant that the decree-holder might possibly have obtained execution of the decree against other property of his judgment-debtor. *Dehors Lal Meher v. Jagannath Prasad*, I. L. R. 28 ALL. 651, followed. *GHULAM NASIR UD DIN v. HARDEO PRASAD* (1912)

I. L. R. 34 ALL. 436

LIMITATION ACT (XV OF 1877)—*contd.*

Sch. II, Arts. 178, 179—

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 88, 89

I. L. R. 40 BOM. 321

Article 179 applies to initiate proceedings—Previous orders in execution, effect of, as res judicata—Civil Procedure Code (XIV of 1882), attachment under, when ceases, a question of intention—Erroneous order on a question of law, when res judicata Previous orders passed in execution and allowing execution on a construction of a decree, as to means profits or as to interest or the like have the force of *res judicata*, though the later application be in respect of a different subject matter. Thus if under the old Civil Procedure Code (Act XIV of 1882), attachment of several properties had been made, and more than three years after such attachment sale of some of those properties was ordered, the supposition that the attachment was then subsisting, that order to sell will act as *res judicata* when a subsequent application for sale is made within three years thereafter to sell other properties originally attached. Under the old Civil Procedure Code the question whether a particular attachment subsists at a certain time was a question of intention. *Ram Krupal v. Rup Kuari*, I. L. R. 6 ALL. 269, *Venkatanarasimha Naidoo v. Papamma*, I. L. R. 19 MAD. 54, and *Sulbarama Ayyar v. Nagammal*, I. L. R. 24 MAD. 633, followed. The rule that an erroneous decision on a question of law has not the force of *res judicata* does not apply to such a case. *Palanippa Chethiar v. Savar Naidoo*, 13 MAD. L. J. 548, and *Mangalathammal v. Varayanasami Ayyar*, I. L. R. 30 MAD. 461, distinguished. It is well established that an application intended to revive and carry through a pending execution is not covered by Art. 179 of the Limitation Act (XV of 1877) as it is not an application to initiate a new execution. *Qamar-ud-din Ahmed v. Jawahir Lal*, I. L. R. 27 ALL. 334, and *Suppa Reddier v. Arudas Ammal*, I. L. R. 28 MAD. 50, followed. The right to apply to continue execution in such cases accrues from day to day and will not be barred until three years have elapsed after the proceedings have ceased to be pending. So the application is not barred under Art. 178 either. *Chalavadi Kotiah v. Paloor Alimelammal*, I. L. R. 31 MAD. 71, followed. *SUBBA CHARAN v. MUTHUVERAN PILLAI* (1913)

I. L. R. 36 MAD. 553

Sch. II, Art. 179—

See LIMITATION I. L. R. 33 ALL. 264

See MORTGAGE. I. L. R. 40 ALL. 407

1. —Application against one judgment-debtor if saves limitation against other—*Civil Procedure Code (Act XIV of 1882), s. 215.* An application for execution which conforms to the requirements specified in ss. 235, 236, 237, and 238 of the Civil Procedure Code and on which the Court permits execution is an application "in accordance with law" within the meaning of Art. 179 of Sch. II of the Limitation Act, 1877. Where a decree was for possession against one set of defendants, for possession through tenants against another set of defendants, and for costs and means profits against all the defendants and an application was made for execution of so much of the decree as related to costs against some of the defendants, but not

LIMITATION ACT (XV OF 1877)—*contd*— Sch. II, Art 179—*contd*

against the others *Held* that a subsequent application for execution of the unsatisfied portion of the decree against those defendants against whom the previous application was not directed is not barred, if made within three years of the previous application. **BARODA KANKAR CHOW DUTTA : NARIN CHANDRA DUTTA (1909)**

14 C W N 465

2. — Application for execution in accordance with law—*Decree—Execution—Execution made conditional upon payment of Court fees—Application for execution without payment—Dismissal—Second application with payment* A decree was passed on the 30th June 1900 whereby partition of immovable property was ordered but the execution of the decree was made conditional on the payment of the proper Court fees. On the 28th June 1903 an application to execute the decree was made but it was dismissed as it was not accompanied by payment. A second application to execute the decree was presented on the 27th June 1906 it was accompanied by payment. The lower Courts dismissed it on the ground that it was time barred inasmuch as the first application made in 1903 was not one in accordance with law as required by Art. 179 of Sch. II to the Limitation Act 1877. *Held* that the first application was made in accordance with law for upon that application it was competent for the Court to order that the execution should begin on the Court fees being paid within a certain date. *Held*, further, that the second application was within time. *Per CURRIE*. An application for execution of a decree to be in accordance with law must ask for something within the decree and not outside it. **NATHUBHAI BASANDAS v. PRANJIVAN LALCHAND (1909)** I L R. 34 Bom 189

3. — Application for execution returned for amendment of formal defect—*Application amended but not filed within time allowed and registered—Limitation—Limitation Act (XV of 1877) Sch. II, Art 179* Where an application for execution of a decree made in proper form under a 235 of the Civil Procedure Code (Act XIV of 1882) was returned by the Court for supplying within 10 days the necessary extracts from the Collector's register under a 238 regarding certain shares of a revenue-paying mouzah and a correct valuation of this and other properties sought to be attached but the application was not refiled till long after the expiry of the 10 days and some days after the period of limitation expired, and the decree holder along with the application filed a petition explaining the delay and it was registered: *Held* that the previous application which was returned was a step taken in aid of execution, such as would save the amended application from being barred by limitation. **Gopal Shah v. Janki Koer, I L R 23 Cal 217**, distinguished and explained. **Asgar Ali v. Troilys Nath Ghose, I L R 17 Cal 631**, **Ajajal Ali v. Ram Singh I L R 7 All 329**, **Jivraj Dube v. Kish Charan Ram, I L R 20 All 478**, **Gopal Chandra Manas v. Gopin Das Koley, I L R 25 Cal 394**, referred to. That the decree holder's application to the Collector for the extracts from the Collector's register was itself a step in aid of execution. Proper scope of a 245 of the Code indicated. **MATHURA PRASAD v. ANURAG ROY (1910)** 14 C. W. N. 481

LIMITATION ACT (XV OF 1877)—*contd*— Sch. II, Art. 179—*contd*

4. — Rejected application for adjournment to prove service of notice—*Civil Procedure Code (Act XIV of 1882), s 248* An application for adjournment to enable decree holder to adduce evidence of service of notice under s 248, Civil Procedure Code, is an application made in order to obtain from the Court an order in furtherance of the execution of the decree. Such an application, even though it is refused, is a step in aid of execution. **MOWAR NARISING DATAL SINGH v. MOWAR HAJI CHARAN SINGH (1909)** 14 C W. N. 488

5. — Applications for execution presented by assignees of decree-holder—*Dismissal of the application for non production of assignment deed* A decree was passed on the 12th October 1894 and an application to execute it was made by the decree holder on the 16th August 1897. The process fee not having been paid the application was struck off. The second application to execute the decree was presented on the 16th August, 1900, by the assignees of the decree holder but as he did not produce the assignment the application was struck off on the 27th October 1900. The third application was presented by a *mukhtar* of the assignee on the 11th August 1903 but as neither the assignment nor the *mukhtarnama* was produced it was struck off on the 9th October 1903. The same *mukhtar* presented a fourth application on the 19th December 1903. A notice was issued to the judgment debtor under s 248 of the Civil Procedure Code (Act XIV of 1882) and the application was disposed of, the decree holder agreeing to accept a payment of Rs 45 from the judgment-debtor. On the 11th December 1908 the fifth application to execute the decree was filed. The lower Courts holding that the second and third applications could not be regarded as applications for execution made in accordance with law, dismissed the fifth application as barred by the law of limitation. *Held*, that the present application was not barred, for the non production of the *mukhtarnama* and the assignment did not prove that they did not exist in fact. **Abdul Majid v. Muhammad Farzullah, 13 All 89** followed. **VINAYAK VAMAN v. ANANDA VALAD RAMJI (1909)**

I L R 34 Bom 68

6. — Application to certify payment made out of Court—Although a decree under s 83 of the Transfer of Property Act 1882, may not be capable of adjustment under a 237A of the Code of Civil Procedure, 1882 yet where the parties had professed to make such an adjustment, and the judgment debtor having paid certain instalments of the decretal money, the decree holder had applied to the Court to have such payments certified under a 238 of the Code, it was held that such applications operated to keep the decree alive, although at the time there might have been no application for execution actually pending. **Sujan Singh v. Hira Singh, I L R 12 All 339**, followed. **Tarun Das Bandopadhyay v. Bishtoo Lal Mukhopadhyay, I L R 12 Cal 608**, referred to. **CHHOTAY SINGH v. ISHWARI (1910)**

I L R 32 All 257

7. — Withdrawal of informal application if it is—*Civil Procedure Code (Act XIV of 1882), s 232, 235—Retransfer of assigned decree to decree holder* Where a decree holder

LIMITATION ACT (XV OF 1877)—contd

—Sch. II, Art. 179—contd.

applied for execution of a decree and withdrew the application on the objection of the judgment debtors that the decree had been transferred to a third person who had retransferred it to the decree holder and that therefore the execution could not proceed—*Held*, that the application was a step in aid of execution and saved limitation *Gopal Sah v. Janaki Koor, I. L. R. 23 Calc 217*, distinguished. *MUSARAF ALI v. AMIR JAV BIBKE (1910)* 15 C. W. N. 71

8. —Applications when not "in accordance with law"—The plaintiff obtained a decree against the defendants. He sought to execute the decree by filing six *darkhasts* all within time. The lower Court held that the sixth *darkhast* was not filed in time, for the first five *darkhasts* could not be taken into consideration for purposes of limitation as they were not in "accordance with law" because every one of them sought relief or reliefs which on considering the merits of the *darkhasts*, the Court could not have granted. On appeal *Held*, that the *darkhast* in question was in time, for the first five *darkhasts* were "in accordance with law" as each one of them claimed relief granted by and therefore within the decree and the question whether on a consideration of all the facts the Court could in the events that had happened grant the relief was only a question for trial on the merits *BANDU KIRSHNA v. NARA SINGHA (1912)* I. L. R. 37 Bom. 42

9. —Application for time to obtain copies—required by s. 238 of the Civil Procedure Code (Act XIV of 1882) In the course of proceedings to execute a decree, the decree-holder filed an application for time to obtain certified copies of extracts required by s. 238 of the Civil Procedure Code, 1882. The second application to execute a decree was filed more than three years after the date of the first application, though it was within three years of the date of the application for time. It was sought to bring the second application within time by relying on the application for time as a step-in-aid of execution. *Held*, that the second application to execute the decree was presented in time, for the application for time to obtain certified copies required by s. 238 of the Civil Procedure Code of 1882, was a step-in-aid of execution *SHESHADASACHARYA v. BHIMACHARYA (1912)* I. L. R. 37 Bom. 317

10. —Mortgagor's petition for declaration of insolvency—Opposition by mortgagee judgment-creditor—Step-in-aid of execution—Limitation. An application by mortgagee judgment-creditor in execution of his decree, opposing the insolvency proceeding of the mortgagor judgment-debtor, is a step-in-aid of execution under Art. 179, Sch. II of the Limitation Act (XV of 1877), and Art. 182, Sch. I of the Limitation Act (IX of 1908). *LAXMIRAM LALLCHAI v. BALASWAMY VENIRAM (1914)* I. L. R. 39 Bom. 20

11. —Application, oral, for adjournment. An application to take a step-in-aid of execution under Art. 179 of the Limitation Act need not be in writing *Amir Singh v. Tula, I. L. R. 3 All 139*, and *Moneklal Jagann v. Nana Buddha, I. L. R. 15 Bom 405*, followed. An application by the decree holder for an adjournment to enable him to produce records or evidence necessary to effectively conduct the execution proceedings further is an application to get an

LIMITATION ACT (XV OF 1877)—contd

—Sch. II, Art. 179—contd.

order in aid of execution. *Sheshadasacharya v. Bhimacharya, 14 Bom L R 1204*, *Haridas Narayan v. Vishaldas Khandas, I. L. R. 36 Bom 638*, *Palam Singh v. Tota Singh, I. L. R. 29 All 301*, and *Kunhi v. Seethagiri, I. L. R. 5 Mad 141*, referred to *ABDUL KADER ROWTHEN v. KRISHNAN MALAYAL NAIR (1913)* I. L. R. 38 Mad. 695

—Sch. II, Arts. 179, 180—

See PRIVY COUNCIL, PRACTICE OF

I. L. R. 38 All 350

See REVIVAL

I. L. R. 43 Calc 903

1. —Sch. II, Art. 180—An order in Privy Council affirming a decree of the High Court includes the directions in such decree, an application to enforce any such direction is in point of law an application to execute the order to the whole of which Art. 180 of Sch. II of the Limitation Act is applicable *KAMINI DEBI v. AGHORN NATH MUKHERJEE (1909)* 14 C. W. N. 357

2. —'Revival' of decree, what is—Civil Procedure Code (XIV of 1882), s. 248, notice under—No revival where notice not issued. Where on an application for execution of a decree more than one year old, order for execution was issued without the notice to the judgment debtor required by s. 248 of the Civil Procedure Code of 1882, such order for execution does not 'revive' the judgment within the meaning of Art. 180 of Sch. II of the Limitation Act of 1877. It is only where such notice has been issued that the judgment or decree is 'revived' *DESSOO V. KATESA PERUNAL CHETTY v. SHIVASAYA RANGA ROW (1909)* I. L. R. 33 Mad. 187

3. —Execution of decree—Limitation—Terminus a quo—Order of His Majesty in Council dismissing an appeal for want of prosecution an affirmation of the decree appealed from. An order of His Majesty in the Privy Council dismissing an appeal for whatever cause is in effect an affirmation of the Court below and is the only order in the litigation capable of enforcement. Where, therefore, an appeal to His Majesty in Council from a decree passed by the High Court for sale on a mortgage was dismissed for want of prosecution, it was held that limitation in respect of an application by the decree holder for an order absolute for sale was governed by Art. 180 of the Second Schedule to the Indian Limitation Act, 1877, time running from the date of the order of His Majesty in Council. *Tassandur Rasool Khan v. Kashi Ram, I. L. R. 25 All 109*, and *Oudh Behari Lal v. Nageshwar Lal, I. L. R. 13 All 278*, referred to *Byro Doss Gossain v. Chunder Sekur Bhutacharyjee, 7 W R 621*, distinguished *ABDUL MAJID v. JAWAHIR LAL (1910)* I. L. R. 33 All 154

LIMITATION ACTS XV OF 1877 AND IX OF 1908—

—Comparative Statement.—

The sections of the 1877 Act correspond to the same sections in the 1908 Act except the following—
 section of the 1908 Act Corresponding section in the 1877 Act.

2	.	.	.	3
3	.	.	.	4
4	.	.	.	5, para. 1.
5	.	.	.	5, paras 2, 5 A.
6	.	.	.	7
7	.	.	.	8

LIMITATION ACTS (XV OF 1877 AND IX OF 1908)—*contd.*

Comparative Statement—*contd.*

Section of the 1908 Act	Corresponding section in the 1877 Act.
8	7 last clause
21 (1)	
21 (2)	21
29 (1) (a)	2 latter part
29 (1) (b)	6
29 (2)	1 (a)
30	
31	
32	

Article in the First Schedule of the 1908 Act.	Corresponding Article in the Second Schedule of the 1877 Act.
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11 (1)	11
11 (2)	
11 A	11
33	
34	33
35	
161	160 A
162	161
163	163 A
164	165 A
165	165 B 175 C
166	166
167	177
168	168
169	169
170	169
171	169
172	169
173	169
174	169
175	169
176	169
177	169
178	169
179	169
180	169
181	169
182	169
183	169

LIMITATION ACT (IX OF 1908)

See HINDU LAW—ADOPTION

I L R 40 Mad. 316

inapplicability of, to insolvency proceedings—

See INSOLVENCY PROCEEDINGS IN

I L R 39 Mad. 74

Cause of action No thing in the Limitation Act can give rise to a cause of action unless a right to sue exists independently of its provisions. *BRUNN SINGH v A. W. N. WYATT* (1911). 16 C W N 540

s. 2—

See LIMITATION ACT (IX OF 1908) SCH

I ART 124 I L R. 41 Mad. 4

s. 2 and 5—

See COURT FEES 3 Pat L J 484

s. 2 (8), Sch I, Art 144—

See ADVERSE POSSESSION

I L R. 49 Calc 173

s. 3—

See CONTRACT ACT (IX OF 1872), s. 23

I L R. 38 Bom 341

Amendment—

Amendment of plaintiff after expiry of limitation—Zamindari property—Incorrect statement of extent of share claimed—In a suit for pre-emption under the Muhammadan law of a zamindari share it was found that the necessary conditions of the Muhammadan law had been fulfilled but, there being some doubt as to the exact share sold, the plaintiff

LIMITATION ACT (IX OF 1908)—*contd.*

s. 3—*contd.*

had specified it in his plaint as 15 bismas, when in fact it amounted to 17 bismas. *Held*, that, it was well in the competence of the Court to allow the plaintiff to amend his plaint so as to claim the larger share even after the period of limitation for the suit had expired. *MUHAMMAD SADIQ v ANDER MAJID* (1911). I L R. 33 All 616

Question of limitation, if may be considered for the first time in appeal. The Court can, under s. 3 take notice of the question of limitation although it has not been taken up in the Courts below. *NARASINGHA BABA GOWDAM v KOLHADMAN THOARI* (1918). 22 C W N 984

s. 3, 4 and 14—Filing suit in a wrong Court on the day of its re-opening after recess—*Effect of—Meaning of limitation during recess—Effect of—Meaning of prosecution in s. 14—Court in s. 4 meaning of* According to s. 14 of the Limitation Act it is only the period during which a suit is actually prosecuted in a wrong Court that can be excluded in favour of a plaintiff but not the period before the filing of the suit though the Court was then closed for recess. So if the period of limitation for the suit expired during the period of recess of the wrong Court wherein the suit was filed on the day of its re-opening the suit must be held to be barred. It is only the period of closing of proper Court in which the suit must be instituted that can be taken account of under s. 4. *Abhoja Churn Chuckerbutty v Gour Mohun Dutt & B R* 1906 followed. *Per STRECHER, J.*—Although the word Court in s. 4 is not qualified by the adjective proper as it is in other parts of the Act, it would not be reasonable to take account of the closing and re-opening of any other Court in which the suit was originally instituted. *Per CURRIE*. According to s. 3 the concessions awarded by the different sections of the Limitation Act are independent and cumulative. *See MIRA MOHIDEW ROWTHEN v NALLAPERUMAL PILLAI* (1913). I L R. 36 Mad. 131

s. 3 to 25 29 (1) (b)—

See LIMITATION I L R. 46 Calc 199

s. 37, Sch I, Art 142—*Minor—Representative re—Death of the minor after majority but pending disability—Right of personal representative to sue—Limitation.* Where a minor acquired a cause of action to sue for possession of property and died within three years after attaining majority his personal representative can, although twelve years have expired since the cause of action accrued, institute a suit on the same cause of action at any time within the three years period which had already commenced in the lifetime of deceased. In such a suit the deceased must be included in the terms plaintiff for the purpose of Art 142 for according to s. 3 of the Limitation Act plaintiff includes any person from or through whom the plaintiff derives his right to sue. *ABDUL RAHMAN v RAMANATH* (1916). I L R. 40 Bom 564

s. 3, Arts 120 132—

See LIMITATION I L R. 46 Calc 455

s. 3, Art. 177—

See APPEAL, ABATED PET OF

I L R. 34 Mad. 292

LIMITATION ACT (IX OF 1908)—*contd*

s. 4—

See LIMITATION I. L. R. 38 Bom. 656
I. L. R. 2 Lah. 127

See MADRAS ESTATES LAND ACT (I OF 1903), s. 192 I. L. R. 38 Mad. 295

General Clauses Act (X of 1897), s. 10—Pre-emption—Time for payment of pre-emptive price not to be extended beyond period fixed by decree. *Held*, that neither s. 4 of the Indian Limitation Act, 1908, nor s. 10 of the General Clauses Act, 1897, applies to the payment of money payable by the successful plaintiff under a decree for pre-emption. *HERN NARAIN v. ALAM SINGH* (1918) I. L. R. 41 All. 47

ss. 4 and 5—

See LIMITATION (43)
I. L. R. 41 Mad. 412

ss. 4 and 23—

See MORTGAGE DECREE.
3 Pat. L. J. 478

ss. 4 and 14—*Suit for dower—Period of limitation expiring during Christmas holidays—Suit filed in a Subordinate Judge's Court, on its Small Cause side on the re-opening day—plaint returned for want of jurisdiction on the Small Cause side—Plaint presented as an Original Suit in the same Court on its regular side—Limitation, bar of* Where the period limited for the institution of a suit for dower expired on a day when the Court was closed for the Christmas holidays, and the suit was instituted on the re-opening day as a Small Cause suit in the Court of a Subordinate Judge on its Small Cause side and on the plaint being returned after some days for want of jurisdiction it was filed on the next day in the same Court as an original suit and the defendant pleaded that the suit was barred by limitation. *Held*, that the time during which the suit was pending on the Small Cause side of the Court and which the plaintiff was allowed to deduct under s. 14 of the Limitation Act could not be tacked on to the period during which the Court was closed, under s. 4 of the Act, so as to save the bar of limitation. *UNMATHU v. PATTUMMA* (1921) I. L. R. 44 Mad. 817

s. 4, Arts. 74, 75, 80 and 120—

See LIMITATION I. L. R. 38 Mad. 374
I. L. R. 41 Mad. 412

s. 4 and seq—

not applicable to Letters Patent appeals—

See LIMITATION I. L. R. 2 Lah. 127

s. 5—

6 Pat. L. J. 625
See APPEAL I. L. R. 1 Lah. 508
I. L. R. 42 Calc. 433

See CIVIL PROCEDURE CODE, 1908
O XXII, r. 9 I. L. R. 42 All. 540
XLI, r. 1 I. L. R. 43 All. 660

See COURT FEES ACT, ss. 4, 6, 28.
3 Pat. L. J. 74

See LIMITATION I. L. R. 44 I. A. 218
I. L. R. 45 Calc. 94
I. L. R. 41 Mad. 412

LIMITATION ACT (IX OF 1908)—*contd.*s. 5—*contd*

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 22, 36 and 52.

I. L. R. 35 All. 410

See SECOND APPEAL I. L. R. 2 Lah. 1.

1. ——— Miscalculation of time by pleader—*Appeal rejected—Discretion, exercise of*—Civil Procedure Code (Act V of 1908), s. 2—“Decree,” meaning of A bond *fide* mistake committed by a pleader in calculating the period of limitation may constitute a “sufficient cause” within the meaning of s. 5 of the Limitation Act. Whether the miscalculation does constitute a sufficient cause in any particular case must be decided by the Court having regard to all the facts and circumstances of that case. Where the Appellate Court refused to admit an appeal presented out of time because according to its view of the authorities a miscalculation by a pleader of the period of limitation was not a “sufficient cause” for not presenting the appeal in time within the meaning of s. 5 of the Limitation Act. *Held*, that the decision could be reviewed on appeal as there was no exercise of discretion by the Court. It is neither necessary nor desirable that any attempt should be made to find precisely and exhaustively the meaning of the expression “sufficient cause” which should receive a liberal construction so as to advance substantial justice when no negligence, nor inaction, nor want of bond *fide*, is imputable to the appellant. *RAKHAL CHANDRA GHOSH v. ASHUTOSH GHOSH* (1913) 17 C. W. N. 507

2. ——— Provisional admission to file in the absence of respondent—*Preliminary objection taken by the respondent at the hearing—Entertainment of the question—Appeal dismissed with all costs—Second appeal* A time barred appeal having been provisionally admitted to the file in the absence of the respondent and at the hearing the respondent having taken a preliminary objection that the appeal was presented beyond time, the Court allowed the objection and dismissed the appeal with all costs on the appellant. On further appeal by the appellant *Held*, that there being no sufficient cause as a matter of law for extending the time under s. 5 of the Limitation Act (IX of 1908), there was no objection to the question being entertained after the provisional admission of the appeal to the file in the absence of the respondent. *Held*, further, that the appeal against the order dismissing the appeal was a second appeal and not a first appeal because it was an appeal against the decree of an Appellate Court. *RAOJI v. KRISHNARAO* (1914) I. L. R. 38 Bom. 813

3. ——— Application for substitution of names filed beyond time—*Procedure* S. 5 of the Indian Limitation Act, 1908, does not apply to an application made under O XXII, r. 4, of the Code of Civil Procedure. Where, therefore, such an application is made after time, the suit or appeal must be declared to have abated, and the remedy for the plaintiff or appellant is to proceed by application under O. XXII, r. 9. *SECRETARY OF STATE FOR INDIA v. JAWAHAR LAL* (1914) I. L. R. 36 All. 235

4. ——— Death of party pending judgment—*Legal representatives not brought on record—Minority of one of the appellants—Diligence of the*

LIMITATION ACT (IX OF 1908)—contd.

guardian—Excuse of delay—Sufficient cause, a question of discretion. *S* filed a suit against *G* in the Subordinate Judge's Court. *G* died after the hearing of the suit, but before delivery of judgment. The judgment was pronounced on the 3rd July 1913 against *G*. On the 2nd October 1913 *G*'s widow *R* filed an appeal to the District Court on behalf of her two sons *D* and *B*, of whom *B* was major but *D* a minor. The appeal was found to be beyond time by fifty days. The question being raised whether there was a sufficient cause for excuse of delay in favour of the minor appellant. *Held*, that there was no sufficient cause as *B* and *B*, the adult relatives of the minor, who were concerned to prosecute the litigation in their own interests and in the interest of the minor were negligent, remiss and careless. **DABU GAYESH v. SITARAM MAHTAND (1916)**

I L R. 41 Bom. 15

5 ——— Time taken by instructions review—Laches—Court's discretion if should be fettered by rules. The time taken by the appellant in an infructuous application for review will not be excluded if the grounds of review were only grounds of appeal, nor does a mere routine order registering an application for review constitute the bona fide prosecution of a civil litigation. The discretion of the Appellate Court to admit appeals filed out of time on cause shown ought not to be crystallised into definite rules so as to fetter that discretion. *Held*, in the circumstances of the present case, that the appeal should be registered. **SUDHAKAR RAUT v. SADASHIVA JHATAP SINGH (1913)** 19 C W N 1113

6 ——— Discretion of Court—Barrister—Liability for negligence. *Held*, that an appeal will lie on the question of limitation where the lower Appellate Court in admitting the appeal to it under s. 5 of the Indian Limitation Act has not exercised a judicial discretion. The mere fact that the papers of the case and a fee of some sort had been left with a legal practitioner in order that he might file an appeal, but that he had not done so and had returned the paper only after the expiry of the period of limitation, would not be in itself a sufficient ground for admitting an appeal 37 days beyond time. *Per* RICHARDS, C. J. *Semble*, that if an advocate who is a barrister or other professional gentleman receives and accepts instructions to file an appeal or make an application and the client loses his right to appeal or make the application as the result of the negligence of the barrister or practitioner to file the appeal or application within time, such barrister or vakil would be liable to his client in a Court of law. **BRIDHU v. DIWAN (1915)**

I. L. R. 37 All 287

7. ——— Stamp not obtainable on last day of limitation—The appellant filed an appeal on the 15th July. The period of limitation for filing the appeal had expired on the 15th July and on that day the appellant had filed an affidavit before the appellate Court, stating that he could not get a stamp. The next day was a holiday. *Held*, that the delay should have been excused under the Limitation Act, 1908, s. 5. **MAHARAJAN KESHO PRASAD SINGH SAHARU v. HANNAK RAUT. 1 Pat. L. J. 163**

8. ——— Presentation of Appeal in wrong Court—Appeal subsequently presented in proper Court—Excuse of delay—Sufficient cause—

LIMITATION ACT (IX OF 1908)—contd.

Good faith—Acting on advice of pleader—Bombay Civil Courts Act (XIV of 1869), s. 16. An Assistant Judge having dismissed a suit in which the claim was valued at Rs. 218, the plaintiff relying on the advice of his pleader filed an appeal in the High Court. The appeal was eventually returned to the plaintiff for its presentation to the District Court, where it was presented long after the prescribed time. The District Judge refused to excuse the delay in presenting the appeal, as he was of opinion that the plaintiff had no sufficient cause since the question as to which Court the appeal lay was not involved in any doubt. The plaintiff having appealed. *Held*, that the plaintiff had under the circumstances shown sufficient cause for not presenting the appeal in time, since in acting upon the advice of his pleader he was to be regarded as having acted in good faith. **Dada-bhai v. Maneksha (1896).** 21 Bom. 552, explained, *Ham Rao Jambhakar v. Prabhadas Subkarn (1895)* 20 Bom. 133, referred to. **DATTATRAYA SITARAM v. THE SECRETARY OF STATE FOR INDIA (1920)** I. L. R. 43 Bom. 607

9 ——— Amendment of decree—Appel—Limitation. Where a decree has been amended and an appeal is filed against the amended decree which is *prima facie* barred by limitation, it is not in every case that the appellant can pray in aid the provisions of section 5 of the Indian Limitation Act, 1908. He cannot do so, for instance if his appeal does not attack the amended decree or raise some question connected with the amended decree. **Amar Chandra Akunda v. Asud Ali Khan I L R, 32 Cal., 595 Brojo Lal Rai Choudhury v. Tara Prasanna Bhattachary, 3 C L J, 183 and Kalu v. Lahu, I L R, 21 Cal., 259, referred to. GAJADHAR SINGH v. BASANT LAL.** I. L. R. 43 All. 380

10 ——— Appeal—Presentation—Vakalatnamah—Vakalatnamah duly accepted, but name of pleader not filled in the body of the document. Two pleaders filed an appeal on behalf of their client; but after they had done so it was discovered that their vakalatnamah, though duly accepted by both, did not contain their names in the body of the document. Thereupon a fresh vakalatnamah was filed, with a petition by the client stating the facts and praying that the memorandum of appeal might be taken as having been presented in the date of the filing of the fresh vakalatnamah and the delay excused under the powers conferred by section 5 of the Indian Limitation Act, 1908. The court nevertheless dismissed the appeal. *Held*, that the lower appellate court was wrong in not admitting the appeal under section 5 of the Indian Limitation Act, 1908. And *quære* whether a vakalatnamah duly accepted by a pleader should be regarded as of no validity because by an oversight the pleader's name has been omitted from the body of the document. **Muhammad Ali Khan v. Jas Ram, I L R, 36 All. 46, referred to. SHAMRUP NATH v. RADHI DAS** I. L. R. 43 All. 392

11. ——— An admission of a time-barred appeal subject to any objection that may be taken subsequently is irregular. **MO. ABDUL KARIM v. CHATURBHAY SAHAY 6 Pat. L. J. 444**

— ss. 5, 12—Sufficient cause—Interference by High Court in second appeal—The time requisite for obtaining a copy of the decree, what is. It is now

LIMITATION ACT (IX OF 1908)—*contd.*— ss. 5, 12—*contd.*

settled by a long string of authorities that where a Court after considering all the circumstances of the case has come to the conclusion that sufficient cause has or has not been established within the meaning of s. 5 of the Limitation Act for not filing an appeal within time, the High Court will not interfere in second appeal. Where a judgment was passed on 27th September 1913 and the decree was prepared and signed on the same day and the annual vacation began on the following day and the Court reopened on 1st November and the appellants applied for a copy of the judgment on 3rd November and for a copy of the decree on 13th November and both copies were ready and were delivered on 21st November and the appeal was filed on 28th November in the lower Appellate Court. *Held*, that the whole of the time which elapsed from the delivery of the judgment to the reopening of the Court on November 1st 1913, was part of the time requisite for obtaining copies of the judgment and decree, and that this must be so whether the appellant applied for copies on the day on which the Court reopened or on some later date. The words of s. 12, Limitation Act, do not appear to lay down any rule that the time requisite for obtaining a copy must be continuous. *DENI CHARAN LAL v. SHEIKH MEHDI HUSSAIN* (1916)

20 C. W. N. 1303

— ss. 5, 12, 29—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s. 48, CL. (3)

I. L. R. 39 Mad. 593

— ss. 5, 12 and Art. 161—

See LIMITATION (67) 23 C. W. N. 553

— ss. 5, 12 ; Sch. I, Art. 179—

See APPEAL TO PRIVY COUNCIL

I. L. R. 39 Calc. 766

See LETTERS PATENT

1 Pat. L. J. 485.

— ss. 5, 14 ; Sch. I, Art. 178—

See CIVIL PROCEDURE CODE (1908), SCH. II, CLS. 17 AND 20

I. L. R. 38 All. 85

— ss. 5, 14—

See LIMITATION

I. L. R. 45 Calc. 94

1. — *Delay—Sufficient*

cause—Review—Strict proof, meaning of—Civil Procedure Code (Act V of 1908), O XLII, r. 4, sub cl (2) (b). The plaintiff a Mahomedan lady, applied for review of the judgment of the First Class Subordinate Judge, A. P., at Sura. Her appeal was dismissed by the Judge on October 8, 1915. The application for review was made on January, 5, 1916, to the District Judge, Surat. This application to that Judge was irregular as before that the plaintiff had filed a second appeal to the High Court on November 10, 1915. After the withdrawal of the second appeal on March 29, 1916, the application of January 5, 1916, was transferred by the District Judge for disposal to the First Class Subordinate Judge. It was dismissed as being not properly made under O XLVII, r. (1) of the Civil Procedure Code, 1908, to the Judge who passed the decree in appeal. The plaintiff, therefore, presented another application to the

LIMITATION ACT (IX OF 1908)—*contd.*— ss. 5, 14—*contd.*

Subordinate Judge on May 6, 1916. On it being contended that it was barred by limitation *Held*, that the plaintiff had shown sufficient cause for excuse of delay under ss. 5 and 14 of the Limitation Act, 1908. *Per BATHUR, Ag. C. J.*—By 'strict proof' in O XLVII, r. 4, sub cl (2) (b), Civil Procedure Code, 1908, is meant anything which may serve directly or indirectly to convince a Court and has been brought before the Court in legal form and in compliance with the requirements of the law of evidence. The words are not that the absence of negligence shall be 'conclusively established' or even satisfactorily proved. What is required is that there be strict proof of this absence of negligence on the record and the phrase 'strict proof' refers to the formal correctness of the evidence offered, not to its effect or result. If the record does contain such strict proof, that is to say, such formal admissible evidence, it shall be for the trial Court only to assess its sufficiency. *And Khondiar v. Mahendra Lal De, I. L. R. 42 Calc. 830, 837, approved. Bat NEMATHU v. Bat NEMATULLAH* (1918)

I. L. R. 42 Bom. 295

2. — *Bona fide prosecution of proceeding in wrong Court, if sufficient ground for extending time for filing appeal.* An appeal against the decision of a Munsif was filed within time in the Court of the District Judge and a question being raised as to which was the proper Court of Appeal the District Judge took time to consider it and ultimately determined that under the notification of the High Court the Subordinate Judge's Court was the proper Court and returned the appeal which was on the same day filed in the latter Court. The Subordinate Judge rejected the appeal as time barred. *Held*, that although s. 14 of the Limitation Act was inapplicable to appeals the principle of that section has been recognised by Courts as applicable to appeals in this sense that the *bona fide* prosecution of a proceeding in a wrong Court has been regarded as a proper ground or as sufficient cause within the meaning of s. 5 of the Limitation Act for extending the time for filing an appeal. *RIPA THAKURANI v. KUMUDNATH KARMAKAR* (1918)

22 C. W. N. 594

— ss. 5 and 15—*Appeal—Security for costs—Decree obtained by appellant accepted as security—Whether limitation runs during the period in which the appeal is pending*

Where a plaintiff whose suit had been dismissed by the High Court appealed to the Privy Council, and offered as security for the respondent's costs in that appeal a decree which he had obtained against the latter in another suit; *Held*, that the acceptance of the decree as security did not amount to an order by the Court that execution of the decree should not proceed pending the disposal of the appeal to the Privy Council and that, therefore, the period between the dismissal of the suit by the High Court and date on which the application for execution of the decree was filed could not be excluded under s. 15 of the Limitation Act, 1908. The period of limitation cannot be extended by express agreement between the parties nor, can it be extended by an agreement to be implied from circumstances such as those of the present case. In the absence of any rule or enactment making s. 5 of the Act applicable to an application execution

LIMITATION ACT (IX OF 1908)—*contd.*

section of a decree the section does not apply to such an application *MIDRAFUR ZIMINDARY CO. v THE DEPUTY COMMISSIONER OF MANBUH*

3 Pat. L. J. 132

ss 5-18—

See CIVIL PROCEDURE CODE (1908), ss 148 AND 115 4 Pat. L. J. 428

s 5 and Art 156—

See BENGAL TENANCY ACT (1885), ss 105 AND 107 5 Pat. L. J. 472

s. 6—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 230 I L R 37 Mad 188

See CIVIL PROCEDURE CODE (1908) s 48 I L R 37 All 638

See GENERAL CLAUSES ACT s 6, CL. (c). 15 C. W. N. 845

Purchaser from minor. The view that the plaintiff having purchased the property from a minor has got by the assignment the rights of a person under disability under s. 6 of the Indian Limitation Act cannot be supported after the decision of the Full Bench in the case of *Rudra Cant v Nobokasore I L R 9 Cal 663 BHAGARAN CHANDRA KAITBARTA DAS v ISHAN CHANDRA KAITBARTA DAS* (1918) 22 C. W. N. 831

ss. 8, 7—

See CIVIL PROCEDURE CODE (1908), O XXXIV, BR 4, 5 AND 10

I L R. 41 All. 473

ss. 6, 7, 9, 15—

See ALIEN ENEMY

I L R. 48 Cal 528

ss. 6, 8, 9—*Disqualification saving limitation—Management of estate by Court of Wards if saves limitation.* Under the Limitation Act, 1908 no other cause of disqualification than those mentioned in the Act can be admitted to save limitation and the only disqualifications that ss. 6, 8 and 9 of the Act recognise are minority, insanity and idiocy and the suit as regards the properties comprised in the *debars* of 1870 was barred by limitation under Arts. 91 and 142 of the Act. The fact that the plaintiff was a disqualified proprietor whose estate was under the charge of the Court of Wards did not prevent the running of time against her during the period the Court remained in charge *ANWARMOOT SINGHA v WASIR ALI MEERZA* (1915) 19 C. W. N. 1113

ss 6, 10—*Receipt of interest by a mortgagee from a trustee knowing mortgage to be in breach of trust—Suit by beneficiary for such interest against mortgagee—Applicability of s 10 to such suit—Cause of action for beneficiary to recover such interest—No new cause of action on beneficiary attaining majority.* Interest received by a mortgagee from a trustee in respect of a mortgage executed by the latter in breach of trust to the knowledge of the mortgagee is not 'property' vested in the mortgagee 'in trust for any specific purpose' within s. 10 of the Limitation Act. If on the dates of payment of interest the beneficiary be a minor, his cause of action to recover the same arises from such dates and if he sues for the recovery

LIMITATION ACT (IX OF 1908)—*contd.*

of such interest after attaining majority he is bound to sue within the time limited by s. 6 of the Act, and he does not get a fresh cause of action on attaining majority *RAJA OF RAMNAD v PONNUSAMI TEVAR* (1921) I L R. 44 Mad 277

ss. 6, 14, 15 and 19—*Assignee of a debt due to a minor—Suit by assignee—Limitation for such suit, whether saved in right of minor assignor—Attachment of debt prior to sale—Time till sale, whether can be deducted in computation—Causes of action for attachment and suit, whether same—Acknowledgment in a deposition—Denial of a subsisting debt—Sufficiency of acknowledgment.* Where a decree holder, having attached in 1913 a book debt due in 1911 to a minor judgment-debtor, sold it in auction and purchased it himself in February 1915, sued in March 1915 to recover it from the defendant who pleaded the bar of limitation. *Held*, (i) that the assignee of a debt due to a minor could not avail himself of the privilege of the extension of limitation given by s. 6 of the Limitation Act, *Rudra Kant Surma Sarkar v Nobo Kishore Surma Bursat I L R. 9 Cal 663*, followed; (ii) that s. 15 of the Act did not operate to save limitation during the time the attachment was in force, *Saib Singh v Sita Ram I L R 13 All 76*, followed, and *Beti Maharan v The Collector of Panchab, I L R 17 All 198* referred to; (iii) that s. 14 of the same Act was also inapplicable as the attachment proceedings were not based on the same cause of action as the suit to recover the debt; (iv) that, on its appearing that the defendant stated in a deposition that there was once a debt but that he had discharged it, the statement did not amount to an acknowledgment within s. 10, explanation 1 of the Act, *Bollapragada Ramamurthy v Tammana Gopayya, 31 M L J 231*, followed, and (v) that the suit was consequently barred by limitation. *RANGASANI CHETTI v THANGAVELU CHETTI* (1919)

I L R. 42 Mad. 637

s 6 and Art 120—*Suit for declaration by after-born sons.* One B sold his occupancy rights on 27th August 1900. On 6th May 1913, his four sons instituted the present suit for a declaration that the sale should not affect their reversionary rights. The four plaintiffs were born in 1891, 1904, 1908 and 1911, respectively. As regards the eldest son, L D, he being over 21 years of age when the suit was lodged, it was admitted, that the suit was barred by limitation. The other three sons who were born after the alienation were minors at the time when the suit was instituted and it was claimed that so far as they were concerned the suit was in time having regard to the provisions of s. 6 of the Limitation Act, inasmuch as two of them were born before their eldest brother had attained the age of 18 and the period of limitation only began to run from that date. *Held*, that the three minor plaintiffs, not having been in existence at the time when the right to sue accrued, could not take advantage of the provisions of s. 6 of the Limitation Act, and that the suit was consequently barred by limitation *Ramkishore v Jainarayan, I L R. 40 Cal 966, 979 (P C)*, distinguished *LACHMAN DAS v SUNDAR DAS* I L R. 1 Lah. 558

s 6 and Art 125—*Widow's alienation—Right of several reversioners independent—Not questioned by deceased father for twelve years—*

LIMITATION ACT (IX OF 1908)—*contd.*

Right of minor son to question after twelve years but within three years of attaining majority For the purpose of questioning an alienation made by a Hindu female possessing a limited estate, one reversioner does not claim through another, and consequently laches on the part of a father who died without instituting a suit within twelve years from the date of the alienation does not disentitle his son from filing a suit for the purpose even after twelve years after the alienation, if he was a minor at the time and files the suit within three years of attaining majority. *S 6 and Art. 123 of Limitation Act considered* *Gowinda Pillai v. Thayammal*, *I L R. 28 Mad 57*, *Bhagwanta v. Sukhi*, *I L R. 22 All 33* *Abinash Chandra Majumdar v. Har Nath Saha*, *9 C W N 25*, *Sakyahana Ingli Rao Sahib v. Bhawanji Bori Sahib*, *I L R 27 Mad 588*, and *Chinna Veerayya v. Lakshminarasimha*, *22 Mad L J 375*, followed. *Mullapudi Ratnam v. Mullapudi Ramayya* *I L R 25 Mad. 731*, and *Chhagunram Asthram v. Bai Motigauri*, *I L R 14 Bom. 412* not followed. *Chiruvolu Punnamma v. Chiruvolu Perayya* *I L R 29 Mad 390* referred to. *Krishner v. Lakshminammal*, *18 Mad L J 275*, distinguished. *VEERAYYA v. GANGAMMA* (1913)

I. L. R. 38 Mad. 570

— *ss. 6, 7 and Art. 144—Mortgage—Mahomedan family—Sale by one co-heir—Suit for redemption by other heirs—One of the plaintiffs a minor—Suit not barred* *M*, a Mahomedan, mortgaged the property in suit to *J* in 1895. *M* died in 1901, and his widow sold the equity of redemption to *J*, who obtained possession of the property under the sale. In 1914, *M*'s son *G* and daughters *S* and *K* sued for redemption of the mortgage of 1895, and for possession. Of these plaintiffs *G* and *K* had attained majority three years before suit, while plaintiff *S* attained majority in July 1913. The lower Court held the suit barred as regards plaintiffs *G* and *K* under Art. 144 read with s 6 of the Limitation Act on the ground that the possession of *J* became adverse in 1901. *Held*, that the suit having been brought within three years of the date when the youngest plaintiff *S* attained majority was not barred by limitation under s 7 of the Limitation Act, because the right to redeem was indivisible and neither of the plaintiffs *G* and *K* was qualified to discharge or release the equity of redemption. *GULAM GOSS v. SHIRIAM PANDURANG* (1918)

I L. R. 43 Bom. 487

— *s. 6, Art. 164—Application to set aside ex parte decree made after coming into force of Act governed by Art. 164—S 7 of old Act XV of 1877, does not apply—S 6 of General Clause Act (X of 1897) does not make the new Act inapplicable.* A decree was passed *ex parte* against *A*, a minor, on the 4th September, 1894. *A* became a major on 16th January, 1909, and applied on 20th January, 1909, to set aside the decree: *Held*, that the Limitation Act (IX of 1908) which came into force on 1st January 1909, applied and the application was barred under Art. 164 of the Act. Under s. 6 of the Act, the plea of minority was available only in the case of suits and applications for execution. S 6 of the General Clause Act (X of 1897) had not the effect of making the new

LIMITATION ACT (IX OF 1908)—*contd.*

Act inapplicable. *Kah Amma v. Palappakkara Manakal*, *20 Mad. L J 347*, followed. *CHIDAMBARAM CHETTY v. KARUPPAN CHETTY* (1912)

I. L. R. 35 Mad. 678

— *s. 6 and Art. 168—*

See CIVIL PROCEDURE CODE, 1908, s. 151 AND O XLI I L. R. 45 Bom. 848

— *ss. 6 and 1, Arts. 182, 183—*

See CIVIL PROCEDURE CODE (Act V of 1908, s. 144 I. L. R. 41 Bom. 625

— *ss. 6, 7, 9 and 15—*

See ALIEN EXCHANGE I. L. R. 46 Calc 526

— *s. 7—*

1. — *Minor decree-holders—Applications for execution by guardian—Attainment of majority by one decree holder—Application by guardian takes effect in favour of all—Right of the major decree holder to give discharge to the judgment debtor in respect of the judgment debt.* Two minor sisters, who were born in the years 1881 and 1887, obtained a decree against the defendants in May 1900. The minor decree holders were represented by a guardian appointed by the Court. The said decree was confirmed by the High Court in appeal in March 1901. Subsequently the guardian presented applications for the execution of the decree in 1904, 1905 and 1906, and while the last application was pending the guardian died. Thereupon the decree holders presented an application for execution as majors in 1908. The defendants contended that as the elder decree holder had attained majority the application by the guardian was, as to her, unauthorized and the execution of the decree was barred as against her. It was further contended that as the elder decree holder could from the time of her attaining majority make an application and give a good discharge to the judgment debtor for the decretal debt without the concurrence of the minor time had, therefore, run against both under s 8 of the Limitation Act (XV of 1877) or s 7 of the Limitation Act (IX of 1908). *Held*, that by reason of the first explanation of Art. 179 of the Limitation Act (XV of 1877) an application made by a representative of one of joint decree holders takes effect in favour of all. Therefore, though the elder decree-holder had attained majority the applications made by the guardian as the next friend of the minor decree holder took effect in favour of both. *Held*, further, that the contention under s 8 of the Limitation Act of 1877 or s 7 of the Limitation Act of 1908 was inconsistent with the decisions in *Gowindram v. Tata*, *I L R 20 Bom 353*, and *Zamir Hasan v. Sunder*, *I L R 22 All 199*, the applicability of which had not ceased owing to any change in the words of s 7 of the Limitation Act of 1908. *MANCHAND PANACHAND v. KESARI* (1910)

I. L. R. 34 Bom. 672

2. — *Receiver—If can give discharge of debt—Minor owner.* A receiver upon whom the Court had conferred all the powers of realisation that an owner has, can himself give a discharge in respect of a debt. He is not fettered by the restrictions which are laid upon any one of several joint creditors or upon a next friend. Where a decree on a bond was passed on 5th August 1904, in favour of the plaintiffs, some of whom were minors, the suit having been filed on 21st June 1904 through their manager and amanda-

LIMITATION ACT (IX OF 1908)—contd.

far, who was appointed Receiver by the District Judge on 16th September, 1900 in a suit between the plaintiffs and was put in charge of the whole business of the plaintiffs with all its "pending and impending litigation," and a Receiver was in charge from that time onwards, and no steps were taken in execution of the decree until 11th May, 1910, when one of the minors applied for execution alleging that he had attained majority on 6th June 1907. Held, that the application for execution was barred by limitation. That the decretal debt vested in the Receiver when he was appointed on 15th September 1900 and from that date onwards he was competent to give a discharge, when once the debt had vested in him the minority of one or more of the decree holders ceased to have any importance for the rights of the minor no less than the rights of the majors were all absorbed by the Receiver. *Jagat Taras Das v Achha Gopal Chaki, 1 L R 34 Cal 395* referred to. *GIRJA NANDAN SINGH v KANKAYA PROSAD SAHU* (1913) 18 C. W. N. 128

3. ——— *Suit to recover arrears of Deshpandegiri cash allowance*—Three years arrears can be recovered. The plaintiffs, one of whom was a minor being jointly entitled to a Deshpandegiri cash allowance, sued to recover arrears for six years prior to the suit. Held, that the plaintiffs were entitled to recover the arrears for three years only for the minority of the second plaintiff could not help the plaintiffs inasmuch as the adult plaintiff was in a position to give a discharge on behalf of himself as well as the minor. *Gangat v Sheekhera 6 Bom L R 647* distinguished. *HCCBRAO THIMMAI v BUTHIRAO GORE RAO* (1917) 1 L R 42 Bom 277

4. ——— *Death of decree-holder*—Persons entitled to execute decree being the decree holder's two sons one of age, the other not—Application for substitution and death of elder son—A decree absolute for sale on a mortgage was obtained on the 19th of December, 1906. The decree holder applied for execution on the 23rd of September 1909, but during the pendency of these proceedings he died, leaving two sons—J, of full age and R, a minor. On the 29th of September 1910 application for substitution was made by J and R, J purporting to act as next friend to his brother and asking the Court to appoint him as such. Before the date fixed for Jaring, however J died and the application was dismissed on the date fixed, no one appearing on behalf of the decree holder. On the 10th of July, 1917 R, who had attained majority earlier in the same year, applied for execution, praying that his application might be regarded as a continuation of the original application of 1909. Held, that this application was time barred. It could not be regarded as a continuation of the application of 1909 and inasmuch as J could as head of the joint family consisting of himself and R, have given valid discharge on behalf of R as well as himself R could not claim the benefit of s. 7 of the Indian Limitation Act, 1908. *RAJ RAM v. NADAN* (1919) 1 L. R. 41 All. 425

5. ——— *Joint Hindu family—Elder brother competent to give a valid discharge as manager of the family—Sued by minor brothers barred*. In 1913, three brothers, members of a joint Hindu family, sued to recover possession of property after setting aside a sale-deed passed by their

LIMITATION ACT (IX OF 1908)—contd.

mother during their minority on the 28th July 1905. Plaintiffs Nos 1 and 2 were minors and plaintiff No 3 was more than twenty one years of age at the date of the suit. The suit was held barred as against plaintiff No 3, but a question having arisen whether it was barred as against plaintiffs Nos. 1 and 2 under s. 7 of the Limitation Act, 1908. Held, that it was barred as against plaintiffs Nos 1 and 2 also, inasmuch as plaintiff No 3 on his attaining majority became the manager of the joint family and as such could give a valid discharge and acquittance of all claims against the defendants without the concurrence of the minor plaintiffs. *Per Fawcett, J.*—The main object of the Legislature in s. 7 (of the Indian Limitation Act, IX of 1908) is to limit the indulgence which is otherwise given to minors, so that, if there are several minors who can claim the benefit of s. 6 that, concession does not extend to cover the whole period of time up to the youngest of the minors becoming a major, but can only be availed of by the eldest of them. *Doramasai Serumadan v. Kondasami Saisawan* (1912) 38 Mad. 118 followed. *BAPU TATTA v. BALA RAJJI* (1920) 1 L. R. 45 Bom. 446

6. ——— s. 7, Sch. I, Art. 44—*Joint Hindu family consisting of minors and widows—Manager—Mukhtiarnama executed by manager—Management by the mukhtiar during the life time and after the death of the manager—Sale by the mukhtiar after the death of the manager—Binding effect—Minor—Limitation to set aside s. 14*. A, the manager of a joint Hindu family consisting of minors and widows, executed a mukhtiarnama providing for the management of the family estate, including settlement of money debts and pecuniary claims both during his life-time and after his death until his eldest minor son attained majority. The mukhtiar was empowered to manage the estate as he thought fit including the power of sale and settle claims as A himself could have done during his life time. In connection with the registration of the mukhtiarinama the Sub-Registrar examined the widows in the family including the widow of A, the manager, who had died in the meanwhile, and the deed was registered as the widows admitted the same. Subsequently the mukhtiar sold mortgaged (leasehold) rights of the family in certain lands for valuable consideration. A's eldest son having attained majority on the 10th December, 1894, he with his minor brother brought a suit on the 17th May, 1890, to recover possession of the property alleging that the sale of the mortgaged (leasehold) rights was void ab initio. The lower Courts having dismissed the suit, on second appeal by the plaintiffs. Held, that (i) the sale by the mukhtiar was binding on plaintiffs as having been within the authority conferred by the mukhtiarinama. (ii) The sale could not be treated as a nullity, inasmuch as a dying adult Hindu might appoint a manager and trustee for the minors themselves without interfering with the succession to the property. *Raj Luthar Daba v. Gokool Chander Choudhry, 13 Moo I A 209*, and *Sobabhai Doorga Lal Jha v. Bujah Nelaund Singh, 7 B L R 74*, referred to. (iii) The right of plaintiff J, if any, to challenge the sale was barred at the date of the suit under Art. 44, Sch. I of the Limitation Act (IX of 1908) by reason of his failure to sue within three years of his attaining majority. (iv) Plaintiff 2, a minor, was also barred under s. 7 of the Limitation Act (IX of 1908) inasmuch as

LIMITATION ACT (IX OF 1908)—*contd*

plaintiff 1 after attaining majority could have bound the minor plaintiff if he had chosen to give a discharge and acquittance of all claims to the defendants in respect of *mulgans* (leasehold) interests, as manager **MAHALESHTAR KRISHNAKAPPA v RAMCHANDRA MANGESH** (1913)

I. L. R. 38 Bom 94
 s 7 and Art 44—*Sale by a Hindu mother as guardian of her only son—Second son in the womb at the time of sale—Subsequent sale by both the sons to another—First purchaser dispossessed by the latter—Suit in ejectment—Limitation*
 The plaintiff claimed under a sale deed executed by a Hindu widow as guardian of her only son at a time when she had another son in the womb. The plaintiff was afterwards forcibly ejected by the appellant who had obtained a later sale deed from the elder son who executed it both on behalf of himself and his minor brother. The plaintiff sued in ejectment more than three years after the first son's attaining majority but within three years of the attainment of majority by the second. *Held*, that no suit having been brought by the first son within the period prescribed by Art 44 of the Limitation Act to set aside the sale, the plaintiff's right to the share of the first son became absolute and that as the mother did not execute the sale deed as guardian of the second son his share in the suit land did not pass to the plaintiff. *Held*, also, that as the causes of action for the two sons were different, s 7 of the Limitation Act had no application to the facts of the case. **Doraiswami Serumadan v Nondisami Saluran**, I L R 38 Mad 118, distinguished. **KANDASAMI v IRUSAPPA** (1917)

I. L. R. 41 Mad. 102

ss. 8 and 9—

See s 6 19 C W N 1113.

s 9—

See CIVIL PROCEDURE CODE, 1908 s 48
 I. L. R. 36 Bom. 493

See LIMITATION ACT, 1877, s 19 ART
 148 I. L. R. 35 All 227

The 12 years prescribed by s 48 of the Civil Procedure Code must be computed from the day on which it begins to run and is not suspended during minority succeeding to Father who died after decree passed. **BHAGWANT RAMCHANDRA v KAMU MAHOMED ABBAS**
 I. L. R. 36 Bom 493

ss 9, 15—

See ALIEN ENEMY
 I. L. R. 46 Calc. 526

s 10

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss 92 and 93.
 I. L. R. 38 Mad. 1064

See EQUITY OF REDEMPTION
 2 Pat. L. J. 587

See HINDU LAW—WILL.
 I. L. R. 39 Mad. 365

See KHUJA MAHOMEDANS
 I. L. R. 38 Bom. 214

See TRUSTS PROPERTY
 24 C. W. N. 752

See WAKFS. I. L. R. 37 Bom. 447

LIMITATION ACT (IX OF 1908)—*contd*

Whether applicable to suits in respect of property which has not been received by a trustee
 The insertion in s 10 of the Indian Limitation Act, 1908, of the words "or the proceeds thereof or for an account of such property or proceeds" has not had the effect of exempting from the ordinary rules of limitation suits against trustees for failure to reduce the trust property into possession. **Neo Fleming, Spinning and Weaving Company, Limited v Kessouji Naik**, I L. P. 9 Bom 373, 392, followed. **THOLASINGAM CHETTI v VEDACHELLA AITAH** (1917)

I. L. R. 41 Mad 319

—Straits

Settlements Ordinance No 6 of 1896 s 10—Specific purpose meaning of
 A specific purpose within the meaning of s 10 of the (Limitation) Ordinance No 6 of 1896 of the Straits Settlements (which in terms corresponds to s 10 of the Indian Limitation Act) must be a purpose that is either actually or specifically defined in the terms of the Will or settlement or a purpose which from the specified terms, can be certainly affirmed. The statement in **Bahart Rao v Puran Mal**, I L R. 6 All, that the purpose of following the property in the hands of the trustees referred to at the end of the section must be the purpose of restoring it to the trust which is specified in the earlier part of the section provides a sound and critical test by which to consider whether or not any particular trust is within the provision of the section. **KHAW SIM TEA v GHUAN HOOI GYON NEON (P. C.)**

26 C W N 495

ss 10 and 20—

1—*Suits against Karta*
 S 10 does not apply to suits against a Karta. That section requires that the property must be vested in the trustee for a specific purpose but it cannot be said that a Karta is vested with the property belonging to a joint family. The 6 year limitation under Art 120 applies to such suits. **BISWAMBAR HALDAR v GRIHALA DAS**
 25 C W N 356

2—*Trustee de son tort*
 Suit for account. A trustee de son tort stands in the same position as an express trustee. The claim for accounts 6 years prior to the institution of the suit would be saved by Art 120 the obligation of the trustee being continuous. Under the 1908 Article there is no limit to a suit for accounts against a trustee. **DHANPAT SINGH v MOHESH NATH TEWARI**
 24 C W N 752

s 10, Sch. I, Arts 14, 120—*Deposit—Order of the Collector refusing payment vested in trust—Specific purpose—No bar of time for recovery*
 In 1833, C, an ancestor of the plaintiff, had his immoveable property sold to satisfy his debt by the then Maharaja of Satara. Out of the sale-proceeds the debt was paid off and the balance of Rs. 1,793-0-5 was credited in the Government Treasury in the name of C. Subsequently when the Satara principality ceased in the year 1818 the said amount came to be credited in C's name in the British Treasury. In 1859 C's descendants applied to the British Government for a refund of the amount when it was ordered that the amount be refunded after production of heirship certificate by the applicants and the order was communicated to the then applicants. Subsequently

LIMITATION ACT (IX OF 1908)—*could*

for a number of years there were litigations in Civil Court between C's descendants and the purchasers of C's property as regards the validity of sale. Ultimately in 1906 M, the father of the plaintiffs, made an application to the District Court for a certificate of heirship and an order for the issue of a certificate was passed on the 23rd March 1907. M then made an application on 16th October 1907 to the Collector of Satara requesting for a refund of the amount of Rs. 1,793 0 5 standing credited in C's name. This application was decided against the plaintiff by the Collector on 6th March 1911. The plaintiffs then appealed to the Commissioner and the appeal was rejected on 17th July 1911. A further appeal to the Government met with a similar fate. Plaintiff, therefore, on 16th June 1912 filed a suit against the defendant as trustee for the recovery of the amount alleging that the cause of action arose on 17th July 1911, the date when the Commissioner's order was received by the plaintiffs. The defendant contended that the cause of action arose on 6th March 1911 when the Collector rejected the plaintiff's application and the suit was barred under Arts. 14 and 120 of Sch. I of the Limitation Act (IX of 1908). The Lower Court being of opinion that the money was at most held by the defendant on an implied trust held that s. 10 of the Limitation Act did not apply to the case and that the plaintiff's claim could only be decreed on the ground that it was within time under Art. 120 of the Limitation Act. The defendant having appealed to the High Court, *Held*, that the money being vested in the Government when it took over the Satara Treasury in 1848 and the purpose of the credit in the name of C, being specific, s. 10 of the Limitation Act did apply. *Held*, further, that the plaintiffs were entitled to succeed on the ground not only that their claim did not fall within Art. 14 and would be within time if it fell within Art. 120, but that it was one to which the bar of limitation could not be pleaded. **SECRETARY OF STATE FOR INDIA v. RAJANI MAHADEO (1915) I. L. R. 39 Bom. 572**

— ss. 10, 30 : Sch. I, Art. 134—

See **LIMITATION I. L. R. 43 Calc. 34**

— s. 10, Sch. I, Art. 120—

See **ADMINISTRATOR, 2 Pat. L. J. 642**

— s. 10, Sch. I, Arts. 124, 134 and 144—

See **RELIGIOUS ENDOWMENTS**
3 Pat. L. J. 327

— s. 12—

See s. 5 20 C. W. N. 1203

See **ARBITRATION**.
I. L. R. 48 Calc. 721

See **APPEAL TO PRIVY COUNCIL**.
I. L. R. 39 Calc. 766

See **CIVIL PROCEDURE CODE (1908)**,
s. 123 I. L. R. 40 All. 1

See **DECREE AGAINST A MAJOR AS MINOR**.
I. L. R. 39 Mad. 1031

See **LEAVE TO APPEAL**.
I. L. R. 42 Calc. 35

See **LIMITATION (67)**. 22 C. W. N. 553

LIMITATION ACT (IX OF 1908)—*could*

See **PROVINCIAL INSOLVENCY ACT, s. 498**

I. L. R. 34 All. 46

I. L. R. 39 Mad. 593

See **PATNA HIGH COURT RULES OF 1916**.

5 Pat. L. J. 701

1. ——— Time requisite for obtaining copy—*Application for copy made on date the Court closed for annual vacation—Notice posted during the vacation—Copy received after vacation*. Where an application for copies of a judgment and decree was made on the day when the Court rose for its annual vacation, it was held that the applicant was entitled to the benefit of the whole period of the vacation, notwithstanding that the copying department was kept open for some days and a notice posted during the vacation that the applicants' copies were ready. **KHUR CHAND v. HARNUM (1911) I. L. R. 34 All. 41**

2. ——— Application for leave to appeal to Privy Council—*Time taken for obtaining copy of decree if may be excluded—Indian Statute permitting exclusion, of ultra vires—Order in Council of 1835—Government of India Act of 1855, s. 64—Letters Patent, cl. 39, 41—Privy Council Appeals Act (VI of 1874)*. An application for leave to appeal to His Majesty in Council is not time-barred, if excluding the time taken for obtaining a copy of the decree appealed from it is found to have been made within 6 months. S. 12 of the Limitation Act of 1908 is within the legislative powers of the Government of India in permitting such exclusion. **ABDULLAH HUSAIN CHAUDHURY v. ANANDA CHANDRA RAY (1914)**

18 C. W. N. 1068

3. ——— High Court judgment—*Application for review—Limitation of time from before the signing of decree*. In computing the period of limitation for an application for review of a judgment of the High Court, the party applying for review is entitled to have excluded, under s. 12 of the Limitation Act, the time requisite for taking a copy of the decree, and the period of limitation cannot in such a case commence to run until, at all events, the day the decree was signed by the Judges. **GANGADHAR KARMAN v. SEKHAR BASINI DASTA (1916) 20 C. W. N. 967**

4. ——— Appeal, limitation for presenting—*Copies of judgment and decrees applied for at different times—Both periods if to be excluded—Rule when periods overlap*. Under s. 12, cl. (2) and (3) of the Limitation Act, the appellant is entitled to a deduction of the time requisite as well for obtaining a copy of the decree as for obtaining a copy of the judgment, and if he has applied for copies of the judgment and decrees at different times, both these periods should be excluded in computing the periods of limitation allowed for presenting the appeal, unless the two periods overlap partially or entirely in which case the appellant is not entitled to have a deduction of the same time twice over. **RAJANI KANTA KAPALI v. KALI MOHAN DAS KAPALI (1910)**

21 C. W. N. 217

5. ——— Appellant filing a copy of decree appealed from, obtained by another party—*Deduction of time taken to get the copy*. An appellant who is required to file with his memorandum of appeal a copy of the decrees appealed from, may file a copy obtained by another party ;

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and under s 12 (2) of the Limitation Act he is entitled to a deduction of time taken to obtain that copy. *Ram Kishan Shastari v Kaash Bai* (1907) 1 L R 29 All 264, followed. *Ramamurthi Ayyar v Subramania Ayyar* (1902), 12 M L J 355, dissented from. *AMIN UD DIN SAHIB v PYARI BI* (1920) 1 L R 43 Mad. 633

6 ————— Christmas holidays—Deduction of, in computing time for appeal. The defendant, against whom a judgment and decree were passed on 21st December 1919, i.e., on the first day of the Christmas vacation, applied for copies of the same on the 7th January 1920, i.e., some days after the reopening. *Held*, that in computing the time for appeal the defendant was not entitled to deduct the period of the Christmas vacation as 'time requisite for obtaining copies' within section 12 of the Limitation Act. *SUBRAHMANYA v NARASIMHAM* (1920)

1 L R 43 Mad. 640

7 ————— Limitation—Exclusion of time necessary for obtaining essential copies—Application for copies made after period of limitation had expired. In order to obtain the benefit of s 12 of the Indian Limitation Act, an appellant must apply once and for all for copies of all essential documents before the period of limitation for appeal has run out. He cannot seek in aid the extended period if he finds later that an essential document has been omitted. *MULRAJ v NIDAR MAL* 1 L R 42 All 260

8 ————— The time requisite for attaining a copy of the decree within the meaning of this section does not begin until the actual application for a copy has been made. *JYOTINDRANATH SARKAR v THE LODNA COLLIERY CO., LTD*

6 Pat L J 350

9 ————— Appeal—Exclusion of time between delivery of judgment and signing of decree—Delay in filing folios—Practice. Under s 12 of the Limitation Act, 1908, an appellant is entitled to deduct the time between the delivery of judgment and the signing of the decree in computing the period of limitation prescribed for an appeal. An applicant for a certified copy should deposit the required number of folios not later than the first day on which the office of the Court is open after that on which the number of folios was notified to him, and in calculating the time required for obtaining a copy, the applicant is not entitled to deduct the days during which the preparation of the copy was delayed by his own neglect to furnish folios. *RAM ASRAY SINGH v SHYO NANDAN SINGH* 1 Pat L J 573

ss 12, 29—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s 46 (4)

1 L R 33 All 738

1 L R 34 All 496

s 12, Sch I, Art 179—

See LIMITATION ACT (IX OF 1908), s 12, Sch I, Art 179

1 L R 39 Cal 510

Limitation—Application for leave to appeal to His Majesty in Council—Exclusion of time requisite for obtaining a copy of the decree. *Held*, that s 12 of the Indian Limitation Act, 1908, applies to applications for leave to appeal to His Majesty in Council. The appellant

LIMITATION ACT (IX OF 1908)—*contd*

is therefore entitled to exclude the day upon which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree from the period of limitation prescribed. *RAM SARUP v JASWANT RAI* (1915)

1 L R 38 All 92

13—Dissolution of partnership—Partnership business carried on outside British India—Absence of defendant out of British India—Suit for dissolution in British Indian Court—Exclusion of time—Cause of action—Jurisdiction of Court—Civil Procedure Code (Act V of 1908) s 20. A partnership consisting of plaintiff, defendant No 1 and one S carried on business at Delagoa in South Africa and was managed by defendant No 1 who lived there. In June 1902 S died. Defendant No 1 returned to British India in July 1903 and was there till November 1910 when he returned to Delagoa. Thereafter in October 1915 he came back and settled in British India. In April 1916, the plaintiff sued in a British Indian Court for dissolution of partnership. The question of limitation arising—*Held*, that the suit was in time, for the periods during which defendant No 1 was absent from British India, should be excluded from the period of limitation, under section 13 of the Indian Limitation Act, 1908. *ATUL KRISHNA BOSE v LYON & CO. (1887) 11 Cal 457* followed. Where the parties to a suit reside within the jurisdiction of a British Indian Court one of them can sue the other for dissolution of partnership in that Court even although that partnership commenced and was carried on in foreign territory. *ISMAILJI v ISMAIL ABDUL* 1 L R 45 Bom 1228

ss. 13, 19 and 20—Loan to a partner ship—One of the partners absent from British India—Suit for loan more than three years after loan but within three years after return of partner, whether barred and against whom—Release by some partners of a partnership debt whether binding on legal representative of a deceased partner—Entries in debtor's accounts, whether payment of interest or acknowledgment. The plaintiff's father was a partner along with the third, the sixth and eighth defendants of a firm at E, which advanced certain loans in 1903 and 1904 to a firm at S of which the first defendant and the former defendants were partners, the first defendant was out of British India from 1903 to 1908. The plaintiff sued in 1909 to recover his share of the loans from the partners of the firm at S. The defendant pleaded that the suit was barred by limitation. The plaintiff relied in bar of limitation on s 13 of the Limitation Act and also on certain unsigned entries in defendants' account books in which the interest accruing due were added to principal from time to time, the first defendant further pleaded a release by defendants Nos. 3, 6 and 8 of the claim against him as binding on the plaintiffs. *Held*, that the suit was not barred by limitation against the first defendant as the plaintiff was entitled to a deduction of the time during which the first defendant was out of British India but was barred against the other defendants under s 13 of the Limitation Act, that the entries in the debtor's accounts could not be treated as payments of interest under s 20 of the Limitation Act or as acknowledgments under s 19 of the Act as they were not signed by the debtors. *Held*, also, that a partner can release a partnership claim, and after the death of a partner, the surviving partners

LIMITATION ACT (IX OF 1908)—*contd*— ss 13, 19 and 20—*contd*

have a right to release such a claim, that, if a release by any of the partners is fraudulent the other partners can avoid it and seek to recover their share of the released debt, but the legal representative of a deceased partner is not entitled to avoid it as the right to do so is personal to the partners. *Held* (on the facts), that the release of the first defendant by the third sixth and eighth defendants was *bona fide* and binding on the plaintiff. **PALANIAPPA CHETTIAR v VEERAPPA CHETTIAR** (1917) I L R 41 Mad 446

— s 14—

See s 4 I L R 44 Mad 817

See s 5 I L R 42 Bom 285

See CIVIL PROCEDURE CODE 1908 s 47

I L R 44 Bom 97

See INSOLVENCY I L R 39 Mad 74

See LIMITATION I L R 45 Calc 84

See LIMITATION (54)

I L R 46 Calc 870

See LIMITATION (72)

I L R 47 Calc 300

See LIMITATION ACT (IX OF 1908) SCH I, ARTS. 62, 120 I L R 39 Mad 62

See REGISTRATION ACT, 1908 s 77

24 C. W. N 4 & 29

See RENT SUIT (PREMATURITY)

I L R 46 Calc 870

1. — *Plaint filed on last day ordered to be returned for presentation in another Court on a later date—Plaint actually returned later—Interval between bars suit* Where a plaintiff which was filed in a wrong Court on the last day of limitation was subsequently ordered to be returned for presentation to the proper Court, but was not actually returned till three days later, and was filed in the proper Court the day following. *Held*, that the suit was not barred by limitation. Where the final order is promulgated on a later date than that on which it was signed, the date of promulgation should be held to be the day on which the proceedings ended within the meaning of expl I of s 14 of the Limitation Act. **Abhaya Charan Chakrabarty v Gour Mohan Dutt**, 24 W R 26 distinguished **MOHEN DRA PRASAD SINGH v NANDA PRASAD SINGH** (1913) 17 C. W. N. 1043

2. — *Fresh suit, filing of, whether barred by S 14 of the (Indian) Limitation Act (IX of 1908) applies only to cases where a Court itself decides that it is unable to entertain a suit for want of jurisdiction or other cause of a like nature and has no application to a case where the plaintiff himself with draws his suit on discovery of some technical defect which would involve a failure* **Parajal v. Shomeshwar**, I L R 29 Bom 219, and **Uyendia Nath Noy Chowdhury v Suryakanta Ray Chowdhury** 20 I C 203, followed **ARUNACHALLAM CHETTIAR v. LAKSHMANA AYYAR** (1913) I L R 39 Mad 938

3. — *Exclusion of time from period of limitation—Time taken up in proceedings bona fide before a Court—Proceedings before Collector under s. 11A of the Bombay Hereditary Offices Act (Bombay Act III of 1874)—Time cannot*

LIMITATION ACT (IX OF 1908)—*contd*— s 14—*contd*

be excluded. The time taken up in prosecuting an application before the Collector under s 11A of the Bombay Hereditary Offices Act (Bom. Act III of 1874) cannot be excluded from the period of limitation, under s 14 of the Indian Limitation Act 1908. **LAXMAN GANESH v KESHAV GOVIND** (1918) I L R 43 Bom. 201

4. — *Plaint—Return of plaint—Proceedings do not end until the party gets back his plaint—Suit filed on the opening date after vacation—Presentation of plaint into another Court—Exclusion of time—Calculation should be made as if the second Court had been closed for vacation* When a party is ordered to take back his plaint and present it in the proper Court the proceedings do not end until the party gets back his plaint within the meaning of Expl I to s 14 of the Limitation Act, 1908. The plaintiff sued to recover a sum due on account of dealings with the defendant between 20th May 1913 and 3rd June 1913. The suit was filed in the Hubli Court on the 7th June 1916 the date the Court re opened after the vacation and was then in time. On defendant's pleading that he was an agriculturist the plaint was ordered on the 15th January 1917 to be returned for presentation to the proper Court. The plaintiff took away the plaint on the 20th January 1917 and presented it on the same day in the Haveri Court. It was contended that even if the period from 7th June 1916 to 20th January 1917 was excluded the suit filed in the Haveri Court would still be four days out of time as the period which was allowed to be excluded owing to the Hubli Court being closed for the vacation when the plaint was filed in that Court could no longer be taken advantage of after the order had been made to take back the plaint and file it in another Court. *Held*, that the suit in the Haveri Court was in time as the plaintiff was entitled to take advantage of those days during which the Hubli Court was closed for the vacation and the calculation should be made in the same way as if the second Court had been closed for the vacation. **Mrs Mohidin Rautner v Vallaperumal Pillai** (1917) 36 Mad 131 not followed **BAVANAPPA v KRISHNADAS** (1920) I L R. 45 Bom 443

5. — *Appliability of when the parties in the two proceedings are not the same—Arts 69 and 97 which applies, where an execution purchaser of a plot paid rent to the zemindar after the setting aside of the sale by the first Court and during the pendency of an application for appeal—Executing consideration, rendering of plaintiff purchased a plot at a sale held under Reg VIII of 1819 in May 1908. In October 1910 the purchaser paid rent to the zemindar after the sale was set aside by the Court of first instance in May 1910, and during the pendency of an appeal by the zemindar which was ultimately dismissed. There were certain proceedings for assessment of meane profits between the purchaser and the original proprietor on the basis of the decree for cancellation of the sale. Thereafter the said purchaser in February 1916 sued for recovery of the money paid as rent to the zemindar. *Held*, that the suit was barred. In view of the provisions of s 14 of the Limitation Act, the Plaintiff was not entitled to a deduction of the time during which the meane profits proceedings were going on as the zemindar was not a party therein, nor was there*

LIMITATION ACT (IX OF 1908)—*contd.*s. 14—*concl'd.*

since October 1910, any period of time when the right of the Plaintiff to sue was suspended by reason of events over which he had no control. That Art. 62 of the Limitation Act applied to the case. The fact that there was failure of consideration at the time the payment was made in October 1910 attracted the operation of the bar imposed by Art. 62. Art. 97 did not apply because at the time when the money was paid there was no subsisting Consideration. *JANAKI NATH SINGH v. BEJOY CHAND MAHATAB* . . . 26 C. W. N. 271

8. ————— *Res Judicata* does not constitute "Other causes of a like nature" within the meaning of s. 14 of the Limitation Act, 1908. *BRAJA GOPAL MUKHARJI v. TARA CHAND MARWARI* . . . 6 Pat. L. J. 593

ss. 14 and 15—

See s. 6 . . . I. L. R. 42 Mad. 637

ss. 14 and 29—

See LIMITATION

I. L. R. 47 Calc. 309

s. 15—

See s. 5 . . . Pat. L. J. 132

See CIVIL PROCEDURE CODE (1908), s. 43.

I. L. R. 40 All. 198

See LIMITATION (27)

I. L. R. 33 Mad. 92

See LIMITATION ACT, 1877, SCH. II

ART. 178 . . . I. L. R. 34 All. 436

See LIMITATION ACT, 1908, ss. 5 AND 15

3 Pat. L. J. 132

See SUIT . . . I. L. R. 45 Calc. 934

1. ————— *Exclusion of time*

—Period during which execution of decree is stayed to be excluded in computing period of limitation.

On the 8th August, 1908 an application to execute a decree was made. The Court having directed the execution to proceed as to a part of the decree, the judgment-debtor appealed against the order and pending the appeal the execution of the decree was stayed from the 9th January to the 16th February 1909. On the 12th August, 1911, the decree-holder applied again to execute the decree. The Lower Courts held that the second application was barred by limitation, it having been made more than three years after the date of the first application. On second appeal —Held, that the second application was filed within time, for the applicant was entitled to exclude the period during which the execution of the decree was stayed, in computing the period of limitation for the second application. *BAI USAM v. BAI RUXMANY* (1913)

I. L. R. 33 Bom. 153

2. ————— *An attachment*

before judgment is not an injunction or order within the meaning of s. 15 of the Limitation Act. *MUNSHIR ALI v. ABHOYA CHARAN DAS* (1917)

21 C. W. N. 1147

3. ————— *Suits against insolvent—Effect of adjudication—Subsequent annulment—Saving of limitation for suits—Adjudication*

whether absolute stay of suits—Obtaining of leave to sue from Court—Condition precedent to sue, if sufficient to save limitation—Provincial Insolvency Act (111 of 1907), s. 16, cl. 2. In computing the period of limitation for suits instituted against a

LIMITATION ACT (IX OF 1908)—*contd.*s. 15—*concl'd.*

person after an order adjudicating him an insolvent was annulled, s. 15 of the Limitation Act does not permit the deduction of time during which the order was in force, as, under s. 16, cl. 2, of the Provincial Insolvency Act, an order of adjudication does not effect an absolute stay of suits against the insolvent, but only makes it necessary that leave to sue should be obtained from Court before a suit could be filed against him while the adjudication was in force. *Soni Ram v. Kanhaiya Lal, I L. R. 35 All. 227, and Dorasami Padayachi v. Vaidyanaga Padayachi, 33 M. L. J. 48, referred to Shurmugam v. Mosdeen, I L. R. 8 Mad. 229, distinguished. RAMASWAMI PILLAI v. GOVINDASAMI NAICKER* (1918)

I. L. R. 42 Mad. 319

4. ————— *Execution of*

decree—Order demanding security pending appeal—

Security not furnished—Appeal subsequently dis-

missed, whether period between order for security

and dismissal of appeal to be excluded in calculating

limitation for a second application for execution—

Code of Civil Procedure (Act V of 1908), O. XLV,

rr. 10, 11, 13 and 14. A judgment debtor applied

to the High Court for leave to appeal to the Privy

Council and petitioned the Court to stay execution

of the decree, an application for which had been to

the Lower Court on the 13th December 1913,

pending the disposal of the appeal by the Privy

Council. It was alleged that the decree holder

was a man of no substance. The High Court

accepted this allegation and by an order, dated

the 27th January 1914, allowed the decree to be

executed only on condition that the decree holder

furnished security. The Lower Court fixed the

security at Rs. 50,000 and, the decree holder being

unable to furnish this amount, dismissed the appli-

cation for execution. On the 18th October 1916,

the judgment-debtor's appeal to the Privy Council

was dismissed for default, and on the 12th April

1918, the decree holder again applied for execution

of his decree. The judgment-debtor objected

that more than three years having elapsed since

the date when the last step was taken, viz., the

13th December 1913 execution of the decree

was barred by limitation. Held, that the Court's

order of the 27th January 1914, was in effect an

order staying execution within the meaning of s. 15

of the Limitation Act, 1908, because the decree-

holder was not in a position to furnish the security

demanded and that, therefore, the decree-holder

was entitled to exclude the period between the

27th July 1914 and 1st October 1916. PANDAY

SATDEO NARAIN v. SRIMATI RADHEY KURA

5 Pat. L. J. 39

s. 16—

— "Proceeding," meaning

of, if includes suit to set aside sale—Period taken

by defendant in litigation to set aside sale, exclusion

of, in calculating period of limitation. That the

word "proceeding" in s. 16 of the Limitation

Act is not restricted to an application for setting

aside a sale but is comprehensive enough to in-

clude a suit as well as an application and the

obvious intention of the Legislature was to allow

an exclusion of the period during which the validity

of the sale was in controversy whether the

sale was impeached by a suit or by an applica-

tion. *PROMOTHA NATH ROY v. KISHORE LAL*

SHARMA (1916) . . . 21 C. W. N. 304

LIMITATION ACT (IX OF 1908)—*contd.*

s 17—Unlike cases governed by the Indian Succession Act and the Hindu Will Act in a case governed by the Probate and Administration Act, 1881, the obtaining of Probate is not necessary to clothe the executor with the right to sue for debts due to the estate within the meaning of s 17 and therefore time begins to run from the date of Testator's death as the obtaining of a succession certificate is not a condition precedent for filing a suit but only for getting a decree
BALAKRISHNADU v NARAYANASWAMY CHETTY
 I L R. 37 Mad. 175

s 18—

See **LIMITATION ACT 1908 ART 95**
 I L R 37 Bom 158

See **SALE IN EXECUTION**
 15 C W. N 965

See **SUCCESSION CERTIFICATE ACT 1889**
 s. 4 I L R 43 AU 440

1. ——— *Sale application made after time to set aside—Fraud antecedent to sale, if may be proved* Where upon an application by a judgment-debtor to set aside a sale on the ground of fraud, made more than 30 days after the sale, the Court refused to admit evidence of fraud antecedent to the sale on the ground that such fraud was not material for the purposes of s 18 of the Limitation Act. *Held*, that although proof of fraud antecedent to the sale does not necessarily indicate the continuance of that fraud subsequent to the sale, it may have an important bearing in the determination of the question whether there was fraud subsequent to the sale sufficient for the purposes of s 18. The question of fraud should be considered as a whole. **TOOKOO MOSI DAS v DWARKA NATH DRADA** (1912)
 17 C W N 478

2. ——— *Conditions to be fulfilled before invoking section—Application for setting aside sale on the ground of frauds—Fraud subsequent to sale if necessary to be established* S 18 of the Limitation Act provides that where a person having a right to make an application has by means of fraud been kept from the knowledge of such right of the title on which it is founded the time limited for making the application against the person guilty of the fraud or accessory thereto shall be computed from the time when the fraud first became known to the person injuriously affected thereby. Consequently whoever desires to avail himself of s. 18 has to establish in the first place that there has been fraud; and in the second place that by means of this fraud he has been kept from the knowledge of his right to make an application, but it is not essential to prove that there has been fraud subsequent to the date of sale. **JOTINDRA MORAN RAI CHoudhuri v BROJENDRA KUMAR DUTTA** (1914)
 19 C W. N. 553

ss 18, 20, 21; Sch I, Arts. 65, 739, 115—

See **PRINCIPAL AND SURETY**
 I L R. 44 Cal 978

s. 18, Sch. I, Arts. 62, 115, 116—

See **CONTRACT** . I. L. R. 41 Mad. 488

LIMITATION ACT (IX OF 1908)—*contd.***s 19—**

See s 6 . I L R 42 Mad 637

See s 21 I. L. R. 41 Mad. 427

See **ACKNOWLEDGMENT**
 I L R. 39 Cal. 769

See **ACKNOWLEDGMENT OF DEBT**
 I L R. 48 Cal. 1046

See **CIVIL PROCEDURE CODE, 1908, s 2.**
 I L R 42 Mad. 52
 I L R. 2 Lab. 13

See **CONTRACT ACT, 1872, s. 25**
 6 Pat. L. J. 121

See **EXECUTION OF DECREE**
 1 Pat. L. J. 214

See **HATCHETTA** I L R. 46 Cal. 746

See **LIMITATION** I L R. 43 Cal. 211

See **LIMITATION, 1877 s 19**
 I L R 47 Cal 300

See **LIMITATION** I L R 35 Bom 383
 I L R 43 Cal 211

1. ——— *Debt entered in schedule filed by Insolvent—Acknowledgment—Limitation* Where an insolvent has written down a debt in his schedule, as owing that debt to a named person, and has signed the schedule, that is a sufficient acknowledgment, under a 19 of the Indian Limitation Act (IX of 1908) to extend the period of limitation. **CHOKRY SHRIGOPAL CHIRANJILAL v DHANALAL GHASIRAM** (1910)
 I L R. 35 Bom 383

2. ——— *Acknowledgment—Joint judgment debtors—Acknowledgment by one portion of debt—Effect.* Acknowledgment of a judgment-debt by one of several judgment debtors keeps alive the decree against such judgment-debtor alone and not against the others. **Richardson v Youngs, I L R 6 CA Ap 418, Bhogyal v Amratal, I L R 17 Bom. 175, Dharmia v Balakund, I L R 18 AU 458, distinguished Narayan v Venkata, I L R 25 Mad 220, Jala Subramanian Pallas v Ramanathan Chettiar I L R 32 Mad 421, Aheanullah v Dakshina Das, I L R 27 AU 575, relied on.** If a part only of the debt is acknowledged it is kept alive to that extent only. **CHANDRA KUMAR DHAR v RAMDIN FODDAR** (1912)
 16 C. W. N. 493

3. ——— *Limitation—Acknowledgment by agent—Law to be applied to test the validity of an acknowledgment* *Held*, that the criterion to be applied to test the validity of an acknowledgment of liability put forward by a plaintiff as extending the period of limitation in his favour, is the law in force at the time when the plaintiff's suit would otherwise have been time-barred and not that in force at the time when the acknowledgment relied upon was made. **Mohesh Lal v Buxant Amaree, I L R 6 Cal 340, Rahman Bibi v Halasa Kwar, I L R 1 AU 642, and Hanuman Prasad v Raghunandan Singh, I AU L J 355, referred to FAIR UK NISSA BIBI v THE MAHARAJA OF BENARES** (1911)
 I L R. 34 AU 109

4. ——— *Acknowledgment of liability* The following two letters were sent by first and second defendants respectively to plaintiff's vakil (i) Sir, 10th June 1908 With reference to your letter of the 2nd instant, I request

LIMITATION ACT (IX OF 1908)—*contd.*s. 19—*contd.*

you to be so good as to furnish me with a copy of a statement of accounts." (ii) "Dear Sir, 18th June 1908. With reference to your letter of the 2nd instant on behalf of landing contractor, Madras, I have to inform you that I wish to examine the accounts as my account does not show such an amount mentioned in your letter. I therefore request you will please forward the copy of the account or to instruct your client to send his *gumastah* with his account books." *Held*, that neither of the letters amounted to an acknowledgment of liability under the Limitation Act, s. 19. **ANDIAFFA CHETTY v ALASINGA NAIDU** (1913)

I. L. R. 38 Mad. 68

5. — *Limitation*

Acknowledgment—Requires for valid acknowledgment. *Held*, that an acknowledgment of a debt to be a valid acknowledgment within the meaning of s. 19 of the Indian Limitation Act, 1908, need not be addressed to the creditor, but may be made to some other person as, e.g., by means of deposition in Court. *Held*, also, that a statement in the form "the whole of Janki Prasad's mortgage money is owing," there being in existence at the time two mortgages held by Janki Prasad, must be taken to apply to both, in the absence of evidence indicating a different signification. **Moniram Seth v. Seth Rupchand**, I. L. R. 33 Cal. 1047, and **Mylapore Iyasarany Vayapooty Moodliar v. Yeo Kay**, I. L. R. 14 Cal. 501, referred to. **MEGH RAY v. MATHURA DAS** (1913)

I. L. R. 35 All. 437

6. — *Acknowledgment*

of debt. A letter to the effect that the writers "after looking into the account will sign it" is not an acknowledgment of liability on an account stated within the meaning of s. 19 of the Limitation Act. **BHARAT PRASAD v. GOVARDHAN PRASAD SANGU** (1914)

19 C. W. N. 170

7. — *Acknowledgment*

of plaintiff's title in statement of boundary of neighbouring land in kabuliyat executed by defendant in favour of third party. Where in stating the boundaries of lands included in a kabuliyat executed by the defendant in favour of a third party, he described the land in suit as plaintiff's: *Held*, that the statement amounted to an acknowledgment within the meaning of s. 19 of the Limitation Act. It is now settled that an acknowledgment, to whomsoever made, if it be an acknowledgment pointing with reasonable certainty to the liability in dispute or the right out of which that liability arises as a legal consequence is an acknowledgment of liability within the meaning of that section. **Maniram Seth v. Seth Rupchand**, 10 C. W. N. 874; s. c., I. L. R. 35 Cal. 1047, **Maynadar Huralal v. Desai Notariyal**, 17 C. W. N. 573, **Imam Ali v. Bani Nath**, I. L. R. 33 Cal. 613, and **Mylapore Iyasarany Moodliar v. Yeo Kay**, I. L. R. 14 Cal. 501, considered. **GLAU CH SAMA v. SREKENDRA KRISHNA RAY CHOWDARY** (1913)

19 C. W. N. 263

8. — *Letter of acknow-*

ledgment, construction of—Conditional acknowledgment, operation of—Performance of condition, necessity for—Contract not to plead limitation, liability of—Contract Act (IX of 1872), s. 23—Developed against statute of limitation. The plaintiff filed a suit on the 19th September 1912, to recover damages for breach of an oral contract by the defendant, of which performance was due in 1903,

LIMITATION ACT (IX OF 1908)—*contd.*s. 19—*contd.*

and relied on a letter, dated 20th September 1909, written by the defendant to the plaintiff as saving the bar of limitation. The letter was to the effect that, if certain arbitrators should decide that the defendant should pay any amount, he would immediately pay, but, that if the arbitrators failed to decide, the plaintiff might sue and that the defendant would not plead limitation. The arbitration failed. The plaintiff sued as aforesaid on the 19th September 1912, but the defendant pleaded limitation in bar of the suit. *Held*, (i) that the letter amounted only to a conditional acknowledgment, (ii) that where there is a promise to pay on a condition, that condition in order that the promise may operate as an acknowledgment, must be fulfilled, **In re River Steamer Company**, L. R. 6 Ch. App. 522, **Maniram Seth v. Seth Rupchand**, I. L. R. 33 Cal. 1047, and **Arnachella Row v. Rangiah Appa Row**, I. L. R. 29 Mad. 519, referred to, (iii) that the plaintiff was not entitled to a deduction of time which elapsed between the date of the agreement to refer to arbitration and the date of the failure of the arbitration, (iv) that an agreement by a debtor not to raise the plea of limitation is void under s. 23 of the Contract Act, as it would defeat the provisions of the Limitation Act; and (v) that parties cannot estop themselves from pleading the provisions of the statute of limitation. **Sitha Rama v. Krishnasami**, I. L. R. 33 Mad. 374, referred to. **RAMAMURTHY v. GOPALYA** (1918)

I. L. R. 40 Mad. 701

9. — *Parties referring*

undadjusted accounts for adjustment by arbitrators—Acknowledgment, if need be addressed to any one and if should be by one willing to pay. Where the parties to an *achukhama* acknowledged that accounts remained undadjusted which the arbitrators were to adjust and each party distinctly agreed that he should have to pay such amount as might be found due from him on adjustment of accounts. *Held*, that this was sufficient acknowledgment within s. 19 of the Limitation Act. Under that section it is not necessary that the acknowledgment should be addressed to any particular person and it is a sufficient acknowledgment even if it be accompanied by a refusal to pay. **JAYARDAN SHAMA PODDAR v. RADHA DILLAS SHAMA** (1919)

23 C. W. N. 921

10. — *Acknowledgment*

—Court of Wards Act (Bom. Act I of 1903), s. 16. Promise—Offer made by Collector in settlement of claim—If letter the offer can be used as an acknowledgment of debt. In 1880, the defendant's family passed in favour of the plaintiff simple mortgage bond for Rs. 2,500 for a period of ten years. The defendant was a minor and a ward of the Collector under the Court of Wards Act (Bom. Act I of 1903). In 1916, the plaintiff sued to recover the amount due on the bond of 1880. Interest on the bond was paid regularly till 1903. On the 24th May 1913, the Collector wrote a letter to the plaintiff by which the Collector offered to pay Rs. 17,000 in instalments in satisfaction of the "whole of the amount due" to the plaintiff. The plaintiff relied upon this letter as an acknowledgment of debt to save the bar of limitation. On behalf of the defendant it was contended that under the proviso to s. 16 of the Court of Wards Act, the letter could not be proved. *Held*, that the proviso did not prevent the plaintiff from using the letter

LIMITATION ACT (IX OF 1908)—*contd.*s. 19—*contd.*

as an acknowledgment so as to start a fresh period of limitation under s. 19 of the Limitation Act, 1908. *SHIVAJIRAO NARAYANRAO v. HARI NARAYAN* (1920). I. L. R. 44 Bom. 871

11. —“Duly authorized agent,” acknowledgment of by—Person having general authority to settle and pay claim, if may acknowledge to save time taken. S, the “note” manager of B, had authority to purchase and pay for all things required for the use of B and his household. The plaintiffs supplied goods to B in 1906 for which S gave a note of hand on behalf of B promising to pay the balance on the 12th November of that year. On 6th February 1908, S gave another note promising payment, amongst others, of the price of the goods. On the question whether the second note which S gave without special authority from B was such an acknowledgment as would under s. 19 of the Limitation Act of 1908 save plaintiffs’ claim from being barred. *Held*, that S who had general authority to settle the purchase price of the goods, and thus could pay the amount of the claim, could plainly also arrange to prevent time from becoming a bar to it. *RAJA BRAJA SUNDAR DAS v. BHOLA NATH* 24 C. W. N. 153

12. —Mortgagee—Signature by mortgagee in the capacity of mortgagee in the Register of Sanads. Certain lands were mortgaged with possession in 1826. Government issued sanads to the holders of lands in 1865 and 1876. These were entered in a register where the mortgagee was described as holding the lands as mortgagee. Three entries were signed by the mortgagee. On the death of the mortgagee a similar sanad was issued to his widow in 1882, which sanad was similarly entered in the register and signed by the widow. The mortgagee having sued to redeem in 1917 the defendant contended that the suit was barred by limitation. *Held*, negating the contention, that the registers having the signatures of the mortgagee and his widow were acknowledgments of the mortgagee’s liability to be redeemed by the mortgagee and that the suit was not barred by limitation. *Hiralal Ichhal v. Narendal Chatur Bhujdas* (1913) 37 Bom. 326, explained and applied. *PRANJIVANDAS v. BAL MANI* (1920)

13. —I. L. R. 43 Bom. 934 The criterion to be applied to test the validity of an acknowledgment of liability put forward by a plaintiff as extending the period of limitation in his favour is the law in force at the time when the plaintiff’s suit would otherwise have been time-barred and not that in force when the acknowledgment was made. *ZAHIR U KHAN v. HIRU K. MAHARAJA v. BEVAREK*. I. L. R. 34 All. 109

14. —Suit for balance due under a contract to supply cotton—Acknowledgment in the plea of another case admitting that the account on the contract had not yet been settled. The plaintiff-appellant sued defendants for the balance due to him and damages on account of the defendants’ breach of contract to supply cotton towards which plaintiff had made payments by way of advance. The last date on which cotton was to have been delivered was the 27th January 1910, and the suit was instituted on the 8th April 1913. Plaintiff relied on an acknowledgment contained in the *jauch danda*, dated 3rd June 1910, in reply to

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another similar suit brought against defendants by the plaintiff in which defendants referred to the existence of the present contract and stated that they had been supplying cotton to the plaintiff and had been taking money from time to time, and that the account had not yet been settled with the plaintiff. *Held*, that as the defendants had admitted in their written plea in the other case that the account with the plaintiff in respect of the contract on which the present suit is based had not been settled, the admission amounted to an acknowledgment and that the bar of limitation under Art. 51 of the Limitation Act was consequently saved thereby. *Maniram Seth v. Seth Rupchand*, I. L. R. 33 Cal. 1047, P. C. *Sukhmani v. Jehan Chander Jug*, I. L. R. 25 Cal. 544 551, P. C. *Kader Patrayya v. Manik Huan*, 3 Indian Cases, 12, *Abdul Ali v. Guldstein*, 43 P. R. 1210, and *Ebrahim Hossain v. Chundil*, I. L. R. 25 Bom. 302, referred to. *Andiappa Chetty v. Derarajulu*, 12 Indian Cases, 378, I. L. R. 36 Mad. 68, *Kalu v. Mehra Mal*, 32 Indian Cases 497, and *Hari Charan v. Brook*, 155 P. L. R. 1906, distinguished. *Ganga Sahai v. Jhannu Chaudhary* I. L. R. 1 Lah. 357

15. —Valid acknowledgment—What is—Endorsement on the back of a mortgage bond stating only that a certain sum on account of the principal was paid, if so a valid acknowledgment saving limitation. In a suit upon a mortgage bond securing an advance of Rs. 5,700, the question was whether an endorsement made on the back of the mortgage bond by the mortgagor in the following terms: “Paid on account of the principal as per separate accounts Rs. 1,761 only was a valid acknowledgment within s. 19 of the Limitation Act. *Held*, that the expression ‘the principal’ must be taken to refer to the principal mentioned in the bond on the back whereof the endorsement was made. The examination of the bond shows that the principal advanced being Rs. 5,700, a payment of Rs. 1,761 on account of that principal cannot be taken to wipe out the liability and there was thus an acknowledgment of the right of the mortgagee to recover whatever might be found to be due. Therefore, the endorsement constituted an acknowledgment within the meaning of s. 19 and consequently saved limitation. *PROSANKA KUMAR ROY v. NIBANJAN ROY* 26 C. W. N. 213

16. —A distinction exists between an acknowledgment which is sufficient to extend time under s. 19 of the Limitation Act, 1908, and a promise to pay a time-barred debt under s. 27 of the Contract Act. *RAM BANADUR SINGH v. DAMODAR PRASAD SINGH*

8 Pat. L. J. 121

ss. 19 and 20—

See s. 13. I. L. R. 41 Mad. 446

See s. 21. I. L. R. 41 Mad. 427

See EXECUTION OF DECREE

I. L. R. 43 Cal. 207

1. —Payment or acknowledgment by one partner only—Invalid as against other partners in absence of proof of authority to make it—No presumption of such authority—Contract Act (IX of 1872), s. 251—Necessary or usually done in carrying on partnership—Proof under, insufficient—Judicial notice—Practice *Held*,

LIMITATION ACT (IX OF 1908)—*contd.*ss. 19 and 20—*concld.*

that according to the rulings in this Presidency an acknowledgment or payment made by one partner does not bind the other partners, in the absence of proof that they authorised such acknowledgment or payment, though it may be an act necessary or one usually done in carrying on the business of partnership, and such authority cannot be presumed. The decisions in *Valasubramania Pillai v. Ramanatha Chettiar*, 1 L. R. 32 Mad. 421, and *Shah Mohdveen Sahib v. Official Assignee of Madras*, 1 L. R. 35 Mad. 142, require to be reconsidered in the light of the rulings of the English and other Indian High Courts. Such acknowledgments are made as a matter of course by trade debtors, whether carrying on business singly or in partnership and are forthcoming in almost every suit for the price of goods sold and delivered. This is a matter within the daily experience of Courts of first instance so that they are entitled to take judicial notice of it without requiring proof of the same. *K. R. V. FIRM v. SEETHARAMASWAMI* (1914)

1 L. R. 37 Mad. 146

2. ————— *Endorsement of part payment recorded by creditor and signed by debtor—Endorsement, good as an acknowledgment of liability under s. 19.* A payment made by a mortgagor who was able to write, was recorded on the back of the mortgage bond by a servant of the creditor and signed by the debtor. The endorsement ran as follows:—"Rs 378 paid towards this document K. V. Subbarayudu." Nearly Rs 1,500 were due on the date of payment. It did not appear whether the payment was made towards principal or towards interest. *Held*, that the endorsement amounted to an acknowledgment of liability within the meaning of s. 19 of the Limitation Act, though the payment was not good as a part payment within the meaning of s. 20 of the Act. The scope of ss. 19 and 20 pointed out *Jeyanatha Sahu v. Rama Sahu*, 17 Mad. L. T. 50, followed *VENKATACHARI NIAH v. SUBBARAYUDU* (1916)

1 L. R. 40 Mad. 698

3. ————— *Acknowledgment of liability—Part payment of principal.* It is not necessary that the writing referred to in section 20 of the Indian Limitation Act, 1908, must itself show that the payment made is made as part payment of the principal sum due. It may, for example, be obvious from the fact that no interest was due at the time of making this payment that it could only have been made in part payment of the principal. *In the matter of Ambrose Summers*, 1 L. R. 23 Cal. 532, followed *Sakharam Manchand v. Keshav Padamsi*, 1 L. R. 44 Bom. 392, referred to. *CHANDLER v. ABDUL HAMID* 1 L. R. 43 All. 216

ss. 19, 21—*Debt contracted by deceased co-parcener for no immoral purpose—Infant son if bound—Limitation—Acknowledgment of debt by karta of Hindu infant—Acknowledgment, if made as made by karta.* The karta of a joint Hindu family of which the defendant was a minor co-parcener was an agent duly authorised on his behalf so as to give an acknowledgment under s. 19 of the Limitation Act of a debt contracted by the Defendant's father for other than an immoral purpose. The decisions in *Wajidun v. Kadir Baktah*, 1 L. R. 13 Cal. 292, and *Chhata Das v.*

LIMITATION ACT (IX OF 1908)—*contd.*ss. 19, 21—*concld.*

Billo Ali, 3 C. W. N. 13, to the contrary being inconsistent with the provisions of s. 21 of Act IX of 1908 are no longer good law. Such an acknowledgment need not be expressed as made in the capacity of karta. *Chinnaya Nayudu v. Gurunatham Chetty*, 1 L. R. 5 Mad. 169, followed. *HAN PROSAD DAS v. BAKSHI HARIBHAI PROSAD SINGH* (1915). 19 C. W. N. 860

ss. 19, 22; Sch. I, Arts. 106, 120—

Dissolution of a partnership business—Indian Contract Act (IX of 1872), ss. 232, 233—Suit for account—Amendment—Suit that plaintiff was a partner, if may be amended on basis that he was servant remunerated by share of profit—Amendment asked for first time in the Court of Appeal—Acknowledgment of part of the claim, effect of. The plaintiff brought a suit against certain defendants on 8th February 1913 alleging that he was a partner with the defendants up to 27th June 1910 when he retired from the partnership, and asking for an account. On the 12th February 1914, a necessary party (e.g., representative of a deceased partner) was added as a defendant. The defendants in their written statement pleaded that the plaintiff was not a partner but a servant remunerated by a share of the profit, they also admitted in a letter, dated 21st January 1913, that they were liable to render an account to the plaintiff up to the year 1904-05 when the plaintiff retired and not till 27th June 1910. In the Court of Appeal the plaintiff (respondent) for the first time prayed that he might be allowed to amend his plaint on the footing that he was not a partner but a servant as alleged by the defendant in their written statement. *Held*, that the suit against all the defendants must be deemed to have been brought on the 12th February 1914 and was barred by limitation. To such a suit Art. 106 and not Art. 120 of the Limitation Act applied. *Held*, also, that having regard to the stage of the litigation at which the amendment was asked for and the nature of the amendment, it could not be granted. It is well-settled that where a plaintiff bases his claim upon a specific legal relation alleged to exist between him and the defendant, he should not be allowed to amend the plaint so as to base it on a different legal relation. This rule is only one aspect of the broader principle that leave to amend should be refused where the amendment would introduce a totally different, new, and inconsistent case. The amendment was also refused on the ground that if the plaintiff were to institute a fresh suit on the date the amendment was asked for on the basis that he was a servant, the new suit would be barred by limitation. *Held*, further, that the letter of 21st January 1913 did not amount to an acknowledgment of the debt claimed by the plaintiff. *KALI DAS CHAUDHURI v. DEBAPATI SUNDARI DASSEE* (1917). 22 C. W. N. 104

ss. 19 and Sch. I, Art. 64—*Acknowledgment of time barred debt, effect of—"Account stated," meaning of.* An acknowledgment of a debt accrues to the benefit of the creditor for the purpose of saving limitation under s. 19 of the Limitation Act, 1908, only if the acknowledgment is made before the original debt is time-barred, the basis of a suit by the creditor for recovery of the amount lent being the original debt and not the subsequent acknowledgment. An "account stated" within the meaning of Art. 64 is one where several cross

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items are set off one against the other and a balance is struck in favour of one of the parties. In such a case the law implies a new promise by the party from whom the balance is found to be due to pay such balance in consideration not merely of past debts but also in consideration of the extinguishment of the old debts on each side, and hence it is not necessary that the balance would be struck within the period of limitation applicable to any of the items in the account. Where the defendant was in the habit of taking loans from the plaintiff and an account of what was due from the former to the latter was made up after the last item in the account was time barred, and the defendant signed the plaintiff's account book acknowledging the amount due on that date *held* that the account was not an account stated and that a suit to recover the amount was not barred by the defendant's acknowledgment. *Hargopal v. Abdul, 9 Bom. H. C. R., followed. SURAJ PRASAD PANDAY v. W. W. BOLCKE 5 Pat. L. J. 371*

s. 19 and Sch. I, Art. 125

See CIVIL PROCEDURE CODE, O. VII. s. 6

I. L. R. 2 Lab. 13

s. 19; Sch. I, Art. 148—

See MORTGAGE. I. L. R. 38 All. 540

s. 19 and Sch., Art. 181—

See CIVIL PROCEDURE CODE (Act V of 1908), ss. 2, 47 I. L. R. 42 Mad. 52

s. 19, Sch. I, Art. 182, cl. 5—

Written acknowledgment—Application made for certifying payments on the decree acknowledging the decree as an outstanding decree—Step-in-and-of execution. The plaintiff obtained a decree on the 3rd July 1909 whereby he was required to pay a sum of Rs. 500 by annual instalment of Rs. 50 and to redeem the mortgaged land. The decree also provided that on failure to pay any two instalments the plaintiff's right to redeem was to be foreclosed and the defendant was to be placed in possession of the land. The instalments for 1901 and 1902 were duly paid, while the one for 1903 was only paid in part. No other payments were made. On the 20th July 1905 the plaintiff made an application to the Court, which was consented to by the defendant, for certifying the above payments in satisfaction of the decree. This application referred to the decree as an outstanding decree. On the 14th December 1907, the defendant applied to foreclose the decree; but the application was dismissed for want of prosecution. He applied again on the 29th March 1909 for the purpose, but his application was dismissed as barred by limitation. The defendant having appealed—*Held*, that the application was within time, for the application of 1905 was sufficient to give a fresh starting point for limitation, either as an acknowledgment within the meaning of s. 19 of the Limitation Act (IX of 1908) or as a step-in-and-of execution under Art. 182, cl. 5 of the first schedule to the Act. *BACHARAJ NYAALCHAND v. BABAJI TEKARAM (1913) I. L. R. 38 Bom. 47*

s. 20—

See s. 19. . . 25 C. W. N. 356

See s. 21. . . I. L. R. 41 Mad. 427

LIMITATION ACT (IX OF 1908)—*contd.*s. 20—*could*.

See CHEQUE (PAYMENT BY)

I. L. R. 42 Calc. 1043

See CONTRACT ACT, s. 40

1 Pat. L. J. 474

See EXEMPTION OF DEBTER.

1 Pat. L. J. 214

See EXEMPTION OF PETITION.

I. L. R. 41 Mad. 251

See LIMITATION (40)

I. L. R. 44 Calc. 567

See PRESIDENTY SMALL CLAIMS COURTS

ACT 1882, s. 69 I. L. R. 38 Mad. 438

See PRINCIPAL AND DEBTER

I. L. R. 44 Calc. 979

1 ———— Limitation—

Interest—Payment of part of interest due—Suit for foreclosure. The word 'interest' in s. 20 of the Limitation Act means interest or any part of the interest due. *Killa v. Haldi, 1 I. R. 13 All. 55, and Anwar Hussain v. Lalpur Khan, I. L. R. 26 All. 167, distinguished. ABDUL AHAD v. MAHYAB DIN (1913) I. L. R. 35 All. 378*

2. ———— Part payment—

Payment—recorded by endorsement in the hand writing of the person receiving—Endorsements only signed by the debtor, whether sufficient acknowledgment. To save the suit from being barred by limitation, the plaintiff relied on part payments made by the defendant. The part payments were recorded by endorsements which the plaintiff admitted were in his handwriting but he contended that the endorsement being signed by the defendant was a sufficient acknowledgment within s. 20 of the Limitation Act 1908. *Held*, that the fact of payment recorded being not in the handwriting of the person making the payment the provisions of the section were not satisfied. *Sankarwar Mahania v. Lakshman Mahania, I. L. R. 35 Calc. 813, applied. NIWAZKHAN NATHANKHAN v. DADARHAI (1916)*

I. L. R. 41 Bom. 168

3. ———— Execution of

decree bearing no interest—Payment saving limitation. Where on an application for execution of a decree which did not bear any interest, made more than three years after the date of the previous application, the decree holder relied on a payment which the judgment debtor was found to have made to the decree-holder, within three years of the first application for execution but there was nothing to show that it was paid by way of interest. *Held*, that though the decree-holder might either apply to certify the payment before execution or might do so in his application for execution of the decree, the provisions of s. 20 of the Limitation Act would in no way be affected by it. The decree not bearing any interest, any payment made by the judgment-debtor must be taken to have been made in part payment of the principal, and such part payment must appear in the handwriting of the judgment-debtor or of his agent duly authorised in this behalf in order that limitation might get a fresh start. *HARENDRA CHANDRA BHATTACHARYA v. GAGAN CHANDRA DAS (1916) 23 C. W. N. 325*

LIMITATION ACT (IX OF 1908)—*contd.*s. 20—*contd.*

4 ———— *Mortgage—Suit for sale—Limitation—Payment of interest as such—Effect of such payment as against purchaser of part of mortgaged property* A payment made on account of interest as such due on a mortgage debt takes effect under s. 20 of the Indian Limitation Act, 1908, as much against a person interested in the mortgage as a purchaser of part of the mortgaged property as against the mortgagor himself who makes the payment. *Krishna Chandra Saha v Bhavab Chandra Saha*, 1 L R 32 Cal 1077, and *Doms Lal Sahu v Roshan Dobay*, 1 L R 33 Cal. 1278, referred to *Suryam Marwar v Barhamdeo Persad*, 1 C L J 337, distinguished *Roshan Lal v Kanhaiya Lal* (1918) 1 L R. 41 All 111

5 ———— *Endorsement of payment in handwriting of payer—Requirement of section where payer illiterate* In the case of an illiterate person if the payer affixes his mark beneath the endorsement written by some one else it is sufficient to satisfy the proviso to s. 20 sub s. (1), of the Limitation Act, but where no such mark is affixed the provision of law has not been complied with. *Baleham Koker v Soha Sreenu* (1918) 23 C W N 930

6 ———— *Part-payment—Handwriting in respect of part payment—Part payment must appear in the handwriting of the person making payment* The defendant purchased certain goods from the plaintiff on the 10th September 1912 for which he owed Rs 1,350. He also owed another debt of Rs 301 to the plaintiff. On the 4th and 5th July 1913, the defendant paid two sums of Rs 500 and Rs 230, accompanied by a letter which ran thus:— "I have sent currency notes of Rs 500 and a Hundi for Rs 235, in all Rs 735 Credit them." The plaintiff applied the sum in wiping out the smaller debt and credited the balance as part-payment of Rs 1,350. On the 14th October 1915, the plaintiff sued to recover the unpaid balance of Rs 1,350 with interest, and sought to bring his claim in time by relying on the part-payment in 1913. *Held* that the plaintiff's claim was in time, for the requirements of s. 20 of the Indian Limitation Act were satisfied, as the fact of the payment appeared in the handwriting of the person making the same, and it appeared that the payment was in part satisfaction of the principal of the debt. *Sakharam Manchand v Ketal Padamji* (1919) 1 L R 44 Bom 292

7 ———— *Execution of decree for sale—Part of the hypotheca taken up under the Land Acquisition Act—Compensation paid into Court—Payment of amount to decree holder through Court—Paper showing payment signed by Judge—Judge, whether an agent of judgment debtor—Signature of Judge, whether sufficient under s. 20* After a decree for sale on a mortgage was passed in 1912 a part of the hypothecated property was taken up under the Land Acquisition Act, and the Government paid the amount of compensation into Court to the credit of the suit, and the same was paid out to the decree holder on the 11th August 1914. When the payment was made the Judge signed a paper showing that payment was made in his presence and through Court. On the decree holder filing an application for execution of the decree on the 10th August 1917, the judg-

LIMITATION ACT (IX OF 1908)—*contd.*s. 20—*contd.*

ment-debtor pleaded the bar of limitation. *Held*, that the Judge should be deemed to have been an agent duly authorized by the judgment-debtor to make the payment, and that the signature of the Judge on the paper showing the payment satisfied the condition that the fact of payment should appear in the handwriting of the person making it, as required by s. 20 of the Limitation Act, and that consequently, the application for execution was not barred. *Chinnery v Evans* (1884) 11 H L Cas 115 applied. *Lakshminan Chetty v Sadasuppu Chetty* (1918), 35 M L J, 571, referred to *Govindasami Pillai v Dasai Goundan* (1921) 1 L R 44 Mad 871

8 ———— *Mortgage decree against mortgagor and purchaser of the equity of redemption—Payment of interest as such by the purchaser, effect of* A purchaser of the equity of redemption is a person liable to pay the mortgage debt within s. 20 of the Limitation Act hence, if under a mortgage decree for sale of the mortgage property, to which he is a party, though exempted from personal liability, he pays interest as such, such payment gives a fresh period of limitation for execution of the decree. *Bolding v Lane* (1863), 1 De G J & Sm, 122 and *Chinnery v Evans* (1884), 11 H L Cas, 115 at 135, followed. *Askaram Sowcar v Venkataswami Naidu* (1921) 1 L R 44 Mad 544

9 ———— *Uncertified payment of an instalment decree, if saves limitation—Civil Procedure Code (Act V of 1908), Or 21 r 2—Certification of payment, if can be made at any time* After the passing of an instalment decree, some instalments were paid within three years of the date of the decree. The payments were not certified to the Court before the application for execution, but were certified by a petition presented after the application for execution was made and made a part of the said application. The said application for execution was made more than three years after the date of the decree, but within three years from the dates of the said payments. *Held*, that the payments which were evidenced by letter written and signed by the judgment-debtor, having been made within three years of the decree and within three years of the present application for execution and then having been certified by a petition which was made a part of the application for execution the application for execution was not barred by limitation. *Madan Mohan Banerjee v Habual Haveli* 26 C W. N 534

ss 20 and 21—

See PRINCIPAL AND SURETY

1 L R 44 Cal 878

ss 20, 57, Sch 1, Art 57—*Suit for money payable for money lent—Payment of interest saving limitation—Creditor's discretion to apply money received to oldest debt—Second appeal—Tender of evidence (bali khata) at hearing* The plaintiff brought a suit on the 28th May 1903 for money due on an adjustment of accounts. The plaintiff alleged that the last adjustment took place within three years from the date of the institution of the suit when the defendant promised to pay. The Courts below dismissed the suit. The District Judge in appeal however found that the defendant took a loan of Rs. 50 from the plaintiff on 21st June 1900, but he refused

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to give a decree for that amount, because the defendant paid Rs 52 in 1907, although he believed the plaintiff's books and evidence to be genuine and there was at the time of payment over Rs 700 due from the defendant. In the High Court at the time of the hearing of the appeal the plaintiff produced an entry in his *baal* *khata* showing that Rs. 43 was paid by the defendant on account of interest in 1907. *Held*, that a creditor cannot claim the benefit of s. 20 of the Limitation Act unless he can show that the payment was made on account of interest as such; there must be either some express declaration by the debtor or there must be circumstances from which such an intention on the part of the debtor may be inferred and in the absence of either, the payment of Rs 52 did not operate to save limitation under s. 20. That under ss. 60 and 61 of the Contract Act the creditor may exercise his discretion and apply any money paid to him by the debtor in discharge of the oldest debt and the lower Appellate Court was in error in treating the Rs. 52 as a repayment of the recent loan of Rs 60. That the High Court could not receive the entry in the plaintiff's *baal* *khata* relating to the payment of Rs 43 at this stage and could not pay any attention to it inasmuch as it was not put in evidence before either of the lower Courts. *BITARI RAM v KANZI SINGH* (1913). 19 C W N 237

s. 20 Art. 116—*Mortgage of Vatan lands—Death of mortgagor—Mortgagor's son recovering possession of lands—Suit by mortgagee to recover mortgage money—Limitation—Covenant in the mortgage deed to pay mortgage money.* In 1803, certain Vatan lands were mortgaged with possession for Rs 2,000 for a period of twelve years by the Vatanar. The mortgage deed contained a covenant: "If there be any hindrance to the continuance of the land, I shall pay the said sum together with interest thereon at the rate of one per cent. per mensem out of my other estate and personally in the year in which the hindrance may arise." The mortgagor having died in 1901, his son recovered possession of the lands in 1914 on the ground that on the death of the mortgagor the mortgage became void under s. 8 of the Bombay Hereditary Officers Act, 1877. The mortgagee thereupon sued to recover the mortgage amount with interest relying upon the personal covenant in the deed. *Held*, that the claim was barred by limitation. *Held*, further, that the covenant in the mortgage deed only meant that the mortgagor was personally liable to pay the amount if any hindrance to possession was caused in his lifetime. *Held*, also, that inasmuch as the mortgage came to an end in 1901, the possession of the mortgages became that of a trespasser, and the receipt of rent or profits after 1901 could not be deemed to be payment for the purpose of s. 20 of the Indian Limitation Act, 1908. *ARUNHAJI SAKHARAM v KASHIM* (1910). I L R. 44 Bom. 500

Bombay Hereditary Officers Act (Bombay Act III of 1871), s. 5—Mortgage of Kulkarni Vatan with possession—Personal covenant by mortgagor to repay mortgage money—Further covenant to pay if mortgagee dispossessed—Death of mortgagor—Mortgagee deprived of posses-

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sion of the mortgaged property after the death of mortgagor—*Suit by mortgagee to recover the mortgage amount under the personal covenant—Mortgagee in possession receiving profits—Demand in lieu of interest—Extension of the period of limitation.* In 1897, a Vatanar mortgaged his Kulkarni Vatan with possession to the plaintiff for a term of ten years. The deed of mortgage, which was registered, contained a personal covenant to pay the principal at the stipulated time and a further covenant that if the mortgaged land before the expiry of the stipulated period or any time thereafter, passed out of the mortgagee's possession on one cause or another, the mortgagor should be personally liable to pay the principal together with interest from the date the mortgagee was deprived of the possession. The mortgagee went into possession of the property and enjoyed its profits in lieu of interest till 1912 when the mortgagor died. On the mortgagor's death, his alienation having come to end, the defendant who was his son, dispossessed the plaintiff by the help of the Revenue authorities. In 1917, the plaintiff sued the defendant to recover the mortgage amount under the personal covenant. *Held*, that the agreement was not void under s. 8 of the Vatan Act, and the suit was not barred by limitation, the period of limitation under Article 116 of the Indian Limitation Act, 1908, as regards the personal liability of the mortgagor to repay the debt, being extended by s. 20, clause 2, of the Act, to six years from the date when the mortgagee as such last received the profits in lieu of interest before the mortgagor's death. *Per MAITLAND C J* — There is nothing to prevent a Vatanar when mortgaging Vatan property, although the mortgagee admittedly would not be effective beyond the lifetime of the Vatanar mortgagor, in ordinary circumstances, from personally covenanting to pay the mortgage amount. *Per BHATT J* — I have grave doubts as to the application of this covenant to dispossession in consequence of the mortgage coming to an end on the death of the mortgagor in virtue of the provisions of the Bombay Hereditary Officers Act. That contention is opposed to the decision in *Arundaji Sakharum v Kashim* (1910), 44 Bom. 500. *VITHORA MAHIPATI v BALKRISHNA SAKHARAM* I L R. 45 Bom. 1206

s. 20 and Art. 130—

Sit SARANJAMDAK.

I L R. 45 Bom. 694

s. 20 and Art. 182 (7)—*Execution of instalment decree—Time from which limitation runs—acknowledgment of payment by person, authorized by paper, whether valid.* Where a decree provides for the payment of the decretal amount by instalments, and states that each instalment will be payable on a specified day, and that on default in the payment of any instalment the whole amount will become due, the decreeholder is entitled to apply for execution of each instalment as it becomes payable, and the period of limitation continues for three years from the date when default is made in the payment of any instalment. S. 20 of the Limitation Act, 1908, will not defeat a plea of limitation where the acknowledgment relied on is not signed by the person by whom payment was made, even though the person signing or endorsing the fact of pay-

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ment was authorised by the payer to do so.
MANINDRA NATH ROY v. KANHAI RAM MARWARI
 4 Pat. L. J. 365

s. 21—

See **LIMITATION** I. L. R. 45 Bom. 630See **PRINCIPAL AND SURETY.**

I. L. R. 44 Calc. 979

ss. 21 (2), 19, 20—**Partnership—**

Acknowledgment of liability or payment by one partner, when binding on others. Direct evidence that one of several partners or co-contractors had authority to acknowledge liability or make payments so as to save limitation as against his partners or co-contractors is not necessary, but such authority can be inferred from surrounding circumstances such as the position of other co-contractors or partners. *Valasubramanian Pillai v. Ramanathan Chettiar*, I L. R. 33 Mad 421, and *Shah Mohideen Sahib v. The Official Assignee of Madras*, I. L. R. 35 Mad 142, 145, considered. **VEERANNA v. VEERABHADRASWAMI** (1917)

I. L. R. 41 Mad. 427

s. 22—

See s. 19 . . . 22 C. W. N. 104

See **BENGAL TENANCY ACT, 1884**, s. 85

25 C. W. N. 38

See **CIVIL PROCEDURE CODE, 1908—**

O. 1, s. 10, AND O XXIV.

I. L. R. 45 Bom. 1009

O. XXI, r. 63 I. L. R. 38 Mad. 535

1. **Mortgage—Sale of mortgaged property—Suit against one of the heirs of the mortgagor—Subsequent addition of parties—Limitation Act (IX of 1908), s. 22.** One K, a Mahomedan, effected a simple mortgage in favour of V on the 23rd of June 1899, the mortgage debt becoming due on demand which was made on the 1st January 1900. K having died, a suit for sale of the mortgaged property was instituted by V against his minor son as a party in possession of the property on the 23rd of June 1911. The minor's guardian having alleged that K left other heirs, a widow and two daughters, applied on the 29th of January 1912 to have them added as parties and they were so added on the 12th February 1912. It was contended by the added defendants that the suit was barred as against them under s. 22 of the Limitation Act, 1908. This plea found favour with the lower Courts and the suit for sale was dismissed so far as the shares of the added defendants were concerned. On appeal to the High Court by the mortgagee. *Held*, that the money was specifically charged on the whole mortgaged property and the property was liable to be sold in satisfaction of the mortgage in priority to the satisfaction of any interest derived from the mortgagor subsequent to the date of the mortgage. The suit as originally filed was not instituted to enforce claims against shares in the hands of heirs; it was to enforce a mortgage lien binding on the whole property, in the hands of any heir of the mortgagor, and the addition of parties after the expiry of the time did not involve the dismissal of the suit under s. 22 of the Limitation Act (IX

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of 1908). **GURUSAYYA v. Dattatraya**, I. L. R. 23 Bom. 11, followed. **VIJENDRA VASIKARASHEET v. KONDU** (1915) . . . I. L. R. 39 Bom. 729

2. **Transference of party from one category to another.** The rule that a party transferred from the side of the defendants to that of the plaintiffs is not a new party to whom the provisions of a 22 of the Limitation Act apply is an absolute rule. **DWARAKA NATH DAS v. MOHMOHAN TAFADAR** (1915)

19 C. W. N. 1269

3. **Substitution of beneficiaries for administratrix after time—New plaintiff.** Where the widow of a deceased person G was appointed administratrix of his estate until G's eldest son should attain majority, and a suit was instituted by the widow after the eldest son of G had attained majority under a *bond fide* belief that she was competent to sue as administratrix, but on discovering her mistake, she prayed that the three sons of G for whose benefit she had been appointed administratrix be substituted as plaintiffs and the substitution was made at a time when the suit if instituted would have been time barred. *Held*, that this was not the addition of a new plaintiff within the meaning of s. 22 of the Limitation Act. **Dharm Das v. Shama Sundari**, 3 Moo. I A 229, **Hari Saran v. Bhuganeswari**, I L. R. 16 Calc 40, and **Peary Mohan v. Narendra Nath**, 9 C. W. N. 421, referred to. **NISTARINI DASAY v. SARAT CHANDRA MAJUMDAR** (1915) . . . 20 C. W. N. 49

ss. 22 and 2 (10)—

The word "suit" as used in s. 22 of the Limitation Act, 1908, includes only the stages of a suit down to its termination by the decree of the trial Court and does not include its appellate stage or proceedings in execution of the decree made in a suit. **CHANDRIKA ROY v. RAM KUTER THAKUR** . . . 6 Pat. L. J. 463

s. 22, Art. 12, Cl. (b)—**Madras Rent Recovery Act (V of 1865)**, ss. 33, 35, 39 and 40—**Sale for arrears of rent—Sale of kudivaram right—Suit to set aside sale—Parties to the suit—Purchaser, necessary party—Receiver of melvaramdars, added as supplemental defendant—Lapse of one year—Suit not barred—Execution sales—Proceedings to set aside—Decree holder, necessary party—Civil Procedure Code (Act V of 1908), O. XXI, rr. 90, 91 and 93.** In a suit instituted under the Madras Rent Recovery Act, by the owners of the kudivaram right in certain lands to set aside a rent-sale of the kudivaram right, the purchaser at the rent sale and the melvaramdars were originally joined as defendants, but on objection taken by the defendants a receiver appointed on behalf of the melvaramdars was added as a supplemental defendant more than one year after the date of the sale. The defendants thereupon pleaded that the suit was barred by limitation. *Held*, that in a suit under the Act neither the receiver nor any of the melvaramdars was a necessary party to the suit but only the purchaser at the rent sale and that consequently the suit was not barred by limitation under s. 22 and Art. 12, cl. (b) of the Limitation Act. In proceedings under the Civil Procedure Code to set aside a sale in execution of a decree, the decree holder is a necessary party. **ANNAMALAI v. MURUGAPPA** (1914) . . . I. L. R. 38 Mad. 837

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s. 23

See MADRAS ESTATES LAND ACT (1908) s. 192 I L R 35 Mad. 655

ss. 23 and 26

See RIPARIAN RIGHTS 3 Pat. L. J. 81

s. 26—

See BIKOAL FERRIES ACT 1835 5 Pat. L. J. 500

See EASEMENT I L R 39 Cal. 59 I L R. 1 Lab. 206

Suit for declaration of right of way—Necessity of proving that enjoyment of the right ended within two years before suit—Affirmative proof of actual user of necessary—Dispute between enjoyment of a right of easement and actual exercise of the right—Plaintiff brought a suit for declaration of a right of way and for removal of an obstruction thereon. The right was enjoyed for more than 20 years peaceably and openly without interruption as an easement and as of right. There was no discontinuance of the enjoyment by reason of the obstruction by the defendant till within a few days previous to the institution of the suit, and there was no suggestion that the plaintiff voluntarily abandoned or discontinued the exercise of the right at any time before such date. *Held* that it was not necessary for the plaintiff to prove affirmatively actual user of the way down to a date within two years before the suit. A person may without violence to language be said to be in "enjoyment of a right of way during a period of time, though he does not actually use" the way every moment. Cessation of user does not necessarily mean abeyance in enjoyment. *CHANDRA SEK v. BANIM BHABH ROY*

28 C W N 121

s. 28—

See ADVERSE POSSESSION I L R 44 Cal. 425

See ATTACHMENT I L R. 45 Bom. 1020

See CIVIL PROCEDURE CODE 1908, s. 92 I L R. 38 Mad. 1064

See LIMITATION I L R. 39 Mad. 617

See MORTGAGE DEEDS 3 Pat. L. J. 478

See SARANJAMDAK I L R. 45 Bom. 684

Several daughters of a Hindu jointly succeeding to their father's estate—Exclusive possession of one for more than twelve years—Right of survivor on her death, to the estate by survivorship. Where, on the death of a Hindu his daughters jointly succeeded to his estate but one of them excluded the others from the enjoyment of the estate for more than twelve years and then died after alienating some of the properties. *Held* in a suit by a surviving daughter against the son of the deceased and the alienees to succeed to the estate by right of survivorship, that with the extinction of the right to joint possession under s. 28 of the Limitation Act, the right of survivorship, which is only an accre-

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s. 28—contd

tion to the right to joint possession was also lost. *KALAMA VATHIAR v. RAJAH of SIKKIMPUR (1863)*, 9 M I 1 539 at page 611 and *SURINDER KISHORE DRY v. RAJAH KANT (Hucknully) (1915)* 27 I C 250, followed. *ATINAMMA v. IYANAM (1921)* I L R. 44 Mad. 131

s. 28, Art. 47 Suit to recover possession of lands—Magistrate order of under Criminal Procedure Code (Art. 1 of 1894) s. 145—Order passed without proper inquiry—Notice not legally served on the plaintiff—Plaintiff aware of proceedings—Order not without jurisdiction—Applicability of Art. 47 Tenant for a term—Landlord treating tenant as a trespasser after the expiry of the term—Subsequent registered notice to quit—Cause of action when Art. 47 of the Limitation Act (IX of 1908) is applicable to a suit for recovery of possession of lands in respect of which an order had been passed by a Magistrate acting under s. 145 of the Code of Criminal Procedure although the Magistrate might not have made before he passed the order if the plaintiff had notice of the proceedings, though the notice was not served on the plaintiff in accordance with law. *GANAPADARAM AGAR v. SANKARASWAMY Vaidy (1914)* 21, followed. Where the defendants were tenants for a term under the plaintiff and continued in possession of the lands after the expiry of the term but the plaintiff did not treat the defendants as tenants holding over but as trespassers after the date of the expiry of the term and the magistrate order under s. 145 of the Code of Criminal Procedure was passed in the defendant's favour subsequent to the said date. *Held* that the suit for recovery of possession of the land is brought by plaintiff more than three years after the said order was barred under Art. 47 of the Limitation Act. *TUKARAM v. HARI (1928)* Bom. 681, *BAJAJI MAHATYI v. MAHATYI VASUDEO (1918)* I L R. 8 Bom. 343 and *HISE v. JAYANARAYAN KHALAM (1917)* I R 71 4 73 referred to. *BALAJI CHAND GHOSAL v. SAMIRUDDIN MANDOL (1919)* Cal. 645 distinguished. *PARASRAMAYYA v. RAMA CHANDRABU (1913)* I L R. 38 Mad. 432

s. 28, Arts. 124, 144—Pious endowment—Adverse possession of sarbarak—Suit by descendant of original dedicant to oust possession of sarbarak Where a person had been appointed in 1892 by a Revenue Court sarbarak of certain endowed property and had remained in possession until 1914, when he died, it was held that a suit brought in 1915 by a descendant of the original dedicant to oust the son of the appointee of 1899 and to have herself declared sarbarak of the endowed property was barred by limitation. *GUANAMBADE PANDARA SHAMSHI v. LALA LAKSHMAN, (1917)* I L R. 23 Mad. 271 followed. *RAM PRASAD v. NAND LAL (1917)* I L R. 39 All. 638

s. 28 Art. 144—Right reverting at uncertain intervals—Right to take wood from trees when fallen or cut—Adverse possession. The father of the plaintiffs in 1863 obtained leave from the Collector to plant trees along a road on land belonging to Government. He expressed his willingness to do so at his own expense and to tend them and the only right he asked for was to get the fallen dry wood from the trees. Subsequently the village passed out of the possession of

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the plaintiffs' father, and on two occasions, in 1900 and in 1910, the defendant, who had purchased the village, got the proceeds of the sale of such wood. The plaintiffs on both occasions asserted their claim to wood or the price thereof, but were unsuccessful. Within six years from the date of the last sale they brought a suit for a declaration of their right to get the dry wood by virtue of the agreement of 1867. The defendant pleaded adverse possession. *Held*, that the right being one which could only be exercised on uncertain occasions and not a right recurring at fixed periods, and as there had been disputes as to the right between the parties on two previous occasions, it could not be said that defendant had acquired a title by adverse possession. *Quare*. Whether s. 28 of the Indian Limitation Act, 1908, applies at all to a case like this. *DEBI PRASAD v BADRI PRASAD* (1918)

I L R 40 All. 481

s. 29—See *LIMITATION* I. L. R. 47 Calc. 300See *PROVINCIAL INSOLVENCY ACT*, s. 46, cl. (3) I L R 39 Mad. 593s. 46, cl. (4) I L R 33 All. 738
I L R 34 All. 496

1 ————— *Limitation Act (XV of 1877), s. 2, Sch II, Art. 35—Suit for restitution of conjugal rights—Limitation* The plaintiff in a suit for restitution of conjugal rights filed in 1910, alleged that his wife had been taken away by two of the defendants under a promise that she should return to him shortly, but subsequently they denied all knowledge of her whereabouts. In 1909, he alleged, he was informed that she was living at a certain place with one of the defendants. *Held*, that the plaintiff's suit was not barred by limitation. *Bunda v Kannekila*, I L R 13 All. 227, referred to. *AYESHA v FARAZ HUSAIN* (1912) I L R 34 All. 412

2. ————— '*Affect*' meaning of—Applicability of the Act to affect periods of limitation prescribed by Provincial Insolvency Act (III of 1907). *Held*, by the Full Bench, that recourse cannot be had to the general provisions of the Limitation Act (IX of 1908), in dealing with the admission of petitions and appeals presented after the time prescribed under the provisions of the Provincial Insolvency Act (III of 1907), as such recourse would affect the specially prescribed period of limitation, within s. 29 (1) (b) of the Limitation Act. *Abu Backer Sahib v The Secretary of State for India*, I. L. R. 34 Mad. 505, followed. *LINGAYYA v CHINNA NARAYANA* (1917) I L R 41 Mad. 169

3 ————— The effect of s. 29 (1) (b) of the Limitation Act is to make both Parts II and III of the Act inapplicable to a special period of limitation prescribed by a special or local law. *SECRETARY OF STATE FOR INDIA v SHIB NARAIN HAZRA* (1918) 22 C. W. N. 502

s. 29, 14—See *REGISTRATION ACT*, 1908, s. 77
24 C. W. N. 29**ss. 29, 15 (2)—**See *SUIT* I. L. R. 45 Calc. 934**LIMITATION ACT (IX OF 1908)—contd****s. 30—**See *LIMITATION* I. L. R. 43 Calc. 34

Mortgage decree against mortgagor and purchaser of the equity of redemption—Payment of interest as such by the purchaser, effect of A purchaser of the equity of redemption is a person liable to pay the mortgage debt within s. 20 of the Limitation Act, hence, if under a mortgage decree for sale of the mortgage property, to which he is a party, though exempted from personal liability, he pays interest as such, such payment gives a fresh period of limitation for execution of the decree. *Bolding v Lane* (1863), 1 De O J & Sm 122, and *Channery v Evans* (1864), 11 H L Cas. 115 at 135, followed. *ASKA RAM SOWKAR v VENKATASWAMI NAIDU* (1921) I L R 44 Mad. 544

s. 31—See *LIMITATION* I. L. R. 35 Mad. 191

1 ————— *Mortgage—Suit for sale—Limitation—General Clauses Act (4 of 1897), s. 10* The special period of limitation for suits for foreclosure or for sale by a mortgagee prescribed by s. 31 of the Indian Limitation Act, 1908, namely, two years from the date of the passing of the Act, expired on a Sunday. *Held* that a suit for sale to which s. 31 applied instituted upon the following Monday was within time. *Sreedas Daulatram Marwadi v Narayan vaji Aary*, 13 Bom. 1153 dissented from. *HIRA SINGH v MUSAMMAT AMARTI* (1912) I L R 34 All. 375

2 ————— *Period of two years for filing suits—Period not 'prescribed'—Last day Sunday—Suit filed on Monday next—Limitation* A question having arisen as to whether a suit for which provision is made under s. 31 (1) of the Limitation Act (IX of 1908) if instituted on a Monday one day after the period of two years from the date of the passing of the Act has expired, can be taken to have been instituted within the period of two years. *Held*, that the suit could not be taken to have been instituted within the period of two years and that two years specified in s. 31 of the Limitation Act (IX of 1908) was not the period of limitation prescribed. *SNEHDAS DAULATRAM v NARAYEN* (1911) I L R. 38 Bom. 289

3 ————— *Limitation—Mortgage—Suit on mortgage barred under Limitation Act of 1871—Mortgagee's rights not removed by present Act* *Held*, that s. 31 of the Indian Limitation Act, 1908, cannot be construed as reviving rights already time barred under the Limitation Act of 1871. *JAI SINGH PRASAD v SURJA SINGH* (1913) I L R. 35 All. 167

Sch. I, Art. 2—Execution of decree—Sale in execution—Tender of decretal amount by judgment debtor—Refusal of sale-officer to accept tender—Suit for damages—Limitation The plaintiff sued for damages against a Court Amn under the following circumstances. The plaintiff alleged that in execution of a simple money decree certain immoveable property belonging to him had been advertised for sale. On the day fixed for the sale, and before it had commenced the plaintiff tendered the decretal amount to the defendant,

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who was the officer deputed to conduct the sale. The defendant, however, wrongfully refused to accept the money offered to him and went on with the sale, and the plaintiff was subsequently obliged to get the sale set aside under O XXI, r 89 of the Code of Civil Procedure. The suit was instituted some nineteen months after the alleged cause of action, assuming that to be the refusal of the Amins to accept the money tendered, or his continuing the sale after the tender had been made, had arisen. *Held* that the suit was barred by limitation under Art 2 of the first schedule to the Indian Limitation Act, 1908. *Ranchardas Moorari v The Municipal Commissioner for the City of Bombay*, 1 L R 25 Bom 387, referred to. *MUKAT LAL v GOPAL SOKUR* (1918) 1 L R 41 All 219

—Sch I, Arts 2, 62, 102—*Limitation*

—*Suit for refund of octroi duty not alleged to have been in the first instance illegally exacted. The plaintiff sued a municipal board for a refund of octroi duty. He did not allege that the duty had in the first instance been taken from him illegally, but that he had after payment thereof become entitled to a refund. Held* that the suit was governed by Art 120 and not by Art 2 or Art 62 of the Indian Limitation Act, 1908. *Rajasthan Malwa Railway Co-operative Stores v Ajmer Municipal Board*, 1 L R 32 All 491, *Guru Das v Ram Narain*, 1 L R 10 Cal 860, and *Hankman v Hankman*, 1 L R 19 Cal 123, referred to. *MUNICIPAL BOARD OF GHANPUR v DEORINANDAN PRASAD* (1914) 1 L R 38 All 555

—Sch. I, Arts. 3, 115, 126—

See PARTNERSHIP 15 C. W. N 882

—Sch. I, Arts 4, 7, 101, 102, 120—

*Hereditary archakas of a temple—Suspension by trustee—Suit by archakas for pay perquisites and damages against trustees—Limitation for suit—Provincial Small Cause Courts Act (IX of 1887), Sch. Art 13—Suit, whether cognizable by a Small Cause Court—Typical against order of remand, whether competent. The plaintiffs, who were hereditary archakas, in a temple, were suspended from their office in June 1912, by the trustees of the temple, the order was passed on the 19th June 1912 and the suspension lasted till 2nd July 1912. The plaintiffs, alleging that the suspension was illegal and unjust, sued on the 25th June 1913 to recover their pay and perquisites as well as damages for mental distress, loss of dignity, etc., for an amount below Rs. 100 as against the trustees, the *peskhar* of the temple and the person who performed the duties of their office during their suspension. The lower Appellate Court having held the suit was not barred by limitation as regards pay and perquisites and remanded the case to the Court of First Instance, one of the trustees preferred an appeal against the order of remand, contending that the suit was wholly barred. The respondents (plaintiffs) raised a preliminary objection that the appeal was incompetent as the suit was of a small cause nature. *Held*, that an appeal lay to the High Court against the order of remand, as the suit was not cognizable by a Small Cause Court;*

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—Sch. I, Arts. 4, 7, 101, 102, 120

—*contd.*

that Art. 102 of the Limitation Act applied to the suit as against the trustees as regards the pay and the perquisites if payable by the temple, and the suit was not barred as regards such claims, that Art. 36 applied to the claim for perquisites if payable by third persons, as well as to the claim for damages, and the claims were barred, and that, as against the *peskhar*, there was either no cause of action or it was barred under Art 36 of the Limitation Act. *BARADWAJA MUDALIAR v ARAYACHALA GURUKAL* (1917)

1 L R. 41 Mad. 528

—Sch I, Art 11—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss 278, 282, 283 AND 287

1 L R. 41 Bom. 64

See CIVIL PROCEDURE CODE (1908)—

O XXI, r. 58 1 L R 40 All 225

1 L R 45 Bom 561

1 L R 41 All 823

1 L R 41 Mad. 985

O XXI, r. 97 1 Lah 57

O XXI, r. 100 5 Pa' L J 652

See LIMITATION 1 L R 45 Cal. 785

*Dekhan Agriculturalists' Relief Act (XVII of 1879) ss 47 and 48—Transfer of Property Act (IV of 1882), s. 55—Agriculturist Mortgagee—Suit—Conciliator's certificate—Mortgagee necessary party along with other persons interested—Exclusion of time spent in obtaining Conciliator's certificate—Limitation. Defendants 1 and 2 brought a suit on a mortgage against defendant 3 and while the suit was pending, defendant 3 mortgaged the same property, namely, a house along with other properties to the plaintiffs. Defendants 1 and 2 having obtained a decree, they applied for execution and sought to recover the decretal debt by sale of the house. Thereupon, the plaintiffs intervened and applied that the house should be sold subject to their mortgage lien. The plaintiff's application being disallowed they brought a suit against defendants, 1, 2 and 3 to establish their right founded on their mortgage. The suit was brought within one year of the order rejecting their application after the exclusion of the time taken up in obtaining the Conciliator's certificate under ss. 47 and 48 of the Dekhan Agriculturists' Relief Act (XVII of 1879) defendant 3 being described in their mortgage as an agriculturist. Defendants 1 and 2 contended that defendant 3 being not a necessary party, the Conciliator's certificate was unnecessary and the suit was time-barred. *Held*, that under the provisions of the Transfer of Property Act (IV of 1882), defendant 3 was a necessary party to the suit which was brought on the strength of the mortgage and he being an agriculturist, the Conciliator's certificate was necessary and the suit was, therefore, not time-barred. *ESKATH PANDORA v DAGADURAM* (1912)*

1 L R. 38 Bom 624

LIMITATION ACT (IX OF 1908)—*contd.*— Sch. I, Art. 11—*contd.*

Period of limitation altered by implication—S. 30, if applies—Claim petition dismissed for default—Regular suit, if must be brought within a year—Civil Procedure Code (Act XIV of 1908), ss. 278, 281. The operation of s. 30 of the Limitation Act is not limited to cases in which the period of limitation has been expressly altered. It applies also to a case where the period of limitation has been altered as the result of the alteration of the description of the suit. Art. 11 of the Limitation Act does not apply where a claim preferred under s. 278 of Act XIV of 1908 was "dismissed for absence," the order of dismissal not being an order passed under s. 281 of that Act but under those sections of the Code which enabled a Court to dismiss a miscellaneous case for default. *UMACHARAN CHATTERJEE v. HERON MOYER DEBI* (1917) 18 C. W. N. 770

Attachment and sale of moveable—Dismissal of claim petition—Suit for declaration and value of moveables, within one year of dismissal of claim petition but more than a year after attachment, governed by Art 11 of the Limitation Act—Civil Procedure Code (Act V of 1908), O XXI, r 63, nature of suits brought under. The plaintiff, whose moveable property was attached in execution of a decree against a third party, was unsuccessful in his claim petition and then filed the present suit more than one year after the date of the attachment but within one year of the date of the order dismissing his claim petition. In his plaint he prayed for a decree establishing his right to his moveables and directing the first defendant at whose instance the moveables were attached, to pay him the value thereof: *Held*, that the suit was within time, that it was a suit contemplated by O XXI, r 63, Civil Procedure Code, and that it was governed by Art. 11 of the Limitation Act: *Held*, further, that the words "to establish the right which he claims to the property" which occur both in Art. 11 and in O XXI, r 63, Civil Procedure Code, are wide enough to cover not only a suit for a declaration, but also one for relief consequential on such declaration. Nature of suits under O XXI, r 63, considered. *Kishori Mohun Roy v. Hurook Dass, I L. R. 12 Cal. 696*, and *Kunhamma v. Kunhunn, I L. R. 18 Mad 140*, followed. *Phil Kumar v. Ghanahayam Mura, I. L. R. 35 Cal. 202*, distinguished. *RASIVI REDDI v. RAMAYYA* (1916) I L. R. 40 Mad. 733

Civil Procedure Code (Act V of 1908), O XXI, r 29—Auction purchaser's petition to be given actual possession refused—Application to be given symbolical possession granted—Suit to recover actual possession—Limitation—Limitation Act (IX of 1908), Sch. I, Art 11 (a) Plaintiff having purchased at Court sale an 8 anna share of certain property, and being resisted in taking actual physical possession by the Defendant, applied to be put into such possession; but the application was refused under O XXI, r. 29, C. P. C. on 12th January 1912. Thereafter he, on a further application to be given symbolical possession, was put in such possession on 12th April 1912. On 10th February

LIMITATION ACT (IX OF 1908)—*contd.*— Sch. I, Art. 11—*contd.*

1913 Plaintiff brought the present suit in which he asked to be put in actual possession. *Held*—That as in the suit, Plaintiff was asking for the very same kind of possession as was refused to him on 12th January 1912, Art. 11 (a) of Sch. I of the Limitation Act applied and the suit was barred. The fact that he might not at that stage have a right to actual possession made no difference, as the question was not what he might or ought to have asked but what he did ask. *BALDEO v. KANHAIAHAL* 24 C. W. N. 1001

Sch. I, Arts 11, 13—Civil Procedure Code (Act V of 1908), O XXI, r 63—Claim petition filed on the original side of the High Court—Claim allowed—Appeal under the Letters Patent, if competent—Order confirming original order—Suit under O XXI, r. 63, after one year from date of original order, but within one year from order on appeal—Starting point of limitation. A claim petition was filed by the second defendant objecting to the attachment of certain properties as belonging to the first defendant in execution of a decree passed by the High Court on its original side. The petition was allowed in favour of the claimant by an order passed by a single Judge of the High Court on its original side. The plaintiff, who was the decree holder, filed an appeal against the order to the High Court under the Letters Patent, and the original order was confirmed on appeal. The plaintiff brought a suit under O XXI r 63 of the Code of Civil Procedure (Act V of 1908), to establish his right to attach the property, more than one year from the date of the original order but within one year from the date of the order passed on appeal. *Held*, that Art. 11 and not Art. 13 of the Limitation Act (IX of 1908) applied to the case but that the suit was not barred, as the starting point of limitation under Art. 11 was the date of the order passed on appeal. The word "order" in Art. 11 of the Limitation Act should be construed as meaning the only subsisting order in the case, which is the appellate order (when there has been an appeal), in accordance with the recognised principles of jurisprudence. An appeal lies under the Letters Patent against an order of a single Judge of the High Court on its Original Side, passed on a claim petition filed therein. *VENUGOPAL MEDALI v. VENKATASUBBIAH CHETTY* (1915) I L. R. 39 Mad 1196

Arts 11, 13 and 120—Attachment before judgment—Decree and order for sale—Claim to attached property, filed after order for sale—Order allowing claim—Suit filed after more than one year to contest the order on claim—Limitation. Property was attached before judgment and after a decree in the suit, and an order for sale in execution were passed, a claim to the property was preferred and allowed by the Court. On a suit to contest the order on the claim being filed more than a year after such order. *Held*, that the property must be deemed to have been attached in execution of a decree by virtue of Order XXXVIII, rule 11, Civil Procedure Code, and that article 11 and not article 13 or 120 was applicable and that the suit was barred by limitation. *ARUNACHALAM CHETTY v. PEEBASANI SERVAT* (1921)

I. L. R. 44 Mad. (F. B.) 962

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Art. 11 and s. 22—

Applicability of, discussed.

See CIVIL PROCEDURE CODE, 1908

O XXI, BR. 38, CO. 25 C W. N. 544

Sch. I, Art. 12—

See DECREE AGAINST A MAJOR AS MINOR
I L. R. 39 Mad. 1031

See CIVIL PROCEDURE CODE, 1882,

s. 406, I L. R. 1 Lah. 27

When in an execution of a decree against a father of a joint family property has been sold, the sons cannot claim to redeem without setting aside the sale within the time prescribed by this section. *BHOLA JHA v. KALI PRASAD*
1 Pat. L. J. 180

Sch. I, Art. 12A and s. 26 and 28—*Arrears of revenue—Sale by Revenue Court—Judgment-debtor remaining in possession of property—Sue by purchaser for possession—Defence by judgment-debtor that the sale was invalid—Judgment-debtor not precluded from raising the defence—Revenue sales to be treated differently from sales by Civil Courts—Purchaser's plea of want of notice of judgment-debtor's title not valid.* The defendants who owned plant land in a *khola* village brought a suit against the *khots* for a declaration that they held the land free of assessment. The suit was dismissed by the lower Courts but on appeal to the High Court it was held in 1905 that the defendants had the right to hold the land free of assessment. While the appeal proceedings were pending, the land was sold by the Revenue Court under the provisions of the Land Revenue Code for arrears of assessment due from the defendants and it was purchased by the plaintiffs' vendor. The sale was confirmed on the 6th August 1904. After the sale, the defendants continued to remain in possession of the property. In 1915, the plaintiff sued to recover possession of the property. The defendants resisted the claim on the ground that the sale was invalid. It was urged on plaintiffs' behalf that as he was a purchaser at a revenue sale without notice of defendants' title, his title was good as against the defendants. The lower Courts decreed the plaintiff's claim, holding that as the defendants did not sue to set aside the sale within one year their right to impugn the sale was barred under Art. 12A of the Limitation Act. Held (reversing the decrees of the lower Courts), that the defendants could raise the defence that the sale was invalid, though a suit by them would have been barred by limitation under Art. 12A of the Limitation Act. Held, also, that the plaintiff as a purchaser at a revenue sale could not succeed on the ground that he was a purchaser without notice, inasmuch as the sale held by the Revenue Court for arrears of assessment while proceedings were pending in a Civil Court became invalid when it was declared that the defendants were entitled to hold the land free of assessment. Unless a suit falls under s. 26 or s. 28 of the Indian Limitation Act, 1908, there is no bar of limitation to a defence. When a decree is passed against a defendant in a civil suit and his property is put up for sale in execution proceedings and he does not ask for a

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Art. 12A and ss. 26 and 28—*contd.*

stay of execution the purchaser at the execution sale acquires a good title although it may happen that eventually the decree against the defendant is set aside on appeal. But there is a great distinction between sales in execution of Civil Court decrees and sales by the Revenue Courts for arrears of assessment. If as a matter of fact the defendant in the revenue proceedings is entitled to hold the land free of assessment, any sale which takes place on the footing that he is bound to pay assessment is invalid and the purchaser at such a sale cannot acquire a good title except by adverse possession. *Venkatachalapathi Ayyar v. Robert Fischer* (1907), 30 Mad. 444, followed; *Shital Bhagwan v. Shamdasprasad* (1905), 29 Bom. 435, distinguished; *Balikesen Das v. Simpson* (1898), L. R. 23 I. A. 151, referred to; *MAHADEV v. SADASHIV* (1920)

I. L. R. 45 Bom. 45

Sch. I, Arts. 12, 65, 166—

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 47 AND 50

I. L. R. 38 Mad. 1078

Sch. I, Art. 12 or 144—

See INAM I L. R. 42 Mad. 673

Sch. I, Art. 13—

See s. 11 I L. R. 44 Mad. 902

Attachment of property before judgment—Order raising the attachment—Decree in the suit—Subsequent suit for a declaration that the property is liable to be attached for the decree—Existence of the order, whether bar to such suit. An order releasing certain properties from attachment before judgment, is no bar to a subsequent suit for a declaration that they are liable to attachment in execution of the decree in the prior suit, and such suit is not governed by Art. 13 of the Limitation Act. *Bukheskar Das v. Ambika Prasad*, I L. R. 37 All. 578, not followed. *RAMANANJAM v. KAMARAJU* (1917)

I L. R. 41 Mad. 23

Sch. I, Art. 14—

See s. 10 I L. R. 39 Bom. 572

See s. 22 I L. R. 39 Bom. 729

See BOMBAY LAND REVENUE CODE,
1878, ss. 68 AND 79

I L. R. 45 Bom. 920

See INAM I L. R. 42 Mad. 673

Possession of land as owner for fifty years—User of land as graveyard and also as timber depot—Order by Government for discontinuing the user as timber depot—Order ultra vires—Land Revenue Code (Bom. Act V of 1879) ss. 65, 66. The plaintiffs were in possession of the land in dispute as owners ever since 1860 and used a portion of it as a graveyard, and on another portion of it they built a shed which was used as a timber shop. In 1871, Government assessed the land and entered it in the Revenue Registers as "Government waste land." The plaintiffs

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Art. 14—*contd.*

paid no assessment on the land, in 1908, the District Deputy Collector passed an order directing the Mamlatdar to "cause the building and the wood to be removed forthwith from the said land." This order was finally confirmed by the Commissioner on the 24th April 1909. The plaintiffs filed the present suits on the 2nd February 1910, to obtain a declaration that they were absolute owners of the land, to have set aside the order of 1909, and to get a permanent injunction restraining Government from disturbing the plaintiffs in their possession of the land. The lower Court dismissed the suits holding that the plaintiffs were not absolute owners but occupants only, and that the suits were barred under Art. 14 of the first schedule to the Limitation Act, 1908. The plaintiffs having appealed *Held*, that as the land in dispute was not used for the purpose of agriculture, neither s. 65 nor s. 66 of the Land Revenue Code (Bom Act V of 1879) applied to the case, and the orders passed by the Revenue Authorities to evict the plaintiffs were *ultra vires* *Held*, further, that the suits were not barred by Art. 14 of the Limitation Act (IX of 1908), inasmuch as it was not necessary for the plaintiffs to have the order set aside *RASUL-KHAN HAMADKHAN v SECRETARY OF STATE FOR INDIA* (1915) . . . I. L. R. 39 Bom. 484

Official order—What is—
Held, that Art. 14 only applies to orders passed by a Government officer 'in his official capacity' and not to orders which are *ultra vires*, and that where a Collector passed orders under a 37 of the Bombay Land Revenue Act 1879, with reference to land *prima facie* the property of an individual in peaceful possession he is dealing with the land in official capacity but acting *ultra vires* *MALKATJI v SECRETARY OF STATE FOR INDIA* (1915) . . . I. L. R. 36 Bom. 325

Collector's Order—
Forfeiture—Appeal—Exclusion of time—Limitation—Revenue Jurisdiction Act (X of 1876), s. 11
On the 6th May 1911, an order was made by the Collector declaring that a survey number belonging to the plaintiff be forfeited to Government for arrears due on the khata. Against the order of forfeiture, the plaintiff preferred an appeal to the Commissioner. The appeal being dismissed, the plaintiff filed a suit on the 14th October 1915 to get the order of forfeiture set aside as illegal and *ultra vires*. It was contended that the time taken up in appealing to Revenue authorities be excluded in reckoning the period of limitation *Held*, overruling the contention, that the suit not being brought within one year from the date of the order of forfeiture, was barred by limitation under Art. 14 of the Limitation Act, 1908 *GANESH SHESHO v THE SECRETARY OF STATE FOR INDIA* (1919) . . . I. L. R. 44 Bom. 451

Sch. I, Arts. 14 and 91—*Suit for a declaration of rights as Vatandar—*

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876), s. 4(a)

I. L. R. 44 Bom. 261

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 19, 23—

See LIMITATION (12).

I. L. R. 40 Calc. 898

Sch. I, Art. 22—

See ART 11 . . . 25 C. W. N. 544

See ARTS 28, 29

See ART 12 . . . I. L. R. 45 Bom. 45

See ARTS 20 and 28

See ART 12A . . . I. L. R. 45 Bom. 45

Sch. I, Arts. 19, 62 and 120—*Attachment of debt—Wrongful seizure of moveable property—Suit by claimant to the debt against the decree holder—Article, applicable* Neither attachment of a debt nor voluntary payment of it into Court, constitutes seizure of moveable property under legal process within the meaning of Art. 29 of the Limitation Act. A suit by a claimant to the debt attached against the decree holder to whom the amount of the debt was paid is governed by either Art. 62 or 120 *Narasimha Rao v Gangaraju, I L R 31 Mad. 431*, distinguished. *YELLAMMAL v AYYAPPA NAICK* (1915) . . . I. L. R. 38 Mad. 972

Sch. I, Arts. 29, 36—*Execution of decree—Civil Procedure Code (1908), s. 73—Money rateably distributed amongst decree holders, to which they were subsequently declared not to be entitled—Suit to recover money so distributed—Limitation.* One S brought a suit for money against N and B and attached before judgment a quantity of grain in their possession. Thereupon one M, from whom the grain had been purchased, objected to the attachment setting up a lien on the grain for unpaid purchase money. The Court allowed M's objection holding that M had a lien to the extent of Rs. 2,000, whereupon S brought a suit for a declaration that M had no lien at all. The property being of a perishable nature was sold by the Court and the proceeds were deposited in Court. The suit of S against M was decreed by the Court of first instance on the 25th of June, 1912. Thereafter certain other decree holders of N and B applied for rateable distribution under s. 73 of the Code of Civil Procedure, and the Court made the order asked for and paid the sale proceeds of the grain rateably to the decree holders and S on dates between the 19th and the 26th of September, 1912. But the declaratory decree obtained by S was reversed on appeal on the 24th of September, 1912, and the decree of the lower Appellate Court was affirmed in second appeal on the 30th of April, 1914. In June and July, 1915, M's son brought suits to recover by virtue of his lien the amounts paid to the various decree-holders. *Held*, that the suits were not barred by limitation, and that neither Art. 29 nor Art. 36 of the first Schedule to the Limitation Act was applicable to the suits *Yellammal v. Ayyappa Naick, 23 Mad. L. J. 519, Rajputana-Malwa Railway Co-operative Stores, Limited v. The Ajmere Municipal Board, I L. R. 32 All. 491, and Ward & Co. v. Wallis (1909), 1 Q. B. 675, referred to by WALSH, J. RAM NARAIN v BHAI BANKER LAL (1917) . . . I. L. R. 39 All. 327*

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 29, 30, 40—

See ARREST OF SHIP

I. L. R. 42 Calc. 35

Sch. I, Arts. 29, 31, 115—

See LAWS OF GOALS

I. L. R. 44 Calc. 18

Sch. I, Art. 31—*Limitation—Suits by consignee for damages on account of non-delivery of goods—Effect of offer to compromise claim on the part of the Railway Company* (On the 16th of January 1913, the plaintiff left at the Ramnagar station on the Mithankhand and Humsar Railway a bundle of gunny bags to be delivered to the Ball Super a tender, Sambhar, on the Bumber, Baroda and Central India Railway. The bundle was not delivered. The plaintiff was subsequently informed that it was lying in the lost property office of the latter railway, and that the plaintiff might take delivery of it if he liked. On the 17th of March, 1916, the Bumber, Baroda and Central India Railway wrote to the plaintiff and offered him Rs. 20 as compensation. The plaintiff did not accept this offer, but on the 7th of July 1919, sued the Railway Company for Rs. 50 damages for non-delivery of the bundle of gunny bags. *Held*, that Art. 31 of the first schedule to the Indian Limitation Act, 1908, applied and the suit was barred by limitation. The plaintiff could not pray in aid the Railway Company's letter of the 17th of March 1916, as it was written long after the expiry of the period of limitation and could not be construed as a promise to pay anything. It was at best an offer made without prejudice to compromise the plaintiff's claim. *Great Indian Peninsula Railway Co. v. Gangul Ray*, I. L. R. 31 All. 544, *Haji Yousaf Goudam Hussein v. Bombay and Persia Steam Navigation Co.*, I. L. R. 26 Bom. 562, referred to. *M.T.A. Raddi Lal v. Bombay, Baroda and Central India Railway Company* I. L. R. 42 All. 290

Sch. I, Arts. 31, 49, 115—

See SPECIFIC MOVABLE PROPERTY

I. L. R. 29 Mad. 1

Sch. I, Arts. 31 and 62—*Railways Act (Indian) (IX of 1909), s. 58—Suits by consignee of goods for surplus sale proceeds—Suits against the Company—Sale of goods under s. 58 of the Railways Act—Suits for compensation, distinct from suit for surplus sale proceeds—Money had and received—Applicability of Art. 31 or 62, Limitation Act. A suit by the consignee of goods by a Railway Company for the recovery of the surplus sale-proceeds realized by the Company by sale of the goods under s. 58 of the Indian Railways Act, is governed by Art. 62 and not Art. 31 of the Limitation Act. *M. & S. M. Ry. Co., Ltd. v. Haridas Bramahloss* (1915), I. L. R. 41 Mad. 371, referred to. *Tanachand v. M. & S. M. Ry. Co., Ltd.* (1921) I. L. R. 44 Mad. 823*

Sch. I, Art. 32—

See HINDU LAW JOINT FAMILY

1 Fal. L. J. 497

See MORTGAGE I. L. R. 47 Calc. 125

Wherein a suit for ejectment of a tenant under s. 165 of the Bengal Tenancy Act for breach of condition compensation was also claimed. *Held*, that latter claim

LIMITATION ACT (IX OF 1908)—*contd.*Art. 32—*contd.*

was governed by Art. 32 of the Limitation Act. *Rajendra Das Roy and another v. M. M. Chandra*, 25 C. W. N. 839

Sch. I, Arts. 22, 143—*Bengal Tenancy Act (I of 1855), s. 125—Suit to set aside sale—Limitation. Art. 22 and not 143 of the first schedule to the Limitation Act governed a suit by a landlord brought under s. 125 of the Bengal Tenancy Act to set aside a tenant who had allowed a portion of his holding to be encroached upon by a stranger and had exchanged another plot of land of the tenancy with the stranger in contravention of the terms of his khalak. *Shreegopal Das Mondal v. Jyotindra Roy Chowdhury*, I. L. R. 4 Calc. 541 & 5 C. W. N. 444, referred to. *Tarab Mondal v. Tarab Gramani* (1915) 20 C. W. N. 661*

Sch. I, Art. 34—

s. 49 Art. 29

I. L. R. 33 A.L. 522

s. 49 Art. 29

I. L. R. 42 Calc. 35

See LIMITATION ACT, 1908, ss. 29, 30

AND 120 I. L. R. 28 All. 322

Sch. I, Art. 42

See INDENTURE I. L. R. 42 Calc. 530

Sch. I, Art. 44

See s. 7 I. L. R. 41 Mad. 112

I. L. R. 28 Bom. 84

See CONTRACT ACT s. 64

I. L. R. 42 Mad. 26

See HINDU LAW GUARDIAN

I. L. R. 25 Mad. 1123

See LIMITATION ACT, 1877, s. 7

I. L. R. 28 Mad. 119

See LIMITATION ACT, 1908, ss. 7 and 44

I. L. R. 41 Mad. 102

See MURUMADAW LAW 25 C. W. N. 238

Sch. I, Art. 44—*Case of minor's property by his mother—Suit to set aside the sale brought more than three years after the minor attained majority. The mother and natural guardian of a minor having sold the minor's property, a suit to set aside the sale was brought more than three years after the minor attained majority. *Held*, that the suit was barred under Art. 44 of the Indian Limitation Act, 1908. *Rajappa v. Channappa*, 17 Bom. L. R. 1134 and *Chandappa v. Tatyappa*, 17 Bom. L. R. 1137, distinguished. *Laxmaya v. Rachappa* (1914)*

I. L. R. 42 Bom. 626

Minor—Guardian—Alienation by natural guardian of minor—Suit to set aside alienation—Limitation. A Hindu minor on his attaining majority cannot sue to recover possession of property transferred by his mother acting as his natural guardian during his minority without suing to set aside the transfer within the period of limitation provided by Art. 44 of the Limitation Act. A mortgaged his property to defendant's father in 1877. After his death, his widow S, as natural guardian of his minor son, sold the equity of redemption to the mortgagee in 1901, without necessity. The son attained majority in 1895 and died in 1901 leaving a widow S who died in 1906, and the son's widow died in 1904.

LIMITATION ACT (IX OF 1908)—*contd*—Sch. I, Art. 44—*contd*.

In 1916, the plaintiff, the next reversioner, sued to redeem the mortgage—*Held*, that the suit was barred under Art. 44 of the Indian Limitation Act, 1908, for the son ought to have sued to set aside the alienation within three years of his attaining majority. *PER SHAN J*—The scope of Art. 44 is not limited to sales by guardians who are appointed under testaments or by the Court. The language of the Article is general and wide enough to include sales by natural guardians, who may have some authority, however limited, to alienate the property of the minor that is, sales which are not wholly void, but are voidable at the instance of the person interested in the property. *Bhagwant Govind v. Kondi valad Mahadu* (1889) 14 Bom. 279, *Balappa v. Chambaappa* (1916) 17 Bom. L. R. 1134 and *Anandappa v. Tolappa* (1911) 17 Bom. L. R. 1137n, overruled. *Malkarjun v. Narhar* (1900) 25 Bom. 337. *Mata Din v. Ahmad Ali* (1917) 34 All. 213. *Mahabeshwar Krishnaappa v. Ramchandra Mangesh* (1913) 38 Bom. 94 and *Laxmana v. Rachappa* (1915) 42 Bom. 626 referred to. *PAKRATTA LIMANNA v. LIMANNA bin MAHADU* (1919)

I L. R. 44 Bom. 742

Suit to recover property transferred by natural guardian on behalf of minor
A suit for the recovery of property transferred during the minority of the Plaintiff by his natural guardian must under Art. 44 of Sch. I to the Limitation Act be brought within three years of attaining majority since a transfer being voidable and not void. *BJOJENDRA CHANDRA SARMA v. PROSHONYO KUMAR DEAR* 24 C. W. N. 1016

—Sch. I, Arts. 44, 91—Suit to set aside a compromise decree—

See EXECUTOR,

I L. R. 38 Mad. 579

—Sch. I Arts. 44, 91, 95, 120—

See CIVIL PROCEDURE CODE 1908

O XXII n 7 I L. R. 2 Lah. 164

—Sch. I, Arts. 44, 144—

See HINDU LAW—GUARDIAN

I L. R. 28 Mad. 1125

Alienation by mother as guardian of the sons—Decree against the sons represented by the mother as guardian ad litem—Sale in execution—Decree and sale whether nullities—Suit by minors to recover possession—Limitation—Civil Procedure Code (1 of 1908) O XXXII, r. 4 (1) Where a mother acting as the guardian of her minor sons mortgaged their property and a decree on the mortgage was passed against the minors represented by the mother as guardian ad litem and properties sold in execution and subsequently the sons sued to recover possession of the properties more than three years after the elder of them attained majority but within twelve years of the sale, alleging that their mother was not competent to represent them in the previous suit as her interest was adverse to theirs. *Held*, that the decree against the minors was not a nullity and had to be set aside and that the suit was consequently barred by limitation. *KUPPUSWAMI AYYANGAR v. KAMALAMMAL* (1920)

I L. R. 43 Mad. 842

LIMITATION ACT (IX OF 1908)—*contd*

—Sch. I, Art. 47—

See s. 28.

I L. R. 38 Mad. 432

Suit for recovery of land previously declared to be in defendant's possession under s. 145 of the Criminal Procedure Code (Act V of 1898)—Limitation—Order not ultra vires, because defective—jurisdiction, meaning of In a proceeding under s. 145 of the Criminal Procedure Code regularly initiated by a preliminary order under sub-s. (1) the parties filed written statements. The first party to the proceedings after some witnesses had been examined on his behalf, applied to withdraw from the proceedings stating that he would conduct the case in Civil Court and would not enter upon the land till the matter should have been settled by the Civil Court. The Magistrate reciting the above facts declared the second party to be in possession on by an order passed on 24th August 1906. The first party instituted the present suit to recover possession on the 21st January 1912 and contended that the suit was not barred by Art. 47 of the Limitation Act because the order of the Magistrate was without jurisdiction. *Held* that the suit was barred by Art. 47 of the Limitation Act. *EAM MAHAMED SHAHA v. HAYAT MAHAMED SAHA* (1917)

22 C. W. N. 342

Decree by Mamladar—Mamladars' Courts Act (Bombay Act II of 1906) Order by Magistrate—Criminal Procedure Code (Act V of 1898), s. 145—Suit for possession—Limitation In 1913, the plaintiff filed a suit under the Bombay Mamladars Courts Act 1906 and obtained an injunction restraining the defendant from disturbing his possession. The District Deputy Collector having purported to interfere in revision the plaintiff applied in 1914 for an order under s. 145 of the Criminal Procedure Code, but the Magistrate decided against him and allowed possession to the defendant. In 1917, the plaintiff sued to recover possession. *Held* that the order of the District Deputy Collector who had no jurisdiction to interfere should be considered as a nullity and that the suit being filed within three years from the order of the Magistrate was not barred under Article 47 of the Indian Limitation Act, 1908. *VENKATESH KEVAL v. BHIKU VENKATESH*

I L. R. 45 Bom. 1135

—Arts. 48 and 49—

Suit for goods misappropriated—Indian Contract Act (IX of 1872), ss. 108 and 178 One K took a jewel of the plaintiff in May 1907, to find a purchaser for it, stating that he would settle the price in the presence of the plaintiff but instead of doing so, K in June 1907 pledged it with the third defendant who bona fide lent on its security. *Re 175. Plaintiff came to know of K's conversion in 1909 and sued in 1911 for the jewel or its value the third defendant and the widow and son of K who died at the end of 1907. Held* that Art. 48 and not 49 of the Limitation Act (IX of 1908) was applicable and that the suit was not barred by limitation. *Held*, also that the bond fides of the third defendant does not preclude the plaintiff from recovering the jewel without paying the third defendant the amount of loan. Effect of ss. 108 and 178 of the Indian Contract Act considered. *SENAPATY v. SUBRAMANIA CHETTIAR* (1914)

I L. R. 38 Mad. 783

LIMITATION ACT (IX OF 1908)—*contd.*Arts 43 and 49—*contd.*

Suit for goods misappropriated—Contract Act (IX of 1872), ss 103 and 178. A commission agent employed to sell a jewel belonging to the plaintiff wrongfully pledged it in 1907 for Rs. 175 to the defendant who lent the amount *bona fide* without any knowledge of the plaintiff's ownership. Plaintiff coming to know of the wrongful pledge in 1909 sued in 1911 for the recovery of the jewel or its value. *Held*, (i) that the suit was in time and Art. 48 and not Art. 49 of the Limitation Act was applicable and time began to run from 1903 when the plaintiff came to know in whose possession the jewel was and (ii) that as the defendant was a pawnee in good faith from one who had juridical possession of the jewel the plaintiff was not entitled to recover the jewel without paying the defendant, the amount due to him on the pledge. "Possession" in a 178 of Contract Act (IX of 1872) means juridical possession and not custody. *Bameshar Chavley v. Mats Bhalu*, I L. R. 5 All. 341, *Ram Lal v. Ghalam Hussain*, I L. R. 29 All. 579 and the observations of BACHELOR, J. in *Vandil Thakrey v. The Bank of Bombay* 12 Bom. L. R. 310 335 followed. *SKESHAPPIER v. SODRAMATIA CREDITORS* (1916).

I L. R. 49 Mad. 678

Sch. I, Art. 49—

See ARREST OF SHIP

I L. R. 42 Calc. 35

See ART 31 I L. R. 39 Mad. 1.*See CONTRACT Act s 162*

28 C W N 772

Limitation begins to run upon refusal to return property detained. Where a person to whom moveable property is entrusted to be returned on the fulfilment of certain conditions, retains such property after such conditions are fulfilled, he will be deemed to be in possession on behalf of the person entitled, until he refuses delivery mere silence on demand being made will not constitute such refusal. The period of limitation for a suit to recover the property thus detained will, under Art. 49 of Sch. I of the Limitation Act, run from the date when the defendant refuses to deliver such property. *GOPALASAMI AYYAR v. SUBRAMANIAM SASTRI* (1912).

I L. R. 35 Mad. 636

In a suit for recovery of property deposited for safe custody with defendant limitation does not begin to run against plaintiff until the return of the property has been demanded and refused. *LADDO BIRAM v. JANAL-UD-DIN* I L. R. 42 All. 45

Sch. I, Arts. 40, 60, 61, 62, 81, 83, 120 and 145.—*Specific moveable property*, meaning of, in Art. 49.—*Whether includes money—* *Readvay article, when to be applied—* *Money had and received to the plaintiff's use.* Where the karnavan of a Malabar taluk sued a junior for recovery of a sum of toward money recovered by the latter, but withheld by him in denial of the plaintiff's right to the same. *Held*, that the case was governed by Art. 62, as the defendant had received money belonging to the plaintiff which *ex ipso facto* he ought to refund, and the cause of action was for money had and received to the plaintiff's use, and arose on the date of the receipt, and not on the date of the denial of the

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Arts. 49, 60, 61, 62, 81, 83, 120 and 145—*contd.*

plaintiff's right to the money. *Mahomed Habib v. Mahomed Amer*, I L. R. 327 Cal. 527, referred to. "Specific moveable property" in Art. 49 does not include money, though money is "moveable property" within Art. 89. "Specific property" is property which is recovered in *specie*, i.e. the very property itself, not any equivalent or reparation. The ordinary Art. 120 should be applied only as a last resort, if no other article is applicable. *Sharoop Dass Mondal v. Joggeswar Roy Chowdhury* I L. R. 26 Cal. 564, referred to. *SANKUTY v. GOVINDA* (1914).

I L. R. 37 Mad. 281

Sch. I, Arts. 40, 60, 145.—*Limitation—Bridgment—Suit to recover property bailed—Contract or tort.* The plaintiff sued for the return of certain property which had been deposited with two persons as follows, namely, four hundred gold mohurs with Musammatt Chon Kunwar and some pictures and manuscripts with Sobhag Mal. *Held* that the limitation applicable to the former suit was that prescribed by Art. 60 of the first schedule to the Indian Limitation Act, 1908, and to the latter that prescribed by Art. 145 or, if the suit was looked upon as one in tort, Art. 49 would apply, the period beginning to run from the date when the return of the property was demanded. *KALYAN MAL v. KISHAN CHAND* (1919).

I L. R. 41 All. 643

Sch. I, Arts. 49, 115, 145.—*Gold deposited with goldsmith to be made into ornaments—Suit to recover—Limitation.* Where the allegation was that nearly eleven years ago the plaintiff had made over a *loka* of gold to defendant to be made into ornaments, but no time was fixed and the latter put him off from time to time until being pressed by plaintiff on 24th March 1914, he promised to make and deliver the ornaments within 15 days, but failed to do so. *Held*, that Art. 145 of Sch. I to the Limitation Act applied to a suit for recovery of the gold deposited. Art. 145 applies even when the property is not recoverable in *specie* and does not cease to be applicable merely because the defendant refuses to return the property. Such refusal does not bring into operation Art. 48 or 49. Even if Art. 49 applied limitation would begin running from 24th April 1914 before which there was no refusal. If Art. 115 applied limitation would run from the same date, when the contract was broken. *GANGAHARI GUERRAVASTI v. NABIN CHANDRA HARIKTA* (1915).

20 C W N 232

Sch. I, Art. 51—

See s 19

I L. R. Lah. 357

Sch. I, Arts. 52, 56, 115, 120.—*Limitation—suit for recovery of money due on account of materials supplied and work done for constructing a floor under a contract fixing a consolidated rate for both—Claim as laid in plaint, an indivisible one—Meaning of compensation—in Art. 115, and in Indian Contract Act, IX of 1872, s 73.* The defendant, who had taken a contract to construct a building at Lahore, employed the plaintiff, as a sub contractor to do the work of flooring in the building. The plaintiff was to supply Italian marble and other stones required for the flooring and was also to do all the work necessary for constructing the floor, and was to be paid a certain sum of money for every square foot of the flooring done by

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 52, 58, 115, 120—*contd.*

him, which rate included both the price of the materials supplied and the work done by the plaintiff. The plaintiff sued for the balance of the money due to him on the basis of this contract and the plaint made no mention of the price of the materials as distinct from the price of the work. The only question before the full bench was what article of the Limitation Act was applicable to the suit. *Held*, that the claim as laid in the plaint was an indivisible one, and could not be split up into two portions and consequently neither article 52 nor article 58 of the Limitation Act was applicable, but that if the suit was governed by article 115 and not by article 120 *Pudha Kusen v. Damul Lal* (193 P R 1913), overruled in this respect. Article 115 is a general provision applying to all actions or contracts not specially provided for otherwise. The word "compensation" in that article as well as in article 116 has the same meaning as it has in section 73 of the Indian Contract Act, and denotes a sum of money payable to a person on account of loss or damage caused to him by the breach of a contract. *Nobocomar Mookhopadhyay v. Suru Mullick* (I L R 6 Cal 94), and *Hussain Ali Khan v. Hafiz Ali Khan* (I L R 3 All 600 F B), followed. *MAHOMED GHAFITA v. SIRAJ UD DIN* I L R 2 Lah. 378

Sch. I, Arts. 59, 60—*Loan or deposit—Money left with a trader, not being a banker, is loan or deposit—Deposit, as Art. 60, meaning of Under Art. 60 of the Limitation Act (IX of 1908), money left in the hands of a trader who is not a banker will be a deposit in circumstances such as would make it money of a customer where the depositor is a banker. Art. 60 and not Art. 59 of the Limitation Act (IX of 1908) applies to a suit to recover money so deposited, even though it is payable on demand. The word "deposit" in Art. 60 is used in a non legal sense. *Official Assignee of Madras v. Smith*, I L R 32 Mad 63, *Perumdevayyar Ammal v. Nammalwar Chellu* I L R 18 Mad 390, and *Jahar Chunder Bhadury v. Jiban Kumar Bibi*, I L R 16 Cal. 25 followed. *Dharam Das v. Ganga Devi*, I L R 29 All 773, and *Ididha Dhanj v. Natha*, I L R 13 Bom. 338 dissented from *Snackar v. Brougha* (Barbeck Bank Case), (1914) A C 328, referred to SUB RAHMANTAN CHETTIAR v. KADIRESAN CHETTIAR (1916) I L R 39 Mad 1081*

Sch. I, Arts. 60, 145—
See ART 49 I L R 41 All 643

Limitation—*Suit to recover money deposited with banking firm*. There is no doubt, since the passing of the Indian Limitation Act, 1908, that a suit for the recovery of money deposited with a banker and repayable on demand is governed by Art. 60, and not by Art. 59, of the first schedule to the Act. *Dharm Das v. Ganga Devi*, I L R 29 All 773, referred to. *JUGAL LAL v. KISHAN LAL* (1915) I L R 37 All 282

Sch. I Arts. 60, 61, 62—
See ART 49 I L R 37 Mad. 381

Sch. I, Arts. 60, 63—
Interest due on "Thavani" transactions with Nattukottai Chettis—Hindu widows—Interest in her husband's assets—Acquiescence in treating it as part of her husband's

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 60, 63—*contd.*

estate—Effect on her death. If a Hindu widow acquiesces in treating the interest on the investments of her husband's assets as part of her husband's estate, it will descend, on her death, to her husband's heirs. If money is deposited with Nattukottai Chettis on "Thavani" with the understanding that at the end of each "Thavani" period the interest for that period is not payable but is to be added to the principal, and both are to be treated as a fresh deposit, Art. 60 of the Limitation Act is applicable to the recovery of such interest and it becomes payable only on demand. Art. 63 does not apply. *NATAYANAM CHETTI v. SUDHAN CHETTI* (1920)

I. L. R. 43 Mad. 629

Sch. I, Art. 61—

Revenue paid by person in possession under an order which is subsequently reversed on appeal—Suit to recover revenue so paid from successful competitor—Limitation. A obtained possession of certain revenue-paying property under an order passed in mutation proceedings and whilst in possession, paid the revenue due in respect of the property. But the order in favour of A was subsequently set aside and B obtained possession under the order of the appellate court. *Held*, that A's claim to recover the revenue which he had paid during the period of his possession was a claim for money payable to the plaintiff for money paid for the defendant and the limitation applicable was that prescribed by Art. 61 of the first schedule to the Indian Limitation Act, 1908. *ALAYAR KHAN v. BIBI HUNWAR*

I. L. R. 42 All 61

Sch. I, Arts. 61, 92, 120—*Contribution suit—Limitation when begins to run—Date of payment.* One R B deposited a certain sum of money in a Bank owned by R and his two brothers S and G. R B brought a suit and obtained a decree for the money deposited against R and the representatives of his brothers S and G. On appeal the High Court exempted G's representatives from liability under the decree in so far as they inherited the share of the family property from G. R B executed his decree against R and advertised some properties exclusively belonging to R for sale. On the 8th December 1900, one Raja S as the purchaser of certain movables belonging to R and his son (the plaintiff) paid in the decretal amount and the execution case was finally struck off. R put in an application stating that the petition filed by the decree holder stating satisfaction of the decree was without his knowledge and that the negotiations between Raja S and himself regarding the sale of the properties had not been concluded. Raja S sued R for specific performance of the contract to sell and ultimately the High Court held that he could not get a decree for specific performance, but was only entitled to get back the money advanced with interest from the 8th December 1900. On 11th January 1900, Raja S in execution of this decree sold certain properties belonging to the plaintiff, the sale being confirmed on 21st June 1906 when Raja S obtained payment. On 3rd February 1908, the plaintiff instituted a suit for contribution against the legal representatives of R's brother S. *Held*, that it was doubtful whether Arts. 61 and 92, Sch. I of the Limitation Act, were applicable to the present case and under Art. 120 the

LIMITATION ACT (IX OF 1908)—contd

Sch. I, Arts 61, 99 120—contd

period of limitation was six years from the time when the right to sue accrued. The date of payment by Raja S was not the date of payment by E within the meaning of Art 99 of the Limitation Act. The plaintiff's right to sue accrued when the decree obtained by Raja S was satisfied by sale of plaintiff's property and the suit being brought within two years from the date of that payment, was not barred by limitation. **JANKI KOER v DOMI LAL** (1913) 18 C W N 480

Arts 61 and 116.—Well jointly owned by parties.—Registered agreement for effecting repairs of well jointly.—Repairs made at plaintiff's costs.—Suit for contribution of expenses.—Claim not for compensation for breach of a contract in writing registered.—Limitation three years. The plaintiff and the defendant jointly owned a well. They entered into a registered agreement to the effect that the repairs of the well were to be made by them jointly. The repairs were effected by the Municipality at the instance of the plaintiff who paid a certain amount to the Municipality in 1911. The plaintiff having sued the defendant in 1916 for the contribution claimable in respect of the repairs of the well, it was contended that the suit being covered by Art 116 of the Limitation Act, 1908, was not barred by limitation. **Held** that the suit, being in fact a suit for contribution, in which the right of action did not rest upon the registered contract, was time barred after three years. **SRINATHPRASAD DWARKADAS v KARMAJI ARJUNJI** (1919) 1 L R. 44 Bom. 591

Art 82—

See ART 2 1 L R 76 All 555

See ART 31 1 L R 44 Mad 823

See BENGAL ZAMINDARI REVENUE ACT
1 Pat. L. J 374

See BHAGDARI AND YADWADARI TEXTILES
ACT (Bom V of 1862) s 3

1 L R 39 Bom. 358

See CIVIL PROCEDURE CODE (ACT V
of 1908), s. 11 1 L R 40 Bom. 614

See CONTRACT 1 L R 41 Mad. 438

1. Payment by cheque. In case of payment by a cheque, limitation runs not from the date of the delivery of the cheque, but from the date of the receipt of the money by the payee. **SECRETARY OF STATE FOR INDIA v MAJON HUGHES** (1913) 1 L R 38 Bom 293

2. Limitation.—Debt due to all the heirs of a deceased recovered by some of them.—Suit by remaining heir for recovery of her share. Some of the heirs of a deceased Muhammadan brought a suit upon a mortgage in his favour implicating as a defendant the remaining heir. The plaintiffs obtained a decree and in execution thereof brought the mortgaged property to sale on the 21st of May 1900 and purchased it themselves for a sum slightly in excess of the amount of the decree and costs. The decree-holders auction purchasers paid in the excess and got possession. On the 1st of June 1912 the remaining heir sued to recover her share in the mortgage money or in the alternative a share in the property purchased. **Held**, that the plaintiff had no cause of action so far as the property was concerned, and that as to the money her

LIMITATION ACT (IX OF 1908)—contd

Art 82—contd

suit was barred by Art 62 of the first schedule to the Indian Limitation Act, 1908. **Mahomed Walid v Mahomed Ameer**, 1 L R 32 Cal 227, followed. **Umardaraz Ali Khan v Wilayat Ali Khan** 1 L R 19 All 169 and **Mahomed Riamat Ali v Hasan Bannu** 1 L R 21 Cal 157, referred to. **AMINA BIBI v NAJIB UDDIN** (1915)

1 L R 37 All 233

3. Limitation.—Suit for money had and received.—Suit by heir to recover share of inheritance from person appointed to wind up estate. Where, pending arbitration in respect of the distribution of the estate of a deceased person amongst his heirs, the estate was by their consent put in charge of a third party who was to realize the assets and pay the debts, it was held that a suit by one of the heirs to recover from such person her share by inheritance was a suit for money had and received and was governed by Art 62 of the first schedule to the Indian Limitation Act, 1908. **MASHI UDDIN v IFTIKHAR-UN-NISSA BIBI** (1914) 1 L R. 37 All. 40

4. Limitation.—Succession certificate obtained by one of the heirs of a deceased person.—Suit by remaining heir for recovery of her share. A certain Mahomedan in the year 1903 obtained a succession certificate to realize debts due to his deceased uncle and realised some of those debts. In the year 1913, the widow of his brother who had died subsequent to the death of his uncle brought the present suit for her husband's share of the money realised. **Held** that Art 62 of the first schedule to the Indian Limitation Act 1908 governed the suit and as no money had been realised by the holder of the succession certificate within three years of the suit it was barred by limitation. **AMINA BIBI v NAJIB UDDIN** (1915) 1 L R 37 All 233. **Paradara Rao Tanjavi v Radha Bai**, 1 L R 37 All 318. **Mashi uddin v Iftikhar un Nissa Bibi**, 1 L R 37 All 40, **Mahomed Walid v Mahomed Ameer**, 1 L R 32 Cal 227 followed. **Umardaraz Ali Khan v Wilayat Ali Khan**, 1 L R 19 All 169, distinguished. **ABDUL GHAFAR v NUR JAHAN BEGAM** (1915) 1 L R 37 All. 434

5. Suit for refund of consideration money where there is a total failure of consideration. When there is a total failure of consideration with regard to a loan, a claim to a refund of the consideration money is governed by Art 62 of the first Schedule of the Limitation Act. **BISWANATH GORAI v SURENDRA MOHAI GHOSH** (1913) 19 C W N 120

6. Suit for money taken in execution of a decree.—Compensation.—Suit for money had and received. In execution of a decree certain rents due to the judgment-debtor from his tenants were attached. Prior to the passing of this decree the judgment debtor had sold the property to a third party. The decree holder got the court orders to realize the rents due from the tenants and they were deposited in Court and ultimately paid over to the decree-holder. The purchaser brought the present suit against the decree holder for the recovery of the money within three years of the payment to him. **Held**, that the suit was money had and received within the meaning of art. 62 of sch. I to the Indian Limitation Act. **Jagannath Sathardis v**

LIMITATION ACT (IX OF 1908)—*contd.*Art. 62—*concl'd*

Gulam Jilani Chaudhuri, I L R 8 Bom 17, dissented from *NIADAR SINGH v GANGA DEVI* (1916) I L R 38 All 678

Arts. 62 and 89—*Hindu joint family—Partition of immoveable properties—Cash sec rules kept joint—Manager failing to account—Suit for account—Manager holding as an agent—Limitation* Plaintiff and his two brothers lived jointly. They divided their immoveable estate in 1898 but kept joint certain cash securities as they were all in the name of their elder brother Ramsing. At the time of the partition it was orally agreed that Ramsing should realize the securities and divide the proceeds among the three brothers. Ramsing did not divide the proceeds nor gave any account. He died on the 6th January 1914, thereafter plaintiff demanded an account from Ramsing's son but he having refused, a suit was filed by the plaintiff for an account on the 3rd January 1917. Both the lower Courts dismissed the suit as being barred under Art 62 of the Limitation Act, 1908. On appeal to the High Court *Held*, that the suit was not barred as it was governed by Art 89 of the Limitation Act inasmuch as Ramsing must be considered as an agent of his brothers and time would not begin to run until the account was demanded and refused. *Bairoo Tewary v Doona Tewary* (1896) 24 Cal 509, doubted. *GABU v ZIRRU* (19.0) I L R. 45 Bom 313

Sch. I, Arts 62 and 97

See LIMITATION I L R 48 Cal 670

Sale of land by one having a voidable title and putting purchaser in possession thereunder—Dispossession by person entitled to avoid—Cause of action for return of purchase money, only on dispossession A who had a title to certain immoveable property voidable at the option of C sold it to B and put B in possession thereof. C then brought a suit against A and B, got a decree and obtained possession thereof in execution. *Held*, that B's cause of action for the return of the purchase money arose not on the date of the sale but on the date of his dispossession when alone there was a failure of consideration and that the article applicable was Art 97 of the Limitation Act. Cases on the subject reviewed. *SUBBARAYA v RAJAGOPALA* (1914) I L R 38 Mad. 887

Arts. 62, 102—

See ART 2 I L R 36 All 555

Sch. I, Arts. 62, 120—

See ART 29 I L R 38 Mad. 972

See CIVIL PROCEDURE CODE, 1882, s. 315.
I L R 35 All 419

1—*Separate Hindu family—Property managed by one member—Receipt of money by that member—Suit for partition* Three brothers who had been living with their father as a joint Hindu family obtained under the will of their father, in whose hands it was separate property, a considerable amount of movable and immovable property. The property bequeathed was divided by the will into three lots, but the legatees still continued to live as a joint Hindu

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Arts 62, 120—*contd.*

family and the property of all was managed for a series of years by one member of the family acting as if he were the *karā* of a joint Hindu family. *Held*, on suit by the widow of one of the members of the family to recover from the manager her deceased husband's share of money received by the defendant as manager but owned by all the three members of the family in equal shares, that the suit was not a suit for 'money had and received', but was one to which Art 120 of the first schedule to the Indian Limitation Act applied. *PARSOTAM RAO TANTIA v RADHA BAI* (1915) I L R 37 All 318

2—*Suit for money on the ground of wrongful rateable distribution, governed by Art 62 and not by Art. 120 of the Limitation Act—s. 14 of the Limitation Act—Time to en to file and to prosecute a revision petition against order of wrongful distribution not to be deducted under s. 14* A suit for money under s. 73, cl (2), Civil Procedure Code, on the ground that the plaintiff and not the defendant was entitled to receive the same in proceedings in execution of a decree for rateable distribution as governed by Art 62 and not by Art. 120 of the Limitation Act (IX of 1908) the cause of action arising on the date of wrongful payment to the defendant. In computing the period of limitation for the filing of such a suit the plaintiff is not entitled to deduct under s. 14 of the Limitation Act the period of time taken by him to file a revision petition in the High Court or the time during which the plaintiff was prosecuting the revision petition against the order of wrongful distribution. *Fish v Bhikaji Phadnis v Achut Jaganath Ghale*, I L R 15 Bom 438, followed. *Ramanammy Chetty v. Hanirahia Chettyar*, 21 Mad L J 705, not followed. *BAIKRATH LALA v RAMADOSS* (1914) I L R 39 Mad. 62

3—*Civil Procedure Code (Act V of 1908), O XXII, rr 11 and 9—Withdrawal of surplus sale proceeds belonging to the plaintiff by defendant—Suit instituted more than three years from date of withdrawal* Where an application for substitution was made more than six months after the appellant's death before the Registrar and the respondents did not put in any objection before the Registrar to the hearing of the appeal, the application for substitution was treated as an application for the restoration of the appeal after abatement. The plaintiff, a purchaser at auction sale of a revenue paying estate, made default in the payment of Government revenue and the estate was sold and the surplus sale proceeds were withdrawn by the defendants, the original proprietors whose names still remained in the register, and a suit was instituted by the plaintiff, for the recovery of the money so withdrawn, more than three years after the date of withdrawal. *Held*, that Art 62 of the Limitation Act applied and the suit was barred by Limitation. *Muhammad Wahid v Muhammad Ameer*, I L R 32 Cal 5-7, and *Lachna Varma Singh v Dhanuk-dhari Prasad Singh*, 17 Ind. Cas 331, referred to. Money paid to one party with the implied intention that it should finally reach the hands of the party to whom it actually belongs, is money, within the meaning of Art 62, paid to that party for the use of the actual person in whom the right to receive it vests. *HARINAR MISER v SYED MOHAMMED* (1916) 20 C. W. N. 983

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Arts. 62, 120—*contd.*

4 ———— *Suit by one part owner of a jaghir against another who was also manager—Suit for account and recovery of income—Nature of suit—Suit in a District Munsif's Court for one year's income—Plaint returned for presentation to proper Court—Plaint not represented—Subsequent suit in a District Court for income due for previous years—Civil Procedure Code (Act V of 1908) O II, r 2, suit of, barred under The plaintiff and the defendant were co-sharers in a jaghir of which the latter was appointed by the Government as manager. The former sued the latter in a District Munsif's Court for his share of the net income due for the year 1912, but the plaint was returned for presentation to the proper Court as the valuation of the suit exceeded the pecuniary limits of the jurisdiction of the said Court. The plaintiff did not represent the plaint in any Court but subsequently instituted the present suit in 1913 in the District Court for an account and recovery of his share of income due for the years 1906 to 1907. The defendant pleaded that the suit was barred by limitation and by O II, r 2 of the Civil Procedure Code. *Held*, that the suit was one for an account which was governed by Art. 120 and not Art. 62 of the Limitation Act and that the suit was not barred by limitation. *Muhammad Habibullah Khan v Saffur Hussain Khan* I L R 7 All 25 followed. *Held*, also that the suit was not barred under O II, r 2 of the Civil Procedure Code. *SURESH RAO v RAMA RAO* (1916)*

I L R 40 Mad 291

5 ———— Money paid to one party with the implied intention that it should finally reach the hands of the party to whom it actually belongs to within Art. 62 HARIRAN MISHRA v SYED MOHAMMED

1 Pat L J 374

Sch. I, Arts. 62, 120, 123—

See TRANSFER OF PROPERTY ACT ss 82
100 I L R 33 All. 708

Sch. I Art. 63—

See ART 60 I L R 43 Mad. 629

Sch. I, Art. 64—

See LIMITATION ACT 1908 s 19 AND ART 64
5 Pat. L J 371

See SUBSTITUTED SERVICE

I L R 38 Calc. 394

——— Sch. I, Arts. 64, 89, 115—*Suit by principal against agent for recovery of money found due on adjustment of accounts—Limitation* A suit contemplated by Art. 89 of Sch. I of the Limitation Act is a suit in which accounts have to be taken. Where an account has been rendered, Art. 89 has no application. Where an account has been taken and adjusted and a specific sum has been found due from the agent to the principal the principal becomes entitled to sue forthwith for recovery of that money, and the position is not altered even if the agent continues thereafter to hold the office as agent of that principal. Either Art. 64 or Art. 115 applies to such a suit. *KISHOR PRASAD SINGH v SARWAN LAL* (1915)

21 C W N 591

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Art. 65—

See PRINCIPAL AND AGENT

I L R 41 Calc 978

Sch. I, Art. 66—

See ART 116 I L R 39 Bom 177

See CIVIL PROCEDURE CODE (1908) O
XXXIV, r. 6 I L R 41 All 581

——— Sch. I, Arts. 66, 115, 145—*Deposit of money repayable at a fixed date—Art. 66 and 115 applicable, Art. 145 not applicable—Deposit in Art. 145, meaning of—Probate and Administration Act (V of 1881)—Title of executor to sue even without Probate or Letters—Limitation Act, s 17—Same word, re enacted in a repealing Act—Construction same meaning as in the repealed Act—Art. 145 of the Limitation Act (IX of 1908) is not applicable to deposits of money—Deposit in Art. 145 means only deposit of goods to be returned in specie when wanted, it is the sort of bailment known to lawyers under that name in the Roman Law of Bailments which was accepted by Bracton and afterwards by Lord Holt in *Cogge v Barnard* (1703) 5 M L C 173 s c, 2 Pym 909, as fit to be enforced in England. *Ishur Chunder Bhaduri v Jibun Aikari Bida* I L R 18 Calc 25 and *Perundestayer Annal v Vam mahar Chetty*, I L R 18 Mad. 350 followed. *Administrator General, Bengal v Krishna Kamin Dassee*, I L R 31 Calc 519, and *Lala Gobind Prasad v Chairman of Patna Municipality*, 6 C L J 535 not followed. A loan repayable at a fixed date is governed by Art. 66 and is not by Art. 115. Unlike cases governed by the Indian Succession Act and the Hindu Wills Act in a case governed by the Probate and Administration Act (V of 1881) the obtaining of probate is not necessary to clothe the executor with the right to sue for debts due to the testator, and the estate is represented by the executor even in the absence of probate, within the meaning of s 17 of the Limitation Act and time begins to run from death of the testator's death, as the obtaining of a succession certificate is not a condition precedent to the filing of a suit but is only necessary before getting a decree. Where a word which is used in one sense in one Act is re enacted in a subsequent Act which repeals the former then unless there is some strong reason to the contrary, it must be read in the same sense in the subsequent Act in which it is re enacted. *Mayor of Portsmouth v Smith* L R 10 A C 354 371, referred to. Testatrix lent money to the defendant on 10th August 1900, and died on 10th January 1904. The will was governed by the Probate and Administration Act. *Held*, that a suit by the executor in 1910 was barred by limitation either under Art. 66 or 115 of the Limitation Act. *BALAKRISHNUPP V NARAYANA WMY CHETTY* (1914)*

I L R 37 Mad 175

Sch. I Art. 73—*Limitation on—Promissory note—Writing necessary: g or postponing the right to sue.*

Defendant borrowed money from a bank and executed a promissory note in favour of the bank on the 13th of June 1913. But on the same date he also wrote to the bank a letter in which he stated—The sum of Rs 700, which I have borrowed from the Bank to day, I undertake to pay principal and interest, within one year. If I cannot pay in within the time specified, then they (the Bank) may realize (the

LIMITATION ACT (IX OF 1908)—*contd.*—Sch. I, Art. 73—*contd.*

money) in any way they please." *Held*, that this letter amounted to a "writing restraining or postponing the right to sue" within the meaning of Art. 73 of the first schedule to the Indian Limitation Act, 1908, and limitation, accordingly, did not begin to run against the Bank until the period of one year from the date of the note had expired. *JWALA PRASAD v. SHAMA CHAVAN*
I. L. R. 42 All. 55

—Sch. I, Arts. 74, 75, 80 and 120—

See LIMITATION

I. L. R. 28 Mad. 374

I. L. R. 41 Mad. 412

—Sch. I, Art. 75—

See CONTRACT . . . 3 Pat. L. J. 412

1. ———— *Bond—Option of suing for whole amount due in default of payment of instalments—Limitation* A bond payable by instalments gave to the creditor the option of suing for the whole amount due on default in payment of any instalment or of suing for the instalments separately. Two instalments were paid, the third was not, and more than six years after default in payment of this instalment, nothing further having been paid on the bond, the creditor sued to recover the whole amount due stating that the cause of action arose on the date when the third instalment became due. *Held*, that the suit was time barred. *Ayudhya v. Kunjal*, I. L. R. 30 All. 123, distinguished. *AMOLAK CHAND v. BAJNATH* (1913) . . . I. L. R. 35 All. 455

2. ———— *Limitation—Bond—Instalment—Power to sue for whole amount in default of payment of any instalment—Terminus a quo* Where a bond payable by instalments provides that the creditor shall have power to sue for the whole amount of the bond upon default being made in payment of any one instalment this does not mean that the creditor is obliged to sue for the whole within the period of limitation from the first default made. He may, if he so chooses, waive this right and sue for such instalments as remain due and are not barred by limitation. *Ayudhya v. Kunjal*, I. L. R. 30 All. 123, followed. *Amolak Chand v. Bajnath*, I. L. R. 35 All. 455, and *Chandan Singh v. Baidhya Dhar*, 15 Indian Cases, 856, distinguished. *MOHAN LAL v. TIKA RAM* (1918) . . . I. L. R. 41 All. 104

3. ———— *Bond repayable by instalments the whole to become payable "on demand" in default in paying one instalment—Meaning of "on demand"—Waiver* A bond repayable by instalments contained the following stipulation—"in default of our making such payment also the amount that may be found due for all future drawings shall be paid in a lump on your demand." *Held*, that the cause of action for recovery of all the instalments would not arise until demand is made by the obligee in terms of the stipulation and that in consequence the whole amount did not become due merely on failure to pay an instalment. *Hannamant Badheram v. Arthur Bowles*, I. L. R. 3 Bom. 561, followed. The words "on your demand" mean "when you require." Failure to make the demand will constitute a waiver of the right stipulated for. *Harri Pershad Chowdhry v. Namb Singh*, I. L. R. 21 Cal. 512, 517 and *Jodab Chandra Bhatia v.*

LIMITATION ACT (IX OF 1908)—*contd.*—Sch. I, Art. 75—*contd.*

Bhairab Chandra Chuckerbutty, I. L. R. 31 Cal. 297, dissented from. *KARUTAKARAN NAIR v. KRISHNA MENON* (1913) . . . I. L. R. 38 Mad. 68

—Sch. I, Art. 78—

See LIMITATION (53)

I. L. R. 46 Cal. 169

—Sch. I, Art. 80—

See LIMITATION ACT 1908, ARTS 73 AND

80 . . . I. L. R. 42 All. 55

——— *Promissory note payable on demand—Agreement fixing time for payment—Suit, by payee—Limitation, from the expiry of the period fixed* Art. 80 of the Limitation Act is the article applicable to a suit by the payee on a promissory note payable on demand but accompanied by an agreement fixing a period for payment and time begins to run from the expiry of the period fixed in the accompanying agreement. *Simon v. Halim Mahomed Sherif*, I. L. R. 19 Mad. 568, and *Somasundaram Chettiar v. Narasimha Chettiar* I. L. R. 29 Mad. 212 overruled. *ANANALAI CHETTY v. VELAYUDA NADAR* (1915)
I. L. R. 39 Mad. 129

—Sch. I, Arts. 81, 89—

See ART 40 . . . I. L. R. 37 Mad. 281

——— *Sch. I, Art. 83—Limitation—Suit upon a covenant in a registered deed of sale to recover excess money paid for redemption of a mortgage on the property sold* One S. B. on 25th May 1889, sold certain immovable property. The sale deed was registered, the consideration money being Rs. 3,000, out of which Rs. 2,000 was to be paid by the vendee to a mortgagee, and in the event of the mortgage money being in excess of Rs. 2,000 S. B. was to be liable for such excess. The vendee was forced to sue the mortgagee for redemption and obtained a decree on 21st July 1911 on payment of Rs. 3,176 9 0. This payment was made on the 5th December 1911 and on 20th July 1916 the vendee brought the present suit against the lessor of S. B. (who had since died) for recovery of Rs. 1,176 9 0 and its 353 7 0 costs of the redemption suit. *Held*, that the combined effect of article 116 read with article 83 of the Limitation Act gave the period of 6 years for the suit time running from the date when the plaintiffs were actually demanded, i.e., the 5th December 1911, when the payment was actually made by the plaintiffs, and that the suit was therefore within time. *Srinivasa Lakshmar v. Rangasami* (I. L. R. 31 Mad. 432), and *Hari Bora Singh v. Mohendra Prasad Singh* (16 Indian Cases 73), followed. *Laghurao Dhol v. Madan Mohan* (I. L. R. 10 All. 3), not followed. *Hari Tivara v. Pagnawath Tivara* (I. L. R. 11 All. 27), distinguished. *Shree Narayan v. Bhat Mehta* (I. L. R. 22 All. 55), *Kudip Dale v. Mahant Daba* (I. L. R. 34 All. 43), *Edoyakura Saha v. Bihary Lal* (I. L. R. 33 Cal. 451), and 27, Mad. L. J. notes 46 referred to. *ABUL KALIM KHAN v. MUHAMMAD BAKSHI* . . . I. L. R. 2 Lah. 316

—Sch. I, Art. 84—

See ATTORNEY AND CLIENT

I. L. R. 46 Cal. 249

LIMITATION ACT (IX OF 1908)—*contd.*

Sch I, Art. 85—

Limitation—"Mutual open and current account, where there have been reciprocal demands between the parties" *Held*, that an account with a bank which commenced by the customer borrowing money from the bank, and which at no time showed a balance in favour of the customer, was not "a mutual, open and current account, where there have been reciprocal demands between the parties" within the meaning of Art. 85 of the first schedule to the Indian Limitation Act, 1908. *Ram Pershad v Harbans Singh*, 6 C L J 153, and *Hajee Syud Mahomed v Ashraf con nissa* 1 L R 5 Calc 759, referred to *BANK OF MULTAN LIMITED v KAMTA PRASAD* (1916) 1 L R 39 All 33

Limitation—suit for balance due on a current account where last item is within time but that item was advanced more than three years after the close of the year in which the last preceding item was entered *Held*, that where the last item in a mutual open and current account was advanced to defendants within limitation, but this item was advanced more than three years after the close of the year in which the last preceding item was entered, the suit is barred by limitation in respect of the previous account.—*vide* Art 85 of the Limitation Act. *Rustoni's Law of Limitation II Edition*, page 308, referred to *GOSWAMI RAM v JAWALA RAM* 1 L R 1 Lah 12

Sch I, Art 89—

See ACCOUNT, SUIT FOR

1 L R 42 Calc. 108

1. *Agent continuing in service of heir—Old agency if subsists—Contract Act (IX of 1872) ss 209 253*—*Demand of accounts—Agent failing to comply if refusal—Agent not responding to demand for explanation of account papers submitted if refusal—Obligation to explain papers* The death of the principal terminates the agency. Where on the death of the principal, the agent continued in the service of his successors in interest *Held*—That a new agency not governed by the original contract was created. Where, under such new arrangement, parties agreed that account should be submitted from year to year, a suit against the agent would not be governed by Art 115 but by Art 89 of Sch I of the Limitation Act. *Easia v Baroda Kuthore*, 11 C L J 43, not followed. *Shib Chandra Roy v Chandra Narain Mukerjee* 1 L R 32 Calc 719 s e 1 C L J 232, and *Asghar Ali Khan v Khurshed Ali Khan*, 1 L R 24 All 27, relied on. If there has been a demand for accounts and the agent has not responded to the call, there is, by implication, a refusal within the meaning of Art 89. This is the case also where the agent has submitted accounts but has failed to respond to the principal's demand to explain them. *Chandra Maikab Barua v Nabin Chandra Barua*, 1 L R 40 Calc. 108, not followed. *MADRUSUDAN SEN v. RAKHAL CHANDRA DAS BASAK* (1915) 19 C. W. N. 1070 1 L R. 43 Calc 248

2. *Agent, liability of, to principal, suit on—Limitation—Agency termination of—Indian Contract Act (IX of 1872)* Money is moveable property within the meaning of Art. 89 of the Limitation Act. *Asghar Ali*

LIMITATION ACT (IX OF 1908)—*contd.*Sch I, Art 89—*contd.*

Khan v Khurshed Ali Khan, 1 L R 24 All-27, followed. Art 89 applies to suits by a principal against an agent for moveable property received by the latter and not accounted for and time begins to run when the account is, during the continuance of the agency, demanded and refused, or when no such demand is made when the agency terminates. An agency is determined when the agent ceases to represent the principal though his liability in respect of acts done by him as agent may continue. *Babu Ram v Ram Dayal* 1 L R 12 All 541, and *Prin v Baldeo Das* 1 L R 28 Calc 77s dissented from. *Joseph Chandro Ghose, v Benode Lal Roy*, 14 C W N 122, not followed. *YENKATACHALAM v NARAYANAM* (1914) 1 L R 39 Mad. 376

Omission to render accounts, when amounts to a refusal A rent collector employed under a registered agreement was called upon to render accounts up to 12th April on or before the 13th May 1914. No accounts were rendered as demanded, and on 11th October 1915 the said rent collector was dismissed and ordered to render accounts up to date. Subsequently a suit for accounts was instituted on the 27th August 1918. *Held* that Arts 115 and 116 of the Limitation Act did not apply to the case. In order to make them applicable it must be shown that the suit was not specifically provided for in the schedule. Art 89 applied to the case, as the term moveable property includes money, and consequently excludes the operation of Arts 115 and 116. That there having been a demand for accounts non compliance with the demand amounted to a refusal and the suit in so far as it claimed accounts up to 12th April 1914 must be deemed barred by limitation as it was instituted after the lapse of three years from the date of refusal, i.e., 13th May 1914. *Madrusudan v Rakhal* (1), *Nabin v Chandra* (4) and *Bhabatarini v Shakti Bahadur* (8) and other cases referred to. That the agency having been terminated by the dismissal on the 11th October 1915, and the suit having been brought within three years from that date the plaintiff was entitled to accounts from the Defendant other than the accounts demanded in April 1914. The suit was thus in time for the accounts from 13th April 1914 to 11th October 1915.

PANDIT RAM RAM MUKERJEE v JAGADISH NATH Roy

28 C W N. 61

Sch I, Arts 89, 115—

See ART 64 21 C W N. 591

Sch I, Arts 89, 115 and 120—

See LAMBARDAR 4 Pat L J 304

Sch. I, Arts. 89, 115, 132—

See PRINCIPAL AND AGENT

1 L R 43 Calc 248

1 L R. 41 Mad 1

Sch I, Art 91—

See LIMITATION ACT, 1877 ART 91

See TRUSTEES OF A TEMPLE

1 L R. 39 Mad. 456

LIMITATION ACT (IX OF 1908)—contd.

Sch. I, Art. 91—*contd.*

See ART 14 . I. L. R. 44 Bom. 261

See ART 44 . I. L. R. 2 Lah. 164

See KHOJAS . I. L. R. 38 Bom. 419

Held that in a suit to set aside an alienation of the Plaintiff's property made during his minority by his guardian the limitation applicable to Art 141 of Sch. II of the Limitation Act, 1877 **BACHCHAY SINGH v KANTA PRASAD** I. L. R. 32 ALL. 392

Alienation by Hindu widow—Suit by reversioner to recover possession of property alienated—Alienation found to be sham—Limitation A Hindu widow having alienated a property of her husband, the reversioners sued more than three years after the date of alienation to recover possession of the property. It was found that the alienation was merely a sham. The lower Courts *held* that Art 91 of the Second Schedule of the Limitation Act 1908 did not apply and decreed the suit. The defendant having appealed *Held*, that Art. 91 of the Second Schedule of the Limitation Act had no application, for the apparent obstacle presented by the mortgage proved usual and ineffectual **MAHACHARAM v PANABHAI LALLUBHAI** (1915)

I. L. R. 40 Bom. 51.

Sale deed executed by a minor—Void instrument—Suit to recover possession—Suit for cancellation of sale deed, whether necessary Art 91, Sch I of the Indian Limitation Act, 1908, does not apply to a suit for possession, where the plaintiff alleges and proves that a sale-deed is void because it was executed by him whilst a minor, but does not claim expressly to have it cancelled or set aside **NARSA GOUDA v CHAWAGOUDA** (1918)

I. L. R. 42 Bom. 638

Plaintiff fraudulently made to execute a deed of a different nature from that agreed upon—Suit to recover property affected—Limitation—Void or voidable. Where it is established that the plaintiff by defendants' misrepresentation was got to execute a deed of sale believing the same to have been a deed of a different kind, the transaction is void and not voidable only, and Art. 91 of the Limitation Act has no application to his suit to recover the property. **SANNI BIBI v SIDDIK HUSAN MUHAMMAD** (1918)

23 C. W. N. 93

Sch. I, Arts 91, 120—*Limitation—Suit for declaration that nominal lessee is not the beneficial lessee but merely bareholder or the plaintiff* *Held*, that a suit for declaration that the defendant, whose name appeared in a certain lease as lessee, had no interest under the lease and that the person really interested in the lease was the plaintiff, was governed as to limitation by Art 120 and not by Art. 91 of the first schedule to the Indian Limitation Act, 1908, the cause of action accruing to the plaintiff when his position as a lessee was challenged **BASANT LAL v CHHIDAMI LAL** (1913) I. L. R. 35 ALL. 149

LIMITATION ACT (IX OF 1908)—contd.

Sch. I, Arts. 91, 120—*Suit to set aside, a mortgage—Mortgage deed executed without consideration and not intended to be operative—Cause of action* A suit to set aside a mortgage-deed was brought nine years after its execution on the ground that the defendant only recently threatened to bring a suit on the basis of it, though when it was executed it was never intended to be acted upon, no consideration having passed for it. *Held*, that the suit was barred by limitation, no matter whether Art. 91 or Art. 120 of the first schedule to the Limitation Act applied to the suit, the fact entitling the plaintiff to have the documents set aside having been known to him from the very outset, **Singarappa v Talari Sanyappa**, I. L. R. 28 Mad. 349, and **Vithal v Hari**, I. L. R. 25 Bom. 78, referred to. **QASIM BEG v MUHAMMAD ZIA BEG** (1915)

I. L. R. 37 ALL. 640

Sch. I, Arts. 91, 95 and 120—*Suit or setting aside or cancelling a written instrument on the ground of fraud and declaration of title—Deed if need be set aside when instrument void ab initio* Plaintiff prayed inter alia (1) for a declaration that a deed of gift was void and inoperative in that the donor signed the deed believing owing to the fraud and misrepresentation of the donee, that it was only a power of attorney, and (2) for a declaration of title in certain Government Promissory Notes, the subject of the deed of gift. The deed was signed on the 12th July 1906 and the donor came to know of the fraud on the 23rd January 1915, and the suit was instituted on the 22nd December 1919. *Held*, that the three years' limitation provided by Arts 95 and 91 of the Limitation Act did apply to the suit, inasmuch as the principle laid down in **Foster v Mackinnon** (1) that the alleged deed is no deed was applicable so that the deed being void *ab initio* did not require to be set aside or cancelled. *Held*, further, with reference to the relief sought for in cl (2) of the prayer, that Art 120 of the Act would apply and that Sec 18 would prevent the period of limitation from running until the fraud became known **SARAT CHANDRA GUPTA v KATAI LAL CHAKRABARTY** 26 C. W. N. 48

Sch. I, Arts. 91 and 124
See TRUSTEES of a TEMPLE.

I. L. R. 39 Mad 456

Sch I, Arts 92, 93—*Suit to declare the forgery of an instrument—Attempt—Lease—Attempt to record a lease under the Record of Rights Act (Bom. Act 11 of 1903) is not an attempt to enforce.* The defendant applied to the Mamlatdar to record, under the Record of Rights Act 1903, a lease under which he claimed to be entitled to a rent of 400 coconuts from the plaintiff. The application was made on the 4th August 1908, but the plaintiff having complained that the document was a forgery the Mamlatdar declined to record it. The defendant then applied to the Collector who on the 11th August 1909 ordered that the lease should be recorded. On the strength of the record, the defendant sued in the Mamlatdar's Court for the enforcement of the terms of the lease and recovered in April and July 1912 coconuts of the value of upwards of Rs 40. Within three years of the recovery of these coconuts the plaintiff brought the suit to recover back the value of the coconuts on the footing of the alleged lease being a forgery. The defen-

LIMITATION ACT (IX OF 1908)—*contd.*Sch I, Arts. 92, 93—*contd.*

dant contended that the suit was barred under Art 93 of the Limitation Act, on the ground that it was filed more than three years after the 4th August 1908, the date of an attempt to enforce it against the plaintiff. *Held* that the suit was not barred under Art 93 of the Limitation Act, 1908, as the first real attempt to enforce the lease took place when the defendant attempted to recover the rent under the lease and that attempt was made within three years of the institution of the suit. The attempt to get the lease recorded under the Record of Rights Act could not be put higher than an unsuccessful attempt to have a document registered in a case in which registration was necessary (Art 92) and that such an attempt was not an attempt to enforce the lease. *ACHUT RAYAPA v GOPAL SUNDAYA* (1913)

I L R 40 Bom 22

Sch I Art 95—

Sec ART 12 I L R. 38 Mad 1076

S e ART 91 28 C W N 480

Sch. I, Art 95—*Relief not claimed distinctly on the ground of fraud—Executor—Suit without probate—Decree—Limitation from the date of testator's death—Fraud in the performance of contract, no ground for rescission—Partnership—Fresh agreement—Deceit—Suit for an account on the footing of continuance of original partnership—Suit not maintainable.* Art. 95, Sch I of the Limitation Act (IX of 1908) has no application where on the face of the plaint no equitable relief is claimed on the ground of fraud. *Abdul Rahim v Karparam Daji*, I L R 16 Bom 186, and *Gour Mohun Gouls v Dinomath Karmakar*, I L R 25 Cal. 49, referred to. An executor is capable of instituting a suit without obtaining a probate although he might not be able to proceed as far as decree without obtaining a probate. Fraud in the performance of a contract, apart from its making, is no ground for rescission and restoration of the parties to the position in which they were before the contract was entered into. A testator appointed his widow as the guardian of his minor children and executrix (by tenor) of his will. On his death the widow consented to the retention of the testator's share in a partnership business by the surviving partners and subsequently to a transfer of the same to another business. In an action brought by one of the testator's sons as administrator against the surviving partners, for an account of all the assets of the testator at the time of his death retained and employed by the defendants in their business. *Held*, dismissing the suit, that the testator's widow was perfectly competent as his executrix to enter into the arrangement, which was a novatio, with the surviving partners so as to bind the estate and the suit against the partners on the footing of a continuance of the original partnership was not maintainable. *JAMBETJI NASSAR WANJI v HIRJIBHAI NAORJI* (1912)

1. L. R. 37 Bom 158

Sch. I, Arts. 95, 120—

Sec ART 44 I L R 2 Lah. 184

Sch. I, Art 95—*Mistake—Discovery of mistake when first Court's decree was passed—Appeal—Dismissal of appeal—Time begins to run from the date of the first Court's decree.* In 1903,

LIMITATION ACT (IX OF 1908)—*contd.*Sch I, Art 96—*contd.*

plaintiff No 2 obtained a decree for partition against the defendant, his father and plaintiff No 1. In execution of that decree a compromise was effected between the parties and certain properties, including a mortgage debt due to the family, were allotted to plaintiffs Nos 1 and 2. The plaintiffs sued the mortgagors in 1910 to recover the mortgage amount but the suit was dismissed as it was held that the consideration for the mortgage had been paid off. The decree of the trial Court was passed in 1912. The plaintiffs appealed but the appeal was dismissed on the 11th July 1914. On the 28th June 1917, the plaintiffs sued to recover from the defendant their share of the loss. The Subordinate Judge found that it was a case of mutual mistake under which all the parties considered that the mortgage was a perfectly good asset and therefore held the defendant liable to contribute to the loss. On appeal to the High Court it was contended that the suit was barred by limitation. *Held*, that the suit was barred under Art 96 of the Limitation Act as the discovery of the mistake dated not later than the first Court's decree which was passed in 1912 and time began to run against the plaintiff from that date. *Hulwanchand v Purkuchand* (1918) 21 Com. I R 632 relied on. Under Indian law an original decree is not suspended by presentation of an appeal nor is its operation interrupted where the decree on appeal is one of dismissal. *MARTAND MAHADEV v DHONDO MORESHWAR* (1920)

I L R 45 Bom. 552

Sch I Art 97—

Sec ART 69 I L R. 38 Mad. 887

—*Money due on an existing consideration which afterwards fails—Limitation* Defendant No. 1 agreed with the plaintiff in September 1906, for a price, to procure from defendant No. 2 a re-conveyance of a house to the plaintiff. In November 1908, defendant No. 2 conveyed the house to 1. In 1910, 1 sued to recover possession of the house from the plaintiff and obtained a decree in July 1911. The plaintiff sued in January 1912 to recover the consideration money. The lower Courts held that the suit was within time under Art. 97 of the first schedule to the Indian Limitation Act (IX of 1908). On appeal *Held*, that the suit was time-barred even under Art. 97, for after the sale to V defendant No. 1 could not have had anything to do with the house and the possession which the plaintiff was allowed to retain must have been on 1's sufferance. *GULABCHAND BALARAM v NARAYAN* (1916)

I L R. 41 Bom 31

—*Failure of consideration, suit on—Sale by a member of joint Hindu family—Mitakshara law—Suit by vendee for possession—Previous sale by manager—Suit dismissed finally by High Court on Second Appeal—Subsequent suit for refund of price and costs of litigation—Suit within three years of decree of High Court whether barred—Failure of consideration, when—Costs of litigation, whether recoverable—Costs of review in High Court, whether recoverable.* Where a purchaser of the share in certain lands of a member of a joint Hindu family governed by the Mitakshara law, sued to recover possession of the same from another who had previ-

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Art. 97—*conclld.*

ously purchased the entire lands from the managing member of the family, succeeded in the Original Court but failed in the lower Appellate Court on appeal and in the High Court on second Appeal and in the review therein, and where he brought another suit within three years of the decree in the High Court for refund of the price paid by him and for the cost of the litigation against his vendor who pleaded the bar of limitation: *Held*, that the suit was not barred by limitation under Art. 97 of the Limitation Act, as the consideration failed only when it was finally determined by the High Court in Second Appeal that the sale by the plaintiff's vendor could not take effect against the prior sale by the manager, and that the costs of litigation were legally recoverable, except the costs of review which was a luxury indulged in by the plaintiff. *Hanuman Kamat v Hanuman Mandur*, I. L. R. 19 Calc. 129, distinguished. *Subaroya v. Rajagopala*, I. L. R. 38 Mad. 557, and *Venkataramayya v. Lanka Ram Brahmam*, 35 M. L. J. 124, followed. *SANYOTHAMA RAO v CHINNASAMI PILLAI* (1918)

I. L. R. 42 Mad. 507

Sch. I, Arts. 97, 62—*Failure of consideration—Sale of land—purchaser stepping into possession—Loss of possession at the suit of a third party, the real owner—Suit to recover purchase money from vendor—Limitation* In 1903, the defendant sold certain land to the plaintiff under the bona fide belief that he was entitled to do so and placed the plaintiff in possession. In 1909, the true owner of the land recovered possession thereof from the plaintiff. In a suit by the plaintiff to recover the purchase money from the defendant, the Court of the first instance held that the suit was barred by limitation under Art. 62 of the First Schedule to the Limitation Act (IX of 1908), for the purchase-money paid to the defendant was money had and received to the plaintiff's use. On appeal it was held that the claim was within time, under Art. 97 of the Act. On appeal to the High Court *Held*, that the suit was governed by Art. 97, inasmuch as possession given under the purchase to the plaintiff was an existing consideration as long as it lasted. *Hanuman Kamat v Hanuman Mandur*, I. L. R. 19 Calc. 123, followed. *NARSING SHIVRAKAS v. PACRU RAMRAKAS* (1913)

I. L. R. 37 Bom. 533

Arts. 97, 116—*Breach of contract—Damages, suit to recover—Limitation* In 1911 the plaintiffs bought two lands under a registered sale-deed, and went into possession. One of the lands was let to a tenant. The tenant claimed the land as his own, and established his title to the land in 1913, the decree was confirmed by the High Court in 1916. In 1917, the plaintiffs sued their vendors for cancellation of the sale of 1911, and to recover the consideration money together with the amount spent by them in improving the land and the costs incurred by them in defending the suit brought by the tenant. The trial Court held that the consideration for the sale failed in 1913 when the tenant established his claim in a Court of law and that the suit was barred by Art. 97 of the Indian Limitation Act. On plaintiff's appeal:—*Held*, that though the cause of action arose in 1913, the contract of sale having been registered, the suit was governed by Art. 116 of the Indian Limitation Act, and was

LIMITATION ACT (IX OF 1908)—*contd.*Arts. 97, 116—*conclld.*

in time. *Subbaraya v. Rajagopala* (1914) 38 Mad. 557, *Hukumchand v. Prithchand* (1918) 21 Bom. L. R. 632 and *Mariand Mahadev v. Dhondo Morechwar* (1920) 45 Bom. 582, followed. *PER MACLEOD, C. J.*—"It must specially be noted that it is not the case that the seller had no title at all so that it could be said that he was selling nothing, and that, therefore, the transaction was void *ab initio*, nor is it a case where the purchaser got no possession. Here undoubtedly at the time the sale deed was passed it was considered that the defendants had a good title to convey the free-hold, and it was only in 1913 when (the tenant) filed his suit that it was discovered that there was a claimant who asked to be allowed to redeem and his claim eventually proved successful." *PER FAWCETT, J.*—"A distinction should be made between cases where from the inception the vendor had no title to convey and the vendee has not been put in possession of the property, and other cases, such as the present one where the sale is only voidable on the objection of third parties and possession is taken under the sale. I think it is only in the first class of cases that the starting point of limitation will be the date of sale." *MULTANMAL v. BUDHIMAL* (1920)

I. L. R. 45 Bom. 955

Sch. I, Arts. 99, 120—

See ART 61 18 C. W. N. 489

Sch. I, Arts. 101, 102—

See ART 4 I. L. R. 41 Mad. 528

Sch. I, Art. 102—

See ART 2 I. L. R. 36 All. 555

Sch. I, Art. 106—*Suit for partner ship accounts—Limitation Act (IX of 1908), Art. 106—Specific assets realised within period of limitation* If a suit for general partnership accounts and a share in partnership profits is itself barred the plaintiff in such a suit cannot be allowed to proceed speculatively against any and every partnership asset which may have been realised by the defendant after dissolution and within the period of limitation. *Mercury Homwuy v. Ruskyu Burgory*, I. L. R. 6 Bom. 628, distinguished. *AHMED SULEMAN v. BHAGWANDAS VISRAM AND Co* (1909)

I. L. R. 34 Bom. 515

Sch. I, Arts. 106 and 120—

See 19 22 C. W. N. 104

Question as to what amount to a dissolution of a partnership discussed and which article was applicable to the case. *HARANDHAN PODDAR and others v. SEDARSON PODDAR*

25 C. W. N. 847

Sch. I, Art. 109—*Usufructuary mortgage—Suit by mortgagee for possession and income profits—Limitation* Where a usufructuary mortgage is wrongfully kept out of possession of the mortgaged property, his proper remedy is a suit for possession and for income profits. As regards the latter remedy the period of limitation applicable is that prescribed by Art. 109 of the First Schedule to the Indian Limitation Act, 1908. *RAM SARUP v. HARPAL* (1916)

I. L. R. 39 All. 200

Suit on mortgage—Profits received by transferee pendente lite—Suit by purchaser at mortgage sale to recover same—Pro-

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Art. 109—*concl.*

file if wrongfully received The words "wrongfully received" in Art. 109 of the Limitation Act, include receipts of profits that cannot be legally substantiated. It was held in a suit between the purchaser at a mortgage sale and the holder of a usufructuary mortgage granted by the mortgagor after the passing of the mortgage decree that the usufructuary mortgage was void as against the purchaser owing to the application of the doctrine of *in pendente*. The purchaser having sued the usufructuary mortgagee to recover rents realized by the latter from certain tenants of the property before the Plaintiff obtained possession under his purchase. *Held*, That Art. 109 of the Limitation Act applied to the case. NAGESHRA NATH PAL & SIBAT KANINI DANI. 26 C. W. N. 336

— Sch. I, Art. 110—

See BENGAL TENANCY ACT 1883, SCH. III, ART. 2 1 Pat. L. J. 506

See CONTRACT ACT, ss. 23 AND 27

1 Pat. L. J. 37

See LIMITATION (34)

I. L. R. 44 Calc. 759

*Madras Rent Recovery Act (VIII of 1865), ss. 9 and 10—When rent ascertained and payable—Rent is payable, within the meaning of Art. 110 of Sch. I of the Limitation Act only when it is ascertained. When proceedings are taken by the landlord under s. 9 of the Madras Rent Recovery Act after the end of the *faisli* to enforce acceptance of a *paika* tendered within the *faisli*, the landlord has to wait an adjudication under s. 19 of the Act and limitation begins to run in respect of a suit for rent only from the date of such adjudication, as it was only then that it can be said that the rent for the suit *faisli* was ascertained. Rangayya Appa Rao v. Bobba Srinamulu, I. L. R. 27 Mad. 143, followed. SINGARAM PILLAI & SYED GOLAM GHOUSE & Co. (1913) I. L. R. 38 Mad. 438*

— Sch. I, Arts. 110, 116—Registered Lease—Suit to recover arrears of rent—Limitation. Art. 116, Sch. I, of the Limitation Act (IX of 1908) applies to suits for debts or sums certain due upon registered instruments. LALCHAND NACHAND & NARAYAN HARI (1913)

I. L. R. 37 Bom. 656

— Sch. I, Arts. 110, 115, 120—

See JOINT PROPERTY

I. L. R. 39 Mad. 54

— Sch. I, Art. 113—

See ART. 83 I. L. R. 2 Lah. 316

See BENGAL AGRA AND ASSAM CIVIL COURTS ACT ' . 4 Pat. L. J. 447

See CHACRIDARI CHALANAN LAWS

I. L. R. 46 Calc. 173

Contract between two parties that on payment of a specified sum by one to the other, the latter would transfer a decree in his favour to a third party—Suit by such third party for specific performance of the contract—Limitation—Starting point. A agreed with B that on the latter paying him a specified sum of money he would transfer a decree in his favour to C. In a suit by C against A for the specific performance of the contract by the execution of a deed of transfer

LIMITATION ACT (IX OF 1908)—*contd.*— Sch. I, Art. 113—*concl.*

Held, that the suit was governed by the second part of Art. 113 and time began to run from the date on which C had notice that performance was refused and not from the date of payment to A by B of the sum agreed in the contract. Applicability of the doctrine of *certum est quod certum rursus potest* to third parties, considered. VENKATANA & VENKATAKRISHNAYYA (1917)

I. L. R. 41 Mad. 18

— Sch. I, Arts. 113, 116, 120—

See SPECIFIC RELIEF ACT, 1877, s. 30

I. L. R. 34 All. 43

*— Sch. I, Arts. 113, 143—Deed of exchange—Express covenant—Transfer of Property Act (II of 1882), s. 119—Implied covenant—Branch of covenant—Dispossession of plaintiff—Suit for recovery of possession of plaintiff's lands—Suit filed more than three years after but within twelve years, of dispossession, whether barred. Where a deed of exchange executed in 1903 between the plaintiff's father and some of the defendants contained a covenant, which only limited the option provided by s. 119 of the Transfer of Property Act and was otherwise of the same nature as one that would be implied under that section, and the plaintiff, being dispossessed in 1908 of the lands given by the defendants, sued in 1916 to recover the lands given by his father under the exchange, and the defendants pleaded the bar of limitation. *Held*, that Art. 143 and not Art. 113 of the Limitation Act applied to the case, and that the suit was in time. BRENIVASA ATTANAR & JOHNSA ROWTHER (1919)*

I. L. R. 42 Mad. 690

— Sch. I, Art. 114—

See HINDU LAW—(CUSTOM).

5 Pat. L. J. 164

— Sch. I, Art. 115—

See ART. 89

26 C. W. N. 61

I. L. R. 43 Calc. 243

See ART. 120

1 Pat. L. J. 69

See LAMBARDAK

4 Pat. L. J. 304

See JOINT PROPERTY

I. L. R. 39 Mad. 54

See PARTNERSHIP

15 C. W. N. 882

See PROCEDURE

I. L. R. 48 Calc. 832

See LOSS OF GOODS.

I. L. R. 44 Calc. 16

See SPECIFIC MOVABLE PROPERTY

I. L. R. 39 Mad. 1

1. *Limitation—Principal and agent—Broker—Suit to recover commission. The relation between a broker and the persons for whom he acts is that of agent and principal. Unlike the factor, he is not entrusted with the custody and apparent ownership of the goods, but he is a mere negotiator to effect business and is paid for his services a commission on the sales resulting from his efforts. Where the contract is not in writing, its terms are to be inferred from the course of dealings between the parties. Hence where a broker, between whom and his employer the contract was that he would be paid his commission at certain rates upon the date of the delivery of goods, sued to*

LIMITATION ACT (IX OF 1908)—*contd*Sch I, Art 115—*concl'd*

recover commission due to him *Held*, that the suit was one for compensation under a contract for services rendered, which for purposes of limitation was governed by Art 115 of Sch I to the Indian Limitation Act, and was not one for wages within the meaning of Art 102 of the said Act. *Ganesh Krishna v Madhavaraj Rayi*, I L R 6 Bom 75 *Parbati Nath Roy Chowdhry v Madho Paroo*, I L R 3 Cal 26 *Voboccomar Vookhopadhaya v Sura Mulla*, I L R 6 Cal 94, and *Vistaram Deb v Chandra Das Deb*, 12 C L J 423 referred to *SUSHIL CHANDRA DAS & GAURI SHANKAR* (1916)

I L R 39 All 81

2 ————— To a suit against a surety guaranteeing a promissory note payable on demand Art 115 and not Art 63 applies *SREENATH ROY v PEARY MOHAN MOOKERJEE* (1896) 21 C W N 479

Arts 115 and 116—

See CONTRACT I L R 41 Mad 488

Arts 115 126—

See PARTNERSHIP 15 C W N 382

Arts 115, 145—

See ART 66 I L R 37 Mad 175

Sch I, Art 116—

See s 20 I L R 44 Bom 500

See ART 61 I L R 44 Bom 591

See ART 83 I L R 2 Lah 316

See ART 94 I L R 45 Bom 955

See ART 110 I L R 37 Bom 656

See LIMITATION 23 C W N 338

I L R 33 Mad. 101

See LIMITATION ACT ART 113

I L R 34 All 43

See SALE DEED I L R 38 Mad. 1171

1 ————— Bond executed by defendant alone and accepted by plaintiff and subsequently registered suit upon—Limitation Art 116 of the Limitation Act applies to a suit brought by the plaintiff to enforce a debt due upon a bond executed by the defendant alone and accepted by the plaintiff and subsequently registered *CHELLAPPOO CHOWDHARI v BANGA BEHARI SEN* (1916) 20 C W N 408

2 ————— Principal and agent bound to render accounts at stated periods—Suit for accounts against heir of agent—Limitation An agent for the management of zamindari property was appointed by a registered mukhtarnama, one of the conditions of the appointment being that the agent should render accounts every six months. The agent died, and the principal sued his heirs to recover a sum of money alleged to be due in respect of a period from 1891 to 1911. *Held* that Art 116 of the first schedule to the Limitation Act, 1908, applied and that the plaintiff was not entitled to get accounts for a period longer than six years before suit. *Jhapananasa Bibi v Bania Sundari Chaudhary*, 16 C W N 1049, followed. *MATHURA NATH v CHEDDU* (1917) I L R 39 All 355

LIMITATION ACT (IX OF 1908)—*contd*Sch I, Art 116—*co cl'd*

3 ————— Company registered under the Indian Companies Act (VI of 1882)—Suit for dividend by a shareholder, governed by Art 116—Registered in Art 116, meaning of A suit by a shareholder against a company registered under the Indian Companies Act (VI of 1882) to recover dividends duly declared by the company is governed by Art 116 of the Limitation Act as the right to a dividend arises out of the contract between the shareholders contained in the registered memorandum and articles of association. Registered in Art 116 means 'registered not only under the Indian Registration Act (III of 1877) but also under special Acts such as the Indian Companies Act, which requires the memorandum and articles of association of a company to be registered. A dividend is a debt on a contract in writing registered within Art 116 of the Limitation Act. *PION PRESS AND SUGAR MILL CO LTD v NAMA VEY KATARAMA CHETTI* (1918) I L R 42 Mad 33

Sch I Arts 116 110

See LIMITATION I L R 44 Cal 19

Sch I Arts 116, 126—

See ART 113 I L R 34 All 43

Sch I, Arts 116 132—

See MORTGAGE I L R 46 Cal 448

Sch I, Arts 116 120 131 132—

Suit to recover arrear of annuity charged on immoveable property—Claim for personal decree only—Limitation *Held* that Art 132 of the first Schedule to the Indian Limitation Act is applicable only to suits in which the plaintiff claims to recover money charged upon immoveable property to raise it out of that property and not to a claim in which merely personal decree is asked for. *Ramdas v Kalka Prasad*, I L R 7 All 502 followed. *Held* also that the words of Art. 131 to establish a periodically recurring right are altogether inapplicable to a suit to recover arrears of payments due under a registered contract. *Dost Muhammad Khan v Sohan Singh*, Punj Rec 1906 p 303, followed. A suit of such a nature is governed by either Art 116 or Art 120 of the first Schedule to the Indian Limitation Act. *LACHMI NARAIN v TIRABUN VISSA* (1911) I L R 24 All 246

Sch I, Arts 116, 68, s 19—*Ignored bond*—Suit to recover money due on the bond—Period of limitation—Acknowledgment contained in promissory notes. On the 17th June 1897 the defendant passed a registered mortgage bond in favour of the plaintiff. It was attested by two witnesses and made the mortgage amount repayable in three instalments the last one being due on the 24th June 1900. On the 24th August 1903, the defendant passed a promissory note in favour of the plaintiff, wherein he stated "An account is taken to-day and the amount due under the mortgage deed is set apart". Again, on the 11th August 1906 he passed another promissory note which recited "Besides this the mortgage debt is distinct". The plaintiff sued on the 6th August 1910 to recover the money due under the bond. *Held*, that the words used in the two promissory notes amounted to acknowledgments within the meaning of s 19 of the Limitation Act. *Held*, further, that the suit was governed by Art.

LIMITATION ACT (IX OF 1908)—contd.

— — — — — Sch. I, Art. 118, 60, s. 19—contd.
118 and not by Art. 60 of the Limitation Act for though the suit was in fact a suit for money due on a bond it was in substance a suit for compensation for breach of a contract. *Pandey v. Kulkarni*, *Pitambar I. R. 12 I. A. 12*, and *Hidabhi G. v. Shri v. Tukuramkhat*, *I. L. R. 14 Bom. 177*—*overruled*. *DISRAM HARI v. CHANDRAVAL NARAYAN* (1913) *I. L. R. 78 Bom. 177*

— — — — — Sch. I, Art. 118—

See HINDU LAW (HINTS)

3 Pat. L. J. 164

— — — — — *Hindu Law—Adoption*—Suits questioning the validity of adoption—Adoption of an orphan—Entry in Revenue register—A suit questioning the validity of an adoption would be time-barred if not brought within six years under Art. 118, sub. 1 of the Limitation Act (IX of 1908). *Srinivas v. Hanumanth*, *I. L. R. 24 Bom. 260* (Board). *Thakur Tukharam Bahadur Singh v. Raja Ramachar Dalak Singh*, *I. R. 33 I. A. 176* and *Umar Khan v. Virendra Khan*, *I. R. 19 I. A. 12* explained and distinguished. The adoption of an orphan is not valid in law. The Collector's Register is merely for the purposes of Government Revenue and its entries are not evidence of title. *SANJAY v. RAILWAY MANAGERS* (1913)

I. L. R. 57 Bom. 518

— — — — — *Adoption—Death of adopted son leaving a widow*—Happening another making a second adoption during widow's life time—Adopted son in possession of the property to the knowledge of the plaintiff—Suit by reversioner of first adopted son to recover property after leaving the second adoption brought after six years

— — — — — *Suit barred by limitation*—One D a holder of Vatan and son Vatan property having died without leaving a son, M his senior widow adopted a son A. A died a minor in 1903 leaving a widow. In 1901, M adopted defendant No. 1 as son to D and from the date of his adoption defendant No. 1 remained in possession of the whole estate to the knowledge of the plaintiff. In 1904, the widow died. In 1912, the plaintiff claiming as the reversionary heir of A sued to recover possession of the property challenging the adoption of defendant No. 1. Defendant No. 1 pleaded limitation and adverse possession. *Held*, that there had been no adverse possession sufficient to bar the plaintiff's suit but it was barred under Art. 118 of the Limitation Act, 1908 as it was not brought within six years from Plaintiff's knowledge of defendant No. 1's adoption. *Held* also, that though the adoption of defendant No. 1 might be invalid by Hindu Law and M's power of adoption might have been already exhausted, nevertheless the law of limitation would effectively defeat the plaintiff's claim. *Mohesh Narain Moonshi v. Tarach Nath Mehta*, *I. R. 20 I. A. 34*, followed. *Held*, further, that defendant No. 1's adoption to D who was not the last male holder affected the plaintiff, for the property in dispute was an ancestral estate and that D as well as A were ancestors of the plaintiff. *CHANDRASAPPA v. KALANDAPPA* (1917)

I. L. R. 41 Bom. 728

— — — — — *Limitation—Sale—*

Consent to make good loss in case of vendor being compelled to pay money in excess of sale consideration—

LIMITATION ACT (IX OF 1908)—contd.

— — — — — Sch. I, Art. 118—contd.

Breach of contract—Suit against vendor on contract of indemnity—Where vendor was suing the vendor on a contract of indemnity contained in their sale-deed, having been obliged to redeem a prior mortgage, the release of which the vendor did not discharge from its own fund, not from the date of the sale-deed, but from the date when the plaintiff suffered actual loss by reason of their being compelled to pay off the prior mortgage charge. *Hari Prasad v. Shankar Dutt*, *I. L. R. 11 A. 17*, 27 referred to. *RAM DULAI v. HARSHAN LAL* (1918) *I. L. R. 40 All. 603*

— — — — — Art. 118 and s. 6—*Suit for declaration that an adoption is untrue or invalid*—*Reversioner's consent to adoption for a bride*—*No suit by reversioner*—*Suit by reversioner*—*more than six years after adoption came to knowledge of the reversioner*—*Plaintiff born after adoption and before suit barred*—*Bar of limitation*—A suit for a declaration that an alleged adoption is untrue or invalid, instituted by a reversioner, more than six years after the adoption came to the knowledge of the reversioner, is barred under art. 118 of the Limitation Act. Neither the fact that the reversioner did not himself bring such a suit because he had been bribed to give his consent to the adoption, nor the fact that the reversioner who sued was born after the alleged adoption and before the suit became barred under art. 118, gives the latter any fresh cause of action or stops time running which had begun to run against the whole body of reversioners from the date of adoption. *VEERATA SHYAMA v. ADENNA* (1921) *I. L. R. 44 Mad. 218*

— — — — — Sch. I, Art. 119—*Suit for declaration that an adoption was valid*—*Limitation*—A decree was passed in 1901 on the basis that there was no adoption. In 1901, the adoption of plaintiff was denied by defendant No. 1. Still the plaintiff did not declare till 1913, when he filed a suit to have it declared that the decree of 1901 was invalid and not binding on him. *Held*, that the plaintiff's adoption having been challenged in 1901, the present suit was barred under art. 119 of the Indian Limitation Act, 1908. *Srinivas v. Hanumanth*, *I. L. R. 24 Bom. 260*, followed. *HEERAM v. BALARAM SAKHARAM* (1916)

I. L. R. 43 Bom. 63

— — — — — Art. 120—

See s. 6 . . . *I. L. R. 1, Lah. 539*

See s. 10 . . . *I. L. R. 39 Bom. 572*

See Art. 4 . . . *I. L. R. 41 Mad. 523*

See Art. 32 . . . *I. L. R. 2 Lah. 378*

See Art. 91 . . . *I. L. R. 35 All. 149*

See Art. 109 . . . *I. L. R. 37 All. 640*

See ADMINISTRATOR. 2. *Pat. L. J. 242*

See ARRANGERS OF REVENUE.

I. L. R. 47 Cal. 331

See HINDU LAW—JOINT FAMILY—

Pat. L. J. 497

See HINDU LAW—WIDOW

I. L. R. 2, Lah. 954

I. L. R. 44 Mad. 951

See JOINT PROPERTY.

I. L. R. 39 Mad. 54

LIMITATION ACT (IX OF 1908)—*contd*Art. 120—*contd.*

See LAMBARDAR 4 Pat. L J 304

See LIMITATION

1 L R 46 Cal 455

See LIMITATION ACT, 1908, Art 113

1 L R 34 All 43

See MINERAL RIGHTS. 5 Pat. L J 273

See NORTH WESTERN PROVINCES AND

ODISH MUNICIPALITIES ACT

1 L R. 35 All 309

See RECORD OF RIGHTS 3 Pat. L J 36

See TRANSFER OF PROPERTY ACT, 1882

ss 62 AND 109

1 L R 33 All 708

Suit to enforce an award—

See CIVIL PROCEDURE CODE, 1908, s 11,

SCH. II, r 20 1 L R 45 Bom 329

1 ———— *Suit for declaration of title—Previous unsuccessful application to correct entry in village papers—Cause of action—Limitation* In 1875, the owners of certain zamindari property sold their interest in it with the exception of 26 bighas. In 1888, the vendors were recorded as exproprietary tenants of these 26 bighas. In 1903, the representatives of the vendors applied to have the village papers corrected, but their application was dismissed and they were told to go to the Civil Court. In 1910, the representatives of the purchasers applied to have rent assessed on the 26 bighas and obtained an order in their favour. The representatives of the vendors thereupon brought the present suit in the Civil Court for a declaration that they were proprietors. *Held*, that, whatever cause of action the plaintiffs might have had before the proceedings of 1910, the order passed in those proceedings gave them a fresh cause of action and their suit was not barred by limitation. *Legge v Rambaran Singh*, 1 L R 29 All 35. *Alber Khan v Turaban*, 1 L R 31 All 9, *Sheepert Singh v Deonarain Singh*, 10 All I J 413, *Purshottam v Parmanand*, Misc No 279 of 1908, and *Shinner v Seanker Lal*, S A No 263 of 1907, referred to. *ALLAH JILAI v UMRAO HUSAIN* (1914) 1 L R 38 All 492

2. ———— *Pre-emption, right of—Knowledge of sale when essential for the article to apply* In a suit by an ottidar to enforce his right of pre-emption the right to sue cannot be said to arise unless the plaintiff has the necessary knowledge of the sale. Such a right can only be exercised when the ottidar knows first of all that the property is sold or attempted to be sold to another person and what the terms on which it is proposed to be sold. Without such knowledge he is not in a position to elect. *Ramasami Pillai v Chinna Aari*, 1 L R 24 Mad 449, and *Kurra Venarreddi v Kurra Epparreddi*, 1 L R 29 Mad 235 distinguished. *Cherna Krishnan v Iyanku*, 1 L R 6 Mad 198, *Varaderan v Keshavan*, 1 L R 7 Mad 109 and *Ammadu Hoja v Kunhayan Kudi*, 1 L R 15 Mad 480, commented on. *MAHMAJI v KUSHIPAKSI HAJI* (1912)

1 L R. 38 Mad. 67

3. ———— *Hypothecation of movable property—Suit to recover money lent by sale of the hypothecated property—Limitation. Where a plaintiff who has lent money on the security of*

LIMITATION ACT (IX OF 1908)—*contd.*

movable property seeks to recover the money by sale of the hypothecated property and does not ask for a personal decree against the debtor, the limitation applicable is that provided for by Art 120 of the first schedule to the Indian Limitation Act, 1908. *Madan Mohan Lal v Kanhai Lal*, 1 L R 17 All 284; *Nim Chand Baboo v Jagabundhu Ghose*, 1 L R 22 Cal 21 and *Mahainga Nadar v Ganapathi Subbiah*, 1 L R 27 Mad 528, followed. *DEOKINANDAN v GAFTA* (1918) 1 L R 40 All 512

4. ———— *A suit to enforce a mortgage of a turn of workshop is not governed by Art 132 but by Art 120 of the Limitation Act* *NARASINGHA BANA GOSWAMI v PRODHADMAN TEOKARI* (1918) 22 C W N 994

5. ———— *Suit for declaration of title—Cause of action—Limitation* In the settlement records of 1897 a certain plot of land was recorded as the separate property of the defendants. In 1914 the defendants applied for partition and claimed that this plot belonged to them in severalty, was in their separate possession and should be assigned to their mahal. The plaintiffs traversed this statement, alleging that the settlement record was wrong and that the plot in question was in fact part of the inhabited aote and belonged to all the co-sharers jointly. The court required the plaintiffs to institute a suit in the Civil Court to have the question of title to the plot in dispute decided. *Held*, that such suit was not barred by limitation. The proceedings taken in the partition court, whereby the plaintiffs found themselves, if their statements of fact were true, for the first time in danger of being actually dispossessed of their joint ownership of the plot gave rise to a fresh cause of action altogether independent of any cause of action which might have been furnished to them by the settlement entry made in the year 1887. *Akbar Khan v Turaban*, 1 L R 31 All 9, *Rahmat Ullah v Shams ud-din*, 11 A L J 877, and *Allah Jilal v Umrao Husain*, 1 L R 36 All 492 referred to. *KALI PRASAD MISHR v HARBANS MISHR* (1919) 1 L R. 41 All. 509

6. ———— *Though attachment of a mans lands as if it belonged to another gives the owner a cause of action on which he could have brought a suit but did not yet the sale of same at a later date is a fresh and greater invasion of his right and gives him a fresh cause of action on which he could sue within six years from the date of sale* *ANANTHARAJU v NARAYANARAU* 1 L R 36 Mad 285

7. ———— *Suit to declare entry in record of rights incorrect—Limitation, when it runs from date of signing of certificate of final publication—Prayer for confirmation of possession when no allegation of disturbance of position—Limitation* The period of limitation applicable to a suit to declare an entry in a record of rights to be incorrect is that provided by Art. 120 of Sch I to the Limitation Act and it commences running from the date of the final publication and not from the date of the signing of the certificate of final publication of the record of rights. Where in such a suit the plaintiff added a prayer for confirmation of possession without however alleging that his possession had in any way been dis-

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Arts. 116, 68, s. 19—*contd.*

116 and not by Art. 68 of the Limitation Act for though the suit was in form a suit for money due on a bond it was in substance a suit for compensation for breach of a contract. *Ramda v. Kalka Parshad I L R 12 I A 12, and Dulakhi Gossu Sht v. Tularambhat I L R 14 Bom. 377, commented on DINKAR HARI v. CHHAUNAL VARSIDAS (1912) I L R. 38 Bom. 177*

Sch. I, Art. 118—

See HINDU LAW (CITYOM)

5 Pat L J 164

Hindu Law—Adoption—Suits questioning the validity of adoption—Limitation—Adoption of an orphan—Fiduciary in Revenue register. A suit questioning the validity of an adoption would be time-barred if not brought within six years under Art. 118, Sch. I of the Limitation Act (IX of 1908). *Shrinivas v. Hanuman, I L R 9 I Bom. 260* followed. *Thakur Tulshnandan Bahadur Singh v. Raja Ramachar Balak Singh I L R 33 I A 156 and Umar Khan v. Vinayad-din Khan, I L R 39 I A 19*, explained and distinguished. The adoption of an orphan is not valid in law. The Collector's Register is purely for the purposes of Government Revenue and its entries are not evidence of title. *SHRINIVAS SAMJERAY v. BALWANT VENKATESH (1913) I L R. 37 Bom. 513*

Adoption—Death of adopted son leaving a widow—Adopting mother making a second adoption during widow's life time—Adopted son in possession of the property to the knowledge of the plaintiff—Suits by reversioner of first adopted son to recover property after leaving the second adoption brought after six years—Suits barred by limitation. One D a holder of Vatan and non Vatan property having died without leaving a son, A his senior widow adopted a son A 4 died a minor in 1895 leaving a widow. In 1901, A adopted defendant No. 1 as son to D and from the date of his adoption defendant No. 1 remained in possession of the whole estate to the knowledge of the plaintiff. In 1904 A widow died. In 1912, the plaintiff claiming as the reversionary heir of A sued to recover possession of the property challenging the adoption of defendant No. 1. Defendant No. 1 pleaded limitation and adverse possession. *Held*, that there had been no adverse possession sufficient to bar the plaintiff's suit but it was barred under Art. 118 of the Limitation Act 1908 as it was not brought within six years from Plaintiff's knowledge of defendant No. 1's adoption. *Held* also, that though the adoption of defendant No. 1 might be invalid by Hindu Law and A's power of adoption might have been already exhausted, nevertheless the law of limitation would effectively defeat the plaintiff's claim. *Mahesh Narayan Moonshi v. Tarunk Nath Motra, I L R 29 I A 30*, followed. *Held*, further, that defendant No. 1's adoption to D who was not the last male holder affected the plaintiff, for the property in dispute was an ancestral estate and that D as well as A were ancestors of the plaintiff. *CHAW BASAPPA v. KALITANDAPPA (1917) I L R. 41 Bom. 728*

Limitation—Sale—

Covenant to make good loss in case of vendee being compelled to pay money in excess of sale consideration—

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Art. 118—*contd.*

Breach of covenant—Suits against vendors on covenant of indemnity. Where vendors engaged their vendors on a covenant of indemnity contained in their sale-deed having been obliged to redeem a prior mortgage the existence of which the vendors did not disclose limitation runs, not from the date of the sale deed but from the date when the plaintiffs suffered actual loss in reason of their being compelled to pay off the prior mortgage charge. *Hari Tiwari v. Jagdish Chandra, I L R 11 All. 27* referred to. *RAM DILASHI v. HARDWARI LAL (1918) I L R. 40 All. 605*

Art. 118 and s. 9—*Suit for declaration that an adoption is untrue or invalid—Nearest reversioner's consent to adoption for a bride—No suit by nearest reversioner—Suits by remote reversioner, more than six years after adoption came to knowledge of the nearest reversioner—Plaintiff born after adoption and before suit barred—Bar of limitation.* A suit for a declaration that an alleged adoption is untrue or invalid, instituted by a remote reversioner, more than six years after the adoption came to the knowledge of the nearest reversioner, is barred under art. 118 of the Limitation Act. Neither the fact that the nearest reversioner did not himself bring such a suit because he had been bribed to give his consent to the adoption, nor the fact that the remote reversioner who sued was born after the alleged adoption and before the suit became barred under art. 118, gives the latter any fresh cause of action or stops time running which had begun to run against the whole body of reversioners from the date of adoption. *VENKATA SVATTA v. ADENNA (1921) I L R. 44 Mad. 218*

Sch. I, Art. 119—*Suit for declaration that an adoption was void—Limitation.* A decree was passed in 1900 on the basis that there was no adoption. In 1901, the adoption of plaintiff was denied by defendant No. 1 still the plaintiff did nothing till 1913, when he filed a suit to have it declared that the decree of 1900 was invalid and not binding on him. *Held*, that the plaintiff's adoption having been challenged in 1901, the present suit was barred under art. 119 of the Indian Limitation Act 1908. *SHRINIVAS v. HANMANT, I L R 24 Bom. 260*, followed. *BEARMA v. BALARAM SAKHARAM (1918) I L R. 43 Bom. 63*

Art. 120—

Sec 6 . I L R. 1, Lah. 558

Sec 10 . I L R. 39 Bom. 572

Sec ART 4 I L R. 41 Mad. 528

Sec ART 52 I L R. 2 Lah. 376

Sec ART 91 . I L R. 35 All. 149

Sec ART 109 I L R. 37 All. 849

Sec ADMINISTRATOR. 2. Pat L J. 642

Sec ANKARS OF REVENUE.

I L R. 47 Calc. 331

See HINDU LAW—JOINT FAMILY—

Pat. L J. 497

See HINDU LAW—WIDOW

I L R. 2 Lah. 884

I L R. 44 Mad. 951

See JOINT PROPERTY

I L R. 39 Mad. 54

LIMITATION ACT (IX OF 1908)—contd**Art 120—contd**See **LAMBARDAR** 4 Pat L J 304See **LIMITATION** 1 L R 46 Cal 455See **LIMITATION ACT, 1908 ART 113**
L L R 34 All 43See **MINERAL RIGHTS** 5 Pat L J 273See **NORTH WESTERN PROVINCES AND**
ODISH MUNICIPALITIES ACT

I L R. 35 All 308

See **RECORD OF RIGHTS** 3 Pat L J 38See **TRANSFER OF PROPERTY ACT, 1882**
ss 52 AND 109

I L R 23 All 708

Suit to enforce an award—See **CIVIL PROCEDURE CODE 1908, s 11,**
SCH. II, s 20 I L R 45 Bom 329

1 **Suit for declaration of title—Previous unsuccessful application to correct entry in village papers—Cause of action—Limitation.** In 1875, the owners of certain samin dan property sold their interest in it with the exception of 26 bighas. In 1888 the vendors were recorded as exproprietary tenants of these 26 bighas. In 1903, the representatives of the vendors applied to have the village papers corrected but their application was dismissed and they were told to go to the Civil Court. In 1910, the representatives of the purchasers applied to have rent assessed on the 26 bighas and obtained an order in their favour. The representatives of the vendors thereupon brought the present suit in the Civil Court for a declaration that they were proprietors. *Held*, that, whatever cause of action the plaintiffs might have had before the proceedings of 1910 the order passed in those proceedings gave them a fresh cause of action and their suit was not barred by limitation. *Legge v Rambaran Singh*, I L R 29 All 35. *Albar Khan v Turaban* I L R 31 All 9. *Sheopher Singh v Deonarain Singh* 10 All L J 413. *Per shotam v Parmanand Mtec.* No 279 of 1908 and *Slanner v Slanker Lal*, S A No 763 of 1907 referred to. *ALLAH JILAI v UMRAO HUSAIN* (1914) I L P 36 All 492

2 **Pre-emption right of—Knowledge of sale when essential for the article to apply.** In a suit by an otidar to enforce his right of pre-emption the right to sue cannot be said to arise unless the plaintiff has the necessary knowledge of the sale. Such a right can only be exercised when the otidar knows first of all that the property is sold or attempted to be sold to another person and what the terms on which it is proposed to be sold. Without such knowledge he is not in a position to elect. *Ramamya Pallar v Chinnam Asari* I L R 21 Mad 449 and *Kurra Veerreddi v Kurra Bapreddi* I L R 29 Mad 336 distinguished. *Cherva Krishnan v Vudhanu*, I L R 5 Mad 198. *Vasudevan v Keshavan* I L R 7 Mad 309 and *Ammothai Haji v Kun Anjan Kutti* I L R 15 Mad 450 commented on. *MAHIMALI v KUSHITAKKI HARI* (1912)

I L R 38 Mad 67

3 **Hypothecation of movable property—Suit to recover money lent by sale of the hypothecated property—Limitation.** Where a plaintiff who has lent money on the security of

LIMITATION ACT (IX OF 1908)—contd.

movable property seeks to recover the money by sale of the hypothecated property and does not ask for a personal decree against the debtor, the limitation applicable is that provided for by Art 120 of the first schedule to the Indian Limitation Act 1908. *Madan Mohan Lal v Ranks Lal*, I L R 17 All 284. *Am Chand Baboo v Jagabandhu Ghose* I L R 22 Cal 21, and *Mahainga Nadar v Ganapathi Subbarin*, I L R 27 Mad 528 followed. *DEOKINANDAN v GAFCA* (1918) I L R 40 All 512

4 **A suit to enforce a mortgage of a turn of workshop is not governed by Art 132 but by Art 120 of the Limitation Act.** *NARASINGHA BANA GOSWAMI v. PROLUADMAN TEGARI* (1918) 22 C W N 994

5 **Suit for declaration of title—Cause of action—Limitation.** In the settlement records of 1887 a certain plot of land was recorded as the separate property of the defendants. In 1914 the defendants applied for partition and claimed that this plot belonged to them in severalty, was in their separate possession and should be assigned to their mahal. The plaintiffs traversed this statement alleging that the settlement record was wrong and that the plot in question was in fact part of the inhabited site and belonged to all the co-sharers jointly. The court required the plaintiffs to institute a suit in the Civil Court to have the question of title to the plot in dispute decided. *Held*, that such suit was not barred by limitation. The proceedings taken in the partition court, whereby the plaintiffs found themselves, if their statements of fact were true, for the first time in danger of being actually dispossessed of their joint ownership of the plot gave rise to a fresh cause of action altogether independent of any cause of action which might have been furnished to them by the settlement entry made in the year 1887. *Albar Khan v Turaban* I L R 31 All 9, *Pahmat Ullah v Shams ud-din*, 11 A L J 877 and *Allah Jilai v Umrao Husain*, I L R 36 All 492 referred to. *KALI PRABAD MISHR v HARBANS MISHR* (1919) I L R 41 All 509

6 **Though attachment of a mans lands as if it belonged to another gives the owner a cause of action on which he could have brought a suit but did not yet the sale of same at a later date is a fresh and greater invasion of his right and gives him a fresh cause of action on which he could sue within x years from the date of sale.** *ANANTHARA. ZU v NARAYA NARAYU* I L R 26 Mad 785

7 **Suit to declare entry in record of rights incorrect—Limitation—The time runs from date of signing of certificate of final publication—Prayer for confirmation of possession when no allegation of disturbance of possession—Limitation.** The period of limitation applicable to a suit to declare an entry in a record of rights to be incorrect is that provided by Art. 120 of Sch. I to the Limitation Act and it commences running from the date of the final publication and not from the date of the signing of the certificate of final publication of the record of rights. Where in such a suit the plaintiff added a prayer for confirmation of possession without however alleging that his possession had in any way been dis-

LIMITATION ACT (IX OF 1908)—*contd*Art 120—*contd*

See LAMBARDAK 4 Pat L J 304

See LIMITATION 1 L R 46 Cal 455

See LIMITATION ACT, 1908, ART 113
I L R 34 All 43

See MINERAL RIGHTS 5 Pat L J 273

See NORTH WESTERN PROVINCES AND
ODISH MUNICIPALITIES ACT
I L R 25 All 308

See RECORD OF RIGHTS 3 Pat L J 36

See TRANSFER OF PROPERTY ACT, 1882
ss 82 AND 100
I L R 33 All 708

Suit to enforce an award—

See CIVIL PROCEDURE CODE, 1908 s 11,
SCH II, s 20 I L R 45 Bom. 329

1 ———— *Suit for declaration of title—Previous unsuccessful application to correct entry in village papers—Cause of action—Limitation* In 1875, the owners of certain zamindari property sold their interest in it with the exception of 26 bighas. In 1888, the vendors were recorded as exproprietary tenants of these 26 bighas. In 1903, the representatives of the vendors applied to have the village papers corrected, but their application was dismissed and they were told to go to the Civil Court. In 1910, the representatives of the purchasers applied to have rent assessed on the 26 bighas and obtained an order in their favour. The representatives of the vendors thereupon brought the present suit in the Civil Court for a declaration that they were proprietors. *Held*, that, whatever cause of action the plaintiffs might have had before the proceedings of 1910, the order passed in those proceedings gave them a fresh cause of action and their suit was not barred by limitation. *Legge v Rambaran Singh*, I L R 29 All 35. *Albar Khan v Turaban* I L R 31 All 9. *Sheopur Singh v Deonarain Singh*, 10 All L J 413. *Purshotam v Parmarand Muc* No 279 of 1908 and *Skinner v Shanker Lal* S A No 263 of 1907 referred to. *ALLAH JILAI v UMRAO HUSAIN* (1914) I L R 28 All 492

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3 ———— *Hypothecation of movable property—Suit to recover money lent by sale of the hypothecated property—Limitation* Where a plaintiff who has lent money on the security of

LIMITATION ACT (IX OF 1908)—*contd*

movable property seeks to recover the money by sale of the hypothecated property and does not ask for a personal decree against the debtor, the limitation applicable is that provided for by Art 120 of the first schedule to the Indian Limitation Act, 1908. *Madan Mohan Lal v Kamhat Lal*, I L R 17 All 284, *Aim Chand Baboo v Jagabundhu Ghose* I L R 22 Cal 21 and *Mohalinga Adar v Ganapathi Subbena*, I L R 27 Mad 528, followed. *DEOKHANANDAN v GADPA* (1918) I L R 40 All 512

4 ———— *A suit to enforce a mortgage of a turn of workshop is not governed by Art 132 but by Art 120 of the Limitation Act* *NARASINGHA BANA GOSWAMI v PRODHADMAN TEOARI* (1918) 22 C W N 994

5 ———— *Suit for declaration of title—Cause of action—Limitation* In the settlement records of 1887 a certain plot of land was recorded as the separate property of the defendants. In 1914 the defendants applied for partition and claimed that this plot belonged to them in severalty, was in their separate possession and should be assigned to their mahal. The plaintiffs traversed this statement alleging that the settlement record was wrong and that the plot in question was in fact part of the undivided estate and belonged to all the co-sharers jointly. The court required the plaintiffs to institute a suit in the Civil Court to have the question of title to the plot in dispute decided. *Held*, that such suit was not barred by limitation. The proceedings taken in the partition court, whereby the plaintiffs found themselves, if their statements of fact were true, for the first time in danger of being actually dispossessed of their joint ownership of the plot, gave rise to a fresh cause of action altogether independent of any cause of action which might have been furnished to them by the settlement entry made in the year 1887. *Albar Khan v Turaban* I L R 31 All 9, *Rahmat Ullah v Shams ud-din* 11 A L J 877 and *Allah Jilai v Umrao Husain*, I L R 36 All 492 referred to. *KALI PRASAD MISHR v HARBHANS MISHR* (1919) I L R 41 All 509

6 ———— *Though attachment of a mans lands as if it belonged to another gives the owner a cause of action on which he could have brought a suit but did not yet the sale of same at a later date is a fresh and greater invasion of his right and gives him a fresh cause of action on which he could sue within six years from the date of sale.* *ANANTHANA RIV NARAYANARAO* I L R 36 Mad 785

7 ———— *Suit to declare entry in record-of-rights incorrect—Limitation when entry runs from date of signing of certificate of final title runs from date of signing of certificate of possession publication—Prayer for confirmation of possession publication—Prayer for declaration of possession—Limitation when no allegation of disturbance of possession—Limitation* The period of limitation applicable to a suit to declare an entry in a record of rights to be incorrect is that provided by Art. 120 of Sch I to the Limitation Act and it commences running from the date of the final publication and not from the date of the signing of the certificate of final publication of the record-of-rights. Where in such a suit the plaintiff added a prayer for confirmation of possession without however alleging that his possession had in any way been disturbed

LIMITATION ACT (IX OF 1908)—contd

turbed or threatened to be disturbed by the defendant: *Held* that the Court of first instance was right in treating the prayer as one for declaration of possession and Art 129 applied to the suit. **RAJANI NATH PRAMANIK v MONAHAN MANDAL (1919)** 23 C W N 893

8. — *Held* that in a sale in contravention of s 59 of the Transfer of Property Act and purchase by mortgagee—suit by mortgagee for recovering property governed by Art 120. **UTTAM CHANDRA DAW v RAJ KRISHNA DALAL** 24 C W N 229

9. — *Mortgage—Sale* — *One of the mortgagors paying off the mortgage amount—Payment creating a charge in favour of the creditor—Creditor not entitled to sell the property until declaratory decree obtained—Limitation* In 1887 a mortgage of the plaintiff property was executed in favour of four brothers. On the 22nd August 1901 the plaintiff one of the mortgagors advanced a sum of money to enable the mortgagee to pay what was required to make the last payment on account of the mortgage of 1887 on the understanding that a further mortgage would be executed by the mortgagee in favour of the plaintiff. The mortgage was executed but it proved ineffectual for want of proper attestation. The plaintiff therefore brought a suit in 1914 for sale of the mortgaged property on the ground that the payment made by him in 1901 created a charge on the property to the extent of the money advanced. *Held* that the payment made in 1901, enabled the plaintiff to establish his right to a charge on the property but mere payment would not give the plaintiff any right against the property either to go into possession or sell it, he was bound to ask for a declaratory decree that a charge was created before the Court could have jurisdiction over the property. *Held* further that the plaintiff's claim to get a declaratory decree was governed by Art 190 of the Limitation Act and was, therefore, barred as not having been brought within six years from the date of payment in 1901. **BULLER v RICE 1910 2 Ch 277**, referred to. **CHHOTALAL KAPASWAS v LALSHY CLAVEN (1920)** I L R 45 Bom 587

10. — *Limitation—Suit to recover money under an award—money originally recovered by plaintiff under a decree passed on the award—but refunded on the decree being set aside—award—date when the right to sue accrues—fresh cause of action* Plaintiff and defendant in 1909 submitted a dispute to arbitration, an award was duly made and a decree passed in terms of it on the 19th October 1909. In execution of the decree plaintiff realised Rs 4,000 on 14th January 1911. The decree was set aside on appeal to the Chief Court on 4th August 1912, and on 4th May 1915 the Rs 4,000 were refunded to the defendant. On 25th February 1919, plaintiff brought the present suit claiming the Rs 4,000 and interest as due to him under the award. The question was whether the suit was barred by limitation. *Held*, that on the annulment of the satisfaction a fresh cause of action arose, and that the claim was therefore with in time under article 120 of the Indian Limitation Act. **Muthuswappa Chetty v Adakkappa Chetty (I L R 43 Mad 845)** followed. *Rameswaramoorthy v Shookhe Mookhee (12 Moo I A 244)* referred to.

LIMITATION ACT (IX OF 1908)—contd

Koat Pam v Kankhaya Lal (I L R 35 All. 227 P C) distinguished. **KANTAN SINGH v BHAGAT SINGH** I L R 2 Lah. 220

— *Sch. I, Arts. 120, 115 A suit by some of the co-shares in a ferry against others for recovery of their share of profits in governed by Art 120 and not 115* **KISHNU DEVAL SINGH v KISHNU**

DEO JHA 1 Pat. L. J. 69

— *Sch. I, Arts. 120, 123—*

See HINDU LAW—POTTERSONER

I L R. 41 All 492

— *Limitation—suit by reversioners for a declaration in respect of a mortgage made by a Hindu widow who has a daughter living—whether "and" in art 125 includes a house* On 24th January 1908 **Musammal A D**, widow of **G R** mortgaged a house to one **U C**. On 12th August 1910, the plaintiffs collaterals of **D R**, sued for a declaration that the mortgage should not affect their reversionary rights. **Musammal A D** had a daughter living who admittedly was entitled to possession on her mother's death, though with limited interest. *Held*, that the suit is governed by art 120 (and not by art. 125) of the Limitation Act, and that the starting point of limitation is the date of the mortgage. **Perumma v Gopalanayyan (I L R 41 Mad 553 (P H))** and rulings cited in **Rudram v Limbungan Act 2nd Edition**, page 294, referred to. **Abinash Chandra v Majumdar (9 Cal W N 23)** and **Gowinda Pillai v Thayammal (14 Mad L. J. 209)** distinguished. *Semler* that "land" in art 125 includes a house and its site. **Dolga Ram v Sher Singh (5 Indian Cases 312)** **Sant Ram v Ganga Ram (32 P R 1904)** and **Musammal Raut v Sunder Singh (103 P R 1912)** referred to. **Dev Raj v Shiv Ram (70 P R 1918)**, distinguished. **ROMAN SINGH v UTTAM CHAND**

I L R 1 Lah. 69

— *Hindu law—Hindu widow—Suit for declaration that alienation by widow accrues only for her life—Pottersoner—Right of suit* *Held* that, although the existence of nearer reversioners may be a bar to a more remote reversioner suing for a declaration that an alienation made by a Hindu widow does not endure for a longer period than the life time of the widow, yet he is not entitled to wait until limitation has expired in respect of all the nearer reversioners for such a suit is, under Art 125 of the first schedule to the Indian Limitation Act, 1908, twelve years from the date of the alienation for nearer and more remote reversioners alike. **KUNWAR BAHADUR v BINDHARAN (1914)** I L R. 37 All. 195

— *Sch. I, Arts. 120 and 131—*

See FIDUCIARYSHIP OF TRUST

2 Pat. L. J. 124

— *Sch. I, Arts. 120, 132, 141 and 144—Immovable property, whether proceeds of sale of, or "any interest therein"—General Clause Act of 1897, s 3 (2)—"Benefit to arise out of land"*

LIMITATION ACT (IX OF 1908)—*contd*

—Sch I, Arts 120, 132, 141 and 144
—*contd*

—*Land acquisition Act (I of 1894)* A claim for the proceeds of what was once immovable property but which has been substituted for moveable property is not a claim for immovable property or any interest therein or any benefit arising out of land. Where, therefore, certain property was compulsorily acquired under the Land Acquisition Act, 1894, and the plaintiff sued the vendor for the value of the property so acquired, *held*, that the period of limitation for the suit was 6 not 12 years. *PAI RADHA KISHEN RAI v. NARAYAN LAL*, 3 Pat L J 522.

—Sch I, Arts 110, 112—

See Art. 62 I L R 33 All 718

Hypothecation decree—moveable property—Moveable property converted into immovable property—Substituted security—Mortgagee purchasing part of the mortgaged property—Merger A hypothecation decree is moveable property and a mortgage thereof is of moveable property which is governed by Art 120, Sch I to the Indian Limitation Act. But where moveable property has become converted into immovable property, the mortgagee becomes entitled to the substituted security and also to the larger period of limitation prescribed by Art 132 of the first Schedule to the said Act. It does not necessarily follow that because a person in the position of a mortgagee purchases a portion of the mortgaged property the mortgage thereby becomes *pro tanto* extinguished. Everything depends upon the terms of the sale, and unless it is stipulated that the mortgage is to be extinguished or unless there are circumstances from which an intention to extinguish the mortgage in whole or part may be inferred, it cannot be held that the mortgage merges in the purchase. *Gowd Malamed v. Akbar Ali Akbar*, 1 L R 23 Cal 56. *Jivan Ali Beg v. Sasa Mal*, 1 L R 9 All 128, referred to. *JAMNA DEVI v. LALA RAM* (1918)

I L R 29 All 74

—Sch I, Arts 120, 124, 144—

See Mutt I L R 41 Mad 124

—*Limitation for suit by one of several mortgagees of a Khankah for recovery of joint possession of a site belonging to the Khankah, wrongfully alienated by one of his co-mortgagees* *Held*, that the limitation for a suit by one of several mortgagees of a Khankah to recover joint possession of a site belonging to the Khankah wrongfully mortgaged with possession by one of his co-mortgagees is 12 years under either Art 134 or Art 144 of the Limitation Act. *Doublet* that a suit by a worshipper of a religious institution for declaration that an alienation by the trustee thereof is void and that the alienee is ejected is governed by Art 120. *Assam v. Paras Ram* (9 P F 1904) referred to. And that a suit brought by the executor of a trustee of such an institution against the alienee of trust property for value, to recover the property for and on behalf of the trust is governed by Art 134 and the term *minors* a *quasi* is not the date when the executor succeeds to the office, but the date of the alienation. *Har Gian Das v. Euldeo Das* (17 P. P

LIMITATION ACT (IX OF 1908)—*contd*

—Sch I, Arts 120, 134, 144—*contd*

1908) (F B), *Sayedur Raja v. Gour Mohan Das* (1 L R 24 Cal 418), *Sagun Balkrishnaiah v. Raju, Hussain* (1 L R 27 Bom 500) referred to. *SUADI v. ABDUR RAHMAN*

I L R 1 Lah. 66

—Sch I, Arts 120, 142—“*Dispossession*” and “*discontinuance of possession*,” meaning of—*Suit to determine rights of parties to order under s. 146, Criminal Procedure Code period of limitation for—Suit, if lies against Magistrate—Magistrate a stake holder—Declaratory suit against rival claimant—continuing wrong* The defendants at tempted to interfere with the plaintiff's possession of the disputed property and a breach of the peace becoming imminent proceedings under s 146, Criminal Procedure Code, were instituted and resulted in an order of attachment under s 146, Criminal Procedure Code. The plaintiff sued for declaration of his title and for recovery of possession. *Held* that though deprived of possession the plaintiff was not dispossessed or had discontinued possession within the meaning of Art 142 of the Limitation Act. Meaning of “dispossession” and “discontinuance of possession” explained. That as there was no cause of action against the Magistrate, the suit could be brought only against the defendants. *Cetwams v. Giridhar* 1 L R 20 All 120, distinguished from *Paja of Venkateswara v. Venkateswara* 1 L R 26 Mad. 410 followed on this point. *Kkegirdra Narain v. Matargiri*, 1 L R 17 Cal 814, 819 and *Pawa Suany v. Malku Suany*, 1 L R 30 Mad 12, referred to. That plaintiff having proved his title the suit must be treated as a suit for declaration of title under s 42 of the Specific Relief Act. That it was a case of continuing wrong. Defendant of contract and consequently under s 43 of the Limitation Act a fresh period of limitation under Art 120 began to run at every moment of the time the wrong continued. Continuing wrong defined. *Jaya of Venkateswara v. Venkateswara*, 1 L R 26 Mad 410 distinguished from *Maha Chavri v. Abdul Hamid*, 1 C L J 73. *Bisda v. Kannaiah*, 1 L R 13 All 126. *Ananda v. Vey yanna*, 1 L R 15 Mad 422, and *Jugal Kishore v. Lakshman Das*, 1 L R 23 Bom 659, referred to. *BROJENDRA KISHORE ROY CHAUDHURY v. SANO JINI RAY* (1915)

20 C W N 481

—Sch I, Arts 120, 142, 144—

See UNSETTLED PALAYAN

I L R. 41 Mad. 749

—Sch I, Arts 120, 144—*Landlord and tenant—Tenant building on the land adjacent to the landlord's house—Staircase of the tenant's house supported by a pillar on the landlord's land—Injunction to remove the staircase—Trespass—Adverse possession—License* In the year 1903, the defendant while a tenant of the house of which the plaintiff had taken a permanent lease in 1903 built his own house on the adjoining land and put up a staircase supported by a pillar. The plaintiff contended that the land on which the pillar rested belonged to him and that the pillar was put up by his predecessor in title nine years before suit. In 1912 he asked the defendant to pull down the staircase but the latter having refused filed a suit on July 21, 1913, praying for a mandatory injunction directing the defendant to remove the staircase. The subordinate Judge found that the land under the staircase belonged to the plaintiff.

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Arts 120, 144—*contd.*

iff but dismissed the plaintiff's suit on the ground that the pillar existed on the land for nineteen years. The Assistant Judge held that as the plot belonged to the plaintiff he was entitled to get the staircase removed. On appeal to the High Court it was contended that the staircase was standing on the land either by the license of the plaintiff's predecessor in title or adversely to them, but in any case the plaintiff's suit was barred under Art 120 or 144 of the Limitation Act, 1908. *Held*, (i) that the plaintiff's suit was barred under Art 120 of the Limitation Act, 1908 as it was not brought within six years from 1893 when the license to construct the staircase could have been granted. (ii) That the plaintiff's claim was also barred by adverse possession as the lower Courts having found that the staircase was put up nineteen years before suit the presumption was that from that date the defendant's possession was adverse. *HARIRAM KUNIVIRAM v. SHYANAKAS RANCHAND* (1915) I. L. R. 42 Bom. 333

Sch. I, Arts 121 to 144—

See SALE FOR ARREARS OF PAYMENT.

I. L. R. 41 Cal. 779

I. L. R. 41 Cal. 412

Sch. I, Arts. 121 and 142—

A suit for recovery of possession brought with 12 years from the date on which the Collector gave symbolical possession to the purchaser is within time coming under Art. 142 not 121. *MOUTH CHANDRA PIER v. PEYAKAL DAS* I. L. R. 44 Cal. 412

Sch. I, Arts. 121, 142, 144—

In a suit for khas possession and recovery of land purchased by plaintiffs at a sale for arrears of Government Revenue the Defendant contended that they had been in adverse possession for a long time and that their occupation was in the nature of an incumbency and plaintiffs were not entitled to avoid same. *Held*, that the interest which defendants acquired was an incumbency within Art 121 and the suit was barred. *PRASADYA KUNAR DUTT v. JYANENDRA KUNAR DUTT* I. L. R. 43 Cal. 79

Sch. I, Art 123—

See BURMESE LAW

I. L. R. 41 Cal. 379

See PRESIDENTIAL LEGATTEE

I. L. R. 41 Cal. 371

See WILL, CONSTRUCTION OF

I. L. R. 43 Bom. 845

Sch. I, Arts. 123, 144—

Mahomedan law Joint property—Property devolving on sons on father's death—One of the sons selling his share to a third person—Suit for partition—Property held by sons as tenants in common—Time to run when one co-tenant excludes the other from joint property. Two mahomedan brothers A and O succeeded to their father's property according to Mahomedan law. O mortgaged his share in the property to the plaintiffs and eventually sold the equity of redemption to them. The plaintiffs sued to recover possession of O's share by partition. The trial Court dismissed the suit as time-barred under Art 123 of the Indian Limitation Act, 1918. *Held*, that the proper Article applicable would be Art. 144

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Arts 123 144—*contd.*

of the Limitation Act, as the plaintiff's suit was in terms a suit to have partitioned property which the two persons were holding as tenants in common. *KALLANGOWDA v. BIRAHAYA* (1920)

I. L. R. 43 Bom. 843

A Mahomedan dying in testate—*Fiduciary undivided*—*Heirs holding as tenants in common*—*Suit by a heir to recover his share*—*Adverse possession*—Where members of a mahomedan family continue to live as tenants in common without dividing the estate of a deceased ancestor limitation will not run from the time of his death and a suit for a distinct share of the deceased estate will not be governed by Art 123 but by Art 144 of the Limitation Act, 1908. *KALLANGOWDA v. BIRAHAYA* (1920) 43 Bom. 843, followed. *KUNDIR NARAYAN v. BO LAKRAO* (1920)

I. L. R. 43 Bom. 819

Art 124—

See LIMITATION, c. (25)

I. L. R. 42 Cal. 244

See RELIGIOUS ENDOWMENT

3 Pat. L. J. 327

Shani in Malabar constituted trustee of a temple and its properties—*Absolute transfer by the shani of the trusteeship and temple properties to defendant's predecessor*—*Effect of adverse possession for over statutory period on succeeding Shani*—S. 2 (d) of Limitation Act, definition of "plaintiff" is. According to the customary law of Malabar a shanom is descendible from one shani to another in a peculiar line of succession. A suit by a shani to recover a hereditary office of trustee of a temple and its properties attached to the shanom is governed by Art 121 of the Limitation Act and adverse possession for over the statutory period of the office of trustee and the properties of the trust as against a prior shani is a bar to a suit by the successor to recover the same. Though the successor gets his title not by any act of his predecessor but by succession according to the law of the land, he derives his right to sue only from or through his predecessor within s. 2 cl (5) of the Limitation Act. *Gnanasambanda Pandara Sannodhi v. Idm Pandaran*, I. L. J. 23 Mad. 217, 231 applied. *RAJA OF KALGHAT v. RAMAN UNNI* (1917)

I. L. R. 41 Mad. 6

Sch. I Arts 124, 140—

See LIMITATION (18) I. L. R. 41 I. A. 267

Sch. I Arts 124, 144—

See s. 29 I. L. R. 33 All. 636

Sch. I, Art. 125—

See s. 8 I. L. R. 28 Mad. 570

See Art 120 I. L. R. 41 All. 482

Held that although the existence of nearer reversioners may be a bar to a more remote reversioner's suit for a declaration regarding an alienation by a Hindu widow yet he is not entitled to wait until limitation has expired in respect of all the nearer reversioners before bringing his suit. *KUNWAR BHANU v. BINDHABAN*

I. L. R. 37 All. 195

Alienation by a Hindu widow—*Failure of existing reversioner to sue to set it aside within twelve years, effect of on*

LIMITATION ACT (IX OF 1908)—contd**Sch. I, Art. 125—contd**

future reversions—Representative characters of the suit. A suit by a reversioner to set aside an alienation by a Hindu widow is a representative suit on behalf of all her reversioners, then existing or thereafter to be born, and all of them have but a single cause of action, which arises on the date of the alienation. Hence, if by failing to sue within twelve years, allowed by Art. 125 of the Limitation Act (IX of 1908), the existing reversioners become barred by limitation, reversioners thereafter born are equally barred. *Venkataramayya Pillai v Subbammal, I L R 33 Mad 406, Janaki Ammal v Narayanaswami Aiyar, I L R 39 Mad. 734, followed Gorinda Pillai v Thagammal, I L R. 28 Mad 57, Veerappa v Gangamma, I L R 36 Mad 570 Narayana v Rama, I L P 33 Mad 396, and Venkata Rao v Tularam Rao, (1917) Mad W A 30, overruled Semble.* A decision one way or other, in a suit by one of them binds all of them. *PER SESHAGIRI AYYAR, J Semble.* That Art. 125, does not apply to persons not born at the date of the alienation but that the right to declaratory relief of this nature is only conferred on persons alive at the date of the alienation. *VARANNA v GOPALA DASATTA (1918).* I L R 41 Mad. 659

Sch. I, Art. 126**See PARTNERSHIP**

15 C W N 882

Sch. I, Arts. 126, 144, 148—Sale of equity of redemption by one of two mortgagors—Redemption by vendee—Possession of property by vendee for more than twelve years—Sale by the other co mortgagor to another—Suit by latter to redeem his half share—Suit more than twelve years after first vendee took possession on redemption, whether barred. The first defendant and his father G mortgaged with possession the suit lands to the second defendant in 1892. In 1897 G sold the equity of redemption to the third defendant, who redeemed the lands and obtained possession in 1898. The first defendant sold his interest in the lands in 1910 to the plaintiff who instituted a suit in 1912 to redeem his half share in the property on payment of half the mortgage-debt. The third defendant pleaded that the suit was barred by limitation. *Held*, that Art. 148 of the Limitation Act was not applicable to the case and the suit was barred by limitation, as the case fell within Art. 126. *Semble.* The suit was also barred under Art. 144. *Jai Kishan Joshi v Padmanand Joshi, I L P 35 AU 138 Bhayy Shamrao v Hajimaya Mahomed, 14 Bom. L. J. 314 followed and Panamam Ayyar v Panamamalai Ayyar, I L R. 23 Bom 137, s e 26 I C 873, Parasuram Mudali v Srinivasa Pillai, I I P 30 Mad. 426, explained. MIGNA GOUDAN v PANASWAMI CHETTI (1918).* I L R. 41 Mad 650

Sch. I, Art. 127—**See CATCH MEMOS.**

I L R. 41 Bom 18

See ANOJAS. I L R. 38 Bom. 449**See LIMITATION ACT, 1877, SCH. II, ARTS. 129 AND 144**

I L R. 47 Bom. 64 & 54

See MAHOMEDAN LAW

I L R. 38 Mad. 1099

LIMITATION ACT (IX OF 1908)—contd.**Sch. I, Art. 127—contd.**

Applicability of the Article to Mahomedan—Suit to recover share in joint family property. The following question was referred to a Full Bench—"Whether Art. 127 of the Second Schedule of Act XV of 1877 can apply to the property of a Mahomedan (or any other person not being a Hindu), and not having been proved to have adopted as a custom the Hindu law of the joint family." *Held* (SHAN J dissenting) that it did not. *ISAF AHMED v ABRAHIM AHMADJI (1917)* I L R. 41 Bom 588

Sch. I Art. 128—Execution of decree—Limitation—Step in aid of execution—Application for transfer of decree—Civil Procedure Code (1882), s. 223. *Held*, that an application made to the Court passing a decree to transfer it for execution to another Court is an application to take a step in aid of execution within the meaning of Art. 182 of the first schedule to the Indian Limitation Act, 1908. *Chandra Nath Goswami v Guroo Prasunno Ghose, I L P 22 Calc 375, followed TODAR MAL v PHOLA KACHWAR (1913)*

I L R. 35 AU 389

Sch. I, Art. 130—**See SARANJAM** I L R 40 Bom 606**See SARANJAMDAR** I L R 45 Bom 694

Land entered in record of rights as liable to assessment—Suit to assess rent—Limitation—Suit of maintenance by a co-sharer landlord—Bengal Tenancy Act (VIII of 1885), ss. 158 and 103B. Defendant's lands having in 1910 been entered in the record-of rights as liable to be assessed with rent, the recorded landlord brought the present suit for assessment of rent. The District Judge held that the right to have the rent assessed having accrued to the plaintiff more than twelve years before the suit, it was barred by limitation under Art. 130 of the Limitation Act, and dismissed the suit disagreeing with the Munsif's finding that the suit having been brought within twelve years of the publications of the record-of rights was within time. *Held*, that the Munsif was wrong in taking the entry in the record-of rights as the starting point for limitation as such rights as the starting point for limitation as such an entry confers no title. That the suit was not one for "resumption or assessment of rent free land" within the meaning of Art. 130 but a suit for the assessment of land presumably liable to be assessed. That the fact rent has not in fact been paid more than twelve years before suit is not per se sufficient to support a decree for dismissal of such a suit, for the right to have rent assessed is not continuous so long as the relationship continues of landlord and tenant of land liable to be assessed. That such a relationship and liability were to be presumed from the record-of rights and it was for the defendant to rebut this presumption by evidence. A suit to assess rent is consistent with and arises out of the general law and the land revenue system of the country, and is not one which the landlord is "required or authorised to do under the Bengal Tenancy Act within the meaning of s. 158 of that Act. A co-sharer landlord is therefore entitled to institute such a suit. That had s. 158 of the Bengal Tenancy Act applied, the fact that the plaintiff had joined his co-sharer as defendants would not have justified the Court in entertaining the suit on principles of justice and equity." *DWANJOY BANERJEE v USHERA NATH DEB (1915).* 22 C. W N 635

LIMITATION ACT (IX OF 1908) —contd

Sch I Art 131

See ART 130

1 Pat L J 124

See ALAPPA P P APPASWAMI

1 L R 45 Bom 633

See ENHANCEMENT OF RENT

2 Pat L J 124

See INAMDAR 1 L R 41 Bom 159

See LIMITATION ACT 1908 ART 110.

1 L R 34 AU 246

—Sut to recover sums due under periodical recurring rights governed by Art. 131 of sch II of the Limitation Act (IX of 1908) applies to suits to recover sums due under a periodically recurring right whether there is a prayer for a declaration of plaintiff's right or not. *Held* therefore that a suit to recover arrears of adima allowance for a period of eight years was not barred as to any portion of it. *ZAMORIN OF CALANT v AUDITHA MEX v* (1914)

1 L R 38 Mad 916

Sch I Arts 131 132—

See ART 110 1 L R 34 AU 246

Arts. 131 and 141—

See ADVERSE POSSESSION

1 L R 45 Bom 639

Sch I, Art 132—

See ART 89 1 L P 43 Calc 248

See ART 110 1 L R 45 Calc 418

See ART 130 1 L R 39 AU 74

See LIMITATION 1 L R 41 Calc 634

1 L R 42 Calc 244

1 L R 48 Calc 625

1 ——— Limitation—Malikana—

Sut for malikana—Decree asked for against property charged Where a plaintiff sued for the recovery of malikana for 11 years and claimed a decree against the property on which the malikana was charged, it was *held* that the suit was within time having regard to Art 132 of the first schedule to the Indian Limitation Act 1908. *Kallar Roy v Gangy Perashat Singh* 1 L R 33 Calc. 998 distinguished. *SHAIKA ALI v. PHILLO* (1913) 1 L R 35 AU 185

2. ——— Interest—Sut to enforce payment of money charged upon immovable property—

Installment bond—Meaning of "becomes due." A mortgage deed executed on the 16th July 1890 provided that the mortgagors pay the principal amount secured in ten years by instalments of Rs 675 yearly and that interest should be paid monthly. There was this further clause:—"If we fail to pay the interest aforesaid in any month, on the principal by the stipulated period, as specified above or no payment is made in a year the mortgagee shall under all those circumstances be at liberty to realize the entire amount with the interest aforesaid in a lump sum through the court by means of a sale from the mortgaged and other moveable and immovable property and the person of us the executors." There was also this further provision:—"If the mortgagee in order to get interest does not bring a suit in default of any instalment and we are unable to pay the money the interest should continue up to the stipulated period of ten years

LIMITATION ACT (IX OF 1908) —contd

— Sch I Art 132—contd

and after it up to the date of realization." No payment was ever made of either principal or interest and the mortgagees ultimately brought a suit on the mortgage of the 12th June 1910. *Held* by *MR JUSTICE J. and MR JUSTICE J. (BAYLEY)* *J. dismissed* that the suit was barred by art 132 of sch. I to the Indian Limitation Act, 1908, the mortgage money having become due when the first instalment was made. *See also* *Mutwar v. Srinivasulu* 1 L R 40 Mad 40 *See also* *Escher v. Escher* 2 Q B D 509 *See also* *Chand Aker v. Hanley Hall* 1 L R 24 Calc 291, and *Perumal Ayyan v. Alajayaram* *Idaya Aiyar*, 1 L P 20 Mad 215 referred to. *See also* *Chandrasekhar v. Kumara Bhat* *Chandrasekhar* 1 L R 23 Mad 2. *Moharaj of Baroda v. Lord Lumsden* 1 L P 22 AU 431. *Shankar Prasad v. Jyoti Prasad* 1 L R 16 AU 371. *Thilaka v. Khand* 1 L R 50 AU 123 and *Jinawar Dutt v. Mohabir Singh*, 1 L R 1 Calc 183 distinguished. *See also* *MR JUSTICE J. Having regard to the second of the provisions above cited the suit was not barred by limitation. Where a deed or is authorized to wait for the full period stipulated for repayment the money does not become due within the meaning of art 132 of the first schedule to the Indian Limitation Act, 1908 until that period expires. *GAYA DUTT v. JHUMMAN LAL* (1915) 1 L R 57 AU 400*

3. ——— Accounts—Sut for unpaid agent—Stipulation to read accounts yearly—*See also* *See also* A suit by the principal against his agent for recovery of sums to be found due upon adjustment of accounts by sale of immovable properties hypothecated by the agent is a suit to enforce a charge on immovable property within the meaning of Art. 132 of the Indian Limitation Act. *Hafizulla v. Mandal v. Joda Nath Saha* 1 L R 35 Calc. 295 followed. *Jogesh Chandra v. Benode Lal Roy* 11 C W N 192 not followed. *MADHUSUDAN SINGH v. PASHAL CHANDRA DAS* (1915) 1 L R 43 Calc 248 19 C W N 100

4. ——— Sut for the recovery of malikana—Limitation—Distinction between personal claim and claim against property charged—Where a plaintiff sued for the recovery of malikana for eleven years and claimed a decree against the property on which the malikana was charged it was *held* that the suit was within time having regard to Art. 132 of the first schedule to the Indian Limitation Act, 1908. *SHAIKA ALI v. PHILLO* 1 L R 35 AU 185 followed. *Pam Dan v. Kalka Prasad* 1 L R 7 AU 50, referred to. *NATHU v. GHANSHAM SINGH* (1918) 1 L R 41 AU 259

5. ——— Loan of paddy secured on land—Sut to recover—Limitation—Where a mortgage bond to secure a loan of paddy provided that in default of payment of the paddy and the interest which was also provided to be paid in paddy the mortgagee would be entitled to attach and sell the mortgaged property and real estate dues and if that was insufficient would be entitled to realise them also from other moveable and immovable property of the mortgagor and from the person. *Held* that it was clear that upon failure to deliver the paddy the mortgagee was entitled to recover money and not to claim specific paddy, and hence the mortgagee's suit to enforce the bond was governed by Art 132

LIMITATION ACT (IX OF 1908)—contd**Sch I, Art 132—contd**

of Sch I of the Limitation Act **JOGENDRA NATH SINGH v MOHAN LAL KHAN (1919)**

23 C W N 951

6 **Loan of paddy charged on land—Suit to recover—Limitation** A mortgagor borrowed a quantity of paddy from the mortgagee (valued in the bond at Rs 192) agreeing to repay the paddy with interest at a certain date, failing which the mortgagee was to be entitled to recover the price of the paddy with interest by sale of the mortgaged land. **Held**, distinguishing **Rash Behari Das v Kunya Bihari Patra 24 C L J 348**, that Art 132 of the Limitation Act applied to a suit by the mortgagee to enforce the bond. **INDRA NARAIN SHAO v DEJABAR SAMANTA (1919)** 23 C. W. N 949

7 **A suit to recover the value of paddy charged upon immovable property is a suit to enforce payment of money charged upon immovable property within the meaning of Art 132 of the Act** **RANCHAND SUN v ISWARCHANDRA GIRI AND OTHERS (1920)**

25 C W N 57

8 **Limitation—Bond payable by instalments—Stipulation empowering creditor to sue for whole amount on default of payment of interest—Terminus a quo** A mortgage bond provided a period for repayment but also provided that if the borrower made default in the payment of any instalment of interest, the creditor could sue for the whole amount due. **Held**, that limitation, under article 132 of the first schedule to the Indian Limitation Act, 1908 began to run from the date of the first default, that being the date when according to the terms of the bond the whole money became due. **Mata Tahal v Bhagwan Singh 19 A L J, 496** not followed. **NATHI v TUNSI** I. L. R. 43 All 671

9 **Mortgage—Bond payable by instalments—Total amount due exigible on default of payment of any instalment—Limitation—Terminus a quo** In a mortgage bond, dated the 21st of February, 1903 it was stipulated that the mortgage debt would be payable at the end of twelve years. It was further stipulated that the mortgagor would pay Rs 500 annually in payment mostly of interest, and that if default was made in such annual payment the mortgagee were to have power, without waiting for the expiry of the stipulated period to set aside all the stipulations embodied in the document and to bring a suit in court to realize the entire principal together with interest and costs from the persons of the mortgagors and from the hypothecated property. No annual instalment was ever paid. The mortgagee brought a suit on their bond on the 21st of February, 1917, that is to say on the last day of a period of twelve years from the time that the mortgage money was expressed to be payable. **Held**, that article 132 of the first schedule to the Indian Limitation Act 1908, applied and the suit was barred. **Goga Das v Jhannan Lal I L. R., 37 All, 400**, followed. **PANCHAM v ANNAH HUSAIN** I. L. R. 43 All 596

Sch I, Arts 132, 75—Mortgage bond—Interest payable annually—Principal payable on a future date—Principal and interest payable immediately on default—Option to mortgagee to enforce payment—Suit after twelve years from default, if

LIMITATION ACT (IX OF 1908)—contd**Sch I, Arts 132, 75—contd**

barred—Gift by a Hindu widow of a mortgage bond due to her husband—gift, if valid and to what extent—Suit by widow, competency of transferee to continue—Decree, nature of Suits for money due on hypothecation bonds, though containing stipulations for payment in instalments, are governed by Art 132 and not by Art 75 of the Limitation Act (IX of 1908) and there is no warrant for importing into the former the words of the latter article. A hypothecatee is not bound to take advantage of a clause in his bond, which in case of default in payments of interest, enables him (a) to demand the principal before its due date and (b) also claim a higher rate of interest from the date of default. Hence a suit restricted to a claim to recover the principal and interest at the original rate, brought within twelve years from the date originally fixed for payment of the principal though beyond twelve years from the date of first default in respect of interest, is not barred by limitation. **Athalaruppa Goundan v Kumarasami Goundan, I L J 2nd Mad 27** **Astley v Earl of Essex 18 Eq 290** and **Goswami of Magdalen Hospital v Knotts 5 Ch D 175**, followed. **Perumal Ayyan v Alagarasami Chagavahar, I L R 20 Mad 245**, explained. A gift by a Hindu widow of a mortgage bond executed to her in discharge of a debt due to her husband, is valid to the extent of the interest that had accrued due at the date of the gift and the transferee is competent after her death to prefer a second appeal in a suit filed by her on the bond and obtain a decree for recovery of interest only due thereon. **NARNA v BHARANI AMMA (1919)**

I L. R. 39 Mad 681

Sch I, Arts. 132, 144—Limitation Mortgage—Suit for sale on a mortgage impeding defendants alleged to be in adverse possession of the mortgage property **Held** that a suit for sale on a mortgage can always be brought under art. 132 of the first schedule to the Indian Limitation Act, 1908, against all persons in possession whose possession is subsequent to the date of the mortgage provided that the suit is brought within twelve years from the time at which the money became due. Such a suit does not become a suit for possession governed by art 141 because it may be necessary to impend persons who are in possession and claim a title by possession adverse to the mortgagor. **Araon Singh v Bakur Ali Khan I L J 5 All 1**, distinguished. **Nandan Singh v Juman, I L R 34 All 640** and **Alimdar Mandal v Mahlan Lal Dey I L R 33 Cal 1915** referred to. **RAJ NATH v NARAIN DAS (1914)**

I L. R. 36 All 567

Sch I, Art 134—**See HINDU LAW—ENDOWMENT**

I L. R. 33 Cal 526

I L. R. 40 Mad 745

See LIMITATION I L. R. 43 Cal 34

See MUTHU—HEAR OF

I L. R. 38 Mad 356

See MAHOMEDAN LAW—ENDOWMENT

I L. R. 47 Cal 886

See MAHOMEDAN LAW—WIDOW

I L. R. 43 All 127

See PELLICCIOLI FIDUCIARIES

3 Pat. L J 327

LIMITATION ACT (IX OF 1908)—*cont'd*Sch. I, Art. 134—*cont'd*

1. ————— *Mortgage—Sale by mortgagee—Suit for redemption by mortgagee against mortgagee and vendee—Plea of purchase for consideration—Omission of the words "in good faith" in Art 134* The omission of the words "in good faith" from the Art 134 of the first schedule to the Limitation Act of 1908 does not entitle a person who purchases with full knowledge that his vendor's title is merely that of mortgagee to the benefit of article. *DRISAL SINGH v KALLU* (1917) . . . I L R 37 All 880

2. ————— *Puina lease granted by shebait, if "transfer for valuable consideration"—Non payment of premium for creation of lease if alters nature of transfer—Suit by shebait for recovery of possession—Limitation—S 30, when applies* The grant of a puina lease of a property belonging to an idol by the shebait is a transfer for valuable consideration within the meaning of Art 134, Sch. I, of the Limitation Act, whether or not and premium was paid for the creation of the lease and a suit brought more than 12 years after the date of the lease by the then shebait to recover possession of the property is barred under Art 134 S 30 of the Limitation Act only applies when there is a period of limitation prescribed both by the Act of 1877 and the Act of 1908. *RAMESHAR MALIA v RAM CHANDRA ACHARYA GOSWAMI* (1915) 19 C W N 1032

3. ————— *Transfer with possession by mortgagee—Transferee taking possession of some items later than date of transfer, effect of—Transferee not taking possession at all of some other items, effect of—Limitation, from what date date of transfer or date of possession* "Transfer" in Art 134, meaning of—Question referable to a Full Bench, when—High Court, Appellate Side Rules, r 2 Held by the Full Bench (WALLIS, C J, and COURTS TROTTER, J, contra) that Art 134 of the Limitation Act does not apply to a transfer from a trustee or mortgagee under which possession is not taken by the transferee. Per WALLIS, C J, and COURTS TROTTER, J—Art 134 of the Limitation Act applies to a transfer from a trustee or mortgagee under which possession is not taken by the transferee. Where possession is taken under the transfer not on the date of the transfer but some time later, Held (a) Per WALLIS C J, and COURTS TROTTER, J—Art 134 of the Limitation Act applies and time begins to run from the date of transfer and not from the date of taking possession, (v) Per ABDUR RAHIM and SESHAGIRI ATYAR, J J—Art 134 of the Limitation Act applies, but time begins to run not from the date of transfer but from the date of taking possession, and (c) Per SRINIVASA AYYANGAR J—Art 134 of the Limitation Act is not applicable to the case. It applies only in cases where the transferee takes possession on the date of transfer and where the mortgagee is entitled even on the date of transfer to sue the transferee for possession. Per SRINIVASA AYYANGAR, J—Obiter "Transfer" in Art. 134 means "transfer of title" and not "transfer of possession." Held by the Full Bench—Under r 2 of the Rules of the High Court Appellate Side only a question of law involved in the determination of the case may be referred to a Full Bench; and that the third question referred to

LIMITATION ACT (IX OF 1908)—*cont'd*Sch. I, Art. 134—*cont'd*

them did not so arise in the case *SEETH KUTTY v KUSHI PATHEMARIA* (1917)

I L R 40 Mad 1040

4. ————— *Mortgagee and mortgagee—Redemption—Purchase by mortgagee of a Court sale—Transfer by mortgagee to third persons—Mortgagee re purchasing from the transferee—Mortgagee entitled to redeem the property re-purchased. The properties in suit were mortgaged with possession in 1885 by two persons, S and D. In 1888 in execution of a money decree against the mortgagors the properties were sold and the interest of the mortgagor S alone was purchased by the mortgagee at a Court sale. In 1892 three of these properties survey Nos. 11, 54 and 87 were sold by the mortgagee to third persons, and in 1898 the mortgagee bought back Survey Nos. 54 and 87 from the vendees. The plaintiffs mortgagees sued for redemption of all the properties in 1910. The lower appellate Court held that D alone was entitled to redeem all the properties in suit except Survey Nos. 11 54 and 87 in respect of which the claim to redeem was barred under Art 134 of the Limitation Act, 1908, and that D could have no right to claim compensation on account of these lands. On appeal to the High Court by D Held that D's claim for redemption and compensation in respect of Survey No. 11 was rightly disallowed but that he was entitled to redeem Survey Nos. 54 and 87 as these properties having come back into the possession of the defendant he must be treated as mortgagee and not as an innocent transferee without notice. *KALU DEVBA v RUPCHAND KISOYDAS* (1920)*

I L R 44 Bom 843

5. ————— *Suit by Mafzal to recover possession of Waf's property mortgaged, by previous Mafzal. Date from which limit on to be reckoned was held to be 12 years from the date of the mortgage* *NABAIN DAI v KAZI ABDUR RAHIM* 24 C W N 690

6. ————— *Mortgage—Transfer by mortgagee—Rights of the transferee—Redemption—Construction of statute—Legislative exposition* The plaintiffs sued in the year 1906 to redeem a mortgage effected prior to the year 1834. The representatives in title of the mortgagee claiming to be absolutely entitled mortgaged the land with possession to A in 1891 and he sold his rights to defendant 5. The suit having been brought more than 12 years after the alienation to A, defendant 5 claimed as against the plaintiffs the interest of a mortgagee by virtue of his adverse possession under Art 134 of the Limitation Act (XV of 1877) Held that it was obligatory on the plaintiffs to redeem defendant 5 before they could recover possession of the property. *Yesu Rang, Kainath v. Bolleekhan Lotekhan* I L R 15 Bom. 533 *Malya v Fakirchand* I L R 22 Bom. 225 and *Ramechandra v Shesik Mohidin*, I L R 23 Bom 614 followed. *Abhairam Goswami v Shyama Charan Aandi*, L R 36 I A 148 and *Ishwar Shyam Chand Jiu v Ram Kanai Ghose* I L R 33 Cal 578 explained. The alteration in the language of Art 134 of the Limitation Act (IX of 1908) was a legislative recognition of the soundness of the view that the Article was intended to give protection to all transferees for value including mortgagees. *Surft v Jewsbury* L R 9 Q B

LIMITATION ACT (IX OF 1908)—contd**Sch. I, Art. 134—contd.**

312, and *Morgan v London General Omnibus Company*, 12 Q B D 201, referred to. **RAGAS UMARJI v. NATHARHAI UTAMRAH** (1911)

I. L. R. 36 Bom. 146

*Neither under Mufha median nor Hindu Law is property conveyed to a Shebat or Mufuals on dedication—They are not trustees in the English sense but of specific property is specifically entrusted to such a person for specific purposes, he might be regarded as trustee with regard to that property. Where the head of a Mutt gave a permanent lease of property which had been granted for the general purposes of the Mutt and no necessity for the alienation was established. Held, That Art 134 of the Limitation Act which is controlled by s 10 of the Act did not apply to the case as the property in question was not property specifically conveyed to the Mastabipathe "in trust". Also, that the rent reserved in the lease was not "valuable consideration" within the meaning of the article. Held, further, that as, according to the well settled law of India, a Mohant is incompetent to create any interest in respect of Mutt property to endure beyond his life the possession of the lessee did not become adverse within the meaning of Art 144 of the Limitation Act until he died, and the acceptance of rent by his successor being properly referable only to a new tenancy created by himself, which it was within his power to continue during his life, the possession of the lessee did not become adverse again until his death. The legal position of Mohants, shebats, sayadanashins and mufuals discussed. Ordinarily speaking, the sayadanashin has a larger right in the surplus income than a mufual, for so long as he does not spend it in wicked living or in objects wholly alien to his office he, like the Mohant of a Hindu Mutt, has full power of disposition over it. **SIR VIDYA VASANTH THEETHA SWAMIDAL v. ALEXSAMI AYYAR.***

26 C. W. N. 538

Sch. I, Arts. 134, 144—

See ART 120 . I. L. R. 1 Lah. 186

See ADVERSE POSSESSION

I. L. R. 39 Mad. 679

See RELIGIOUS ENDOWMENT

I. L. R. 44 Mad. 831

Suit for redemption by co-mortgagor—Property already redeemed, re mortgaged and finally sold to second mortgagee—Limitation—Transfer of Property Act (IV of 1882), s 95 In 1860 the father of a family of four sons mortgaged some of the family property. In 1877, after the death of the father, one of the sons again mortgaged the property and with the money borrowed on the second mortgage paid off the first mortgage. The second mortgagee or his son remained in possession of the property as mortgagee until 1893, when the second mortgagee sold it to the son of the second mortgagee. In 1912, a grandson of the original mortgagor sued for redemption of the mortgage of 1860. Held that the suit was barred by limitation under Art 144 of the first schedule to the Indian Limitation Act, 1908, whatever might have been the position of the members of the family (which was not clear) as regards jointness or separation. Art 134 does not apply to a person who being interested in part of

LIMITATION ACT (IX OF 1908)—contd**Sch. I, Arts. 134, 144—contd**

a mortgage redeems the whole, such person being merely a charge holder and not a mortgagee. **Ashfaq Ahmad v Wazir Ali**, **I. L. R. 14 All. 1** distinguished. **JAI KISHAN JOSHI v. BUDHANAND JOSHI** (1915) **I. L. R. 38 All. 138**

Hindu Law—Rever

*soner—Suit by reversioner to recover possession after death of daughter of the last male owner—Lands mortgaged usufructually by last male owner in 1866—Sale in 1900 by mortgagee after male owner's death, during daughter's lifetime—Death of daughter in 1908—Suit in 1914 by reversioner against vendee for possession of lands—Bar of limitation A Hindu reversioner instituted a suit in 1914 to recover possession of certain lands which has been usufructually mortgaged by the last male owner in 1866, and had been sold for consideration by the mortgagee in 1900 after the death of the last male owner and during the lifetime of his daughter who had inherited his estates and died in 1906. The vendee who were unpleaded in the suit pleaded, inter alia, the bar of limitation. Held, that article 134 and not article 141 of the Indian Limitation Act (IX of 1904) applied to the case and that the suit was barred by limitation. **SESHA NAIDU v. PERIASAMI ODAYAR** (1921) **I. L. R. 44 Mad. 951***

*Sch. I, Arts. 134, 144 and 148—Mortgage—Mortgagee in possession dealing with mortgaged property as full owner—Adverse possession A mortgagee in possession, professing himself to be the full owner and not merely a mortgagee, mortgaged the property to a third party, whose heirs, having brought a suit on their mortgage and obtained a decree, put up the property for sale and purchased it themselves. Subsequently they sold by private contract the property which they had so purchased. The representatives of the original mortgagor then sued for redemption. Held, that neither article 134 nor article 148 of the first schedule to the Indian Limitation Act, 1908, applied to the suit, but article 144, and the suit was barred. The ultimate purchasers, the defendants, were entitled to add to the period of their possession the period of possession of the auction purchasers, their predecessors. **Hussain Ahamam v. Hussain Khan**, **I. L. R. 29 All. 471**, **Seeti Kutt v. Kunbi Pathumma**, **I. L. R. 40, Mad 1040** **Ammu v. Ramu Krishna Sastri**, **I. L. R. 2 Mad. 226**, **Chitlu v. Janki**, **I. L. R. 18 Bom. 51**, **Ahamed Kutt v. Raman Nambudri**, **I. L. R. 25 Mad. 99**, **Elayagan Sahas v. Elayagan Din**, **I. L. R. 9 All. 97**, **Sheo Nath Singh v. Mahipati Singh**, **2 A. L. J. 234**, referred to. **Babu Ram v. Banke Behar Lal**, **3 A. L. J. 424**, followed. **RAM PRASAD v. BUDH SEN.** **I. L. R. 43 All. 164***

Sch. I, Arts. 134 and 148—Mortgage

—Transfer from mortgagee—Suit for redemption—Mortgagor's right of redemption not defeated by reason of mortgagee's transfer In 1882 certain lands were mortgaged with possession by the plaintiff's father. In 1883 the mortgagee mortgaged the lands to the predecessor in title of the defendants representing himself as absolute owner. In 1916, the plaintiff having sued for redemption, the defendants contended that the suit was barred under Art 134 of the Limitation Act, 1908. Held, that the suit was not barred as on the facts the proper Article applicable to the case was Art 148 and not Art. 134 of Sch. I of the Limitation Act, 1908,

LIMITATION ACT (IX OF 1908)—contd.

Sch. I, Arts. 134 and 148—contd.

Per MACLEOD, C J—"A suit to recover possession is not the same thing as a suit to redeem, and a mortgagor's right to redeem the period of limitation for which is 60 years under Art. 143, will not be defeated merely because his mortgagee transfers the mortgage to another person."

TAIMIYA v SHIBULISAR (1919)

I L R 44 Bom 614

Sch. I, Art 135—

See CONTRACT ACT, ss. 126 AND 149

I L R 42 All 70

See MORTGAGE

I L R 38 All 97

Sch. I, Art 137—

See POSSESSION 4 Pat. L J 463

Sch. I, Arts 137, 139, 142—*Suit for*

possession by auction purchaser—Onus on plaintiff to prove judgment debtor's possession at date of sale or that judgment-debtor became entitled to possession within 12 years of suit. The plaintiff, an auction purchaser of certain lands, sued to recover possession on declaration of title. His case was that the judgment-debtor was in possession at the date of the sale and subsequently, and when he went to take possession on their treating the land he was met by the defendant who alleged that they had been in possession from before the execution sale and contended that the suit was barred. *Held*, that the suit was governed either by Art. 137 or Art. 138 or Art. 142 of the Limitation Act and the onus was entirely on the plaintiff to prove not only that he had a title but a subsisting title which he had not lost by the prescriptive sections of the Limitation Act, i.e., he must show which Article of the Limitation Act saved his suit from the bar of limitation and the lower Court erred in law in throwing the burden of proof on the defendants to show that they had been in adverse possession for over 12 years. *DOKARI JODDAR v NILMANI KUNDU* (1916)

22 C W N 319

Sch. I, Art 138—

See CIVIL PROCEDURE CODE 1908 s. 47

I L R 35 Bom 452

See POSSESSION. 4 Pat. L J 463

"Date when sale becomes absolute," significance of—Arts 137, 138 and 144, which applies when an execution purchaser obtains symbolical possession, but is kept out of actual possession—S. 16, if applies to a suit for possession by such an execution purchaser. A tenure was purchased at an execution sale, which was confirmed in August 1902 symbolical possession was delivered to the purchaser in January 1904. An application for setting aside the sale was made in June 1905 and was rejected in April 1906. Being kept out of actual possession the purchaser brought a suit for possession in July 1914 and added some Defendants in March 1916, i.e., more than 12 years from the date on which the sale became absolute, as well as from the date when symbolical possession was delivered to the execution purchaser. *Held*, that the sale became absolute on the confirmation of the sale in August 1902 and not in April 1904 when the application for setting aside the sale was dismissed. The confirmation of a sale cannot be kept in abeyance (when no proceedings are taken to set aside the sale before the confirmation) in order to

LIMITATION ACT (IX OF 1908)—contd.

Sch. I, Art 138—contd.

enable the judgment-debtor to take such proceedings afterwards. So if Art. 138 of the Limitation Act applied, the suit would be barred, even deducting the time during which the application for setting aside the sale was pending. Art. 137 did not apply as the judgment debtor was in possession at the date of the sale. Art. 138 too was not the proper article applicable to the case. The purchaser obtained symbolical possession, which was as effective as actual possession against the judgment debtor, and if the latter continued in possession it was adverse against the purchaser from the very day on which he got symbolical possession. The purchaser therefore had a fresh cause of action for instituting the suit for possession against the judgment debtor. In such a case Art. 138 does not apply but Art. 144 applies. *Gopal v Krishna Rao* I L R 25 Bom. 275 referred to. Where Art. 144 applies no deduction of time under s. 16 of the Limitation Act or under the general principles of equity is allowable and the suit was therefore barred. *BRAJENDRA KUMAR ROY CROWDHURST v ASHUTOSH ROY*

28 C. W. N 364

Sch. I, Arts 138, 144—

Execution of decree—Successive purchasers of same property—Suit by subsequent purchaser to recover from earl or purchaser—Limitation Art. 138 of the Limitation Act only applies to suits in which the auction purchaser is the plaintiff and the judgment-debtor or some one claiming through him is the defendant. *Ram Lalhan Rai v Gayadhar Rai*, I L R 34 All. 224 and *Akroda Kanta Roy v Krishna Das Laha* 12 C L J 378 referred to. *BHAGWANT SINGH v BHOLI SINGH* (1913)

I L R. 35 All. 432

Limitation—Suit for joint possession—Purchase of undivided share—Effect of an order for formal possession against the judgment debtor On the 20th of March, 1900, plaintiff purchased at an auction sale in execution of a decree an undivided one third share in certain waste land. On the 20th of September 1900, plaintiff obtained under s. 319 of the Code of Civil Procedure, 1882, formal possession of the property purchased. On the 18th of September, 1912 plaintiff filed a suit for recovery of joint possession of the share. *Held* that the suit was within time. *Mangal Prasad v Devi* I L R 19 All. 499, *Jagan Nath v Mlap Chand*, I L R 28 All. 722 *Narain Das v Lalla Prasad*, I L R 21 All. 269 and *Rahim Baksh v Muhammad Hafez*, 19 Indian Cases 319, referred to. *RAJENDRA KISHORE SINGH v BHAGWANT SINGH* (1917)

I L R. 39 All. 460

Sch. I, Arts 139, 142—

See ART 137

22 C W. N 319

Sch. I, Art 140—

See LIMITATION (18) I L R. 41 I A 287

Sch. I, Arts 140, 141—*Suit by a reversioner—Mortgage—Redemption—H widow, disappearance of—Presumption of death—Onus of proof—Indian Evidence Act (I of 1872), s. 108* One S died leaving him surviving his widowed daughter-in-law R. In 1860 R passed a mortgage bond in

LIMITATION ACT (IX OF 1908)—*contd.***Sch. I, Arts. 140, 141—*contd.***

favour of the 1st defendant's father. In 1803 R disappeared and was not heard of since 1870. In 1911 the plaintiff, as the reversioner of S, sued to recover possession of the property alienated by R. The defendants pleaded limitation. The first Court decided in plaintiff's favour on the ground that under s. 109 of the Indian Evidence Act the Court must presume that R died at the time of the suit and therefore the claim was in time. The lower Appellate Court reversed the decree and dismissed the suit holding that the presumption of R's death at the time of the suit could not be drawn and that the *onus probandi* which lay heavily on the plaintiff to show when R died was not discharged. The plaintiff having appealed; *Held*, that it lay on the plaintiff to show affirmatively that he had brought his suit within twelve years from the actual death of R. *Nepean v Deo d Knight, 2 M and W 824*, followed. Art. 141 of the Limitation Act is merely an extension of Art. 140, with special reference to persons succeeding to an estate as reversioners upon the cessation of the peculiar estate of a Hindu widow. But the plaintiff's case under each Article rests upon the same principle. The doctrine of non-adverse possession does not obtain in regard to such suits and the plaintiff suing in ejectment must prove whether it be that he sues as remainder man in the English sense or as a reversioner in the Hindu sense, that he sues within twelve years of the estate falling into possession, and that *onus* is in no way removed by any presumption which can be drawn according to the terms of s. 109 of the Evidence Act, 1872. *JAYAWANT JIVANRAO v RAMCHANDRA NARAYAN (1915)*

I. L. R. 40 Bom. 239

Sch. I, Art. 141—

See ART 131 I. L. R. 45 Bom. 638

See HINDU LAW—ENDOWMENT

I. L. R. 43 Mad 665

See HINDU LAW—JOINT FAMILY PROPERTY I. L. R. 47 Calc. 274

See HINDU LAW—SUCCESSION

I. L. R. 39 All 117

See HINDU LAW WIDOW

I. L. R. 43 Mad 855

Dispossession in lifetime of full owner—Adverse possession against limited owner before Limitation Act of 1871, effect of— *Thal and survey maps, as evidence of title and possession.* Art. 141 only applies to cases where it is proved that the last full owner was in possession at the time of his death. If he himself was dispossessed and time began to run against him, the fact that on his death he was succeeded by his widow, daughter or mother would not arrest the operation of the law of limitation. Under the law as it stood before the Limitation Act of 1871 came into operation, adverse possession which extinguished the title of the female heir also extinguished the title of the reversioner and once the title was extinguished while the Limitation Act of 1859 or Reg. III of 1793 or Reg. II of 1805, was in force, it could not be revived by the introduction of the Limitation Act of 1871. *MOKEY DRA NATH BISWAS v SHANUSUNISSA KHAYUM (1914)* 19 C. W. N 1280

LIMITATION ACT (IX OF 1908)—*contd.***Sch. I, Arts. 141, 142, 144—**

See HINDU LAW—JOINT FAMILY.

I. L. R. 42 Bom. 69

Sch. I, Arts. 141, 144—Alienation by a widow—Death of the widow—Property taken by surviving co-widow—On her death property vesting in the daughter as reversionary heir—Suit by daughter's son to recover possession—Adverse possession. One D died leaving two widows K and R and daughters S and T. In 1897 the senior widow K sold the property in suit to defendant No. 1. In July 1902 K died. Thereupon R as the surviving co-widow took the property for a widow's estate. R died on January 17, 1903. On her death, the daughters S and T inherited the property. S died in 1907 and T in 1911. On January 13, 1915 S's son brought a suit to recover possession of the property sold by K. Both the lower Courts held that the suit was barred by limitation under Art. 144 of the Limitation Act 1908. On appeal to the High Court it was contended that the suit was governed by Art. 141 of the Limitation Act, 1908, and, if not, in any case, it was not barred by adverse possession under Art. 141. *Held*, that Art. 141 of the Limitation Act, 1908, did not apply as that Article was restricted to suits by a plaintiff whose right and title to sue for possession occurred upon the death of a female holding the limited woman's estate. The suit was, however, not barred under Art. 144 of the Limitation Act, 1908, as no adverse possession began to run against the plaintiff until the death of R on January 17, 1903. *MALKARJUN MAHADEO v AMRITA TEJARAM (1918)* I. L. R. 42 Bom. 714

Art. 142—

See ART 120 20 C. W. N. 481

See ART 121 I. L. R. 44 Calc. 412

See BENGAL SURVEY ACT 1905 s 41
6 Pat. L. J. 51

See HINDU LAW—JOINT FAMILY

I. L. R. 38 Mad. 684

See LIMITATION ACT, 1908, Art. 121

I. L. R. 43 Calc. 779

See POSSESSION 1 Pat. L. J. 148

Suit for possession—De facto possession with defendant—Burden of proof. Where the plaintiff alleges possession of land, and it is found that part of the land is *de facto* in possession of the defendant, the case falls under Art. 142, and not Art. 144, of Sch. II to the Indian Limitation Act (IX of 1908). Every suit for possession of immoveable property in which the plaintiff alleges that he has had possession must fall under Art. 142. It is only where the plaintiff does not allege that he has ever been in possession that the case will fall under Art. 144. In the former class of cases the plaintiff is bound to show that the dispossession or discontinuance of possession which gives rise to the starting point of limitation was within twelve years of the date of the suit. *SUBAPPA v VEKKAPPA (1914)*

I. L. R. 39 Bom. 335

In cases under Art. 142 of the Limitation Act, although the Plaintiff's title is proved, the *onus* is not upon the Defendant to show that the Plaintiff lost his title

LIMITATION ACT (IX OF 1908)—*contd.*Art. 142—*contd.*

by adverse possession on the part of the Defendant. **RAKHAL CHANDRA GHOSH v DURGADAS SAMANTA** 26 C. W. N. 725

"Discontinuance" and "dispossession"—*time from which limitation runs*—"Discontinuance" in Art. 142 of the Limitation Act, 1908, implies abandonment of possession followed by the actual possession of another person. "Dispossession" in the same article implies ouster from possession followed by the possession of another person. An owner of property must be considered in law to be always in possession so long as there is no intrusion. **MADAN MOHAN SINGH v BRAJ BIHARI LAL** 5 Pat. L. J. 592

Ejectment—plaintiff's title proved but neither side found to be in possession within 12 years of suit—presumption. A Court can draw a presumption as to possession from title. In a suit for ejectment, where the plaintiff's title is established but neither party is found to have been in possession within 12 years of the institution of the suit, and the condition of the land during that time is such as to render it unfit for actual enjoyment in the usual way, the plaintiff's possession will be presumed. **INDER LALL v MUHAMMAD RAM SARAT KUER** 5 Pat. L. J. 724

A suit to reverse or modify a Collector's order under s. 41 of the Bengal Survey Act is governed by Art. 142. **MUNANTH PARNHU CHAMAN BHUTTI v SECRETARY OF STATE** 6 Pat. L. J. 51

Arts. 142 and 144—

See Art. 142. I. L. R. 39 Bom. 335

See Art. 144. 2 Pat. L. J. 506

See CONSTRUCTION OF DOCUMENT
I. L. R. 41 Bom. 5

See LIMITATION I. L. R. 48 Calc. 694
I. L. R. 44 Calc. 858

See LIMITATION ACT, s. 51
I. L. R. 46 Calc. 694

See UNSETTLED PALAYAM
I. L. R. 41 Mad. 749

Where a right to catch fish is a benefit derived from the ownership of land upon which the water in which the fish are caught collects, dispossession from that benefit is dispossession from immovable property within the meaning of arts. 142 and 144 of Sch. I to the Limitation Act, 1908. **SYED BAKAR HUSAIN v RANI RANJIT KUER** 2 Pat. L. J. 289

Suit to recover possession—Adverse possession of trespasser—One trespasser cannot tack his own wrongful possession to the wrongful possession of another trespasser. The property in dispute, which belonged to V, was wrongfully sold in execution of a decree and purchased by C. C was put in possession of the property in 1893. V applied to recover possession of the property by setting aside the sale. On V's death, the name of his sister B was placed on the record as his heir. The proceedings terminated in B's favour and she recovered possession of the property on the 14th October 1903. The plaintiff who was the nearer heir to V than B, filed the present suit on the 11th October 1915 to recover possession of the property from the absence of

LIMITATION ACT (IX OF 1908)—*contd.*Arts. 142 and 144—*contd.*

B.—*Held*, that the suit was within time as it was governed by Art. 144 and not by Art. 142 of the Indian Limitation Act, 1908, and that B, the latter of the two trespassers, could not be allowed to add to the period of her hostile possession the period of possession of a former trespasser C from whom she did not derive title in any way. **RANCHANDRA BALWANT v BALAJI GANESH (1920)** I. L. R. 45 Bom. 570

Sch. I, Art. 143—

See Art. 32. 20 C. W. N. 661

See Art. 113 I. L. R. 42 Mad. 590

See LIMITATION ACT, 1908, s. 113
I. L. R. 42 Mad. 690

Suit for lease possession on breach of covenant of lease—Period of limitation and point of time whence period runs. **MOTILAL PAL CHOWDHURY v CHANDRA KUMAR SEN** 24 C. W. N. 1064

Sch. I, Art. 144—

See s. 28. I. L. R. 40 All. 461

See Art. 120. I. L. R. 42 Bom. 333

See Art. 132. I. L. R. 36 All. 567

See Art. 134. 26 C. W. N. 538

See Art. 141. I. L. R. 42 Bom. 714

See ADVERSE POSSESSION
I. L. R. 44 Calc. 425

See EASEMENT ACT 1882, ss. 13 and 47
I. L. R. 45 Bom. 80

See HINDU LAW GUARDIAN
I. L. R. 38 Mad. 1125

See HINDU LAW—JOINT FAMILY
I. L. R. 42 Bom. 69

See IVAM I. L. R. 42 Mad. 673

See LIMITATION I. L. R. 46 I. A. 285
I. L. R. 43 Mad. 244

I. L. R. 44 Mad. 883

See LIMITATION ACT, Art. 121, 142, and 144. I. L. R. 43 Calc. 776

See RELIGIOUS ENDOWMENTS
3 Pat. L. J. 327

See SALE FOR ARREARS OF REVENUE
I. L. R. 44 Calc. 46

Right to take water from a well—

See EASEMENT ACT 1882, ss. 13 and 47
I. L. R. 45 Bom. 80

Suit by more distant collaterals for possession—within 12 years of death of nearest reversioner who did not contest mutation in favour of defendants—adverse possession—compensation to defendants, collaterals of the donees, for trees planted by the donees. 1st December 1897 the widow of one H gifted certain land to her daughter's sons, D and N. On 21st January 1900, N died and D obtained possession of his share and retained it till his death in 1909. After D's death mutation was effected in favour of defendants, D's first cousins, which was accepted by A, the nearest reversioner. A died in 1914 and in 1918 plaintiffs, collaterals in 4th degree of H, the original donor's husband, brought the present suit for possession on the ground that the donees direct line of des-

LIMITATION ACT (IX OF 1908)—*contd.*

cendants having failed the lands revert to plaintiffs. *Held*, that the suit was not barred by limitation in respect of N's share, plaintiffs having had no right to sue for possession until the death of A in 1914 *Sundar v Salig Ram* (25 P R 1911, F. B.), referred to *Kabla Singh v. Dials* (113 P R 1916), distinguished. *Held also*, that the defendants, collaterals of the donees, were not entitled to claim compensation for trees planted on the land by the donees and that the ordinary principle *quid quid plantatur solo, solo cedit* must prevail. *HANNAHAN v DASOUDH*

I. L. R. 1 Lah. 210

Adverse possession, continuity of 12 years, whether death of trespasser operates as break in Where the proprietor of land sued a tenant-holder for recovery of possession of land on which the latter had encroached, *Held*, that the proprietor, having shown that he had a good title to the land prior to 12 years before the institution of the suit, was entitled to claim the presumption that he was in possession at that time and that his possession continued till within 12 years of the institution of the suit, and the suit, therefore, was in essence a suit for declaration of title and confirmation of possession, and was governed by art. 144 of the Limitation Act, 1908, and not by art. 142. Therefore the tenant holder's plea that the encroachment had been begun by his father and that the period for which he and his father had been in possession was more than 12 years prior to the institution of the suit, did not establish adverse possession for 12 continuous years as there was a break in the period on the death of the father. The character of the land cannot affect the principle of law which requires that the plaintiff should give affirmative evidence of possession within 12 years in every suit under art. 142 of the Limitation Act, 1908. *MIDYARORE ZAMINDARY COMPANY, LIMITED, v PANDAY SARDAR*

2 Pat. L. J. 500

Sch. I, Arts. 144 and 148—

See LIMITATION I. L. R. 41 Mad. 650

See MORTGAGE 6 Pat. L. J. 680

Sch. I, Arts. 144 and 149—

See LIMITATION I. L. R. 39 Mad. 617

Sch. I, Art. 145—

See CONTRACT ACT, s 162
26 C. W. N. 772

Sch. I, Art. 148—

See ART 134 I. L. R. 44 Bom. 614
See ART 148 26 C. W. N. 123

See LIMITATION (51) I. L. R. 46 Calc. 111

See MORTGAGE I. L. R. 38 All. 540

See TRANSFER OF PROPERTY ACT, 1882,
s 99 24 C. W. N. 229

1. ———— Limitation—Usufructuary mortgage—Redemption Right of purchaser of equity of redemption in part of the mort-

LIMITATION ACT (IX OF 1908)—*contd.*Sch. I, Art. 148—*contd.*

gaged property A purchaser of the equity of the redemption in a part of the mortgaged property, is entitled to redeem his own portion of the property within sixty years of the date of the mortgage from another person who having purchased another portion of the mortgaged property has redeemed the entire mortgage and is in possession of the entire property. The limitation applicable to a suit of this description is that provided by Art. 148 of Sch. I to the Indian Limitation Act. *Ashfaq Ahmad v Wazir Ali*, I. L. R. 14 All. 1, followed. *Jai Kishan Joshi v Budhanand Joshi*, I. L. R. 35 All. 133, referred to. *WAZIR ALI v ALI ISLAM* (1918) I. L. R. 40 All. 633

2. ———— Persons owning a portion of the equity of redemption paying off the whole mortgage—Suit by remaining co-sharer to redeem—Limitation—Mortgage and charge—Transfer of Property Act (IV of 1882), ss 35, 100—Persons taking exclusive possession under a Court sale of the whole, though interest of certain co-sharers only sold—Possession, whether as co-sharer or exclusive Where on 7th May 1890 in execution of a decree against two out of three brothers who had mortgaged their property, one A purported to purchase the whole property which he redeemed on 6th April 1892 by paying off the mortgage, and A or persons claiming through A remained in sole possession of the property for 19 years from 19th April 1892 when A obtained possession through Court, until the present suit by an assignee of the share of the remaining brother A was brought for redemption of A's one third share of the property in the hand of A's successor in interest. *Held*, that under a 93 of the Transfer of Property Act, A obtained a charge on the one third share of A, which not being a mortgage, Art. 148 of the Limitation Act did not apply to the suit. That suit having been brought more than twelve years from the date when the charge came into existence and more than twelve years from the date when A obtained exclusive possession was barred by limitation. That in the circumstances, the possession of A under a sale of the whole property was not that of a co-sharer of A and was exclusive of him. *PURNA CHANDRA PAL v BARODA PRASANTA BHATTACHARJYA* (1918) 22 C. W. N. 637

3. ———— Suit for redemption of a *lekha-mukhi* mortgage—Limitation—Starting point of *Held*, that a suit for redemption of a *lekha mukhi* mortgage is governed by art. 148 of the Limitation Act and the starting point of limitation is the date of the mortgage. *Ranaja v Mussammat Piarce* (39 P R 1867) and *Gali Haf v Shera* (39 P R 1881) referred to—also *Ruttigan's Customary Law*, 1111 Edition, page 151, and *Ghose's Law of Mortgage*, IV Edition, Volume I, page 103. *KHANDU LAL v FARAZ*
I. L. R. 1 Lah. 80

Sch. I, Art. 149—

See LIMITATION I. L. R. 39 Mad. 617

Sch. I, Art. 152—

Limitation—Appeal—Jurisdiction—Appeal presented to Judge at his private house after court hours A memorandum of appeal was presented to a District Judge at his private house, after court hours on the last

LIMITATION ACT (IX OF 1908)—*contd.***Sch I, Art. 152—*contd.***

day of limitation *Held*, that the Judge had jurisdiction to accept the memorandum of appeal so presented, though he was not obliged to do so. *Jai Anar v Hara Lal* 7 A W P H C Rep. 5 overruled. *THAKAR DINDAS v HARI DAS* (1912) I L R. 34 All 482

Present on of appeal beyond the prescribed period of limitation—Proper order to endorse on such memorandum of appeal—Suits Valuation Act (VII of 1887), s 5—Court Fees Act (VII of 1870), s 7, sub s. (4) cl. (c)—Bombay Civil Courts Act (Bom Act XIV of 1869), s 8 and 26—Party following mistaken advice as to proper Court to which to appeal—Sufficient cause for not presenting appeal in proper time—Power of Desai in Belgaum District to alienate hereditary property of the Vatan as against his widow, his adopted son, and the servants of the Vatan—Bombay Regulation XVI of 1897—Bombay Act II of 1863. Where a memorandum of appeal is presented beyond the prescribed period of limitation the proper order which the Court should endorse on it would be that it was presented for admission on the date when the memorandum of appeal was handed into the office of the Court and that notice of the order and its dates should be given to the respondent. *Krushnasami Panlondar v Ramasami Chet* (1891) 1 L R 41 Mad 412, 1 L R. 45 I A 25, followed. An appeal from a Subordinate Judge which from its nature should rightly have been presented to the District Court and not to the High Court, was not presented to either Court until after the period of 30 days prescribed by the Limitation Act, 1908, Sch. I, Art. 152, had expired for an appeal to the District Court, it was then, on 19th July 1910 presented to the High Court well within the 90 days allowed for such an appeal, but the High Court directed it to be presented to the District Court which made an order admitting it without prejudice to any objection that may be taken by the respondent as to its being barred by limitation. It appeared that the District Judge had when Legal Remembrancer advised that the appeal rightly lay to the High Court when it was presented to that Court on 19th July 1910. After the District Judge had admitted the appeal it was, by order of the High Court, removed to that Court and, after hearing the parties, and considering the affidavits which were filed, an order was made by the High Court admitting the appeal on the ground that they were satisfied that there had been sufficient cause shown for not having preferred the appeal to the District Court within the prescribed period of limitation. *Held*, that the appeal was not barred by limitation the fact that the defendants had acted on mistaken advice as to the law in appealing to the High Court in 1910 did not preclude them from showing that it was owing to their reliance on that advice that they had not presented the appeal to the Court of the District Judge within the proper period. *By: Indar Singh v Anasahi Ram*, 1 L R 45 Cal 91 1 L R 44 I A 213, referred to. On the question whether a Desai in the Belgaum District could dispose by will of the hereditary lands of the Vatan as against his widow his son adopted by the widow, and the hereditary servants interested in the Vatan property, their Lordships of the Judicial Committee agreed with the High Court in holding

LIMITATION ACT (IX OF 1908)—*contd.***Sch I, Art 152—*contd.***

that such property was not alienable. Only the testator's private property was alienable. *Subbarao v The Collector of Belgaum* (1918) I L R. 43 Bom 378

Sch I, Art 154—**See SANCTION FOR PROSECUTION**

I L R. 40 Cal. 239

I L R. 29 Mad. 750

Sch I, Art 156—*Applicability of, to appeals under Land Acquisition Act (I of 1894).* Art 156 of the Limitation Act (IX of 1908) applies to appeals filed under s 54 of the Land Acquisition Act (I of 1894). *Agga Muhammad Hamadani v Cohen* (1936) 1 L R 13 Cal 221, referred to. *RAMASAMI PILLAI v DEPUTY COLLECTOR OF MADURAI* (1920) I L R. 43 Mad 51

Sch. I, Art 158—**See ARBITRATION I L R 46 Cal 721****Arbitration—Award**

Application to set aside—Form of—Practice The form which an application to set aside an award under the Second Schedule of the Civil Procedure Code should take is nowhere prescribed or indicated. It is sufficient if some notice is given to the proper office that the party objects to the award, and the date on which such notice is given is for the purpose of the Indian Limitation Act, the date on which the application is made. *GOPALJI KALLIANJI v CHHAQANTAL VITTHALJI* . . . I L R 45 Bom. 1071

Art 161, read with s 17, Provincial Small Cause Courts Act (IX of 1887)—Application for review of judgment made on the last day of limitation without the required deposit of security, if barred—Limitation Act (IX of 1908), s 5, if empowers the Court to grant extension of time for the deposit, after the application was made in time. An application for review of judgment in a Small Cause Court suit was made on the last day of the period prescribed for limitation; but without deposit of the amount of costs or security for the same as required by s 17 of the Provincial Small Cause Courts Act. On the following day the Court allowed the applicant time for making the deposit, which was eventually made and the application for review was granted. *Held*, that as the application failed to comply with the provisions of s 17 of the Provincial Small Cause Courts Act, the application for review was not a proper application in time and it was barred under Art 161 of the Limitation Act. It was doubtful whether s 5 of the Limitation Act applied to the case at all as the application for review was made within time. *ABDUL SHUKR v MAHAMMAD ATTA* . . . 24 C W N 380

Sch I, Art 161—**See LIMITATION (67) 23 C. W N. 553****Sch. I, Art 164—****See s 6 . . . I L R. 35 Mad. 678****See EX PARTE DECREE.**

I L R. 39 Cal. 506

See PROMISE I L R. 41 Cal. 819

LIMITATION ACT (IX OF 1908)—*contd*Sch. I, Art. 164—*contd*.

*Limitation Act (XI of 1877), s. 11 and Sch. II, Art. 164, and (IX of 1908), s. 11 and Sch. I, Art. 164, applicability of—*Application to set aside *ex parte* decree passed before Amending Act—Provincial Small Cause Courts Act (XV of 1909), s. 17—Deposit of security after application—Power of Court to extend time—Fraud, knowledge of, onus of proof as to—*Simble*. Where an application to set aside an *ex parte* decree is made after the Limitation Act of 1908 came into operation although the decree was passed before it came into force, the provisions of the Act of 1908 and not those of the Act of 1877 would apply. An *ex parte* decree was obtained in a Small Cause Court on the 7th August 1908 and on the 14th December 1909 a fraudulent entry was obtained in the records of the Court that the decree had been partially executed by attachment of moveables. On the 20th February 1909 the judgment-debtor first became aware of the existence of an *ex parte* decree against him. On the 15th March he applied before another Court to have the *ex parte* decree set aside. Subsequently the application was returned for presentation to the Court which passed the decree. On the application being refused in that Court it was registered as an ordinary application to set aside an *ex parte* money decree. On the 7th August 1909 it was discovered that the decree was a Small Cause Court decree and an order was made giving the petitioner time to deposit the amount of the decree under s. 17 of the Provincial Small Cause Courts Act. The time having subsequently been extended the amount was ultimately deposited on the 28th August 1909. *Held*, that in the circumstances whether the Limitation Act of 1877 or that of 1908 applied the application was not liable to be rejected as time barred as under s. 14 of the Limitation Act the judgment-debtor would be entitled to a deduction of time from the 15th March to the 7th August when he was prosecuting another legal proceeding in good faith. Also in the circumstances, he must be deemed to have first become aware of the decree as a decree of the Small Cause Court on the 7th August 1909. Thus regarding the application as having been filed on the 7th August 1909 no question as to the deposit being made out of time as prescribed by s. 17 of the Provincial Small Cause Courts Act arises. The provisions of s. 17 of the Provincial Small Cause Courts Act are mandatory where an application under that section is filed within the time allowed by law for the application, the applicant has a right to have his application heard on the merits. Where an application is made by a party on the obligation that an entry in a judicial record is fraudulent there is nothing to prevent the application being entertained without a preliminary enquiry into the truth of the allegation. *Shankarprasad v. Jindal & Sons*, *Mad. L. J. 1 L. R. 23 Cal. 372* (1913) approved and cited. Where a fraud has been committed by a person who has obtained property thereby the party defrauded can move the application of the injured party on the ground of fraud in, *case*, that it can show that the injured party has had clear and definite knowledge of the facts moving to the fraud at a time too remote for the suit to be brought and the mere suggestion of being defrauded is not sufficient in the present case. *Police*

LIMITATION ACT (IX OF 1908)—*contd*Sch. I, Art. 164—*contd*

Shoy v. Turner, *1 L. R. 17 Bom. 341*, followed. *BASTRUDDIN MANDAL v. SONAVILLA MANDAL* (1910) 15 C. W. N. 1002

Application to set aside an ex parte decree passed when Act No. XI of 1907 was in force—Limitation. The plaintiff obtained an *ex parte* decree on the 29th of November 1904 which was made absolute on the 24th of August 1907. The proclamation of sale was brought to the village on the 19th of December, 1912. The defendant on the 9th of January, 1913 applied to have the *ex parte* decree set aside. The plaintiff contended that the defendant had knowledge of the decree prior to 1910 and, therefore her application was barred by Art. 164 of the Indian Limitation Act of 1908. The defendant contended that Art. 164 of the Limitation Act of 1877 applied to her case. *Held*, that the defendant's application was barred by Art. 164 of Act IX of 1908. *Hope Mills Limited v. Jitlal Das Frankindas*, *12 L. M. J. L. P. 720*, referred to. *Jia Bibi v. Itani Baksh* (1915)

I L. R. 37 All. 597

Arts. 164 and 181—Ex parte decree setting aside of—Defendant died after decree—Executor not brought on the record—Executor, application by, to set aside ex parte decree—Application made more than thirty days after decree—Civil Procedure Code (I of 1908), s. 146. Where a decree was passed *ex parte* against a defendant who died seven days after the decree, and an application to set it aside was made by the executor of the deceased defendant more than thirty days after the passing of the decree. *Held*, that Art. 164 and not Art. 181 of the Limitation Act (IX of 1908) applied to the case and that the application was barred. On the true construction of Art. 164 of the Limitation Act read with s. 146 of the Code of Civil Procedure (Act V of 1908) the word "defendant" in the said Art. 164 is wide enough to include the executor of the original defendant though the executor may not have been brought on the record when the application was made. *Canada Food Co. v. S. S. Narain Malhotra*, *1 L. P. 23 Cal. 31*, referred to. *VENKATASUBRAHMANIAM v. KRISHNABENDEY* (1913)

I L. R. 23 Mad. 442

See also CHANDAN LAY, 1912, at 150 and 169.

I L. R. 1 Lah. 187

Sch. I, Arts. 163, 181—

Civil Procedure Code (1908), s. 47—Execution of decree—Limitation—Application by judgment-debtor to set aside judgment of immovable property sold in the execution of decree of that Court. It is that the application of a judgment-debtor to set aside a judgment of immovable property sold in the execution of a decree of that Court is barred under s. 47 of the Code of Civil Procedure and governed by Art. 181 of Sch. I to the Limitation Act. *Prasanna Appa v. Krishna L. v. Vaidya*, *1 L. R. 21 Mad. 194*, *110 Ind. 503*, *v. Lakshmi Narayana v. Lakshmi Narayana* (1913)

I L. R. 22 All. 239

Execution of decree—Limitation of decree—Judgment-debtor to set aside judgment of immovable property sold in the execution of decree of that Court. It is that the application of a judgment-debtor to set aside a judgment of immovable property sold in the execution of a decree of that Court is barred under s. 47 of the Code of Civil Procedure and governed by Art. 181 of Sch. I to the Limitation Act. *Prasanna Appa v. Krishna L. v. Vaidya*, *1 L. R. 21 Mad. 194*, *110 Ind. 503*, *v. Lakshmi Narayana v. Lakshmi Narayana* (1913)

LIMITATION ACT (IX OF 1908)—*contd*Sch I, Arts 163, 181—*contd*.

lands—Limitation for such applications—Applicability of Arts 163 or 181 of the Limitation Act, 181, and not Art 163, of Sch. I of the Limitation Act (IX of 1908) governs an application made by a judgment debtor for restoration of immoveable property delivered to the decree holder in execution proceedings in excess of what had been decreed *Pataam Ayyar v. Krishna Doss Fital Doss*, I L R 21 Mad 491, overruled *Aldat Khanna v. Islamunnissa Bibi*, I L R 33 All 339, followed *Vachali Ramesh v. Kumbh Aliyasan* (1910) I L R 42 Mad. 753

Sch. I, Art 166—

See Art 12 I L R 38 Mad. 1078

See CHOTA NAGPUR TENANCY ACT, 1909, s 231 I Pat L J 453

See CIVIL PROCEDURE CODE, 1908, s 47, O XXXIV, s 14

I L R 45 Bom 174

See HIGH COURT CIVIL APPELLARS

I L R 45 Bom 1132

Sch. I, Arts 166, 181—

See BENGAL TENANCY ACT, s 63

14 C W N 1098

See CIVIL PROCEDURE CODE, 1908, s 47, 144, 15 I L R 43 Bom 235

See SALE I L R 46 Calc 975

Exonerated defendants

Gifts of properties, including share of exonerated defendants—Application to set aside sale—Limitation In a decree awarding maintenance a charge was created on the shares of some of the defendants in lands belonging jointly to them and the appellants, but the shares of the latter were expressly exonerated. In execution of the decree, however, the lands were sold by Court auction, including the shares of the appellants therein. On an application by them a year and seven months later to set aside the sale of their shares. *Held* that art 181 and not art 166 of the Limitation Act applied, and that the application was not barred *Beshagiri Rao v. Srinivasa Rao* (1920) I L R 43 Mad 311

Sch I, Art 168—

See s 6 I L R 45 Bom. 648

Application for realisation of an appeal dismissed in default—Inherent powers of Court—Civil Procedure Code, Act V of 1908, s 151 This application for restoration of an appeal dismissed in default was filed on the 17th November 1919 the order dismissing the appeal was made on the 27th January 1919. The applicant urged that he was not to blame for his non-appearance and did not discover for several months that the appeal had been dismissed. *Held*, that the application is barred by limitation under art 163 of the Limitation Act. *Held* also, that the inherent powers of the Court under s 151 of the Code of Civil Procedure cannot be invoked in breach of the clear provisions of the Limitation Act. *Devi Baksh Singh v. Habib Shah* (I L R 35 All 331, P O) distinguished *Bista Mal v. Kesar Singh* I L R 1 Lah 363

LIMITATION ACT (IX OF 1908)—*contd*

Sch. I, Art. 171—

See CIVIL PROCEDURE CODE, 1908, O L R 10 I L R 35 Bom. 393

Sch. I, Art. 178—

See ARBITRATION 4 Pat L J 394

See CIVIL PROCEDURE CODE, 1908, Sec II, cl. 17 AND 20

I L R. 33 All. 83

Sch I, Art. 179—

See APPEAL TO PRINCIPAL COUNCIL.

I L R. 39 Calc. 765

See s 12 I L R. 39 Calc. 510

I L R. 33 All. 82

Decree—Execution proceedings—Application for time to obtain copies of decree and judgment—Step in aid of execution An application for time to enable the applicant to obtain copies of decree and judgment, made after presenting a draft to execute a decree is a step in aid of execution *Kunhi v. Sitchapuri*, I L R 5 Mad 111, followed *Karick Nath Pandey v. Jangernath Ram Marwari*, I L R 27 Calc 755, disented from *Haridas Nandanai v. Vithaldas Kirandias* (1912) I L R. 35 Bom. 635

Sch. I, Art 180—Application by

decree holder for possession of properties purchased in Court auction—Application filed more than three years after confirmation of sale—Proceedings to set aside sale, effect of—Suspension of cause of action After a Court sale had been confirmed without opposition on 26th April 1913, an application was made on 3rd January 1914 to set it aside on the ground of fraud, and it was set aside on 25th June 1915 as to part of the properties sold. The auction purchaser having applied on 17th February 1917 for delivery of the remaining properties, on a reference to a Full Bench, *Held* (*Per ABDEU RAHIM ORU C J*, *SADASIVA AYYAR*, *J.*, *SESHAGIRI AYYAR*, *J.*, and *BHARU*, *J.*), that the application was not barred under art 180 of the Limitation Act as time should be computed from the date of the order disallowing the petition to set aside the sale on the ground of fraud and not from the date of the first confirmation *Baijanath Sahas v. Pampat Singh*, (1926) I L R 23 Calc 775 (P C), followed *Per OLDFIELD J*—As the question referred was not 'when the cause of action arose on the facts of the case' but whether the existing cause of action became suspended, the answer is that when once a cause of action has arisen, it is not suspended by later events *Per SADASIVA AYYAR, J.*—The cause of action was suspended during the interval *MUTHU KORAKKAT CHETTY v. Madan Annal* (1920) I L R 43 Mad. 185

Sch I, Arts 180, 183—

See LIMITATION I L R. 42 Calc. 776

Sch. I, Art. 181—

See s 19 I L R 42 Mad 52

See Art 164 I L R. 38 Mad. 442

See Art 163 I L R. 33 All. 339

See Art 160 14 C. W. N. 1098

See CIVIL PROCEDURE CODE (1908), O XXI, s. 2; O XXXIV, s. 4 & 5.

I L R. 39 All. 532

LIMITATION ACT (IX OF 1908)—contd

Sch. I, Art. 181—contd

See CIVIL PROCEDURE CODE (1908),
O XXI, R. 89-92 24 C. W. N. 73

O XXXIV, R. 5

1 L. R. 39 All. 641

1 L. R. 38 All. 21

1 L. R. 40 All. 203

25 C. W. N. 378

R. 6 1 L. R. 40 All. 551

See COMPANIES ACT, 1882, ss. 150 AND
160 1 L. R. 1 Lab. 187

See EXECUTION OF DECREE

1 L. R. 35 All. 178

3 Pat. L. J. 103

See LIMITATION 1 L. R. 42 Cal. 294

See MORTGAGE 1 L. R. 37 Cal. 796

See MORTGAGE DECREE.

4 Pat. L. J. 213 & 523

See RESTITUTION 3 Pat. L. J. 367

Filing affidavit to prove service of notice under O XXI, r. 22 of the Civil Procedure Code (Act V of 1908) step in aid of execution. Filing an affidavit to prove service on judgment debtor of notice issued under O XXI, r. 22 of the Civil Procedure Code was equivalent, in this case, to applying to the Court to take a step in aid of execution. *PRANERISHNA DAS v PRATAP CHANDRA DALOI* (1917)

[21 C. W. N. 423]

Mortgage—Suit for sale

Application for final decree—Limitation. An application for final decree in a suit for sale on a mortgage being an application in the suit and not an application in execution, the fact that one such application has been made within the prescribed period of limitation does not operate to extend the period of limitation in favour of a second application, the first having been dismissed for default. *ANAND KHAIR v MUHAMMAD GAURA* (1917)

1 L. R. 40 All. 235

Execution of decree—

Limitation—Execution temporarily suspended by an injunction. Whilst an application for execution of a final decree in a mortgage suit was pending, a suit was brought for a declaration that the decree itself had been obtained by fraud and on the 9th of December 1914 an order staying execution was passed. On the 26th of April 1915 this suit was dismissed. An appeal was filed, but it too was dismissed on the 19th of April, 1917. The next application for execution of the mortgage decree was made on the 11th of June, 1918. Held, that the application was time barred. *Pudhar Singh v Dhanpal Singh* 1 L. P. 28 All. 156 followed. *Mohd ud-din Khan v Chhajju Singh* 2 A. L. J. 276, and *Qamar-uddin Ahmad v Jauhar Lal*, 1 L. R. 27 All. 334, distinguished. *BALWANT SINGH v BUDH SINGH* 1 L. R. 42 All. 564

Consent decree—Instal-

ments—Application for decree absolute for sale—Limitation—Civil Procedure Code (Act V of 1908), O XXXIV. An application for a decree absolute for sale of a mortgage charge under the terms of a consent decree which provided for satisfaction of the decretal debt by instalments, is an application under the Civil Procedure Code (Act V of

LIMITATION ACT (IX OF 1908)—contd

Sch. I, Art. 181—contd.

1908), O XXXIV, and is governed by Art. 181, Sch. I, of the Limitation Act (IX of 1908). Such application must be made within 3 years from the time the right to apply accrues. *DATTO ATMARAN v SHANKAR DATTATRAYA* (1913)

1 L. R. 38 Bom. 32

Limitation—Execution of decree, payable by instalments, with option of getting possession of land in case of default of payment—application for possession more than 3 years after first default. In 1909, the appellant obtained a decree against the respondents for Rs. 370, payable by annual instalments of Rs. 25 which provided that in default of payment of the whole or part the judgment debtors would put the decree holder in proprietary possession of 5 bighas 4 biswas of land. In April 1918 the decree-holder applied to be put in possession of the land and failed to prove that any instalment had been paid under the decree. The lower Appellate Court held that the claim for possession was time barred more than three years having elapsed since the date to the first default. The decree holder appealed to the High Court. Held that it was not intended that the option given to the decree holder of obtaining possession of the land on a default being made in payment was to be exercised only on the occurrence of the first default. The decree holder was entitled to apply for delivery of possession on the occurrence of any subsequent default, and the present application was consequently within time, under art. 181 of the 1st Schedule of the Limitation Act. *Muhammad Islam v Muhammad Ahsan* (1 L. R. 16 All. 237) and *Shankar Prasad v Jalpa Prasad* (1 L. R. 16 All. 371) followed. *Musammam Kirpa Devi v Das* and *Ram* (8 P. R. 1917) not followed. *HAR GOPAL v RAM RACHPAL* 1 L. R. 2 Lah. 155

182—Application to

execute decree—Limitation—Decree against property of deceased debtor in the hands of his brother, not a decree against the estate of the deceased generally—Time does not run until brother gets possession of estate. Pending the trial of a suit for money against J, J died whereupon the Plaintiff R had J's brother F substituted on the records in the place of J and got a decree on 27th July 1906 which did not provide that E was to be personally liable but declared that the decretal amount was to be realised by the sale of the property belonging to J and left in P's possession. There was no decree against the estate of J in the possession of any one else. All J's property was at that time in the possession of the widow of J. E brought a suit to recover that property from J, which was decreed by the trial Court on 15th August 1908. At the High Court on Appeal (having stayed execution in the meantime) reversed this judgment on 2nd August 1909. This decision of the High Court again having been reversed by the Privy Council decreeing E's suit on appeal on 22nd July 1914, P applied for execution of the decree in December 1914. Held that the application was not barred by limitation. In order to make the provision of Art. 182 of the schedule to the Limitation Act applicable, the decree sought to be enforced must have been in such a form as to render it capable in the circumstances of being enforced. *Shah Anwar ud din Ahmad v Jauhar Lal*, L. P. 32 I. A. 102 (1905), referred to. That the

LIMITATION ACT (IX OF 1908)—*contd*

application for execution could not have been executed until E had come into possession of the property of J and by Art 181 of the Limitation Act, the period of limitation for making the applications was three years from the time when the right to apply accrued. **MAHARAJA SRI RAMESHWAR SINGH v HOMESWAR SINGH (P C)**

25 C W N 337

Limitation—decree for sale.—*Appeal* A preliminary decree in a suit on a mortgage declared the liability of each of the properties against which the mortgage was sought to be enforced and also that each would be liable for a proportionate part of the amount found to be due on the mortgage. The amounts and property liable therefore were specified in the decree. Against his decree some only of the defendant appealed and against them only the decree was set aside. More than 5 years after the decree of the first Court though within three years of the appellate decision the decree holders applied for a final decree against the defendant who had not appealed. *Held* that the application was time barred. **GTAM SINGH v ATA HUSAIN**

I L R 43 All 320

Appeal against preliminary decree for sale in a mortgage suit.—*Application for final decree under O XXXIV r 5 Civil Procedure Code.*—Article applicable and starting point of limitation. An application for a final decree for sale under O XXXIV, r 5, Civil Procedure Code, is governed by art 181 of the Limitation Act and the starting point, in cases where there has been an appeal from the preliminary decree is the date of the appellate decree whether the latter confirmed or varied the preliminary decree. **Bhup Indar Bahadur Singh v Brijas Bahadur Singh, (1901) I L R 23 All. 152 (P C)**, applied. **Jascuran Baid v Pirichand Lal Chowdhury, (1919) I L R 46 Cal 670 (P C)**, explained. **Venunatha Sastri v Sitalakshmi Ammal, (1921) 23 L W 37**, distinguished. **VENKATYA v SATHIBABU (1921)**

I L R 44 Mad. 714

Sch. I, Arts. 181, 182—

See **INSURANCE** I L R 46 Cal 103

Civil Procedure Code (Act V of 1908), s 48—Decree—Execution—Amendment of the decree.—Date of judgment, the date of the amended decree—*Right to apply* to make the decree final under Civil Procedure Code (Act V of 1908), O XXXIV, r 5—*Limitation—Starting point—Procedure* On the 17th November 1907, a decree on an award was passed. The decree did not embody the terms of the award. Plaintiff applied for execution of the decree. It was opposed by the defendants on the ground that the decree did not specify the relief that was granted and was on that account inexecutable of execution. The Court then directed the plaintiff to obtain an amendment. On January 28 1909 the decree was amended so as to bring it into consonance with the directions of the award and was dated 28th January 1909. Several applications for execution were made the last of which was dated 2nd December 1909. The lower Court held the application in time and allowed execution to proceed. On appeal it was contended (1) that the application was barred so far as it related to two

LIMITATION ACT (IX OF 1908)—*contd*

sums of Rs 575 and Rs 6,000 which under the decree were to be paid forthwith that is, 17th November 1907 the date on which the decree was passed and which must be taken as the starting point for limitation. (2) that the application as a whole was barred by limitation, as the application must be treated as an application for a decree final for sale under O XXXIV, r 5 of the Civil Procedure Code, 1908 and as such it was barred under Art 181 of the Limitation Act, 1908, for the right to apply accrued when default in payment was made and that was found to have been in 1902. *Held*, (i) that the recovery of the two sums was barred as the decree was to be referred to 17th November 1897, the date of the judgment and not to 28th January 1909, the date of the amended decree. (ii) that the application was not barred as the right to apply under O XXXIV, r 5, never accrued to the plaintiff until the Code of 1908 conferred it upon him, the plaintiff was, therefore entitled to claim that under Art. 181 of the Limitation Act 1908 he would have a period of three years from 1st January 1909, when the new Code of Civil Procedure came into force. **Amlook Chand Parroek v Sarat Chander Mukerjee, I L R 35 Cal. 213**, distinguished. **NARISINGAO KONHAR INAMDAR v BANDO KRISHNA (1918)**

I L R 42 Bom 309

Redemption of mortgage—Decree for redemption.—*Application for time to pay the mortgage amount into Court and recover possession.*—*Limitation.*—**Dekkahn Agriculturists' Relief Act (XVII of 1879) s 15B** On the 17th January 1907, the plaintiff obtained a decree in a redemption suit brought under the provisions of the Dekkahn Agriculturists' Relief Act 1879. The decree remained unexecuted. In 1915, the rights under the decree were assigned by the plaintiff to the respondent, who applied to the Court on the 27th September 1915 to be allowed to pay the mortgage amount into Court and get possession of the property under the decree. The lower Courts held the application was in time and ordered warrant for possession to issue. On appeal to the High Court, **HEATON and PRATT JJ.**, having differed in opinion, referred the following point of law to a third Judge—“Is the application or is it not time barred under Art. 181 of the Schedule to the Limitation Act the application being regarded as one to extend time for the payment of the mortgage debt. *Held* by **SHAN J** (agreeing with **HEATON, J.**, but differing from **PRATT J.**) that treating the application as one to extend time for the payment of mortgage debt it was barred under Art 181 of the Limitation Act. *Held*, further by **SHAN J** that even if the application was treated as one not merely for the extension of time for the payment of the mortgage debt but for the recovery of possession of the property as in terms it purported to be, it was an application for the execution of the decree and as such it was time barred under Art. 182 of the Limitation Act. **VANUDEY VISHNU v GOTAL PARASHRAM (1919)**

I L R 43 Fcm. 629

Sch. I, Arts. 181-183—

See **MORTGAGE** I L R 28 Cal 613See **MORTGAGE DECREE.**
I L R 39 Mad 544

LIMITATION ACT (IX OF 1908)—*contd*

Sch I, Art. 182—

See CIVIL PROCEDURE CODE (Act V of 1908), ss. 38, 39, 41 AND 50, ETC
 I L R 37 Mad 231
 I L R 39 Bom 256

See EXECUTION OF DECREE

I L R. 36 All 482
 I L R. 37 All 527
 e 49 3 Pat. L J 285

See LIMITATION (41)

I L R. 45 Calc 630

See LIMITATION ACT (XV OF 1877), SCH
 II, ART 179 I L R. 39 Bom 20

See LIMITATION ACT, 1908 s 20

4 Pat. L J 365

See MORTGAGE DECREE

I L R. 39 Mad. 544

1. — *Suit for account—*
Court fee paid months after date of judgment—
Starting point of limitation—Step in aid of execution for the purpose of Art 182 of the first schedule of the Limitation Act, the date on which the Court passed its judgment is the 'date of the decree,' and the fact that the Court fee required to be paid in order to validate the decree (which was passed in a suit for account) was not put in till some months later, did not give a different starting point for computing the period of limitation. The payment of the Court fee did not constitute a step in aid of execution within the provisions of the Limitation Act. BRAJAN BEDARY SHANAI & GIRISH CHANDRA SHANAI (1917)
 17 C W. N 959

2. — *Execution of decrees of Presidency Small Cause Court—S 48 Civil Procedure Code (Act V of 1908) not applicable to such Court—Transfer to City Civil Court for execution of a decree more than 12 years old—Art 182 applicable—S 48 applicable to City Civil Court, no bar. Although a decree may be transferred by the Court which passed it to another Court, for execution the law of limitation applicable for its execution is that applicable to the decrees of the former Court, i.e., of the Court which passed them. A different rule will lead to anomalous consequences. A decree of the Presidency Small Cause Court (Madras) passed in 1896 was transferred for execution to the City Civil Court. S 48, Civil Procedure Code, not being applicable to the Court of Small Causes. Held, that an application for the execution presented to the City Civil Court in 1910 was not barred the article applicable to the cause being Article 182 of the Limitation Act, that the fact that s 48 of the Civil Procedure Code was applicable to the City Civil Court was immaterial. Sambasiva Mudaliar v Ponchanada Pillai 17 Mad L J 441, I L R 37 Mad 24, Tincovture Dassi v Debendra Nath Mookerjee, 5 L J 17 Calc. 491 and Jogemaya Dassi v Thackuram Dassi, I L R 24 Calc 473, followed. Her Highness Ruckmaboy v Lallabhooy Maltichand, 5 Moo I A 234, not applicable. Per CURRIE. A transfer of a decree by the Court which passed it to another Court does not make the decree one passed by the latter Court. Even after transfer the control of the execution is still left in several respects in the hands of the Court which passed the decree, e.g., recognition*

LIMITATION ACT (IX OF 1908)—*contd*

of assignment, application for execution against legal representative, stay of execution, issuing precepts and certificate of non execution or partial execution, etc. SREE KRISHNA DASS v ALVARAR ANNAL (1913) . . . I L R. 36 Mad 108

Part of a decree containing unascertained amount—Execution of whole decree three years after ascertainment—No bar—Policy of Limitation Act as to period of limitation for execution of decrees. For the purposes of limitation regarding execution of a decree, the decree must be taken as a whole and ordinarily when a portion of the decree is not executable by reason of the fact that the amount due under that portion is left to be determined at a future time, limitation begins to run as regards execution of the whole decree only from the time of ascertainment of the amount left undetermined, even though it might have been open to the party to have executed the other portions earlier. Hoja Ashfaq Hussain di Lala Court Sahai, 13 C L J 351, I L R 33 All 264, Ratnachalam Ayyar v Venkatarama Ayyar, I L R 29 Mad 46 and Krishnan v Nilakandan, I L R 8 Mad 137, followed. Gopal Chandra Hanna v Govind Dass Kalay, I L R 25 Calc 594. Krishnawar Chastor v Mangammal, I L R 26 Mad 51, Abdul Kari man v Mardin Saibai I L R 22 Bom. 50 and Court Sahai v Ashfaq Hussain, I L R 29 All 623 applied. Subramanya Chettiar v Alagappa Chettiar, I L R 30 Mad 268, and Deval Chandra Sadooklan v Amiria Lall Sadookhan, I L R 26 Calc 888, referred to. C M A No 74 of 1913 (unreported) not followed. A decree in a second appeal, dated 30th July 1908 was as follows—
 'Appellant (defendant) do pay respondent (plain tiff) Rs 64 11 4 for his costs in this second appeal, Rs 78 3 7 for his costs in the memorandum of objections and also his costs in the lower Appellate Court which will be ascertained and taxed by that Court.' The costs in the lower Appellate Court were ascertained by that Court on 1st December 1906. The application for the execution of the whole decree was made on 7th August 1909 i.e., more than three years after the decree in second appeal but within three years after ascertainment by the lower Appellate Court. Held that the execution of the decree was not barred. The policy of the Limitation Act in the case of execution of decrees is to lay down a simple rule and to treat the decree as a whole except when the decree itself directs that different portions of the relief granted are to be rendered by the defendant to the decree holder at different times. Per CURRIE. Under Art 182, there is only a single starting point, where there has been an appeal review or amendment, although it might be open for a decree holder to apply for the execution of a part of the decree before proceedings in appeal review or amendment have terminated. VIDYANATHA AIVAR & SUBRAMANIA PANTER (1913)

I L R. 36 Mad. 104

Restitution of property—Application for execution—Civil Procedure Code (Act V of 1908), s 144. An application for restitution, under s 144 of the Civil Procedure Code, 1908 is an application for execution of a decree, and is governed by Art 182 of the Indian Limitation Act, 1908. Kurpadipanda v Nisargan gouda (1917) 41 Bom 625, followed. Kishorilal

LIMITATION ACT (IX OF 1908)—*contd.*

Roy v Mahanta Balindra Das (1917) 3 P. L. J. 357, dissented from *Hamidalli v Annadalli*
I L. R. 45 Bom 1137

Sch. I Art 182 (2)—

See CIVIL PROCEDURE CODE, 1908 s 145
I L. R. 41 Bom. 34

Revision to the High Court—
Order in, not giving any fresh starting point for execution of original decree—Effect of reversal or modification in revision—"Appral" meaning of in Limitation Act—Letters patent appeal from revisions no "appral". An order of the High Court passed in the exercise of its revisional powers is not an order on an 'appeal' within the meaning of Art. 182, sub-cl. (2) so as to create a fresh starting point for the calculation of limitation. *Per Curiam* Unlike the word "appeal" in ss 15 and 39 of the Letters Patent, the word 'appeal' in the Limitation Act is used in the narrower sense so as to exclude a revision, this is clear from the three classifications in the Limitation Act, viz., "suits appeals and applications, which last include applications for revision. If the High Court interferes on revision, either there is a decree passed by the High Court which may be executed under the first clause of Art. 182 or the case is sent down with a direction to the lower Court to amend its decree. The latter appears to be the regular course and in such event there is no room to employ any sub-clause other than sub-cl. (1) or the new sub-cl. (4). Where a revision petition is simply dismissed, no fresh starting point of limitation arises. When the order appealed against cannot give any fresh starting point (viz., the order in the revision petition) an order in a Letters Patent appeal therefrom, cannot give one, as if it were an appeal within the meaning of Art. 182. *Chappan v Moudia Kuti*, I L. R. 22 Mad. 63, *Secretary of State for India in Council v Pruthi India Steam Navigation Company*, 15 C. W. N. 813, and *Hariak Chandra Acharya v Naich Bakhadar of Marhadiabad*, 15 C. W. N. 879 distinguished. Judgment of WALLIS, J. confirmed. *SUBRAMANIAM PILLAI v. SETHNAI AMMAL* (1913)

I L. R. 38 Mad. 135

Mortgage suit decreed against some defendants and dismissed against others who were allowed costs against plaintiffs—
Appeal by the defendants against whom suit decreed effect of, an application by the other defendants for execution of decree for costs against plaintiff. The appellant was the plaintiff in a mortgage suit and obtained a decree except against two of the defendants whose property was exempted from liability and whose costs the plaintiff was directed to pay. The defendants against whom the suit was decreed appealed. The two other defendants applied for execution of their decree, for costs against the appellant. The lower Court held that limitation ran from the date of the decision of the appeal preferred by the defendants against whom the suit had been decreed. *Held*, that in dealing with the question of limitation in these cases, the Court should see whether the original decree was really one decree or an incorporation of several decrees and whether the appeal against it imperilled the whole decree or not, for the execution of which the application is made. That the order dismissing the plaintiff's suit with costs as against two

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of the defendants and the order decreeing it with costs as against the other defendants were not one and the same decree, because they were embodied in one formal order. There was no appeal against the decree by which the plaintiff was directed to pay costs to two of the defendants and the fact that there was an appeal against an entirely different decree which was recorded in the same document did not affect the question of limitation when no order that could have been passed in that appeal could possibly have affected the decree sought to be executed. *LAW v BHARANATHI PROSHAD CHOWDHURY* (1914) . 19 C. W. N. 237

Suit for ejectment—

Decree against some defendants on consent and against others on contest—Appeal by contesting defendants—Dismissal of appeal—Execution of decree, application for, within three years of dismissal of appeal but more than three years after the first Court's decree, if barred as against consenting defendants. A suit for ejectment brought against two sets of defendants A and B was decreed on 17th September 1903 against set A upon consent and against set B upon contest, the result being embodied in one decree which did not define the respective shares of the two sets of defendants. An appeal preferred by set B alone in which they did not make set A parties was not disposed of until 5th May 1908. On 7th May 1910 application was made for execution of the decree against both sets of defendants. *Held*, that the application was not time-barred as against set A, even though set A did not and could not appeal against the decree of 17th September 1903, inasmuch as the appeal of set B was of necessity against the entire decree—there being a chance or risk of the Appellate Court modifying the decree even as against set A. That on appeal by the contesting defendants the whole matter was reopened and the decree holders were entitled to the benefit of Art. 180 col. 3, cl. (2) of Sch. I of the Limitation Act. *Balak Nath v Munas Das*, I L. P. 36 AR 350 s. c. 18 C. W. N. 740, and *Ashraf Hussain v Gouri Sahai*, L. R. 38 I. A. 37 s. c. 15 C. W. N. 370 and *Lau v Perarathnam Proshad* 19 C. W. N. 237, referred to. *Quare* Whether time runs against the decree holder from the date of the final decree in the appeal irrespective of the question whether the appeal did or did not imperil the decree whereof execution was ultimately sought. *LOKYNATH SINGH v GURU SINGH* (1915) . 20 C. W. N. 178

Decree modified by

High Court in revision if gives new start to limitation. A decree was passed on consent by the High Court directing that the plaintiffs do pay to the defendant the price to be ascertained by the first Court of a certain property within one month from the date of the valuation being made and that upon such payment the defendant do convey the property to the plaintiff. The first Court made the valuation and embodied it in a supplementary decree. An appeal from this decree was rejected by the High Court but in revision the said Court on 14th June 1909 held that no supplementary decree should have been passed and that the decree of the High Court became capable of execution one month after the making of the valuation viz., on 12th January 1905. The defendant applied for execution of the decree on 23rd August

LIMITATION ACT (IX OF 1908)—*contd.*Sch I, Art 182 (2)—*contd.*

1911 *Hell*, that under cl. (2) of Art. 182 of the Limitation Act, limitation ran from the order in revision passed by the High Court on 14th June 1909, which modified the decree of the first Court and the application was within time. *GURUJADA HALDAR v TARIT BHUSAN RAY CHOUDHRY* (1915) 22 C W N 158

"A final decree or order"—*abatement of appeal—date from which limitation runs—Code of Civil Procedure (Act V of 1908), O XXII rr 4 (3) and 11 Art 182 (2) of the Limitation Act, 1908 which provides that limitation shall run from the date of the final decree or order of the appellate court does not apply where the appeal has abated by operation of law and not on account of any final decree or order of the appellate court, e.g., where the appeal abates by reason of non substitution of any of the parties but there is no order of the appellate court declaring the appeal to have abated.*—*TIKAIT KRISHNA PRASAD SINGH v RAJA WAJAH NARAIN SINGH* . . . 5 Pat L J 731

Appeal filed in wrong Court—Order of Court returning appeal for presentation to proper Court—Appellate Court, meaning of—Time for executing decree. Where a Court decides that an appeal has been wrongly presented to it and orders a return of it for presentation to the proper Court, such an order is neither 'a final order' of the Appellate Court, nor 'a withdrawal of the appeal' within art. 182 (2) of the Limitation Act. 'Appellate Court' in the article means an Appellate Court having jurisdiction to hear the appeal. *Per OLDFIELD J.* (*YESHAJIAT ATYAR J.* doubting).—A mortgagor in whose favour a decree for redemption has been passed can execute the decree by sale of the mortgaged properties. *Gowinda Taragan v Ieran* (1913) 1 L R 35 Mad 32 followed. *ABDUL KADER v SAMIPANDIA TEVAR* (1920) 1 L R 43 Mad. 835

Execution of decree—Limitation—Appeal—Appeal filed though no appeal lay—Terminals a quo—Civil Procedure Code, 1908 s 43 Where an appeal has been filed, the twelve years period of limitation referred to in s 43 of the Code of Civil Procedure 1908, begins to run from the date of the decree in appeal not withstanding that the decree in appeal may be merely a decree dismissing the appeal on the ground that no appeal lies. *Ankush Kumar v Chander Mohan*, 1 L R, 18 Cal 250, and *Faizul Rahman v Shah Muhammad Khan*, 1 L R 39 All, 335 referred to *RUP NARAIN v SHRO PRAKASH* 1 L R 43 All 405

(Sub-cl. 2 and 3)—*Application for rehearing of and dismissal for default dismissal of appeal—where there has been appeal*—"Review." The words "where there has been an appeal" in cl. (2) of art. 182 of Sch. I to the Limitation Act 1908, mean where there has been an appeal against a decree in the suit, and do not include an appeal against an order made on an application to set aside that decree. An order dismissing an application for rehearing a suit who has been dismissed for default is not a "review of judgment" within the meaning of cl. (3) of art. 182. *KARUPAN ZAMUDAN v RAI BHURAJ v NARAYAN LAL* 3 Pat L J 119

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Application for ascertaining of means profile—Application for execution Civil Procedure Code (XIV of 1882), s 211, 212 and 214 An application for ascertainment of means profits is an application for execution of a decree and is governed by Art 182 of the Limitation Act, 1908. *Uttamram v Kshordas* (1899) 24 Bom 149 and *Ramana v Babu* (1912) 37 Mad 186, approved. *Puran Chand v Poy Padma Kishan* (1891) 19 Cal 132, disapproved. *GANGADHAR v BALKRISHNA SORROBA* 1 L R 45 Bom. 819

Sch I, Art 182 cl. (5)—

Sec 19 1 L R 38 Bom 47

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 37, 38 30, 150

1 L R 42 Mad. 821

See EXECUTION

1 L R 40 Mad. 1069

See GUJARAT TALUKDARS ACT (BOM ACT VI OF 1883) s 29 E

1 L R 43 Bom. 44

See LIMITATION 1 L R 46 Cal 22

1. *Execution of decree—Step in aid of execution—Substituted service* Held, that an application by a decree holder seeking to execute his decree for substituted service on the judgment debtor is an application to take some step in aid of execution within the meaning of art. 182 (5) of the first schedule to the Indian Limitation Act 1908. *Pram Singh v Tata Singh*, 1 L R 29 All 301, referred to. *AMINA BIBI v BANARSI PRASAD* (1914) 1 L R 38 All 439

2. *Execution of decree—Limitation—Step in aid of execution—Application by decree holder to be put into possession of property purchased by him in execution of his decree.* Held, that an application by a decree holder to be put in possession of property which he has purchased in execution of his decree is an application to take a step in aid of execution of the decree within the meaning of Art 182 (5) of the first schedule to the Indian Limitation Act, 1908. *Moti Lal v Mokund Singh* 1 L R 19 All 477, and *Bhagwati v Banwari Lal*, 1 L R 31 All 82, referred to. *BAHU PAM v PIRAI LAL* (1919) 1 L R 41 All 479

3. *Application by decree holder purchaser for delivery of possession of a step in aid of execution* *Per NEWBOLT, J* (*GURUJADA J.* contra).—An application by a decree holder to be put in possession of property purchased by him at a sale in execution of his decree is an application to the Court to take a step in aid of execution within the meaning of cl. 5 of art 182 of the First Schedule of the Limitation Act. *Per GURUJADA J.* All steps in execution of a decree which can save limitation on must be taken by the decree-holder as decree-holder and not as auction purchaser. *ANVADA PRASADRA SRY v SOMNATH MISHRA* (1919) 23 C W N 920

4. *Application for execution of decree by transferee—Injunction against transferee—Subsequent application by persons entitled to execute decree—Limitation—For whether saved by previous application* An application for execution of a decree made by a transferee of the decree after he has been restrained by injunction

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tion from "executing it or otherwise realising the decree-debt" will operate to save the bar of limitation in respect of a later application for execution made by persons held to be legally entitled to execute the decree. **HARI KRISHNA MURTI v SURYANARAYANMURTI** (1920)

I L R 43 Mad 424

5 ————— Decree—Execution—Step in aid of execution—Application for certificate under Succession Certificate Act (VI of 1889). An application by the representative of a judgment creditor to obtain a certificate under the Succession Certificate Act (VII of 1889) is not a step in aid of execution within the meaning of the Limitation Act, 1908. **Sch I Art 182 cl (5) MURGEPPA MUDIWALLAPPA v BASAWANTRAO** (1913)

I L R 37 Bom 539

6 ————— Application for execution—Limitation—Step in aid of execution—Application by decree holder certifying portion of payment with a prayer to strike off execution on satisfaction. An application by the decree holder certifying payment of a portion of the decretal amount out of Court is a step in aid of execution of the decree within the meaning of Art 182 (5) of the Limitation Act provided the payment asserted has actually been made. The fact that there is in the application a prayer that the execution case might be struck off after satisfaction does not take it out of the operation of the above rule. Where an application for execution filed within time which had been returned for amendment of certain formal defects was re-filed after the period of limitation had expired and after the time allowed by the Court for the purpose, with an application explaining the delay and the petition was accepted. Held that the Court had in fact in exercise of its discretion enlarged the time under a 148 Civil Procedure Code, though there was no express order to that effect. **GORAL PRSHAD BHAGAT v RAJENDRA LAL PANDA** (1915)

20 C W N 615

7. ————— Step in aid of execution, what is—Decree holder's application for summoning witnesses in opposition to objections taken by the judgment debtor, if such a step. After delivery of possession of certain property to the decree holder, the judgment debtor put in objections to the said delivery of possession and the Court found it necessary to determine the standard of measurement, and, for that purpose, to take evidence in the matter. The decree holder, on 11th February 1911 applied for summonses upon his witnesses and witnesses were examined. The Court after taking evidence on both sides directed fresh delivery of possession and ordered the decree holder to deposit costs which not having been paid, the execution case was dismissed on the 29th April 1911 for default. The decree-holder next put in the present application for execution on the 17th January 1914. Held, that as the determination of the standard of measurement became necessary by reason of the judgment debtor's objection, the decree holder's appeal on to the Court for summoning witnesses was an act in furtherance of the application for execution which was still pending and was therefore a step in aid of execution. And the present application for execution having been made

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within three years of the date on which such a step was taken, was not barred. **HADESA NATH DE ROY v LAXMI KANTA DE** (1917)

21 C. W. N. 863

8 ————— Application for execution—Omission to file encumbrance certificate and draft sale proclamation—Petition for amendment—No representation—Application whether, in accordance with law. An application for execution presented in December 1912 was ordered to be returned for amendment the order requiring the applicant to file (a) encumbrance certificates and (b) draft proclamation of sale. It was never taken back by the applicant or amended. A fresh application was presented in January 1915. On the objection that the application of December, 1912 was not in accordance with law and that the application of January 1915 was therefore barred by limitation. Held that the application of December 1912 having complied with every statutory requirement was one in accordance with law within Art 182 (5) of the Limitation Act and that the application of January, 1915 was therefore in time, the failure to represent the earlier application being of no consequence, as neither the failure to file an encumbrance certificate as required by r 148 of the Rules of Practice nor the failure to file a draft proclamation of sale (which is not required by O XXI, r 66, Civil Procedure Code to be annexed to the application) were with defects as would render an application otherwise legal, illegal. **NATESA v GANAPATHA** (1916)

I L R. 40 Mad. 949

9 ————— Execution of decree—Limitation—Step in aid of execution. An application to the Court executing a decree asking that certain objections to the execution of the decree be rejected is a step in aid of execution within the meaning of Art 182 (5) of the first schedule to the Indian Limitation Act 1908. **TANIZ UN NISSA BINI v NAJJU KHAN** (1918)

I L R 40 All. 683

10 ————— Execution of decree—Limitation—Application accompanied by a copy of the decree—Civil Procedure Code (1908), O XXI r 11. An application for execution of a decree which complies with the requirements of cl (2) of r 11 O XXI of the Code of Civil Procedure cannot be said to be an application which is not 'in accordance with law' within the meaning of Art 182 (5) of the first schedule to the Indian Limitation Act, 1908 only because it is not accompanied by a copy of the decree which may be required by the Court under cl. (3) of the rule. **RAGHUNANDAN LAL v RADAN SINGH** (1918)

I L R 40 All. 209

11 ————— Decree for partition—Decree unnecessarily made absolute—Application to execute the decree if made within three years of the final decree is in order. On 10th January 1910, a decree for partition was made. In 1912 the plaintiff applied to the Court for a final decree although such application was quite unnecessary. The Court, however, made the decree final on 10th February 1913. The first application to execute the decree was made on 6th October 1913. On 6th August 1916, a second application was made, but it was objected to on the ground

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that the first application being made more than three years after the date of the original decree was barred by time, inasmuch as the application for final decree and the order made on that application were not in accordance with law. *Held*, overruling the contention, that the first application was within time, as the final decree made by the Court in 1913 was binding on the parties until it was set aside. *Mungul Pershad Dicit v. Gajra Kait Lahiri Chowdhry* (1881) L R 8 I A 123 and *Desappa v. Dundappa* (1919) 41 Bom 227, referred to. *DATARHAI v. BAI UJAN* (1920)

I L R 45 Bom 952

12. — *Application for execution of decree to Court which passed the decree—Application made after transfer of decree to another Court for execution—'Proper Court' meaning of—Civil Procedure Code (Act XIV of 1889) ss 203 and 224—Civil Procedure Code (Act V of 1908), ss 33, 39 and 41* In this appeal their Lordships of the Judicial Committee held (affirming the decision of the High Court) that an application for execution of a decree not having been made to the 'proper Court' within the meaning of art 182 of sch I of the Limitation Act, 1908, was insufficient to prevent limitation from running and that the execution of the decree was consequently barred. *Maharajah of Bobbili v. Narasarao Pedd Bahara Samadulu*, I L R 37 Mad 231, upheld. *MAHARAJAH OF BOBILU v. NARASARAJO PEDD BAHARA* (1916) I L R 39 Mad 640

13. — *Held* that an application made to the Court passing a decree to transfer it for execution to another Court is an application to take a step in aid of execution within the meaning of Art 182 of Sch I of the Limitation Act 1908. *TODAR MAL v. PHOLA KUNWAR* I L R 35 All 389

14. — *Execution of decree—Limitation—Application in accordance with law—Application claiming interest in excess of that provided for by the decree. Held* that a mere mistake in calculating interest or even deliberately calculating more interest than is due does not make an application for execution of a decree one not in accordance with law' within the meaning of art 182 (5) of the first schedule to the Indian Limitation Act 1908. If more interest than is due is charged, it may be considered as mere surplusage and be struck out. *JAMIL UL-NISSA BIBI v. MATHURA PRASAD*

I L R 43 All 550

15. — *Exec (i) on of decree—Application to take a step in aid of execution—Application to execute decree against surety available in respect of a subsequent application to execute against judgment-debtor* An application asking the proper court to execute the entire decree by arrest of the person of a surety who has made himself liable for the satisfaction of the decree amounts to asking the execution court, to take a step in aid of the execution of the decree as against the principal whose liability the surety has taken upon himself within the meaning of clause (5) of Art 182 of the first schedule to the Indian Limitation Act, 1908. *MUHAMMAD HAFIZ v. MUHAMMAD IBRAHIM* I L R 43 All 152

Sch I, Art 182, cls (5) and (6)—*Step-in-aid of execution—Application to transfer the*

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decree to the Court of a Native State for execution. An application made to a British Indian Court to transfer its decrees for execution to the Court of a Native State between whom and the British Government there exists an agreement to execute each other's decrees is a step in aid of execution within the meaning of Art 182 of the Indian Limitation Act, 1908. *JANARDAN GOVIND v. NARAYAN KRISHNAJI* (1918)

I L R 42 Bom. 420

Sch I, Art 182 (6)—

See EXECUTION OF DECREE

3 Pat L J 285

Interpretation principle of—Execution application—Art 182, cl (6)—Notice, issue of whether, gives a fresh starting point Art 182 of the Limitation Act should receive a fair and liberal but not too technical a construction, so as to enable the decree-holder to obtain the fruits of his decree. The issue of notice referred to in cl (6) of Art 182 of the Act need not be in respect of an application made in accordance with law. The words in accordance with law' found in cl (5) should not be introduced into cl (6) when the Legislature has not thought fit to do so. *Jamna Dui v. Bishnooth Singh*, 6 All L J 944 and *Deo Narain Singh v. Sri Bhogal Das*, 10 I C 411, followed. A decision especially on procedure cannot be treated as *res judicata* when that procedure itself is changed by the statute law. *VARADARAJA MUDALI v. MURUGAN PILLAY* (1910) I L R 39 Mad 923

Execution of decree—Limitation—Step in aid of execution An application for execution of a decree was made on the 20th January 1911. The judgment-debtor put in an objection and the Court ordered the parties to adduce evidence in support of the respective cases. In the course of these objection proceedings the decree holder on the 25th November 1911 filed a list of witnesses and intimated to the Court that he was ready to proceed with his case. *Held*, that this should be taken to be an application to the Court to take some step in aid of execution and a subsequent application for execution of the decree filed on the 2nd August 1914 was within time. *BRONJESARA KISHORE ROY CHOWDHURY v. DIL MAHMUD SARKAR* (1918)

22 C W N 1027

Execution opposed by judgment-debtor alleging payment and asking for certification thereof—Plea successful in first Court, but reversed on appeal—Second appeal by judgment-debtor—Limitation of super added during pendency of second appeal When a decree-holder is obstructed by violence or fraud and litigation is necessary to get rid of such obstruction, the execution is suspended during such litigation. But the mere pendency of an appeal from a decision which has removed all obstacles from the decree-holder's way cannot give him a right to defer execution until the disposal of such appeal. *Ashrafuddin Ahmed v. Depa Bahari Mullick* I L R 20 Cal 497, 413, and *Mazhab Alam Dasi v. Lambert* I L R 37 Cal 796 & 15 C W N 337, 12 C L J 328 relied on. *HARTECK CHANDRA MONDAL v. NIRMAL MONDAL* (1916)

20 C W N 695

LIMITATION ACT (IX OF 1908)—*contd**Execution of decree—*

Advice on decree holder issued by executing Court forwarded to another for service—Date from which limitation to commence—Filing of affidavit by debtor if step in aid of execution—Limitation if runs from date of application or date of disposal thereof Where the notice for the execution of a decree is forwarded by the Court to another Court within the local limits of whose jurisdiction the judgment debtor resides the period of limitation under cl 6 of Art 182 of the Limitation Act begins to run from the date when the notice actually left the Court of execution and the fact that in the Court of service it was made over to the peon on a later date cannot extend the period of limitation. *Rajan Chand Oswal v Deb Nath Barua*, 10 C W N 303 (1906), distinguished. The date on which an application for execution of a decree is disposed of is not the date from which the period of limitation runs. It commences on the date on which the application was actually made. The mere filing by the decree holder's identifier of an affidavit of service unaccompanied by any application oral or written does not give a fresh start to limitation. *Pran Krishna Das v Pratap Chandra Datta*, 21 C W N 423 (1917), distinguished. *ANNAPURNA THAKURANI, Sateow KRISHNA PRASAD MOTRA v DHIRENDRA NATH CHAKRAVARTY*

24 C W. N. 55

Execution of decree—

Step in-aid of execution—Order to issue notice—Actual issue of notice—Time runs from the actual issue Cl 6 of Art 182 of the first schedule to the Indian Limitation Act, 1908, makes the time run, not from the date when the Court passes an order to issue the notice but, from the date on which the notice is actually issued. *MILKANTH LAXMAN v RAJOU BHA MAHARU* (1918)

I L R. 42 Bom 553

Execution of

decree—'Date of issue of notice'—Minority—Super-session of a minority after limitation has commenced to run *Held*, on a construction of art. 182 (6) of the first schedule to the Indian Limitation Act, 1908, that the expression "the date of issue of notice" must be taken as the date on which the order of the Court directing that notice be issued to the judgment-debtor is passed. *Held*, also, that when the decree-holders are all of full age at the time of a passing of the decree execution of which is sought, and limitation has already commenced to run, the subsequent intervention of a minority does not entitle the decree holders to the benefit of s 7 of the Indian Limitation Act, 1908. *Bhagot Eihars Lal v Rama Nath*, I L R 27 All 704, referred to *Zamir Hasan v Sundar*, I L R 22 All 299, distinguished. *KALKA BAKSH SINGH v RAM CHARAN* (1918). I L R 40 All. 630

Sch. I, Art. 182 Sub-cl 7—

Secs 20 . . . 4 Pat. L. J 365

See CIVIL PROCEDURE CODE (1908), O

XXI, p 2 . I L R 38 All 204

Execution of decree—

Decree payable by instalments—Whole decree executable on failure to pay any one instalment—Limitation When a decree payable by instalments provides that the decree-holder shall have "discretion" or "power" on default being made in payment of any one instalment to realize the

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full amount of the decree with interest without waiting for any future instalment to become due. *Held*, that this does not mean that the decree-holder is bound to execute the decree for the whole amount remaining due when default is made, but he may still continue to execute the decree by instalments as they become due. *Goya Das v Jhumsian Lal*, I L R 37 All 460, and *Chatar Singh v Amir Singh*, I L R 33 All 204, distinguished. *Shankar Prasad v Jaiya Prasad*, I L R 16 All 371, referred to. *LACHMI NARAIN v SANJU PRASAD* (1916). I L R 39 All 230

Sch I, Art 182, Expl I.—*Execution of decree—Limitation—Execution of decrees of first Court and of decree of Appellate Court for costs carried out separately* In execution of a decree against S, D attached a decree held by S against himself and others for possession of certain property and costs. This decree had been the subject of an appeal by D and one other of the judgment debtors, which had resulted in a decree for costs against the two appellants only. The last application for execution of this decree was made in 1907. As to the lower Court's decree D made various applications for execution and succeeded in realizing all that was due under it. S became insolvent, and the receiver sold to one M what ever rights S may have had under either decree, but on application for execution made by the purchaser, it was held that there was nothing more to realize under the original decree and that execution of the appellate decree was barred by limitation. *CHULAM MURUGUDIN KHAH v DAMBAR SINGH* (1918). I L R 40 All 206

Sch I Art 182(5)—Expl II.—*'Proper Court,' interpretation of—Execution proceedings before Sangli Courts are proceedings before 'proper Courts'*—*Intermediate application barred by limitation—Subsequent application if made in time and not objected to are not barred* On the 10th September 1907, a decree was passed by the Sangli Court. An application was made to that Court to execute the decree, but it proved fruitless. On the 11th November 1907, a second Darbhast was made to that Court, but it was transferred to the Shabapur Court on the 14th idem. It resulted in recovery of Rs 11412 odd on the 24th March 1915. The third Darbhast was presented to the Sangli Court on the 9th August 1916, but it was disposed of on the 10th November of the same year. The next Darbhast was made to the Belgaum Court, but it was disposed of on the 16th May 1917. The present Darbhast, which was filed in the same Court on the 27th August 1917, was objected to as having been barred by limitation on two grounds (1) the proceedings from November 1907 to November 1915 not being before "proper Courts" did not save limitation; (2) the third Darbhast which was filed more than three years after the date of the second Darbhast having been barred by limitation, the subsequent Darbhasts also were similarly barred. *Held* (overruling the objections), that the proceedings before the Sangli Court operated to save limitation, because those Courts were "proper Courts" within the meaning of Art 182 cl 5 Expl. II of the Indian Limitation Act 1908. *Held*, further, that assuming that the third Darbhast was barred by limitation, yet inasmuch as proceedings were taken thereunder until the disposal of the Darbhast

LIMITATION ACT (IX OF 1908)—*contd*

they provided a new starting point for limitation and the subsequent Darkhasts which were in time and not objected to were not affected by the bar of limitation *Asubhas Vazrubhas v Dayabhas Amulakh* (1916) 40 Bom 594, distinguished. *Desaiappa v Dandappa* (1919) 41 Bom 227, followed. *PARBETLINGA APPA v GURUNTH DALAJI* (1920) . . . I L R 45 Bom 453

Sch I, Arts 182, 183—

See s 6 I L R 41 Bom 625

See REVIVOR . I L R 43 Calc 903

Sch I Art 183—

See CIVIL PROCEDURE CODE, 1908, O 45, r. 15 I Fa' L J 385

See LIMITATION I L R 47 Calc 746
I L R 42 Calc 776

Revivor of decree of Original Side of the High Court—Revivor of decree on notice to one only of two judgment debtors, not operating as revival against the other. A revivor of a decree of the Original Side of the High Court made on an application for execution against one only of two judgment-debtors in the case does not keep the decree alive so as to enable the decree-holder to execute it against the other judgment debtor after twelve years from the date of the decree. *McLAREN v VEERIAN NAIDU* (1915) I L R 38 Mad 1102

Application to enforce Privy Council order—Revivor, meaning of. On 22nd January, 1915 an application for execution of an Order of Her late Majesty in Council, dated the 28th November 1899 was made to a Subordinate Judge to whom the execution proceedings were transferred. Held that the application was governed by Art 183 of the 1st Schedule of the Limitation Act, 1908 according to which an application to enforce an Order of the Sovereign in Council must be made within 12 years from the date on which a present right to enforce the order accrued to some person capable of releasing the right providing, *inter alia*, that where the Order has been revived, 12 years shall be computed from the date of such revivor. Where on an application for execution notice is issued under s 216 of the Code of Civil Procedure, 1877 or s 243 of the Code of Civil Procedure, 1882 and the Court has decided that the decree is still capable of execution and makes an order for execution there has been a revivor within the meaning of the article. Where an Order in Council is transmitted to a subordinate Court for execution without any notice being given to the judgment debtors it would not be a revivor of the Order. *TRIBERAM DEO NARAYAN SINOH v BADRI MISSEY* (1916) 20 C W N 1051

Decree of Original—Side of High Court against two persons jointly—Revivor of decree on notice to one only under s 216 of Civil Procedure Code (XIV of 1877), whether a revivor against the other also. On the Original Side of the High Court an order of revivor under s 243, Civil Procedure Code (XIV of 1882) of a decree against two persons jointly when made on an application for execution against only one of them does not keep the decree alive as against the other so as to enable the decree-holder to execute it against that other judgment-debtor, more than

LIMITATION ACT (IX OF 1908)—*contd*

twelve years from the date of the decree. Art 183 of the Limitation Act (IX of 1908) which is applicable to execution of decrees passed on the Original Side of the High Court differs in this respect from Art 182. *KRISHNAIAH v GAJENDRA NAIDU* (1917) . . . I L R 40 Mad 1127

LIMITATION AMENDMENT ACT (XI OF 1909)

See MADRAS DISTRICT MUNICIPALITIES ACT (IV of 1884), s 168

I L R 38 Mad 456

See MUNICIPAL COUNCIL.

I L R 38 Mad 6

LIMITED COMPANY

See PCTNI LESSOR

I L R 42 Calc 1029

— assignment of lease to—

See LESSOR OR LEASEE

I L R 48 Calc 176

LIMITED GROUND

See APPEAL I L R 41 Calc 406

LINGAYET PANCH-KALAS MARRIAGE

See VATANDAR JOSHI

I L R. 40 Bom 112

LIQUIDATED DAMAGES

See INTEREST. I L R 42 Calc 652

LIQUIDATION

See COMPANIES ACT (VI of 1882), ss. 58, 147 I L R 40 Bom 134

See COMPANY

I L R 42 Bom 159, 264

LIQUIDATOR

— appointment of—

See COMPANIES ACT (VII of 1913), ss 207 (u), 208 I L R 39 All 412

— charges created by—

See COMPANY I L R 42 Bom 215

— in possession—

See MORTGAGE I L R 39 Calc 810

— Release of—

See COMPANY I L R 47 Calc 620

Registered company—Property of the company, vesting of—Official Assignee—Distribution of proceeds in Court when governed by Civil Procedure Code (Act V of 1908)—Release—Companies Act (VII of 1913) ss 2 (3), 3 (3), 171, 215 232 The Liquidator of a registered company differs in this respect from the Official Assignee in that the property of the company does not vest in him. The distribution of the proceeds which had come into Court before an application was made (to the High Court) to pass an order in favour of the liquidator, must be governed by the provisions of the Code of Civil Procedure. *ANBITA LAL KUNDU v ASHUTL CHANDRA DAS* (1916) I L R 43 Calc. 586

LIS PENDENS

See ASSIGNEE OF A MONEY DECREE.

I L R. 38 Mad 36

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XVI, R 63

I L R. 38 Mad 535

See COMPANY I L R. 42 Bom 215

See RES JUDICATA.

I L R. 36 Bom 169

See SALE FOR ARREARS OF RENT.

14 C W N 677

See TRANSFER OF PROPERTY ACT, s 5.

----- Misdescription of Property-----

See SPECIFIC RELIEF ACT s 31

26 C W N 36

Civil Procedure Code (Act XIV of 1852), ss 213, 311-313. Non-service of notice, of an irregularity—Sale of 1 tni mahal for arrears of rent—Purchase of tni mahal by executor of deceased d r potahar's estate in his personal capacity—Application under s 311 for setting aside sale by executor as such and under s 313 by purchaser in personal capacity. D, the zamindar of a purni mahal, sold his interest in the property and then brought a suit against C, the putnadar for the arrears of the purni rent that had accrued prior to the sale and obtained a decree. Shortly afterwards D died after having assigned all his property including this decree to certain trustees for the payment of his debts. The purni was then put to sale under Reg VIII of 1619 for non payment of rent and F who was the executor to the estate of his deceased father who was dar putnadar under C deposited the arrears for saving the dar putnadar interest from the effect of the sale and obtained possession as mortgagor. The putnadars interest in the purni was then sold in execution of a money decree and purchased by S. The trustees appointed by D took out execution and the purni was fixed for sale. F instituted a regular suit for a declaration that the decree under execution was not a rent decree and for a perpetual injunction upon the decree-holders not to execute the same against the purni mahal. The suit was decreed by the first Court but disallowed by the High Court on the 8th April 1908. F applied for leave to appeal to the Privy Council which was granted on the 30th June 1908. The trustees applied for the sale of the purni mahal and they impeached C alone as judgment-debtor. The sale took place on the 6th July 1908 and the property was purchased by F in his personal capacity. For setting aside the sale an application under s 311, Civil Procedure Code, was made by S as also by F as executor to the estate of his deceased father. F also made an application in his personal capacity under s 313, Civil Procedure Code. The District Judge allowed these applications and set aside the sale. The judgment of the Privy Council was subsequently delivered on the 4th March 1914 and it was held that the suit instituted by F should have been decreed. *Held* that the facts were sufficient to attract the application of the doctrine of lis pendens and the act of the decree holders in bringing about the sale could not prejudice F and make the judgment of the Privy Council nugatory.

LIS PENDENS—contd.

Shidol v Shambhu, I L R. 29 Bom 435, distinguished. That although C, the former putnadar, had no subsisting interest in the property, the decree holders having chosen to treat him alone as the judgment debtor were bound to serve him with notice of the sale, though they were not bound to issue notice on S the purchaser of the purni interest, whose suit failed, whom they were not willing to treat as the legal representative of C and against whom they did not want to execute the decree. That non-service of notice under s 218, Civil Procedure Code, was not a mere irregularity and violated the sale. *Jagannath Das v Sunder Das, 15 C W N 1038*, followed. That the auction purchase of the purni was made by F in his personal capacity and he was not debarred from applying under s 313, Civil Procedure Code, for setting aside the sale. *MOHANAS BHADUR SINGH v SURENDRA NARAIN SINGH 1914*) 19 C W N 152

Mortgage suit, settlement of land by mortgagor with tenants pending suit and before suit—Tenants if acquire rights in title—Mortgagor's power to grant leases binding on mortgagor. Where, pending a mortgage suit, the mortgagor settled a number of persons on different portions of the land and the latter got their names entered in the record of rights as tenants in occupation. *Held*, in a suit by the plaintiff in the mortgage suit, who had purchased the mortgaged property in execution of his own decree to recover possession from the tenants, that the plaintiff should recover. The principle of *Brund Lal Patraiah v Anil Prameswar, I F R. 20 Cal. 703*, should not be extended so as to affect the application of the doctrine of lis pendens. But tenants who were settled on the land by the mortgagor before the mortgage suit but after the mortgage, could keep their lands against the plaintiff upon proof (the burden whereof would be upon them) that the leases in their favour were granted on the usual terms in the ordinary course of management. The mortgagor has not anything like a general authority to deal with or affect the mortgaged property during his possession thereof. The true position is that he may make a lease conformable to usage in the ordinary course of management. *MADAN MOHAN SINGH v RAJ KISHORI KUMARI (1912)*

21 C. W. N. 88

Act (IV of 1852) s 52—No contest between defendant and alienation by one defendant to a stranger pending suit, whether affected by lis pendens. The rule of lis pendens enunciated in s. 52 of the Transfer of Property Act does not differ from the English rule and it protects parties to litigation against alienations by their opponents pending suit and the prohibition contained in the section is like *res judicata* inapplicable between parties to the suit who are ranged on the same side and between whom there is no issue for adjudication. 'Any other party' in s. 52 means any other party between whom and the party alienating there is an issue for decision which might be prejudiced by the alienation. *Pillay v Salane, (1857) De C & J 566*, and *Fayaz Hussain Khan v Prag Narain, I L R. 29 All 339, 345*, applied. In a previous suit by A to set aside a sale made by him to B as void and invalid and consequently

LIS PENDENS—*concl'd*

to set aside a mortgage made by B to C also as invalid, the plea of B and C that both the sale and mortgage were good was upheld. Pending the suit D bought B's rights in a Court auction. In a subsequent suit by C to enforce the mortgage *Held*, that D's purchase was not affected by *lis pendens* as there was no contest between B and C in the previous suit as to the validity of the mortgage and that D was entitled to plead that the mortgage was invalid as having no consideration. *KRISHNAYA v MALLYA* (1917)

I. L. R. 41 Mad 458

Suit to set aside gift of immovable property—Amendment of plaint—Change of description of property—Amendment not necessarily relating back to date of suit—Mahomedan law—Gift—Circumstances in which a gift becomes irrevocable In 1908, a Mahomedian lady executed a deed of gift transferring seven items of house property to her daughter in law S. In February, 1912, the donor instituted a suit for revocation of the gift, and summons was served upon the defendant in March, 1912. In the plaint it was alleged that the gift had in fact been cancelled as regards items 1, 6 and 7 of the property comprised in the deed of gift as the result of a decree in litigation between an heir of the donor's husband and the donee, and the plaintiff sued for cancellation of the gift in respect of the remaining items, including Nos 2 and 5. On the 16th of May, 1912 item No 6 (a house) was sold by the donee to T for Rs 1,000. On the 21st of May, 1912, the plaintiff asked for and obtained leave to amend her plaint by substituting item 6 for item 5. Subsequently to this the defendant added a plea to her written statement to the effect that item No 6 had been sold by her to T on the 18th of May, 1912. Nevertheless no steps were taken by the plaintiff to bring T on to the record as a defendant. In this suit a decree was passed in favour of the plaintiff. In 1915, T, the vendee of item No. 6, sued for possession of the property sold to her, impleading as defendants the original donor and W, her niece, to whom the house had been transferred by a deed of gift in April, 1914. *Held*, the plaintiff was entitled to succeed. The claim was not barred by the doctrine of *lis pendens*, inasmuch as an amendment of a plaint such as that obtained by the donor in her suit for revocation of the gift made by her, would not relate back to the date of the filing of the suit. Moreover, according to the Mahomedan law, the gift in favour of S became irrevocable on the execution of the sale by the donee in favour of T. *WALI BANDI TIBI v TAREYA BIBI* (1919)

I. L. R. 41 All 634

Alienation made a party to the litigation—Compromise between original parties behind the back of the alienor, whether binding on the alienor An alienor pendente lite who has been added as a party to the litigation is entitled to object to a decree being passed in terms of a compromise arrived at between his alienor and the opposite party. *VEERABHAGAVAT REDDI v SUBBA REDDI* (1920)

I. L. R. 43 Mad. 37

LIST OF MEMBERS

See COMPANY I. L. R. 45 Calc. 492

LITIGATION

— protection of—

See GRANT I. L. R. 44 Calc. 585

LOANSee CONTRACT ACT, s 74
I. L. R. 36 Bom 184See LIMITATION ACT (IX of 1908), ART. 59, 60
I. L. R. 39 Mad 1081**LOCAL BOARDS ACT (V OF 1894)**

— ss. 54, 144 to 147—

See NEGOTIABLE INSTRUMENTS ACT (V OF 1881), ss. 5 AND 6.

I. L. R. 43 Mad. 818

LOCAL BOOKING FORMSee RAILWAY COMPANY
I. L. R. 47 Calc 6**LOCAL CUSTOMS**See RAILWAY RECEIPT
I. L. R. 38 Mad. 684**LOCAL FUND CODE**

— I 549—

See NEGOTIABLE INSTRUMENTS ACT (V OF 1881) ss. 5 AND 6.

I. L. R. 43 Mad. 818

LOCAL GOVERNMENT

— delegation of power to—

See PENAL CODE (ACT XLV OF 1860), ss. 183 AND 209

I. L. R. 38 Mad. 602

— order of, authorising complaint—

See JURY, RIGHT OF TRIAL BY
I. L. R. 37 Calc 467

— powers of—

See BYE LAWS I. L. R. 47 Calc 547

See JURY, RIGHT OF TRIAL BY
I. L. R. 37 Calc 467

— ratification by—

See SECRETARY OF STATE.
I. L. R. 37 Mad. 45

— Rules of—

See MUNICIPALITY
I. L. R. 47 Calc 426See PENAL CODE (ACT XLV OF 1860)
ss. 183 AND 209

I. L. R. 38 Mad. 802

LOCAL INQUIRY

See COMPLAINT I. L. R. 46 Calc. 854

See LOCAL INSPECTION

LOCAL INQUIRY—contd

—order based on—

See DISPUTE CONCERNING LAND
I L. R. 46 Cal. 1036**LOCAL INSPECTION AND INVESTIGATION**

See PRACTICE

I. L. R. 25 Bom. 317

—by Judge—

See RIGHT OF SUIT
I. L. R. 39 Mad. 501

Power of Magistrate to make such inspection during a trial to understand the evidence and to determine the credibility of witnesses—Importing into judgment facts of record on such inspection—Disqualification of Magistrate—Illegality of conviction—Criminal Procedure Code (Act V of 1895), ss 145 202 293 294 336, Explanation. A Magistrate may inspect the place of the occurrence of an offence in cases where he cannot follow or understand the evidence without seeing the features of the land and he does not, merely by doing so disqualify himself from trying the case. But every possible precaution should be taken that the inspection is only a view of the local features, and an immediate report of what he has seen should be placed on the record and laid open to the scrutiny of the parties. The Magistrate can use the testimony of his own senses to test the veracity of the witnesses before him as regards the features of the locality but he cannot import into the case other matters of facts which he has himself observed. Where the Magistrate did not merely view the place of occurrence for the purpose of following or understanding the evidence and testing it in respect of the features of the locality but imported into his judgment matters of opinion and inference based on circumstances not on the record and did not place thereon the results of his local inspection—Held that he had committed an error of jurisdiction which may have materially prejudiced the accused, and that the conviction was, therefore, bad in law. The Explanation to s. 336 of the Criminal Procedure Code does not directly authorize a Magistrate to make a local inspection, but saves his jurisdiction to try a case, notwithstanding his having made such inspection or investigation, and does not do away with the restrictions under which they should be made. *Griek Chander Ghose v Queen Empress*, I L. R. 20 Cal. 337, *Hari Kishore Mitra v Abdul Baki Miah*, I L. R. 21 Cal. 920, *Queen-Empress v Manabam* I L. R. 19 Mad. 263 *In re Lajp*, I L. R. 13 All 302, *Sabri Dulah v Empress*, 3 C W N 607, *Nidani Mondal v Alohoza Sircar*, 2 C W N 622 and *Lal Behari Saha v Dejoy Sankar Sirkar*, 10 C W N 181, referred to. *HARBON SHELK v EMPRESS* (1910) I L. R. 37 Cal. 340

Results of inspection not recorded at the time but embodied in the trying Magistrate's judgment—Effect of omission of contemporaneous record—Facts so found not impugned before the Appellate Court—Legality of the conviction—Prejudice. A Magistrate trying a case may view the place of occurrence in order to follow or understand the evidence, but he should be careful not to allow any one on either side to say anything to him which might prejudice his mind one way

LOCAL INSPECTION AND INVESTIGATION
—contd.

or the other. *In re Lajp*, I L. R. 13 All 302, approved. There is nothing in the Criminal Procedure Code to prevent a Magistrate from holding a local investigation for the purpose of elucidating any matter in dispute, and in so far as it conforms to the provisions of the law of evidence it cannot be excluded. He should place on record the results of the local investigation, but it is not a positive rule of law that a note thereof must be made on the spot. Where the facts established by the local investigation are impugned and there is no contemporaneous record of them the Appellate Court cannot act on them; but if they are not impugned the Court cannot exclude them from consideration because there is no such record when the accused is not prejudiced by the irregularity. *Joy Chomar v Bhandoo Tail* I L. R. 9 Cal. 363 followed. *Earbon Sheikh v Empress* I L. R. 37 Cal. 319, *Griek Chander Ghose v Queen Empress*, I L. R. 20 Cal. 337 distinguished. Where the defence suggested that the alleged place of occurrence, a mound of earth was not available nor large enough to accommodate the number of assailants said to have been present, upon which the trying Magistrate inspected the locality and found the facts against the accused but made no separate note thereon on the record of the time though he embodied them in his judgment and they were not impugned before the Appellate Court but it was sought to exclude them on the ground of the omission of such note. Held that the omission of the Magistrate to record a note of the results of the local inspection at the time had not prejudiced the accused and that the conviction was not bad on that ground. *ATIAN RAI v EMPRESS* (1912) I L. R. 39 Cal. 476

Irregularity whether vitulates trial. Where in the course of a trial, the Court sent out a Sub Deputy Magistrate to hold a local investigation and examine him as a witness after he had made the investigation: Held, that the sending out of the Sub Deputy Magistrate was at most an irregularity and unless it prejudiced the accused, the trial was not vitiated thereby. That, under the circumstances of the trial, the irregularity did not prejudice the defence. *KADHA MADHAR PAIRRA v EMPRESS* (1910)

15 C. W. N. 414

Proper mode of conducting local investigations—Practice. Great care ought to be taken by a Magistrate who holds a local investigation to see that he is not approached by an outsider and that he does not allow his mind to be affected by outside matters. The proper thing for him to do is to be attended by a representative of either side for the purpose of identifying the points which are material in the case on the one side or the other, and he ought not to allow himself to enter into general conversation with the people of the neighbourhood about the case. *CHANDRA KUMAR GHOSH v MAHENDRA KUMAR GHOSH* (1910)

I L. R. 44 Cal. 711

LOCAL LIMITS.

See SECURITY FOR GOOD BEHAVIOUR.

I L. R. 46 Cal. 215

LOCAL SELF-GOVERNMENT ACT (BENG. III OF 1885).

S. 2 (2)—*District Board of Manbhum bye laws framed by—Encroachment, hanging verandah, if is* A hanging verandah would be an encroachment if it amounted to an unlawful gaining upon the right of user by the public. That right extends to all forms of traffic which have been usual or customary and also all that are reasonably similar or incidental thereto. The question whether a hanging verandah amounted to an encroachment would depend in each case upon the question whether in the particular circumstances it constituted an invasion of the public right of user as described above. The public have a right of user not merely on the roadway, but also on the side lands attached to the road. *MIRAJI BALDEO v MANBHUM DISTRICT BOARD* (1913) 18 C. W. N 1120

LOCUS DELICTI

See **EMIGRATION** I L R 37 Calc. 27

LOCUS POENITENTIAE.

See **SECURITY FOR GOOD BEHAVIOUR.**
I L R 43 Calc 1128

LOCUS STANDI.

to maintain suit—

See **UNDER-TEXTURE, SALE OF**
I L R 37 Calc. 823

LOCUSTS

Locusts, owner's right to drive away, from land—Liability to neighbouring owner on whose land they alight, for injury done Visitations of locusts, even where unpleasantly frequent, are in the nature of extraordinary and incalculable events, rather than a normal incident like the rise of a river in a rainy season. The principles of law laid down preserving or regulating the settled course of a river, on which depend many of the rights and benefits of adjacent owners are not necessarily appropriate to the course of an insect pest, which has no settled course and which it is the interest of every one concerned to repel or destroy. An owner may therefore protect his land from such a visitation and turn away the pest without being responsible for the consequences to neighbouring owners. Even if such visitations be regarded as a normal incident of agricultural industry, the owner would be entitled as an agricultural operator to drive away the swarm, just as he would be entitled to scare crows without regard to the direction they may take in leaving *GREYVEN STEYN v BATTINGOR* (1911) 15 C. W. N 563

LOBBY (HAND-DRAWN).

See **PUBLIC CONVEYANCES ACT** (BOM ACT VI OF 1863), s 1
I L R. 27 Bom. 374

LOSS OF GOODS.

See **CARRIERS** I L R. 39 Calc. 311
I L R 41 Calc. 80
I L R 47 Calc. 1027

See **RAILWAYS ACT** (IX OF 1890) s. 72.
21 C. W. N 1125

See **RAILWAY COMPANY**
16 C. W. N 766
I L R 41 Calc 576
I L R 47 Calc. 6

See **SHAWLS, MEANING OF**
I L R. 39 Calc 1029

*Notice—"Railway administration"—Railways Act (IX of 1890), s 3(6) 77, 140—Scope of s 140—Notice to Government through Collector—Limitation Act (IX of 1908), Sch 1, Arts 30 31, 115—Contract—Breach of contract for non delivery s 140 of the Railway Act has not the effect of cutting down the connotation of the words "railway administration" as contained in s 3 (6) It only provides for the convenience of the party aggrieved that if he wants to serve the notice on the Manager of the State Railway or the Agent of the Railway Company he must do so in one of the ways mentioned there. If the party chooses to give notice to the Government or the Native States or the Railway Company there is nothing in the Act to prevent his doing so, the latter alternative may enhance his trouble but it cannot take away his rights. *Secretary of State for India v Dip Chand Poddar*, I L R 24 Calc 306, *Great Indian Peninsular Railway Co. v Chandra Bai*, I L R 25 All. 552, *Janaki Das v Bengal Nagpur Railway Co.*, 15 C W N 356, *Pervannan Chetti v South Indian Railway*, I L R 22 Mad 137, *Nadhar Chand Shaha v Wood*, I L R 35 Calc 194, referred to. *Per CHATTERJEE, J* Notice served upon the Government through the Collector within six months is sufficient to satisfy the requirements of s. 77 of the Act. Art 30 of the 1st Schedule to the Limitation Act does not apply where the plaintiff's case is not for the loss of the goods, and where the defendant does not plead or prove any loss. *Per CHATTERJEE, J* Art 31 applies to suits against a carrier for compensation for non delivery of or delay in delivering goods, and the time for suit is one year from the time when the goods ought to be delivered. This Article contemplates a suit by the consignee and further it casts upon the carrier the onus of proving when the goods should have been delivered. *Per CHATTERJEE, J* When there is breach of a written contract Art 115 of the Schedule governs the case. *Mohani Singh (Kauwa v Henry Coude*, I L R 7 Bom 478, *Diamond v British India Steam Navigation Co.*, I L R 12 Calc 477, referred to. *RADHA SHYAM DASAK v SECRETARY OF STATE FOR INDIA* (1916) I L R. 44 Calc. 16 20 C. W. N. 780*

Damages—Port Commissioner's liability to deliver goods—Calcutta Port Act (Beng 111 of 1890), s 112, 113 and 114—"Sale risk," meaning of Is an action for damages, by a consignee against the Port Commissioners of Calcutta for non-delivery of goods landed by them—*Held*, that the provisions of

LUNACY ACT (XXXV OF 1858)—contd**— s 14—contd.**

Sale by Manager with out obtaining order of Court—oid—Pre-emption—compromise in suit for land—whether a sale—Trans fer of Property Act IV of 1882 s 54 One J D was judicially decreed insane and his wife Musammat R N was appointed his Manager. On 10th January 1883 she sold part of her husband's estate to N R, father of present defendant respondent M. R., without obtaining an order of the Court. The property sold was already in possession of N R, as mortgagee and the mortgage money was part of the consideration for the sale. On 10th May 1883, Musammat R N was removed from the Managership and M D the brother of the lunatic was appointed in her place and N R. was informed that the sale was invalid but nothing further was apparently done. In July 1895 there was a dispute in mutation proceedings in connection with the sale but mutation was granted mainly on account of the vendee's possession. On 3rd March 1903 the lunatic J D died and on 29th February 1912 his sons who had attained majority instituted a suit against the representatives of N R. for the possession of the land sold by their mother on the ground that the sale was void and also for redemption on payment of Rs. 260. The defendants pleaded that the plaintiffs were governed by Muhammadan Law, and that the mother was herself a sharer, that the suit was barred by limitation and acquiescence, that plaintiffs were estopped, that they had gained a title by adverse possession and that plaintiffs had benefited by the purchase money. But before any evidence was recorded the suit was compromised the plaintiffs giving up all their claims on payment of Rs. 500 and the suit was accordingly dismissed. In August 1913 a cousin of J D instituted the present suit for pre-emption on the basis that the compromise was a sale of the land. *Held*, that under the provisions of s 14 of Act XXXV of 1858 the sale by Musammat R N was void and as such could not be ratified. *Held also*, that by the compromise the sons of J D did not sell the land; they merely abandoned, in consideration of Rs. 500, their rights to obtain a decision of the Court in a case which was genuinely contested and therefore no claim for pre-emption was competent. *Janki v Gya Dat* (I. L. R. 7 All 482 F B) *Gul Muhammad Khan v Aham Ahmad Shah* (29 P. R. 1393) *Tilava Pami v Dharam Chand* (45 P. R. 1895), *Krishna Tanjari v Aba Shetti Padi* (I. L. R. 34 Bom. 139), *Rani Meera v Aswar v Panti Hulas Kaur* (L. R. 11 A 157, 166 P C) *Abdul Wahid Khan v Shalakh Babi* (I. L. R. 21 Cal. 496 P C) *Raj Bahadur v Jayrup Pande* (48 Indian Cases 37) *Mirza Muhammad Ali v Ali v 4 Quere* (9 O. C. 86), *Kurella v Ali v Rashid Hussain*, (9 O. C. 331) *Lauq Singh v Harnam* (20 Ind. Cases 351), *Miles v New Zealand Alford Estate Co.* (32 Ch. D 268, 291), referred to, also *1 stock and Mulla's Ind. on Contract Act*, 3rd Edition, p 152 *Mahmuddin v Matu Pami*

I L. R. 2 Lab. 109

LUNACY ACT (IV OF 1912).

Procedure—Inquisition as to person alleged to be a lunatic—Court not competent to delegate its judicial functions to an

LUNACY ACT (IV OF 1912)—contd

arbitrator or commissioner—Expert evidence It is not competent to a Judge who has to conduct an inquisition under the Indian Lunacy Act, 1912, into the state of mind of an alleged lunatic to abrogate his own judicial functions and appoint some person by way of an arbitrator or commissioner to make a report on the state of mind of the alleged lunatic. If a Judge, in these or similar circumstances, finds it necessary to have expert opinions to assist him it is his duty to call such persons as may be able to give the evidence needed and examine them upon oath. *MULLIKHAR PANDIT v LACHMI PANDIT* I L. R. 43 All 459

— ss 37, 38 and 62—**See LUNACY**

I L. R. 48 Cal. 577

Before a District Court can institute inquisition under s 62 as to a person possessed of property it must be established not merely that such person is residing with its jurisdiction but also that he is not subject to the jurisdiction of the High Court mentioned in s. 37 as the jurisdiction of the two Courts is not concurrent. *SERINATI ANILABALA CHOWDHURANI v DHIRENDRA NATH CHOWDHURY*

I L. R. 48 Cal. 577

25 C. W. N. 178

s 56—Guardian of lunatic obtaining District Judge's permission to take out compensation money in deposit with Land Acquisition Judge—Latter if may refuse to pay Where the natural guardian of a lunatic, in whose name a sum of money representing his share of compensation money paid by the Land Acquisition Collector was in deposit in the Court of the Land Acquisition Judge, obtained an order from the District Judge under s 56 of Act IV of 1912 for payment to him of a portion thereof for the maintenance of the lunatic, the Land Acquisition Judge had no jurisdiction to refuse the guardian's application for withdrawing the money. *BATTENDRA NATH DIX v THE SECRETARY OF STATE FOR INDIA* (1916) 20 C. W. N. 975

ss. 62, 63—“Relative” in s 63, meaning of—Wife's brother, if a “relative”—Inquisition proceedings, if may be started on verified petition only without medical certificates The brother of the wife is a “relative” within the meaning of cl. 11 of s 63 of the Lunacy Act competent to apply to the Court for the initiation of proceedings for inquisition. A District Judge is competent to take action for inquisition on a verified petition unaccompanied by medical certificates which under the rules of the High Court must be filed in such proceedings in the Original Side of that Court. *MANI LAL SINGH v NEPAL CHANDRA PAL* (1917) 22 C. W. N. 847

s 72—Lunatic—Appointment of guardian to person of lunatic—Wife of lunatic not necessarily excluded by s 72 s 72 of the Lunacy Act is a kind of warning that particular care should be exercised by the court where a person is appointed to inherit part of the property of a lunatic and is therefore benefited by his death, to see that the appointment of such person as guardian of the person of the lunatic is a beneficial one. The section, however, does not absolutely pre-

LUNACY ACT (IV OF 1912)—contd

s 72—contd.

clude such an appointment and in some cases the appointment of, for instance, the wife of the lunatic may be the most suitable, notwithstanding that she is one of the heirs. *Fazal Rab v Khafun Bibi*, 1 L R 15 All 29, distinguished. *AVIR KAZIM v MUSI IMRAN* (1916)

I. L. R. 39 All. 158

Chap V—

Lunacy—Requisition as to mental condition of alleged lunatic—Procedure. An inquisition under Chap. V of the Indian Lunacy Act once started must be prosecuted to the end. Before such an inquisition is ordered there ought to be a careful and thorough preliminary inquiry, and the Judge ought to satisfy himself that there is a real ground for an inquisition. An application for an inquisition should ordinarily be supported by affidavit or by examination on oath of the applicant, and by a medical certificate of some doctor as to the condition of the alleged lunatic. It would also be desirable in many cases that the Judge should seek some personal interview with the alleged lunatic with a view to satisfy himself that there is a real ground for supposing the existence of an abnormal mental condition which might bring the person within the Lunacy Act. *MUHAMMAD YAKUB v NAZIR AHMAD*

I. L. R. 42 All. 504

LUNATIC

See COSTS. I. L. R. 34 Bom. 374

See CRIMINAL PROCEDURE CODE (ACT V OF 1933) s 471

I. L. R. 43 Bom. 134

See DECREE. I. L. R. 44 Calc. 627

See GUARDIAN AD LITEM.
14 C W N 236

See LUNACY ACT

adoption by—

See LUNACY ACT (XXXV OF 1933)

I. L. R. 43 Mad. 680

Lunatic suit against—Ex parte decrees against unrepresented lunatic—Ignorance of Court as to fact of lunacy—Jurisdiction of Court—Fraudulent purchases by de facto manager of lunatic—Rights of purchasers from such fraudulent purchaser. One A was a lunatic not adjudged as such. During his lunacy a suit for rent was brought by the landlord for two plots of land belonging to the lunatic and two rent decrees were obtained ex parte against the lunatic who was not at all represented in the suit. The fact of the lunacy was not brought to the notice of the Court. At the auction sales in execution of the decrees the properties were purchased by a person who was the lunatic's de facto manager who again sold them to other persons who purchased with full knowledge of the lunacy. *Held*, that as the lunatic or his estate was not represented in the rent-suit the sales under the decrees of the Court therein obtained were nullities and the purchaser acquired no title by his purchase. The purchaser, being besides a fraudulent purchaser who had acted deliberately in breach of his trust as de facto manager of the lunatic, could not in any case be allowed to take advantage of the Court-sales even if they

LUNATIC—contd.

had been made with jurisdiction. As he had no title whatever the purchasers from him also acquired no title. *Rasik Lal Datta v Budhramkha Dasari*, 1 L R 33 Calc. 1094, relied on. *Kharaj Mal v Daim*, 1 L R 32 Calc. 296, 315, doubted. *HAKINGELLA v NABIN CHANDRA BARUA* (1914)

18 C W N 1329

LURKING HOUSE TRISPASSSee PENAL CODE (ACT XLV OF 1860),
s 456 I. L. R. 37 All. 395

I. L. R. 38 All. 517

See PENAL CODE ss. 413 and 441

Theft—Penal Code (Act XLV of 1860) ss 456, 457, 350—Trial for house trespass and theft under ss 457, 350, Penal Code—Disbelief of story of theft—Finding of intention to make immoral proposals—Contention under s 456, legality of—Prejudice—Criminal Procedure Code (Act V of 1898), s 238—Necessity of charging intention in cases under s 456—Intention how determined—Rule of construction of decided cases. On a trial for offences under ss 457 and 350 of the Penal Code, although the alleged intention, viz to commit theft has failed, the Court can, under s 239 of the Criminal Procedure Code, convict the accused of a minor offence, under s 456 of the Penal Code, if he has not been prejudiced thereby. Where on an allegation that the accused entered the room of a widow at night and committed theft he was tried summarily for offences under ss 457 and 350, and set up the defence of previous intrigue and entry with such intent at her invitation but the Court disbelieved the stories of theft and intrigue and found the entry to have been without her consent and in order to make immoral proposals to her annoyance. *Held* that that the conviction under s 456 of the Penal Code was legal and that the accused had not been prejudiced in the circumstances. *Jharu Sheikh v King Emperor*, 16 C W N 696, distinguished. *Kodlash Chandra Chakrabarty v Queen-Emress*, 1 L R 16 Calc. 637, *Bulmaband Ram v Ghansamram*, 1 L R 22 Calc. 391, *Premannanda Shaha v Brindaban Chung*, 1 L R 22 Calc. 991, *Emperor v Ishri*, 1 L R 29 All. 46 *Sher Singh v Emress* (1883), *Punj Rec 14 Lohi Rom v Queen Emress*, (1893) *Punj Rec 12 Ramroop v King-Emperor* (1902) *Punj Rec 18 Queen Emress v Balu* (1856) *Rukan unrep Cr O 253*, approved in determining the question of prejudice, the nature of the case made at the trial, the evidence given and the line of defence of the accused are matters to be taken into consideration. *Reg v Gomedas Haridas*, 6 Bom. H C 96, referred to. To sustain a conviction under s 456 of the Penal Code it is not necessary to specify the criminal intention in the charge. It is sufficient if a guilty intent on contemplated by s 441 is proved. The intention may be determined from direct evidence or from the conduct of the accused and the attendant circumstances of the case. *Dalmatand Ram v Ghansamram* 1 L R 22 Calc. 391, *Re v Dixon* 3 M & S 11, referred to. Every judgment must be read as applicable to the particular facts proved or assumed to be proved. *Quinn v Leatham*, (1901) A C 496, followed. *KARALI PRASAD GURU v EMRESS* (1916) I. L. R. 44 Calc. 358

M

MACHINERY.

_____ hire of—

See HIRE PURCHASE AGREEMENT

I. L. R. 44 Calc. 72

Over-head tank of Calcutta Corporation, if "machinery"—Machinery attached to land, if can be taken into account, in assessing value of land—Bengal Municipal Act (Beng III of 1884), ss. 6 (5), 101 (proviso) Per BEACHROFT, J. It cannot be properly said that everything which is contained in a system comes within the description of Machinery. Merely because mechanical contrivances are employed in the working of some parts of that system. The test to be applied with reference to any particular parts of the system is whether it is essential to, or assists in the working of the mechanical contrivance. The over head tank of the Calcutta Corporation is nothing more than a building for the storage of water, the water so stored being used when the need arises to supplement the amount of water pumped into the mains from the underground reservoir. It forms part of the system for supplying Calcutta with water and is filled from the same pumps which pump the supply of water into the mains. Held by the majority (FLITCHER, J. dissenting), on the above finding, that the tank was not "machinery" within the third proviso to s. 101 of the Bengal Municipal Act, 1884 *Chamberlayne v. Collins*, 70 L. T. N. S. 217, *Re Mulley and Finn*, (1894) W. N. 64, *Kirby v. Hundel Union Assessment Committee*, [1906] A. C. 43, and *Mersey Docks and Harbour Board v. Assessment Committee of the Birkenhead Union*, (1901) A. C. 175, referred to. *COSMOPOLITE CHITPORE MUNICIPALITY v THE CORPORATION OF CALCUTTA* (1919).

I. L. R. 46 Calc. 910

MADRAS ABKARI ACT (MAD. ACT. I OF 1886).

ss. 56, 64—Offence under section 56 not by licensee but by his deposit writer—Conviction, inquiry of. ss. 56 and 64 of the Abkari Act (Madras Act I of 1886) should be read together and not only the licensee but also the actual offender is liable to prosecution for offences under s. 56 of the Act. *Re Subudaimathu*, 1 W. N. Cr. R. 647, followed. *Re MUTHAYA* (1915)

I. L. R. 39 Mad. 895

MADRAS ACTS

1859—XXIV.

See MADRAS DISTRICT POLICE ACT.

1863—X.

See MADRAS RELIGIOUS ENDOWMENTS ACT.

1864—II.

See MADRAS REVENUE RECOVERY ACT.

1865—VII.

See MADRAS IRRIGATION CESS ACT.

See MADRAS WATER CESS ACT.

MADRAS ACTS—contd.

1865—VIII.

See MADRAS RENT RECOVERY ACT.

1869—VIII.

See MADRAS INAM ACT.

1873—III.

See MADRAS CIVIL COURTS ACT.

1876—I.

See MADRAS LAND REVENUE ASSESSMENT ACT.

1878—V.

See MADRAS CITY MUNICIPAL ACT.

1882—V.

See MADRAS FOREST ACT.

XXI.

See MADRAS FOREST ACT.

1884—IV.

See MADRAS DISTRICT MUNICIPALITIES ACT.

V.

See MADRAS LOCAL BOARDS ACT.

1886—I.

See MADRAS ABKARI ACT.

1887—I.

See MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT.

1888—III.

See MADRAS CITY POLICE ACT.

1889—I.

See MADRAS VILLAGE COURTS ACT.

1889—III.

See MADRAS TOWNS NUISANCE ACT.

1891—I.

See MADRAS GENERAL CLAUSES ACT.

1894—II.

See MADRAS PROPRIETARY ESTATE VILLAGE SERVICE ACT.

1895—III.

See (MADRAS) HEREDITARY VILLAGE OFFICES ACT.

1896—IV.

See MALABAR MARRIAGE ACT.

1897—IV.

See MADRAS SURVEY AND BOUNDARIES ACT.

1900—I.

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MADRAS).

See MALABAR TENANTS' IMPROVEMENTS ACT.

1900—V.

See IRRIGATION CESS AMENDMENT ACT.

1902—I.

See MADRAS COURT OF WARDS ACT.

1903—I.

See MADRAS PLANTERS' LABOUR ACT.

MADRAS ACTS—*concl'd*

1904—III

See MADRAS CITY MUNICIPALITY ACT

1905—II

See MADRAS PORT TRUST ACT

1905—III

See MADRAS LAND ENCROACHMENT ACT

1907—I

See MADRAS MOTOR VEHICLES ACT

1908—I

See MADRAS ESTATES LAND ACT

1914—I

See HINDU TRANSFERS AND REQUESTS ACT, MADRAS

MADRAS CITY MUNICIPAL ACT (MAD III OF 1904)

— s 120—*Exercising a trade,* what amounts to. Where a person has a servant at A who purchases piece-goods there and forwards them to B, where they are sold and the profits are earned, such person 'exercises his trade,' within the meaning of s 120 of the Madras City Municipal Act at B and not at A. There may be kinds of business in which the buying of goods is the most important part of the business and in such cases it cannot be said that the profits are earned elsewhere. **HARVEY SHAIK MEERA ROWTHEN v THE PRESIDENT OF THE CORPORATION OF MADRAS** (1906) I L R 23 Mad 62

— ss 121, 125, 172 and 177—*Right of appeal—Scope of section, assessment finally of order of, when no objection made within 15 days.* Petitioner's name appeared in the classification made under s 121 Madras City Municipal Act of 1904, and he was served with a notice to pay profession tax under s 125 of the Act. He did not pay the tax nor did he apply for revision within fifteen days of the notice. *Held*, that under s 177 the assessment was final and that no appeal lay. Profession tax is a matter within the scope of s 172. The first clause of s 172 of the Act of 1904 is wider than the corresponding clause of s 190 of Act I of 1884. S. 172 of the Act of 1904 must be construed to mean that all complaints against any tax or toll leviable under Part IV and all applications for revision in respect of any such tax or toll are cognisable by the President and two Commissioners. It should not be read so as to limit the complaints and the applications for revision as to the question of classification. **Muthuswamy Ayyar, J., vs Davies v President of the Madras Municipal Commission, I L R 14 Mad, 140, 144**, not followed. **Municipal Council of Cocanada v The Standard Life Assurance Company, I L R 24 Mad 206** distinguished. **VEERARAGHAVU v THE PRESIDENT OF THE CORPORATION OF MADRAS** (1910)

I L R 34 Mad 130

— s 150—*'Kept,' meaning of—Vehicle under repair is one kept and taxable.* Even a vehicle that is under repair and therefore unfit for immediate use is a vehicle 'kept' within the meaning of s 150 (1) of the Madras City Municipal Act (III of 1904) and so becomes liable to be taxed under that section. The word 'kept' is not qualified by the words 'for hire.' It is not necessary that the owner should have possession

MADRAS CITY MUNICIPAL ACT (MAD III OF 1904)—*concl'd*— s 150—*concl'd*

of the vehicle (in order to make it taxable. **KRISHNA ROW v. MADRAS MUNICIPAL CORPORATION** (1916) I L R. 40 Mad. 543

— ss 172, 177—

See S 121 I L R 34 Mad 130

— ss 262 and 420—*Re-construction of pandal, whether within the section.* The reconstruction of an old pandal with inflammable materials without the written permission of the President of the Corporation is prohibited by s 262 and is an offence punishable under s 420 of the Madras City Municipal Act (III of 1904). S. 262 of the Madras City Municipal Act (III of 1904) was intended to reproduce s 264 of the Madras City Municipal Act (I of 1884). **CORPORATION OF MADRAS v VANADACHARIAR** (1918)

I L R 42 Mad. 7

— s 287—*Final,* meaning of in s 287 (3)—*Standing Committee, whether special tribunal, or independent body—New additions to building—Whether mandamus or injunction appropriate—Remedy to remove them.* The plaintiff, as the owner of house and premises No 34 in Ergama Chetty Street in the City of Madras obtained permission from the Municipality of Madras City to execute certain repairs therein. The President being of opinion that under cover of the permission granted she had made considerable additions and alterations, made a provisional order under s 287, cl (1) of the Madras City Municipal Act (III of 1904) directing their removal and subsequently confirmed that order under cl (2) of s 287. Any appeal by the plaintiff to the Standing Committee having proved ineffectual she filed a suit in the City Civil Court for the issue of a perpetual injunction restraining the Corporation from continuing the alleged additions. *Held*, that when a right and an infringement thereof are alleged a cause of action is disclosed, and unless there is a bar to the entertainment of a suit the ordinary Civil Courts are bound to entertain the claim and that a suit for injunction will therefore lie. *Held*, further, that the Standing Committee cannot be held to be an independent body or a special tribunal authorised to settle finally disputes as between the tax payers or house-owners and the Corporation of which they are the members. Instance of 'Special tribunal,' pointed out. **Bhai Ekanori v The Municipal Corporation of Bombay I L R 31 Bom. 604**, referred to. *Held*, also, that the word 'final' in s 287 refers to proceedings before the Corporation and is intended to bar an appeal from the Standing Committee to the general body of Commissioners, but not to shut out the jurisdiction of the courts. The suit was properly brought against the President as he was acting on behalf of the Corporation. **Phadaram Chowdhury v Corporation of Calcutta, I L R 35 Cal. 671**, distinguished. **VALLI ANNAL v THE CORPORATION OF MADRAS** (1912) I L R 33 Mad 41

— s 368—*Order by Health Officer to remove a patient to isolation hospital—Fines to be levied—Disobedience of order—Charge under s 269, Indian Penal Code, whether sustainable—Duty of prosecution—Essentials of offence—The golly' and 'unlawfully' distinction between A person who was directed by the Health Officer acting under s 368 of the Madras City Municipal*

MADRAS CITY MUNICIPAL ACT (MAD III OF 1904)—*contd*s 366—*contd*

Act to remove his son to an isolation hospital removed him to an isolated house *Held*, that he was not guilty of an offence under s 269 Indian Penal Code Although under s 368 cl (3) of the Madras City Municipal Act, a person disobeying an order under the section is to be deemed to have committed an offence under s 269, Indian Penal Code, the prosecution must prove not only that there has been disobedience to the order but also that he had unlawfully or negligently done an act which he knew, or had reason to believe, would spread infectious disease *Caloon v Maheux (1897) I L R 24 Cal 494* referred to *KANDA SWAMY MUDALIAR v KING EMPEROR (1900)*

I L R 43 Mad 344

s 409 (Bye Laws under)—

bye-law 169—*Exposing for sale unwholesome drink (aerated waters)—Food in bye-law not covering drink* The word "food" in bye-law 169 framed under the Madras City Municipal Act (III of 1904) which prohibits the exposing or keeping for sale any article intended for human food which is unwholesome or unfit for human consumption does not include drinks such as aerated waters *THE CROWN PROSECUTOR v GANAPATHI IYER (1914) I L R 39 Mad. 362*

s 413 (Rules under)—*Presidency Magistrate holding an inquiry under rules framed under, not a Court under Charter Act (24 & 25 Vct, c 104), s 15—Jurisdiction—The Indian High Courts Act (24 & 25 Vct, c 104), s 15* The High Court has no jurisdiction to revise an order passed by a Presidency Magistrate in an inquiry held by virtue of the rules framed by Government under the Madras City Municipal Act (III of 1904), whereby a Magistrate may decide as to the competency or otherwise of a candidate for a Municipal election The Magistrate is not a Court subject to the appellate jurisdiction of the High Court within the meaning of that word in s 15 of the Charter Act (24 & 25 Vct, c 104) He is in the position of a referee between the President of the Municipal Corporation and the candidate *VIRI RAGHAYYU PILLAI v THEAGORAYA CHETTI (1914)*

I L R 38 Mad. 581

s 420—

See S 262. I L R. 42 Mad. 7

MADRAS CITY POLICE ACT (III OF 1888)

s. 75—

1 Place of public resort, meaning of—*Madras Harbour as a place of public resort—Disorderly behaviour in harbour premises, if an offence under s 75—Public place, meaning of—Right of public to go if necessary—Madras Port Trust Act (II of 1905) bye-law 2nd, meaning of The Madras Harbour is a place of public resort within the terms of s 75 of the Madras City Police Act Though the bye-laws passed under the Port Trust Act provide for the prosecution as trespassers of persons who enter the harbour premises without having business there or with the ships lying in the harbour, yet the bye laws were not intended to exclude respectable members of the public who have been freely allowed to enter the harbour premises A legal right of access by the public is not necessary to constitute a public place A public place is one where the public go, no matter*

MADRAS CITY POLICE ACT (III OF 1888)—*contd*s 75—*contd*

whether they have a right to go or not. *The Queen v Wellard, 14 Q B D 63*, followed *Kiston v Ashu, [1899] 1 Q B 245* referred to *THE CROWN PROSECUTOR v GOVINDARAJULU (1915)*

I L R 39 Mad. 886

—*Arack shop is a place of "public resort" within the section* The public have a right, under the terms of the licence granted to arack shopkeepers to resort to such shops and such shops are places of public resort within the meaning of s 75 of the Madras City Police Act III of 1888 *THE CROWN PROSECUTOR v MOOVU SANY (1909)*

I L R 33 Mad. 83

s 76—*Breach of condition of licence by servants of licensee holder—Conviction not only of licensee holder but of servants also, propriety of* Under s 76 of the Madras City Police Act only a licensee under the Act is liable to punishment for a breach of the conditions of the licence whether committed by himself or his servants But the section does not contemplate proceedings against the servant or agent of the licensee *VELAYUTTA MURALI v KING EMPEROR (1920)*

I L R 43 Mad. 438

MADRAS CIVIL COURTS ACT (III OF 1873).

ss 12 13—*Court Fees Act (VII of 1870) s 7 (a)—Suits Valuation Act (VII of 1887)*

—*Suits to redeem—Suit in a Subordinate Court—Voluntion for purposes of jurisdiction and court fees same—Court fees rightly payable only on principal debt as certified by Rs 800—Erroneous order of Subordinate Court to pay court fees on total amount payable on redemption above Rs 800—Appeal—No jurisdiction to the High Court but to the District Court In a suit for redemption of a mortgage instituted in the Subordinate Judge's Court, the amount of the principal of the debt was Rs 3,809 and odd the plaintiffs paid court fees on that amount; but the Subordinate Judge erroneously ordered the plaintiffs to pay court fees on the total amount payable on redemption, viz, Rs 7,218 and odd, and the plaintiffs paid the deficient court fees The Subordinate Judge passed a decree in the suit in favour of the plaintiffs The defendants preferred an appeal to the High Court The respondents objected that the appeal did not lie to the High Court but to the District Court *Held* that the amount of the principal debt must be taken as determining the jurisdiction under the Civil Courts Act and consequently that the suit lay in the Subordinate Judge's Court and that the appeal lay to the District Court and not to the High Court The authority of the Full Bench decision in *Zamern v Calcutt v Narayana I L R 5 Mad 281*, is unaffected by the Suits Valuation Act (VII of 1887) The order of the Subordinate Judge erroneously levying court fees on the total amount payable on redemption, cannot deprive the District Court of jurisdiction to hear the appeal and reverse it on the High Court *Joia dera v Madhava I L R 16 Mad 396* followed *Jyotulla Bhayya v Chandra Mohan Panneer, I L R 31 Cal 354*, distinguished *Jallijalluv Narayana v Vijayarani (1913)**

I L R 29 Mad. 447

s 12—

See APPEAL. I L R 40 Mad 1

MADRAS CIVIL COURTS ACT (III OF 1873)

—contd

s. 14—

See COURT FEES ACT, 1870, s. 7

I L. R. 39 Mad. 873

See JURISDICTION I L. R. 38 Mad. 795

Court Fees Act (VII of 1837), s. 7, (v) and (vi).—Suit for pre-emption—Valuation of suit for purposes of jurisdiction.—Suit originally filed in District Munsif's Court.—Return of plaintiff as beyond its jurisdiction.—Presentation of plaint in a Subordinate Judge's Court.—Plaint again returned by latter Court.—Appeal to District Court against order of District Munsif whether competent.—Election of remedies.—Civil Procedure Code, O XLVIII, r. 1. The plaintiff instituted the suit in a District Munsif's Court to enforce his right of pre-emption in respect of the suit lands which had been mortgaged to him on otti for Rs. 3190 and were sold to some of the defendants for Rs. 4500. The District Munsif returned the plaint for presentation to the proper Court, holding that the suit was beyond his pecuniary jurisdiction. On the plaint being presented in a Subordinate Judge's Court, it was returned again by that Court which held that the former Court had jurisdiction. The plaintiff, thereupon, preferred an appeal to the District Court against the order of the District Munsif. The defendants raised a preliminary objection that the appeal was incompetent and also contended that the District Munsif had no jurisdiction to entertain the suit. *Held*, that the appeal to the District Court was maintainable, although the plaintiff had filed the plaint in the Subordinate Judge's Court in pursuance of the order of the District Munsif. *Held*, also, that the proper valuation of a suit for pre-emption is for purposes of jurisdiction, in accordance with s. 14 of the Madras Civil Courts Act that fixed in the manner provided by the Court Fees Act, s. 7 (b); and that so valued the present suit was within the jurisdiction of the District Munsif's Court. **NARAYAN NAIR v. CHEKIA KATHIR KUTTY** (1918)

I L. R. 41 Mad. 721

s. 16—

See LIMITATION ACT, 1877, SCH. II, ART. 35. I L. R. 34 Mad. 398

See MAPPELLAS OF NORTH MALABAR.

I L. R. 18 Mad. 1052

Marriage—Hindu Law—Validity of marriage of Hindu with Christian women converted to Hindu religion.—Such marriage valid if recognised by the usage of the particular caste, though opposed to orthodox Hindu tenets.—Suit, abatement of.—Suit by reversioner for declaration on behalf of all reversioners does not abate on death of plaintiff. A marriage contracted according to Hindu rites by a Hindu with a Christian woman who, before marriage, is converted to Hinduism, is valid when such marriages are common among and recognised as valid by the custom of the caste to which the man belongs, although such marriage may not be in strict accordance with the orthodox Hindu religion. Under the Hindu system of Law, clear proof of usage will outweigh the written text of the Law. Under s. 16 of Madras Act III of 1873, any proved custom concerning marriage must be upheld. Apart from custom, such a marriage between parties who do not belong to the twice-born classes, is valid under Hindu Law. It is only

MADRAS CIVIL COURTS ACT (III OF 1873)

—contd

s. 16—contd

persons who belong to the twice born classes that are enjoined to marry in their own class. All other persons must be treated as Sudras and marriages between members of different classes of Sudras are valid. Where a caste accepts a marriage as valid and treats the parties thereto as members of the caste, the Court will not declare such a marriage null and void. A declaratory suit by a reversioner brought not only on his own behalf but on behalf of the body of reversioners, does not abate on the death of the plaintiff. **MUTHUSAMI MEDALAR v. MASILAMANI** (1909) I L. R. 33 Mad. 342

s. 17.—Original suit tried partly by a District Munsif.—Subsequent appointment as Subordinate Judge.—Decree passed by successor in the Munsif's Court.—Appeal from the decree.—Competency of the Subordinate Judge to hear the appeal.—Disqualification under the common law and statutory law, nature of.—Objection when to be taken.—Waiver.—Here bias or prejudice, ground of disqualification, when.—Appropriate remedy. Where a District Munsif tried an original suit in part and was promoted to be a Subordinate Judge and his successor in office as a District Munsif completed the trial of the suit and passed a decree therein, and an appeal preferred against the decree was heard and disposed of without objection, by the Subordinate Judge who had tried the original suit in part, *Held*, that the disposal of the appeal by the Subordinate Judge was not legally invalid and ought not to be set aside by the Appellate Court. S. 17 of the Madras Civil Courts Act introduces a statutory disqualification as regards District and Subordinate Judges but is confined to the case where the appeal to be heard in the Appellate Court is against the decree or order passed by the District or Subordinate Judge himself in another capacity. S. 17 of the Madras Civil Courts Act does not make any distinction between the Judge being a nominal party or a really interested party. The interest which disqualifies a Judge must be pecuniary interest or one which involves some individual right or privilege or it must be an interest arising out of the near relationship of the Judge to a party to the cause. *Mere bias or prejudice on the part of a Judge does not disqualify him in the absence of a statutory provision.* Even as regards relationship to a party to the cause, a Judge was not under the common law disqualified by such relationship and it is only by statute law that such a disqualification could be imposed on a Judge. Under the common law, there is no disqualification imposed on a Judge to sit in his own Court in review of his own decision (it is so under the statute law also) or even to review it on appeal in the Appellate Court, if he becomes an Appellate Judge having appellate jurisdiction over the Tribunal in which he decided the cause as Original Judge. Where there is no statutory or common law disqualification in the Judge of the Court below, an Appellate Court could not set aside its judgment of the Lower Court on the mere ground that it might have been swayed by bias or prejudice. Even in such a case unless objection was taken before the Judge of the Lower Court itself at or during the trial of the cause to his trying the suit or appeal, the Appellate Court could not interfere except in a strong or clear case of failure of justice in the Lower Court through bias or

MADRAS CIVIL COURTS ACT (III OF 1873)—
*—concld***s. 17—contd**

prejudice. The appropriate remedy in such cases was for the party to have applied to the proper superior Court to have the case transferred to another Court. *VENKATAPATEE NAYANIVART v MAHOMED SAMIR* (1913). I. L. R. 38 Mad. 531

MADRAS COURT OF WARDS ACT (MAD. I OF 1902).**s. 35—****See HINDU LAW—REVERSIONERS****I. L. R. 40 Mad. 671**

ss. 41, 37—Non-notification of pecuniary claims as required by s. 37, effect of—Cessation of interest, whether final—postponement of payment of unnotified claims to notified claims, whether continued after cessation of Court of Wards' management. The direction contained in s. 41 of the Madras Court of Wards Act (II of 1902) to postpone payment of pecuniary claims against a ward of the Court which are not notified to claims notified to the Collector as required by s. 37 of the Act applies only to the Court of Wards and not to others authorized to execute decrees under the Civil Procedure Code, and that to others in respect of unsecured claims; and the direction is not operative after the ward's estate ceases to be under the Court of Wards. Hence a mortgage decree against a person which the decree holder failed to notify to the Collector while the person was under the Court of Wards is executable in Civil Courts, without any liability to postponement to notified claims, after the Court of Wards management ceases. But non notification of existence of the claim as required by s. 37 entails a final cessation of interest from six months after the notification prescribed in s. 37 of the Act except in the event specified in s. 53 (f). *Depuru Kalappa Reddy v Umada Rajah*, 1 Mad W N 75, considered. *BUNGA ROW v RAJAH of KARVEENAGAR* (1917).

I. L. R. 41 Mad. 603

s. 49—(1)—Notice of suit—Suit for money as a suit relating to property of a ward. A suit for money is a suit relating to the property of a ward within the meaning of sub s. (1) of s. 49 of Madras Act I of 1902 (Madras Court of Wards Act) and requires a notice of suit under that section. A mere demand for payment is not a notice of suit. *VENKATACHALAPATHY v SRI RAJAH B S V SIVA RAO NAIDU BARADUR* (1912).

I. L. R. 37 Mad. 283**MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884).****See MUNICIPAL COUNCIL.****I. L. R. 38 Mad. 6****s. 10—****See RIGHT OF SUE****I. L. R. 36 Mad. 120**

s. 53—Shipping Company—Stips, calling at ports to load and unload goods—Calling at Cocanada for loading goods—Agent at Madras—Sub Agent at Cocanada—Contracts with shippers entered into only by agent at Madras—Company, whether trading or carrying on business at Cocanada—Company, whether liable to be taxed in Cocanada. Where a shipping company, which earned profits by carriage of goods by sea and in the course of its business called at several ports in various parts of the world, was in the habit of loading and un-

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—contd**s. 53—contd**

loading goods at Cocanada, and it appeared that the Company had its principal Agent at Madras who employed a Sub Agent at Cocanada but that all contracts with shippers could be and were entered into only by the Agent at Madras and the Company was assessed by the Municipality of Cocanada to pay tax under s. 53 of the District Municipalities Act (IV of 1884) for exercising its trade and carrying on business in Cocanada. Held, that the Company was not exercising any trade or carrying on business in Cocanada so as to be liable to be taxed under s. 53 of the Madras District Municipalities Act, because the freight-earning contracts with the shippers were not entered into at the port of Cocanada. *Umsinger v Gough*, [1896] A. C. 325, and *Lowell and Christmas, Limited, v Commissioners of Taxes*, [1903] A. C. 40, followed. *MUNICIPAL COUNCIL OF COCANADA v THE 'CLAN' LINE STEAMERS, LIMITED* (1918).

I. L. R. 42 Mad. 455

ss. 53 and 60—'Holds office' meaning of M, a District and Sessions Judge, whose usual place of business was within the Municipality of C, resided for sixty days within the Municipality of A, during the annual recess and during that period did some administrative but no judicial work. Held, (a) that M 'held his office' during that period, within the Municipality of K, within the meaning of s. 53 of the District Municipalities Act (IV of 1884), and (b) that a payment by him of profession tax for the half year covering the sixty days to the Municipality of K was a lawful payment which would exempt him under s. 60 of the Act from liability to pay the tax again for the same half year to the Municipality of C. *Chasman, Ongole Municipality, v Mounsey*, 1 I. L. R. 17 Mad. 453 distinguished. *MOBERT v THE MUNICIPAL COUNCIL OF CUDDALORE* (1914).

I. L. R. 38 Mad. 679

ss. 72 and 73—Theatre unfit for use and unused owing to removal of part of roofing—Exemption from tax. A building cannot be held to be 'completely demolished or destroyed' within section 73 (2) of the Madras District Municipalities Act (IV of 1884) so as to be completely exempt from liability to tax, simply because part of its roof is removed for the purpose of effecting repairs and the building is thus rendered unfit for use. As a building actually unused, it is liable for half the usual tax under section 72 of the Act. *MUNICIPAL COUNCIL OF TANJORE v KARNATA PRASAD* (1921).

I. L. R. 44 Mad. 354**s. 103—****See MORTGAGE. I. L. R. 38 Mad. 18****s. 168—****See MUNICIPAL COUNCIL.****I. L. R. 38 Mad. 6**

Adverse possession, against Municipality—Lawful encroachment, meaning of—Right of Municipality to remove encroachments, etc., after title barred—Limitation Act (XI of 1877)—Limitation Amendment Act (XI of 1900). Adverse possession by a person for twelve years before the Limitation Amendment Act of 1900 came into force, of some portion of a street vested in a Municipality is sufficient to give the person a clear title as against the Municipality.

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd*

— s 168—*contd*

Under s 168 of the District Municipalities Act the Municipal Council is not entitled to remove the projections and encroachments made by a person who has acquired full title to them and to the site on which the encroachments stand by adverse possession for the statutory period. *Bakamurra Swami v Bellary Municipal Council*, 1 L R 33 Mad 6, a.c. 23 Mad 1 J 478 distinguished. CHAIRMAN, MUNICIPAL COUNCIL, SRIHARAGAM, v SUBBA PANDITHAR (1913) 1 L R 38 Mad. 456

— ss 172 and 173—

See Torts 1 L R 41 Mad. 538

— ss 188, cl (5) and 189—*Application for license to boil paddy—Refusal of license more than thirty days after application—Fails to apply subsequent to refusal—Charge under s 189 of the Act—Conviction of legal Where a petitioner applied to the Chairman of a municipality for the continuance of a license for boiling paddy at a certain place during the next financial year, but the license was refused more than thirty days after the receipt of the application by the Chairman, and the applicant used the place for boiling paddy notwithstanding the refusal. Held that the petitioner was not guilty of an offence under s 189 of the District Municipalities Act, as the place in question should be held to be duly licensed for the financial year for which the license was sought under s 188, cl (5) of the Act. *Ra Venkatarubraya* (1916) 1 L R 40 Mad 589*

— s 191—*No right to farm slaughtering fees—Contract of farming such fees void and unenforceable—Contract Act, ss 11 and 23—Powers of Corporations to contract—Farming out by a municipality, of its right to collect fees on the slaughter of animals, which the municipality is entitled to levy under s 191 of Madras District Municipalities Act (IV of 1884), is unauthorized and ultra vires. A contract of lease which has the effect of farming out such a right is void and unenforceable under ss 11 and 23 of the Contract Act (IX of 1925) as being beyond the competency of the Municipal Corporation to enter into, and therefore prohibited. Held that any amount due to the municipality under such a contract cannot be recovered. Decision of *WALLIS, J.*, in *Corporation of Madras v Nathan Sah* [C S No. 244 of 1907] 21 Mad L J 788, and *Marudamuthu Pillai v Ranganatha Moopan*, 1 L R 24 Mad 401 applied. Halsbury's Laws of England Vol VIII, article 80, Corporations Title, referred to *Abdulla v Mamood*, 1 L R 26 Mad 156, distinguished. *Per* CURRIE. The right of farming out is not necessary to the exercise of the right of levying such fees may be naturally and easily collected by Municipal subordinates. The fact that there is an express power to farm out tolls negatives an implied power to farm out other kinds of fees. The fact that the Municipal Account Code contains provisions for the farming out of slaughtering fees and other taxes besides tolls is no guide to the interpretation of the Act in this respect. *Quare* Whether s 11 of the Contract Act is not exhaustive and does not deprive competency of a corporation to contract? MUNICIPAL COUNCIL, KUMBakonam, v ABRAHAM SAHIB (1913) 1 L R 33 Mad 113*

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd*

— ss 207 and 248-A—*Non-compliance with notice to provide latrines in houses—Duty of Municipality to call upon owners to provide movable receptacles or itself construct latrines before prosecution, whether any. It is not obligatory on a Municipality under the Madras District Municipalities Act (IV of 1884) either to call upon a house owner to provide movable receptacles under s 217 of the Act or to construct a latrine itself, before prosecuting the house owner under s 204 A for non-compliance with a notice to construct a latrine. An owner cannot be convicted of not providing a latrine in the backyard of his house when there is no backyard to his house. THE PUBLIC PROSECUTOR v NARAYANA REDDI AND OTHERS (1918) 1 L R 42 Mad. 57*

— ss 207, 264 (a), 278—*Fraction of a latrine by a house-owner—Nuisance to neighbours—Nuisance avoidable—Injunction—Damages whether sole remedy. The fact that a municipality, governed by the Madras District Municipalities Act which is empowered to see that house-owners provide latrines in their houses ordered the erection of a latrine in a certain house does not enable the house owner to erect a latrine at a place where it would be a nuisance to his neighbour. If he could erect it at any other place where it would not be a nuisance he can be restrained by an injunction to abate the nuisance. Award of damages as provided for by s 278 of the Act is not the only remedy. *RAMA ROW v MARTHA SEQUEIRA* (1919) 1 L R 43 Mad. 796*

— ss 216 to 221—*Duty of Municipality to carry night soil from houses to Municipal deposits—No rights in the municipality to levy fees from house owners. A Municipality constituted under the Madras District Municipalities Act (V of 1931) has no power to levy fees from owners or occupiers of houses and buildings within the Municipality, for carrying night soil and other offensive matter accumulating on their premises from inside those premises to the municipal deposits wherever situated, such duty being cast on the Municipality by the Act. SOUTH INDIAN RAILWAY v MUNICIPAL COUNCIL, TRICHINOPOLY (1920) 1 L R 43 Mad. 905*

— s 279—

See RIGHT OF SOFT

— s 287—*Held that the word 'shall' in s 287 refers to proceedings before the Corporation and is intended to bar an appeal from the Standing Committee to the Commissioners but not to shut out the Jurisdiction of the Courts. VALLI AMMAL v THE CORPORATION OF MADRAS* 1 L R 38 Mad 41.

MADRAS DISTRICT POLICE ACT (XXIV OF 1859)

See UNSETTLED PALATAM

1 L R 41 Mad. 749

— s 45—*'Threat' means if—Demand by a police constable of manil or customary payment whether an offence under the section. A demand by a police constable of a 'mamul' (customary payment made to obtain his favour) is a 'threat' within s. 46 of the Police Act (XXIV of 1859) and obtaining money by such a threat is an offence under the section. THE KING EMPEROR v LAL BAGO (1917) 1 L R 41 Mad. 463*

MADRAS ESTATES LAND ACT (I OF 1908)

See LAND TENURE IN MADRAS

Tender of patta not necessary to recover rent though accrued due prior to the Act.—Limitation, when begins to run in respect of claim for rent. In a suit for recovery of rent time runs from the time the rent became due according to the terms of the tenancy. *Arunachalam Chettiar v Kadir Panthan*, 1 L R 22 Mad 556 applied. *Chinnampalam Rajagopalachari v Lakshmi Doss*, 1 L R 27 Mad 241, and *Pangayya Appa Rao v Bobba Sriramulu*, 1 L R 27 Mad 143, referred to. Tender of patta is not a condition precedent to the maintainability of a suit under the Estates Land Act for the recovery of arrears of rent though such rent may have accrued due before the Act came into force. *Leenbhadra Raju v Kumbharanda*, 22 Mad L J 451 followed. Even under the Rent Recovery Act (VIII of 1805) the tender of patta was not necessary to complete the landholders right to rent but was only a condition to be fulfilled if legal proceedings had to be instituted for the enforcement of the landholder's rights. *Appa Rao v Ratnam* 1 L R 13 Mad 249 followed. *Venkata Narayana Andu v Seethayya*, 9 Mad. L T 231 and *Jaganmohi Jinnal v Muktabai*, 1 L R 14 Bom 516 distinguished. *Gopalanayami Mudali v Muktes Gopalur*, 7 Mad H C 312 referred to. *KANTHATHATHYATHA v MUTHUSANIA* (1912) 1 L R 37 Mad 540

Lessee whose term has expired whether a landholder under the Act.—No power to distrain holding after expiry of lease. The provisions of the Madras Estates Land Act (I of 1908) do not empower a person who was a lessee of an estate to take proceedings after the expiry of his lease to sell the tenant's holding for arrears of rent due for a term covered by the period of his lease. *Forbes v Maharaja Bahadur Singh*, 1 L R 41 Cal. 926 referred to. *PER SESHAKR J.*—His only remedy is to sue the tenant on his contract for rent. *PER SESHAKR AYYAR J.*—(i) A person to whom arrears are due is a landholder notwithstanding the fact that his estate has terminated. (ii) The law does not give him a first charge on the holding or the crops thereon. (iii) He can distrain the moveable property or the trees in the holding of the defaulter. (iv) He is not entitled to attach the holding. *SUNDARAM AYYAR v KULATHU AYYAR* (1910) 1 L R 23 Mad 1018

Arrears of rent.—*Transfer of interest in the estate.*—Suit for recovery of arrears—Pecuniary or Civil Court—Jurisdiction. The Revenue Court alone has jurisdiction to try a suit for arrears of rent which accrued due to a landholder under the Madras Estates Land Act, even though before the date of the filing of the suit plaintiff's interest in the estate had been transferred. *Forbes v Maharaja Bahadur Singh* (1914) 1 L R, 41 Cal. 926 (P.C.) distinguished. *PER SADASIVA AYYAR J.*—From a bare assignee of the arrears of rent from the owner of an estate or a part thereof is a landholder within the meaning of the Act for the purpose of pursuing the remedies of a landholder under the Act. *VENKATA LAKSHMANAIAH v ACUTI REDDI* (1921) 1 L R 44 Mad F. R 433

Appellant obtained from Respondents a lease of certain Lanka Lands for 3 years at an annual rent.—The law shewed that the

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parties anticipated cultivation of the land and there was no clause forbidding a sub-letting. It was further stipulated that at the conclusion of the term the lands were to be dealt with according to the pleasure of the Estate authorities without obtaining any release from the lessees. After obtaining the lease the Appellants did not cultivate the lands themselves but sub leased them to cultivating tenants. On the termination of the lease the Appellants were served with a notice to quit. The Appellants contending that inasmuch as they were cultivating the lands as *rayots* when the Madras Estates Act of 1908 came into operation the contract of tenancy was entirely superseded by that statute instituted a suit against the Respondents for determination of a fair and equitable rent for the holding leased to them and for a decree directing the Respondents to grant to them a patta in proper terms. Held that the object of the Madras Estates Act 1908, was to improve the condition and confer new rights and privileges especially upon the occupying cultivators of *rayots* lands and it would be quite opposed to its policy to confer on middlemen who sub let to occupying and cultivating tenants rights and privileges at all resembling those conferred on occupying cultivators and indeed would result in depriving the latter class of the benefits intended to be conferred upon them. The words *owner and farmer of rent* in sub-s 1 & 6 are not synonymous. They denote two classes of persons. If *owners* and *farmers of rent* are *rayots* at all they are as appears from s 48 non-occupying *rayots* and cannot be converted into *rayots* with a permanent right of occupancy. *SCRIBETT BURGIAIA v SRI RAJAH PARTHA SARATHY APPA RAO* 28 C W N 785

s 3 cl (2) (c) (d) & 5—*Land holder.*—Grantee of a portion of *melaram* is an estate a landholder—Cultivating tenant under the grantee, a *ryot*. An alienee of a part of the *melaram* due from the lands which form a part of an estate's *ryoti* lands is a landholder within the meaning of s 3 cl 5 of the Madras Estates Land Act (I of 1908) though what he thus owns may not be an estate under the Act and the tenant holding *ryoti* land under him for purposes of agriculture is a *ryot* under the Act hence a suit to eject such a tenant can be brought only in a Revenue Court and Civil Courts have no jurisdiction. *Brandanachandrar Horsachandrar Raja v Ramayya*, 25 Mad. L J 600 followed. *VENKATIA v SRI RAJA PAMA RAO* (1914)

1 L R 38 Mad. 1155

s 2 cl (2) (d), s 8, except—*Grant of village as nam.*—Village composed of cultivated lands and waste lands—Grant of *melaram*—Tenant of waste lands without occupancy right—Village an estate—Surrender by tenant—No acquisition of *melaram* by landlord—Suit in ejectment—Jurisdiction of Civil Courts. A village granted as an *nam* in A.D. 1749 was comprised at the time of the grant partly of lands under cultivation and partly of waste lands. The waste lands were subsequently given by the *namdar* for cultivation from time to time to different sets of tenants without occupancy right. The *namdar* brought the present suit in the Civil Court to eject the tenant whose period of tenancy had expired prior to the suit. The defendant contended that the Civil Court had no jurisdiction to entertain the suit

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Held, that the village as a whole must be considered to be an estate within the definition of s 3 cl (2) () of the Estates Land Act. Nor render by a tenant is not one of the modes in which the kudivaram right can be acquired by an inamdar within the terms of the exception to s 8 of the Estates Land Act. An inamdar cannot acquire the kudivaram right by surrender from a tenant, who had himself no occupancy right in the holding. *Held* consequently, that the Civil Court had no jurisdiction to entertain the suit. **VENKATA SASTRULU v SITARAMUDU** (1914)

I L R 33 Mad. 891

The provisions of the Madras Estates Land Act 1908 do not empower a person who was a lessee of an estate to take proceedings after the expiry of his lease to set the tenant's holding for arrears of rent due for a fall covered by the period of his lease. **SUNDARAM AYYAR v KULATHU AYYAR**

I L R 39 Mad. 1018

ss 3 (2) (c) and 8.—Meaning of 'an settled jagir,' as distinguished from ordinary inams.—Jurisdiction of Civil Courts. A personal grant for subsistence in no way differing from an ordinary inam, is not an *unsettled jagir* within the meaning of s 3 (2) (c) of the Estates Land Act but an inam. When the inamdar subsequently to the grant, acquires the kudivaram interest the case comes under the exception in s 8 of the Act, and the Civil Courts have jurisdiction in ejectment. **SAM v RAMALINGA MUDALIAR** (1916)

I L R 40 Mad. 664

s 3 (2) (d) —

Tanjore Palace Estate whether an "estate"—Inam.—Resumability not a test. After the annexation of the Tanjore Raj, the British Government made an irrevocable grant in inam in 1862 to the widows of the last Raja of Tanjore, of the revenue due on certain villages, commonly called the Tanjore Palace Estate, the kudivaram in which was vested in other persons, namely, the actual cultivating tenants of the village. *Held*, by the Full Bench that the Tanjore Palace Estate was an estate within s 3 (2) (d) of the Madras Estates Land Act (I of 1908). *Seemle*. A grant to be an inam need not be resumable. **SUNDARAM AYYAR v DEVA SANKARA BHAI** Second Appeal No 261 of 1913, overruled. **SUNDARAM AYYAR v RAMA CHANDRA AYYAR** (1917) I L R 40 Mad. 389

Grant in inam of an agraharam by an ancient king.—Presumption as to rights conveyed.—Agraharam granted, whether an "estate".—Right of agraharamdar to sue in ejectment in Civil Court. There is no presumption in law that the grant of an inam by a Native ruler prior to British rule conveyed only the melvaram (revenue due to the State). *Held* accordingly, that a grant of an agraharam in inam made by a Reddi king of Nellore more than 400 years ago and validated under s 15 of Madras Regulation XXXI of 1802 conveyed both the melvaram and kudivaram rights. *Held*, further, that the agraharam was not an "estate" within s 3 (2) (d) of the Madras Estates Land Act and the agraharamdar was entitled to sue the tenants in ejectment in a Civil Court. **SCRIVANARAYANA v PATANNA** (1918) I L R 41 Mad. 1012

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ss 3 (2) (d) and 8.—One of several inamdar, acquiring the entire kudivaram right in an inam village.—Leave of lands by such inamdar.—Suit for rent in Civil Court.—Jurisdiction of Civil or Revenue Court.—Exception to s 8, applicability of, to cl 1 or 2 of s 8.—Strict construction, necessary for. Where one of several inamdar in an inam village, having acquired by gift the kudivaram right in the whole village and leased fifty cents of land out of the whole village, sued to recover rent in a Civil Court on the basis of the lease; *Held*, that the Civil Court had no jurisdiction to entertain the suit and that the plaintiff should be returned for presentation to a Revenue Court having jurisdiction. The expression "the inamdar" in the exception to s 8 of the Estates Land Act should be read in its strict sense as equivalent only to the owner of the entire interest in the inam, and the exception should be treated as governing only sub-s (1) and not sub-s (2) of s 8 of the Act. **RAJACHARI v THEMCOON DEVASTANAM** (1918)

I L R 41 Mad. 724

s 3, cl (d) and s 8.—Whole inam village.—Minor inams therein.—Sarna inam of the temple, whole village described as.—Landholder, meaning of, in s 6 of the Act. s 3 sub-s (2), cl (d) of the Estates Land Act excludes from the definition of estate minor inams & e particular extents of lands in a particular village as contrasted with the grant of the whole village by its boundaries. A whole inam village though containing such minor inams is an estate within the meaning of cl (d) of the above section. Where a village is described as sarna or rent free agraharam of a deity it means that the whole village has been granted to the deity as inam. The term landholder in s 6 of the Act need not be a beneficial owner of the estate and includes a receiver appointed to manage the estate. **NARAYANASWAMI NATUDDU v SUBRAMANYAM** (1913)

I L R 39 Mad. 883

ss 3 (2) (d) and 153.—Inam village, if estate.—Grant whether carries melvaram only or kudivaram also.—Agraharam, meaning of. The word kudivaram, literally signifying a cultivator's share in the produce of land as distinguished from the landlord's share which is sometimes designated melvaram is a species of tenant right or right of permanent occupancy. In a suit by an inamdar of a village holding under a grant made to his ancestor in 1748 to eject tenants who had entered in 1907 under a tenancy agreement which had expired in 1908, the District Judge held that the inam village was an "estate" within the definition in s 3 of the Madras Estates Land Act, so that the Civil Court had no jurisdiction to entertain the suit. The decision having been affirmed by the High Court. *Held*, by the Judicial Committee, that there is no presumption of law that an inam grant of a village particularly if made to a Brahmin, is *prima facie* a grant of melvaram right only and does not include the kudivaram. **ADVENMILLS SRYGANARAYANA v ACHIA PAIKANNA**, L R 45 I A 209 s c 23 C W N 273 (1918), followed. *Held*, on the evidence, that the inam grant in this case carried, not the land revenue alone, but the whole proprietary interest in the property. S. 153 of the Madras Estates Land Act I of 1908, as amended by s 8 of Act IV of 1909, had no application to the case. **UPADRASHTA VENKATA SASTRULU v DEVI SREKTHARASUDU**

24 C. W. N. 126

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ss 3 (2) (d) and 189.—Grant of *inam* village.—Leaves by *inamdar* to tenants.—Claim by tenants to rights of occupancy.—Presumption as to transfer of *kuduvaram*.—Suits in Civil Court for ejectment.—'Estate' under Estates Land Act.—No evidence of any permanent occupancy rights.—Jurisdiction.—The appellant was the *inamdar* of a village consisting of both cultivated and waste lands, and he held it under a grant made to his ancestor in 1748, and since confirmed and recognized by the British Government. To suit in the Civil Court for ejectment against tenants of waste lands, the defence was that the respondents had permanent rights of occupancy, and that as the *inam* village was an 'estate' under s 3, sub-a (2), cl (d) of the Madras Estates Land Act, 1908, the Civil Court had no jurisdiction to entertain the suits. *Held*, that since the decision of the Board in *Suryanarayana v Palanra* (1915), I L R 41 Mad 1012 (P C), which was decided subsequently to the judgment now appealed from, there was no presumption of law that an *inam* grant of a village did not include the *kuduvaram*. Each case must be considered on its own facts and in order to ascertain the effect of the grant, resort must be had to the terms of the grant, and to the whole circumstances, so far as they could now be ascertained. *Held* having regard to the facts the terms of the grant the history of the estate, and the conclusions to be drawn from the other documentary evidence in the case, they were all inconsistent with the existence of any permanent occupancy rights, and lead to the conclusion that the *inam* grant carried not the land revenue alone but the whole proprietary interest in the property. The lands in suit therefore were not an 'estate' within the meaning of the Act, and s 189 did not apply. The Civil Court consequently had jurisdiction to entertain the suits. *VENKATA SASTRIGU v SEETHARAMUDU* (1920)

I L R 43 Mad 168

s 3, 2 (d) (e) and 5 and s 189.—*Inamdar* and ryot.—Suit for rent in a *Revenue Court*.—Revenue Court jurisdiction of—Landholder under s 3 cl (5)—Estate—S 3 cl (2) (d) and (e)—S 189 and sch A, No 8.—Landholders wider than "owner of an estate". An *inamdar* of a portion of a village where the *inam* consists only of some of the lands in a village granted by a *Zamindar* after the permanent settlement, is a landholder under s 3, cl (5) of the Madras Estates Land Act though the *inam* may not be an estate under s 3 cl (2) (d) and (e) of the said Act. A suit brought by such an *inamdar* for arrears of rent against a ryot is cognizable by a Revenue Court under the said Act. The test which is decisive on the question of jurisdiction is whether the plaintiffs are landholders under the Act. The term 'landholder' is wider than the expression the owner of an estate, and includes every person entitled to collect the rents of any portion of an estate by virtue of any transfer. *APPALANARASIMHULU v SANYASI* (1912)

I L R 38 Mad 33

Minor *inamdar*.—Lands granted by *zamindar* after settlement in permanently settled estate.—Whether *inamdar* a landholder.—Whether tenants under him have occupancy rights. Where a *zamindar* made post settlement *inam* grant of a portion of a village with both the *warasams* on a permanent *kasimbadi*. *Held* (*RAMARASWAMI SASTRI, J.*, dissenting) such minor *inamdar* is a

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"landholder" within the meaning of s 3, cl (5) of the Estates Land Act and the tenants have permanent rights of occupancy. *GADADHARA DAS BAJAJ v SURYANARAYANA PATNAIK* (1921)

I L R 44 Mad 677

ss 3 (5), 192, 205—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XVII, r 5

I L R 42 Mad 76

ss 3, (7) and 6.—'Final decree' in s 3 cl (7), meaning of. *Held*, by the Full Bench as follows—where an appeal from a decree in ejectment passed under the old law is heard after the commencement of Madras Act I of 1908 (Estates Land Act) the defendant being a ryot in possession of ryot land on such date he is entitled to claim a right of occupancy under s 6 cl (1) of the Act notwithstanding the original decree. The words "final decree" in the last sub clause of s 3, cl (7) mean a decree which is not under appeal or liable to be set aside or modified on appeal. *Obiter* CHIEF JUSTICE.—It is clear that where a landlord obtains a decree in ejectment before the commencement of the Act and executes it before the commencement of the Act the ryot could not claim the benefit of the first part of s 6. *Obiter* KANISWA SWAMI AYYAR, J. The final decree of a competent civil court referred to in the definition of old waste in s 3 cl (7) is a decree obtained in a proceeding independent of that in which the question of occupancy right is dealt with under s 6, cl (1) or the presumption under s 23 is made. The presumption under s 23 applies to all suits or appeals whether pending at the date of the commencement of the Act or instituted thereafter. *KANAKAYYA v JANARDHANA PADHI* (1913)

I L R 36 Mad 439

ss 3 (7) (1) and 6 (1).—Definition of old waste.—At the time of letting, meaning of. In a suit in 1910 by a landholder against a tenant who was holding over for ejectment and damages under s 153 of the Estates Land Act it appeared that the land in question was not cultivated before 1901 that it was then leased to a stranger for cultivation for five years ending with June 1906 and that it was thereafter leased by the plaintiff to the defendants for three years ending with June 1909. The defendants contended that they had acquired occupancy rights under s 6 (1) of the Estates Land Act. *Held* (i) that the land was ryot land other than old waste within s 6 (1) and (ii) that the defendants had acquired occupancy rights under s 6 (1) of the Estates Land Act and were not liable to be ejected. *Held*, further, that the words "at the time of letting" in the definition of "old waste" in s 3 (7) (1) refer to the creation of the tenure which is in dispute. *VENKATARAMAN v SRI RAJAN APPA RAO RAJA DUB* (1916)

I L R 40 Mad 529

Suit for resumption by a landholder against ryots.—First Court a decree before the Act in favour of the landholder.—Act coming into force during appeal, effect of.—Whether Estates Land Act, s 6, retrospective.—Final decree in s 3 (7), meaning of.—*Annamam* tenure, resumable.—Right of resumption when exercisable.—Notice to quit.—Prescription.—No estoppel by receipt of rent.—Improvements when tenant entitled to value of.—Transfer of

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property Act (IV of 1882) as 51 and 103 (h) Appeal No 174 of 1901. If a tenant knowing that he has not a permanent occupancy right in the land in his possession makes improvements without any hope or expectation in himself created or encouraged by the landlord, he cannot claim compensation for the value of such improvements. Even if the landlord knew that the tenant was making the improvements under a mistaken belief, that he had occupancy rights in the land, and merely kept quiet without interfering there will be no estoppel against the landlord. *Ramsden v Dyson* L R 111 L 192 and *Bani Ram v Kundan Lal* L R 26 All 493 followed. *Mahabateshi Ammal v Palani Chetti* 6 Mad H C 245 doubted S 51 of the Transfer of Property Act will not apply to the case of a tenant as it cannot be said that he is a person believing in good faith to be absolutely entitled to the land. Neither s 108 cl (h) of Transfer of Property Act nor the Hindu Mubam madan law nor Common Law of India is applicable to a case where the tenant without removing the fixtures in the one case or the building erected by him in the other case, wants to recover compensation for the improvements effected by him. [Where there has been a periodical raising of the rent due by the tenants and periodical resumption of the tenants' lands by the landlords both of which were submitted to by the tenants without any contest it may be concluded that the tenants have no occupancy rights. Lands held under *Amaram* tenure have generally been held to be resumable. So far as this Presidency is concerned it would seem to be well settled that a person who has lawfully come into possession as a tenant from year to year or a term of years cannot by setting up, however notoriously during the continuance of such relation, any title adverse to that of the landlord, inconsistent with the legal relation between them acquire by limitation, title as owner of any other, title inconsistent with that under which he was let into possession. *Seshamma Shetty v Chikaya Hegde*, I L R 25 Mad 507 followed. This doctrine is of doubtful applicability in a case where the landlord has shown by an unequivocal act that he intends to exercise his option and determine the tenancy even though he may not have succeeded in doing so. *Srinivas Ayyar v Mathurami Pillai*, I L R 24 Mad 216, referred to. It is also well established in this Presidency that if after the determination of the tenancy the tenant remains in possession as a trespasser for the statutory period, he will by prescription acquire a right as owner of such limited estate as he might prescribe for. A receipt of rent, subsequent to a notice to determine the tenancy is consistent with the case of either party on the question as to the existence of occupancy right as in any event there would be a liability to pay rent and it is therefore doubtful if such a receipt could be relied on as a waiver of the plaintiff's right to resume. *Held*, on the facts of the present case, that there was a determination of the tenancy by a reasonable notice and that there was no assertion of an adverse title for twelve years before the suit so as to entitle the defendants to claim a prescriptive right.] (The views enclosed in rectangular brackets were also stated but are no longer law as a Full Bench composed of the C. J., KUNSI NAYANAR, AYYAR and ALYING, JJ., decided the contrary in *Harakappa v Janardhanu Padha*, I L

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R 35 Mad 439, on 14th November 1910. This case is now reported for the other points decided in the case which are noted below.) [Where, during the pendency of an appeal filed by the defendant in a suit brought by a ramiandar to eject his tenants, the Madras Estates Land Act of 1908 came into force, the tenants who were ordered by the decree of the First Court to be ejected, cannot take advantage of s 6 of the Act even if that section be assumed to be retrospective, as the ryoti lands in respect of which they claimed permanent occupancy rights would be "old waste" as defined by s 3 cl (1), of that Act, in respect of which, before the passing of the Act, the zamindar had obtained a final decree of a competent Civil Court negating the occupancy right.] The words "Final Decree" occurring in s 3, cl (7) mean "final" with reference to the Court which passes the decree. A decree is none the less final for the purposes of the section because an appeal was pending when the Act came into operation. *Quære* Whether an appeal is a rehearing of the suit within the meaning of the Civil Procedure Code as under the Rules under the English Judicature Act so as to give retrospective effect to a statute passed after the decree of the First Court and during the pendency of the appeal. *Quære* Whether s 6 of the Madras Estates Land Act 1908 is in terms retrospective. *NARASAYIA v RAJA of VENKATAGIRI* (1910).

I L R 37 Mad 1

—s 3 (7), 6, 23, 153 and 157—'Old waste,' 'ejectment from—Onus of proving 'old waste' on landlord. A landholder claiming to eject a tenant under s 153 and 157 of Madras Estates Land Act (I of 1908) on the ground that he is a non occupancy ryot of 'old waste' is by s 23 of the Act bound to prove that the land is 'old waste' within the meaning of s 3 cl (7) of the Act. If neither sub-cl (1) nor the latter part of sub-cl (2) of the definition of 'old waste' would apply to the facts of the case, the first part of sub-cl. (2) cannot be used to prove that the land is 'old waste' as that refers to a state of facts subsequent to the passing of the Act, and as s 6 of the Act vested in the tenant in possession occupancy right from the date of the passing of the Act in all ryoti lands not being 'old waste'. *SARAYANATHU v VENKATARAJU* (1913) I L R 38 Mad 459

—s 3 (7), 153 and 157—*Proviso to s 153 effect of—* 'Old waste,' tenant of—*Ejectment from grounds of*. The combined effect of s 153 of the Madras Estates Land Act (I of 1908) even as added to by s 8 of Madras Act IV of 1909, and of s 157 of the Estates Land Act is that a ryot of old waste cannot be ejected on the ground of expiry of a term of lease contained in a contract entered into before the Act came into force. *ATYAPARAJU v RAJAH VELUGOTI GOVINDA KRISHNAYACHEN DRULAVARU* (1913) I L R 38 Mad. 163

—s 3 (10) 8, 185—*Private land conversion of ryoti into—Proof—Proviso to s 185 nature of*. *Per WALLIS, C J*—S 8 of the Estates Land Act does not impose respectively an absolute prohibition of the conversion of ryoti into private land not to be found in the definition or in the section specially dealing with evidence as to what is private land. Such a conversion should be proved by every clear and satisfactory evidence. The acquisition of *Ludivaram* right in certain

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lands by the landlord and his letting them out as kambattam lands on terms negating occupancy right with a view to prevent the assertion of such right is not sufficient to convert them into private lands within the meaning of the definition. *Per SESHAGIRI AYYAR, J*—Land originally *seri* cannot become the private land of the landholder except in the one instance mentioned in the proviso to s 185 of the Act. The proviso is not in the nature of an exception but enacts a rule of substantive law. *Mullins v Treasurer of Survey, 5 Q B D 173*, and *Maha Prasad Singh v Ramani Mohan Singh, 27 Mad L J 459*, followed. *ZAMINDAR OF CHELLAPALLE v SOMAYA (1914)*

I L R. 39 Mad. 341

—ss 3 (10 and 15) and 6—Sub s (1) and explanation added by amending Act (*Madras Act IV of 1909*), s 3, and s 185, proviso—Conversion of ryots into private land—Holder in unauthorized possession. The respondents held certain lands under a *muchlika*, dated 28th July 1907, given by them to the appellant by which they agreed to hold the lands, described as *Kamatam* or private lands until 30th April 1908 for the purpose of cultivation, the document expressly providing that it should itself operate as a surrender of the lands at the end of that term. The respondents however held over after the expiration of the lease, not only without the consent of the appellant, but contrary to his wishes and intention, and contrary also to the terms of the *muchlika*, and were so holding the lands on and after 1st July 1908 when the *Madras Estates Land Act (Mad Act I of 1908)*, came into force. In a suit by the appellant to eject the respondents and recover possession of the lands which he claimed as his private lands within the meaning of *Madras Act I of 1908* the defence was that they were ryotilands in which the respondents had occupancy rights under s 6, sub s (1) of the Act and explanation thereto added by the amending Act (*Mad. Act IV of 1909*). There were concurrent findings of fact by the Courts below that the lands were ryots, and that the appellant had not proved that they were his private lands within the proviso of s 185 of the Act of 1908. *Held* that, assuming that the respondents had not any permanent rights of occupancy in the lands in suit before the coming into force of *Madras Act I of 1908*, they obtained such permanent rights of occupancy by the operation of s 6 sub-s (1) as amended by s 3 of *Madras Act IV of 1919*, and the suit was rightly dismissed by the Courts in India. *Gowinda Parama Guruvu v Bhojani Dandam Padhi, 20 M L J 628* approved. *Kanaleyya v Janardhana Vadhi, 1 L P 35 Mad 439*, referred to. *YERLACADDA MALI KARJUNA PRASAD NAYUDU v SOMAYYA (1918)*

I L R. 42 Mad. 400

—ss 3 (10), 19, 189—

See RENT. I L R. 26 Mad. 7

—s 3 (11)—

See LANDLORD AND TENANT

I L R. 42 Mad. 702

—ss 3 (11) 53, 189 and Sch A Art 6

—Suit for *ci*, local cess, village cess by an *ijaradar*—Mandatory only in Revenue Court—Exchange of *patia* and *muchlika* not necessary for recovery of rent by suit under *Estates Land Act*—

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'*Ijaradar*' and '*Pent*,' definitions of—Article 13 of schedule of the *Provincial Small Cause Courts Act (IX of 1887)*. A suit by an *ijaradar* of a *ehate* of a village governed by the *Estates Land Act (Mad. Act I of 1908)* for recovery of *ci*, local cess and village cess due by a ryot is cognisable by virtue of s 189 and sch A, art 8 of the Act only by a Revenue Court and not by a Small Cause Court, as all the above items sought to be recovered are by s 3 of the Act included in the term '*rent*' and as an '*ijaradar*' is according to s 3 (5) of the Act a '*landholder*' being entitled to collect rent by virtue of a transfer from the owners. No exchange of *patia* and *muchlika* is necessary under the *Estates Land Act* for recovery of rent by suit, the same being necessary according to s 53 only in case where the landholder wishes to distrain or sell the ryot's movables or his holding. It is wrong to hold that art 13 of the schedule to the *Provincial Small Cause Courts Act (IX of 1887)* applies to a suit for land cess or village cess under the above circumstances. Second Appeal No 680 of 1910 (unreported), followed. *PERRAJU GARU v SUBBAHAYUDU (1913)* I L R. 36 Mad. 126

—s 3 (15 & 16)—'Ryotilard'—'Ryot, Rent—Pasture land not ryotilard—Rent for pasturing, not '*rent*' under the Act—Ss 139 and 77 of the Act—Suit for ejectment and recovery of pasture rent, cognisable, only by Civil Courts. Land usually fit only for pasturing cattle and not for cultivation, i.e., ploughing and raising agricultural crops is not '*ryotil*' land, though it may have been '*old waste*' and a tenant of such land is not a '*ryot*' and any amount agreed to be paid for pasturing cattle is not '*rent*' within the definitions of s 3 of the *Madras Estates Land Act (I of 1908)* hence a suit to eject such a tenant from the land or to recover the amount due for pasturage is cognisable only by a Civil Court and not by a Revenue Court, as the jurisdiction of Civil Courts exists in all cases where it has not been expressly taken away. *PAJA OF VENKATAGIRI v AYYAPANE DJI (1913)*

I L R. 38 Mad. 738

—ss 4, 27, 73, 143—Levy of fee (*Kanpa nam*) for supervision of harvest, legality of—Right of landlord to enter land and make experimental harvest—Liability of tenant to pay compensation for loss of crops by theft or cattle—Liability to pay rent for fallow lands, in the absence of custom—Right of tenant to obstruct flow of rain water into the landlord's irrigation channel—Liability to pay wet rate when water insufficient—Remission of rent, legal right to. Where the landlord is entitled to a share of the produce, the levy of a fee (called *Kanpanam*) by the landlord on the tenant for supervising the harvest in order to protect his interests is not illegal and it is not opposed to s 73 or 143 of the *Estates Land Act*. *Detana v Raghunatha Row, (1913) Mad W N 886* and *Karri Peddi Reddy v Receiver of Nidadavole and Medur Estates, 18 Mad L T, 771*, followed. A landholder entitled to a specific share of the produce, is not entitled to enter upon the land and make an experimental harvest of a small portion of the land with a view to throw on the tenant the burden of proving that the yield of the other portions was not equal to that of the experimental harvest. A landowner is not entitled to levy a fee (called *Panchamuti*) as compensation for the loss caused to the crop by cattle, theft, etc., as the tenant is not an insurer and is not

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liable for acts beyond his control. *Raja Paritha Sarathi Appa Poo v Cherendra Chinnu Sundara Pimayyan*, 1 L R 27 Mad 813, followed. In the absence of a custom to charge rent for lands left fallow by the tenant no rent is claimable in respect of such lands. S 4 of the Estates Land Act should be read subject to s 27 of the Act. *Siva Rethen v Alagappa Chetty* 26 Mad L J 269. *Arunachalam Chettiar v Mahalingam Thevar*, 26 Mad L J 575 and *In re Arunachalam Chettiar*, 26 Mad L J 828 followed. *Appalaraju v Raja of Visnupuram*, 25 Mad L J 50 distinguished. In the absence of a custom to that effect a tenant owning dry land within the bed of an irrigation tank has no right to obstruct the flow of rain water into the tank by putting up ridges on his land so as to retain for his cultivation the water so obstructed. If he so obstructs the flow of water he is liable to pay the higher rate called *Sarasari* as for wet crops. A tenant is liable (a) to pay *Sarasari* wet rate, if he raises on his wet and dry crops when he can raise wet crops and (b) to pay only the usual dry rate if he raises only dry crops owing to insufficiency of water. Remission of rent is a matter of grace and not of right. *Alagappa Chetty v Tirunagurali* 13 Mad L J 377 followed. *ARUNACHALAM CHETTIAR v MANGALAM* (1915) 1 L R 43 Mad. 249

— ss 5, 7th 125 132, 133 *Transfer of Property Act* (1 of 1882), s 100—*Civil Procedure Code* (Act 1 of 1908) O XXIV, r 14—*Suit for rent in a Revenue Court—Money decree for rent—Rule in execution—Title of purchaser, whether free from encumbrances*. A sale in execution of a decree for rent in a Revenue Court passes the property to the purchaser free of all encumbrances except those specified in s 125 of the Madras Estates Land Act. A charge for rent, created by s 5 of the Madras Estates Land Act is not a charge within the meaning of s 100 of the Transfer of Property Act so as to attract to it the provisions of O XXIV of the Civil Procedure Code. *Perick Chander Dey Sarcar v Foley* 1 L R 15 Cal 49^a, and *Royudis Shrikh v Kals Nath Bookkeeper* 1 L R 33 Cal 985 followed. *Taruniprasad Roy v Narayan Kumar Dutt* 1 L R 17 Cal 301, dissenting from *SRINAMMA v SURYANARAYANA JAGAPATHIRAJU* (1918) 1 L R 42 Mad 114

— ss 5 and 132—*Decree for rent—Transfer of execution of decree to a Civil Court—Land holder's right of first charge on holding—Decree holder ceasing to be landlord at the time of execution effect of a first charge*. A landlord's right to enforce in execution a decree for rent passed under the Madras Estates Land Act as a first charge upon the tenant's holding is available only if the decree is executed in a Revenue Court and not when its execution is transferred to a Civil Court. *Held* further by *SADANIV AVARAJ*—The landlord is entitled to claim the first charge for rent on v if he continues to be landlord at the time the claim for rent is sought to be enforced. *Forbe v Mahomed Bahadur Singh* (1914) 1 L R 41 Cal 906 (P C) followed. *VENKATA LAKSHMANNA v SRIYATTA* (1920)

1 L R 43 Mad. 786

— s 6—

See ante

26 C W N 783

See s. 3

1 L R 37 Mad. 1

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— s 6—contd.

— *Permanent right of occupancy—Sole crop—Proprietors and farmers of rent—Middlemen*. The appellants were lessees of certain lands under a lease made before the Madras Estates Land Act 1908 came into operation. The lease by its terms contemplated the cultivation of the land by ryots and did not prohibit subletting. It provided for the termination of the tenancy in 1910. The appellants sublet the lands to tenants who occupied and cultivated them. *Held* that the appellants had not a permanent right of occupancy under section 6 sub-section (1) of the Act being merely middlemen. If the proprietors and farmers of rent referred to in s 6 (6), are ryots at all they are non-occupying ryots and cannot be converted into ryots with a permanent right of occupancy. (*Judgment of the High Court affirmed*) *PITCHAYIA v AIPA RAO* (1921)

1 L R. 44 Mad (P.C.), 836

— *Explanation on—Transfer of property in possession on the date of the Act not entitled to occupancy right*. Where a landholder brought in execution of his decree for arrears of rent his tenant's right in a ryoti land before the date of the commencement of the Estates Land Act, but the tenant continued in actual possession of the land on that date. *Held* that the tenant was then a mere trespasser and did not acquire occupancy rights by virtue of the Explanation to s 6, clause (1) of the Act. *Sripada Mudali v Thyagaraja Chettiar* (1914) 2nd M L J 60^a not followed. *VENKATACHALA NAIR v PETHURAJAN NAIR* (1911)

1 L R 44 Mad 220.

— s 6 sub-s (5)—*Release of revenue on lands and ryotwari tenure purchased by zamindar—Zamindari lands acquired by Government under Land Acquisition Act (1 of 1894)—Compensation—Substitution of ryotwari lands as zamindari lands—Suit for payment—Acquisition by land holder of occupancy rights—Acquisition by tenant of rights of land holder*. The respondent was zamindar of a settled estate parts of which were taken by the Government under the Land Acquisition Act 1894, for making drainage canals. The compensation to which the land holder was entitled could have been paid in money or with the land holder's consent by a reduction of the revenue on the estate, but the land holder asked that he might have instead some Government lands in another district of which lands he had already acquired the ryoti rights and this was agreed to, and the new lands were transferred to the land holder and entered in the Collector's registers as zamindari lands instead of as formerly Government lands. Three lands were let in 1901 to the appellant for five years, and the lease was prolonged for a further period of three years on the expiration of which the land holder was desirous of resuming possession, but the appellant refused to quit on the ground that he had acquired a permanent right of occupancy in virtue of the provisions of s 6 of the Madras Estates Land Act (1 of 1908) which had come into force on 1st July of that year. In a suit in the Civil Court by the respondent to eject the appellant. *Held* that for the appellant to succeed it was essential that the lands let to him should be a 'permanently settled estate' or part of such an

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estate within the provisions of Madras Act I of 1908. But there was no formal settlement, and no recorded evidence of any settlement. Admittedly there was no sanad dealing with the lands in terms of Madras Regulation XXV of 1802, nor anything to which the appellant could point as making a settlement, and the uncertainty of the mode of settlement, if any, was fatal to any idea of a settlement having been made, and the defence therefore failed. **PARTHASARATHI APPA RAO v BONMADEVA SATTANARAYANA** (1918)

I L R 42 Mad 355

— s 6, sub-s (6) and s 8—*Government lands under ryotwari tenure, purchased by zamindar*—Release of revenue on such lands—*Zamindars' lands, acquired by Government under Land Acquisition Act (I of 1894)—Compensation—Substitution of ryotwari lands as zamindars' lands—Suit to eject—Jurisdiction of Civil Courts—Acquisition by landholder of occupancy right—Acquisition by tenant of landholder's right, difference between* Where a zamindar who had purchased some ryotwari lands from a Government ryot and obtained a release of revenue due on such lands in lieu of compensation payable to him for some other lands taken up by the Government under the Land Acquisition Act (I of 1904), brought a suit in 1911 in the District Court to recover such lands from a tenant who was in possession thereof since 1801, and the defendant contended that he had acquired occupancy right thereto and that the Civil Courts had no jurisdiction to entertain the suit. *Held* (i) that assuming that the suit lands were substituted as part of the zamindari, the plaintiff, who was a Government ryot of such lands prior to the substitution had occupancy right therein and did not lose such right by becoming interested in them as landholder, under the explanation to sub-s (6) of s 6 of the Madras Estates Land Act, (ii) that the provision of s 8 (1) of the Act refer to the acquisition of occupancy right by landholders and not to the acquisition of landholders' right by ryots, and (iii) that in any event the general provisions of s 8 (1) cannot affect the special provisions of the explanation to sub-s (6) of s 6 of the Act. **ZAMINDAR OF SANTYARAPET v ZAMINDAR OF SOUTH VALUR** (1913). I L R 39 Mad. 943

— s 8—

See s 3. I L R. 38 Mad 891

I L R. 40 Mad. 684

I L R. 41 Mad. 724

See s 6. I. L. R. 39 Mad. 944

— ss 8 (except 3), cl (2) (d)—*Inamdar*—Right to kudavaram—No presumption in favour of inamdar—No distinction between zamindar and inamdar as to presumption—Surrender or abandonment of holding, not an acquisition by landholder of right to kudavaram—Suit in ejectment—Jurisdiction of Civil or Revenue Court The presumption is that an inamdar like a zamindar is not the owner of the kudavaram right. *Per* SANKARA AYYAN, J.—Surrender or abandonment of the holding by the tenant, is not a case of acquisition of the kudavaram right by the landholder within the terms of the exception to s 8 of the Estates Land Act and such land does not therefore cease to be part of the estate, consequently the Civil Courts have no jurisdiction to entertain suits in ejectment brought by inamdars against the defendants who

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were tenants in possession, but the plaintiffs should be returned for presentation to the Revenue Courts. *Per* SPENCER, J.—A narrow interpretation should not be placed on the word 'acquired' in the exception to s 8, so as to exclude acquisition by an inamdar by surrender or abandonment of the kudavaram right by a tenant. **SUBBANA RAYANA v PATANA** (1913) I L R 38 Mad 608

— s 8, except; s 153, proviso, ss 157 and 163—*Shrotriendrar—Right to kudavaram—Presumption as to—Acquisition of kudavaram right—Surrender or abandonment, effect of—Suit in ejectment—Jurisdiction of Civil or Revenue Courts—Tenant for a term—Tenant in possession after expiry of term—No subsequent recognition by landholder as tenant, effect of—Trespasser* The plaintiff, who was the shrotriendrar of a certain village, brought a suit in the Civil Court to eject the defendant who was a tenant of some lands forming old waste under a lease for a period of three years which had expired before the Madras Estates Land Act came into force. It was found that the defendant had no occupancy right in the holding, and that he was not recognised as a tenant by the landholder after the expiry of the period of the lease. The defendant contended that the Civil Court had no jurisdiction to entertain the suit. *Held* that the Civil Court had jurisdiction to entertain the suit. *Per* MILLER, J.—Surrender or abandonment by the tenant is one of the modes in which the landholder can acquire the kudavaram right so as to attract the provisions of the exception to s 8 of the Estates Land Act. When it is found that a tenant has no occupancy right in his holding and that the land is not private land, the presumption, is that the occupancy right is in the landholder either by the original grant or by prior or subsequent acquisition. *Per* SPENCER, J.—The provisions of s 153 of the Estates Land Act are not exhaustive of all possible cases of eviction. Cases of eviction of tenants under leases or terms not exceeding five years are taken out of the Act by the proviso to s 153 and consequently out of the jurisdiction of the Revenue Courts. A tenant in possession after the expiry of his term, who has not been recognised by the landholder as a tenant subsequent thereto, is a trespasser within the meaning of s 163 of the Act, and consequently a suit in ejectment can be instituted against him in a Civil Court. **PONNUSAMY PADAYACHI v KARUPUDAYAN** (1914). I L R 38 Mad. 543

— ss 9, 11, 151, 157 and 157 (g)—*Custom or contract enabling tenant to build on ryoti land, validity of* A custom or contract entitling a ryot of agricultural land to erect buildings thereon, is not opposed to the provisions of the Madras Estates Land Act, and can be enforced against the landlord, though such erections may impair the value of the holding for agricultural purposes. The effect of such a custom is simply to make it an implied term of the contract of tenancy. **MARNA KATH ROWTHAN v FOLKES** (1912)

I L R 37 Mad. 432

— s 11—

See s 3. I L R. 43 Mad. 174

— ss 11 and 151—*Suit for injunction by landholder against tenant—Agricultural holding—Erection of building on part of the holding—Part rendered unfit for agricultural purposes—Holding as a whole not rendered unfit, effect of—*

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Right of landlord to reliefs under s 151—*Bengal Tenancy Act (VIII of 1885)* s 23 S 151 of the Madras Estates Land Act gives the landlord a right to sue for any of the reliefs mentioned in cls 1 and 2 thereof only when the holding as a whole was rendered substantially unfit for agricultural purposes by the acts of the ryot committed on the whole or any part of the holding. *Mrs. Mohan Misser v. Suresh Chandra Karayon Singh I L R 31 Cal. 713*, followed. *RAMA v. ARUNACHALAM* (1913) I L R 39 Mad. 673

s 13, cl (3)—Improvements at tenants' sole expense—Payment of higher rent therefor for sixty years—Presumption of a binding contract to pay at a higher rate under the Rent Recovery Act—*Madras Estates Land Act (I of 1908)* s 23—*Sadashur and Mathuri Kasuru* not illegal cesses within s 143 of the Act Held by NAPIER and KUMARASWAMI SASTRIYAR JJ (*SADASHIVA AYYAR v. SASTRIYAR*) that—(i) s 13 cl (3) (Madras Estates Land Act) does not enable a tenant to claim exemption from liability to pay a higher rate of rent for crops raised with the help of improvements made at the tenant's sole expense where the improvements had been effected before the Act came into force and where there had been a binding contract entered into between the landlord and the tenant before the passing of the Act for the payment of such enhanced rent, (ii) the section applies only to contracts and improvements made after the Madras Estates Land Act came into force (iii) the right to levy increased assessments in consequence of improvements effected before the Act being a vested right in the landlord the section cannot be construed so as to operate retrospectively and to defeat the same especially when there is no indication in the section that it is to operate retrospectively and (iv) the rule embodied in s 23 of the Act applies to the increased assessment and makes it binding between the parties. *Per SADASHIVA AYYAR and NAPIER JJ*—Where the higher rate was regularly paid for sixty years even in respect of the improvements effected at the tenant's sole expense, the Courts could presume a lawful origin for a contract to pay like that under the Rent Recovery Act (Madras Act VIII of 1885) *Per SADASHIVA AYYAR v. Sadashur* (charge for stationery) and *Mathuri Kasuru* (straw rent) which were being customarily paid along with the rent for a long number of years form part of the rent and are not additional illegal cesses within s 143 of the Madras Estates Land Act. *VENKATA PEEUMAL RAJA v. RAMANUJ* (1914) I L R 39 Mad. 84

— s 19—

See REVY I L R 38 Mad. 7

— s 23—

See S 3 I L R 38 Mad. 459

s 26—*Suit in a Revenue Court*—Contract between previous landlord and tenant as to rate of rent—Rate, lower than the lawful rate, whether binding on successor—Validity of contract—Jurisdiction of Revenue Court to decide. A Revenue Court exercising jurisdiction under the Madras Estates Land Act is competent to decide all incidental questions the determination of which is necessary for the disposal of the main question arising in the case; and in a suit filed to contest

the right to sell a holding for arrears of rent under the Act the Revenue Court can decide on the validity of a contract between the landlord's predecessor in title and the tenant as to the rate of rent although the objection to its validity is based on grounds other than those specified in s 26 of the Act. *Raja of Irtayee v. Sreerama Charyulu*, (1911) *Mad W A 30* explained. *SATHURAMA AYYANGAR v. SUFFIAN LILLAI* (1917)

I L R 41 Mad. 121

— s 27—

See S 4 I L R 40 Mad. 640

— s 28—

See MADRAS ESTATES LAND ACT (I OF 1908) s 13, cl. (3)

I L R. 39 Mad. 84

s 40, cl (3)—Years' in meaning of—*Swami bhagam* whether rent or cess within s 3, cl (11)—Agreement between landlord and tenant for a consolidated gross rent enforceability of—In s 40, cl (3) (a) of the Madras Estates Land Act, 'preceding ten years' means the ten years preceding the year in which the Collector determines the amount of the commuted rent and not the ten years preceding the year in which the suit is instituted, and 'year' means the year of the lease, that is, the year for which the landlord is entitled either by custom or contract to claim rent and not the *fiscal* or the *calendar* year. *Swami-bhagam* is 'rent' within s 3, cl. (11) and is not a cess. Where a fixed grain *pollam* (rent) has been agreed to the arrangement is binding on both the parties and it is not open to the tenant to reopen the same on the ground that certain illegal cesses were included therein. When the Revenue Court refuses commutation, an appeal lies under Sch A, cl. 4 of the Act only to the District Collector and not to the District Court and hence no second appeal lies to the High Court from such order of refusal. *Jeevadiah Paramanick v. Jugadindro Narayan Roy* 22 W R 12, followed. *SIVAN PANDIA THEVAR v. ZAMINDAR OF URKAD* (1917)

I L R 41 Mad. 109

s 42, cl (1) (a) and (b), cl (2)—Enhancement or alteration of rent—Lease-deed—Provision as to payment of rent on excess of area of lands found on measurement—No enhancement or alteration of rent—Previous order of Collector not required—*Bengal Tenancy Act (VIII of 1885)* ss 22 and 188 The proviso found in cl. 2 of s. 42 of the Madras Estates Land Act (I of 1908) which requires the order of a Collector before enhancement of rent can be allowed, does not apply to the claim of a landlord who sues to recover arrears of excess area due under a lease-deed which contained a provision for payment of rent at a specified rate on the excess lands found on measurement over the area specified in the lease deed. It is only where the landlord wants to enhance the rent, basing his claim on the right granted and declared by s. 42, cl. 1 (a) and (b) that he should obtain under cl. 2, the order of the Collector for such alteration of rent before he could claim the altered rent. *Dhanraj Das v. L P D Broughton*, 3 C N N 225, and *Rama Chander Chelrabuttu v. Girdhar Dutt I L R 19 Cal. 754*, followed. *MANAGER TO THE LESSEES OF THE SIVANGA ZAMINDARY, v. CHIDAMBARAM CHETTI* (1913)

I L R 38 Mad. 524

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—contd.

s. 46—

See S 1

26 C. W. N. 785

Application to Receiver of an estate, for conferring occupancy right, validity of. An application by a non occupancy ryot under s. 46 of the Madras Estates Land Act, for the acquisition of occupancy right in an estate, can be made only to or against the owner of the estate and not to a Receiver in charge of the estate
SWAMINATHA ODAYAR v SUNDARAM AITAR
 I. L. R. 44 Mad. 274

s. 52(3)—

See PROCEDURE

I. L. R. 44 Mad. 293

s. 53—

See S. 3

I. L. R. 38 Mad. 126

Distrain for a higher rent than legally due good for the amount legally due. S. 53 (2) of the (Madras) Estates Land Act (I of 1907) enables a Collector, in a suit to set aside a distraint to the extent of the amount legally due to the landlord by the tenant under the patta tendered by the landlord. The application of the clause is not confined to the enforceability of the proper amount of rent, in suits for rent only.
IRAGUNATHA ROW SAMIR v VELLAMONJI GOV. DAW (1914).
 I. L. R. 38 Mad. 1140

ss. 54 and 78, cl. (2).—Tender of patta by a landlord to his tenant at his house.—Tenant, refusal by.—Subsequent affixture of patta to the tenant's house, not to his land.—Tender, val duty of.—Methods of tender under the Act.—Delivery of patta, meaning of.—Essentials of a valid tender under the Act. Where a patta was offered by a landlord to his tenant at his house but the tenant refused to receive it, and thereupon the patta was affixed to the tenant's house but not to the land in his holding. Held, that there was no valid tender of patta to the tenant as required by ss. 54 and 78, cl. (2) of the Madras Estates Land Act (I of 1907). An offer of a patta to the ryot is not delivery to him. When once an offer of patta is made and refused, the tender by delivery cannot be effected, and it then becomes necessary to affix the patta to the land in the ryot's holding. If this is not done, there is no valid tender of patta. Meaning of 'tender' and 'deliver' considered.
CHINNATHAMBAR v. MICHAEL (1913)
 I. L. R. 33 Mad. 629

ss. 55 and 146.—Purchaser of occupancy right.—Suit for patta in a Revenue Court.—Duty of Revenue Court to decide as to title of plaintiff.—Rival claimant of such right, previously recognised by landlord as transferee.—Power and duty of Court to decide in the suit.—Proceedings under s. 146, effect of.—Non-frustration of purchase.—Dismissal of suit.—Civil Procedure Code (I of 1908), O. 1, r. 10, cl. (2). The power and duty of a Revenue Court, in a suit under section 55 of the Madras Estates Land Act, to deal with the rights of the parties before it, are not affected by the provisions of s. 146 of the Act. Where a suit is instituted in a Revenue Court under section 55 of the Act by a purchaser of land from a ryot against the landlord to obtain patta, the Court is bound to decide whether the plaintiff is entitled to patta or not, if his title is disputed, although the landlord might have previously recognised a rival claimant

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—contd.

as transferee and issued patta to him, on the joint application of the transferor and the transferee. In such a suit, the rival claimant is only a desirable and not a necessary party. even if he were a necessary party, the Court should not dismiss the suit for non joinder of such claimant, but add him as a party if it thought fit to do so, under Order I, rule 10, clause (2), Civil Procedure Code, which is made applicable to Revenue Courts by s. 192 of the Act **RAMANATHAN CHETTY v ARUNACHALAM CHETTIAR (1921)**
 I. L. R. 44 Mad. 43

s. 73—

See S 4

I. L. R. 40 Mad. 640

s. 77—

See S 5

I. L. R. 42 Mad. 114

See S 189

I. L. R. 39 Mad. 239

Madras Local Boards Act (V of 1884), ss. 73 and 74.—Right of land holder to distrain property of intermediate tenure holder for cess paid. Neither s. 77 of the Madras Estates Land Act, nor ss. 73 and 74 of the Madras Local Boards Act, authorizes a land holder to levy distraint against an intermediate tenure holder for recovering any portion of cess collected from the land holder **LAKESHIVARASIMHAM PANTILU v RAMACHANDRA MARDARAJA DEO (1912)**
 I. L. R. 37 Mad. 319

ss. 77 and 189—

See CIVIL PROCEDURE CODE, 1908

s. 102—

I. L. R. 44 Mad. 697

See MADRAS ESTATES LAND ACT (I OF 1908), s. 3. I. L. R. 38 Mad. 738

s. 78—

See S 54

I. L. R. 38 Mad. 629

s. 81—

See S. 189

I. L. R. 39 Mad. 239

ss. 111 and 118.—Civil Procedure Code O. XXI, rr. 90 and 92.—Sale of ryot's holding for arrears of rent.—Irregularity in conduct of sale.—Application to Revenue Court by landholder to set aside sale.—Jurisdiction of Revenue Court.—Order setting aside sale.—Suit by purchaser in Civil Court for declaration that order is ultra vires and void, whether maintainable. When summary proceedings under ss. 111 and 118 of the Madras Estates Land Act, have been instituted by a landholder for recovery of rent by the sale of a ryot's holding and property has been sold, the Revenue Court has no jurisdiction, on an application by the landholder, to set aside the sale on the ground of irregularity in the publication, or conduct, of the sale; and if in the publication, or conduct, of the sale; and if such an order is passed the purchaser can institute a suit in a Civil Court for a declaration that the order is ultra vires and void. O. XXI, rr. 90 and 92, Civil Procedure Code, do not apply to sales held under ss. 111 and 118 of the Madras Estates Land Act **JAGANNATHA CHAVILU v. SATTANARAYANA VARATHAPADA PIAO (1920)**
 I. L. R. 43 Mad. 351

s. 111 et seq.—Sale of holding under.—Suit for declaration of its invalidity.—Competence in a Civil Court. A suit for a declaration that the

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—cond

sale of a holding under s. 111 *et seq.* of the Madras Estates Land Act was void in consequence of the landholder's failure to supply for sale within forty five days as prescribed by s. 115 of the Act is maintainable in a Civil Court. *Gowes Mohideen Sahib v. Muthulu Chettiar* (1914) 44 Mad. W. N. 55, followed. *Dorasamy Pillai v. Muthusamy Mooppan*, 1 L. R. 27 Mad. 94 and *Zemindar of Ettayapuram v. Sankarappa Reddiar*, 1 L. R. 27 Mad. 453 referred to. S. 189 of the Act commented on in *CHIDAMBARAM PILLAI v. MUTHURAM* (1914)

1 L. R. 38 Mad. 1042

— s. 125—

See S. 5 1 L. R. 42 Mad. 114

ss. 131, 182, 205—Civil Procedure Code (Act V of 1908) s. 115—Application to Deputy Collector to set aside sale on the thirtieth day—Deputy Collector absent on leave—Deposit made two days later—Sale set aside by Deputy Collector without notice to purchaser—Revision petitions to District Collector and Board of Revenue dismissed—Revision petition to High Court competency of District on exercise of revisional powers—Absence of notice before setting aside sale effect of General Clauses Act (X of 1897) s. 10. An application to set aside a sale held for arrears of rent was made to the Deputy Collector under s. 131 of the Madras Estates Land Act and the deposit thereon required tendered on the last day allowed by that section the Deputy Collector being absent on leave the petitioner was asked by the clerk to come two days later on which day the Deputy Collector received the deposit and set aside the sale without giving notice to the purchaser. The latter presented petitions to the District Collector and the Board of Revenue respectively to revise the order under s. 205 of the Act, the petitions being dismissed the purchaser filed a revision petition to the High Court. The respondent objected that no revision lay to the High Court and that as the sale was properly set aside the High Court should not interfere in revision. *Held*, that the revision petition to the High Court was competent, because s. 192 of the Madras Estates Land Act renders s. 115 of the Civil Procedure Code applicable to all suits, appeals and other proceedings under the Act, even though s. 205 thereof gave a power of revision to the Board of Revenue and the District Collector, but where the petitioner had previously applied to the revenue authorities and failed, the High Court would decline to exercise its discretionary power in revision, unless it was imperatively called upon to do so to prevent miscarriage of justice, that, as the deposit was not made within time owing to the absence of the Deputy Collector and not the default of the petitioner it was competent to the former to receive the deposit on the next open day under general principles of law embodied in s. 10 of the General Clauses Act and set aside the sale. *Shoochee Bhushan Rudra v. Gounda Chander Roy*, 1 L. R. 18 Cal. 231, followed, that assuming that the failure to give notice to the purchaser vitiated the whole proceedings, the High Court will not exercise its revisional powers on that ground alone, and that the order setting aside the sale was proper as no valid objection was or could be raised by the petitioner even when opportunity was given to him. *RANASINGH GOUDAN v. KALI GOUDAN* (1916). 1 L. R. 42 Mad. 310

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— s. 132—

See S. 5 1 L. R. 42 Mad. 114
1 L. R. 43 Mad. 786

— s. 133—

See S. 5 1 L. R. 42 Mad. 114

— s. 134—

See S. 189 1 L. R. 38 Mad. 239

— s. 143—

See S. 4 1 L. R. 40 Mad. 640

See LANDLORD AND TENANT

1 L. R. 42 Mad. 197

— s. 146—

See S. 55 1 L. R. 44 Mad. 43

Second crop of paddy, raised by ryot with landlord's water—Landlord's right to extra rent—Usage or contract disentitling landlord to extra rent—Proof of—Burden of proof on tenant—Heir of registered pattadar—Right to be recognized as ryot—Defaulter under the Act, meaning of—Mere receipt of rent from a person, whether landlord bound to accept as ryot. The landlord is *prima facie* entitled to claim extra rent for second crop of paddy raised with the landlord's water by the tenant on his wet holding in the absence of proof of an established usage or an express or implied contract disentitling the landlord to the same, the burden of proving such usage or contract being on the tenant. The landlord is bound to recognize the heir of the registered pattadar as the ryot under the Madras Estates Land Act in the place of the deceased pattadar, and if a suit under the Act is instituted by a person claiming as heir to be recognized as the ryot, the question whether he is the heir or not must be determined by the Court, and if the heirship is established or admitted, the suit must be held to be competent. Mere receipt by the landlord of the rent due upon the holding from any person, cannot bind him to recognize the latter as the ryot. "Defaulter" in the Estates Land Act, denotes only the man who is the registered pattadar or his heir or the person whom the landholder has become bound to recognize as the ryot under s. 146 of the Act. *MIRZA FORN ZEMINDARY CO., LTD., v. MUTHARUPUDAYAN* (1921)

1 L. R. 44 Mad. 534

— s. 151—

See S. 9 1 L. R. 37 Mad. 432

See S. 11 1 L. R. 39 Mad. 673

— s. 153—

See S. 3 1 L. R. 38 Mad. 163, 453
24 C. W. N. 129

See S. 8 1 L. R. 38 Mad. 343

ss. 153 and 157—Suit in Revenue Court to eject non-occupancy ryot of "old waste" on expiry of registered lease for more than five years granted before the Estates Land Act—Jurisdiction—Mere profits, jurisdiction of Revenue Court to grant. A suit is maintainable in a Revenue Court under ss. 153 and 157 of Madras Estates Land Act to eject a non-occupancy ryot of "old waste" on the expiry of the term of a registered lease or more than five years though granted before the commencement of the Estates Land Act. *Atticharaya*

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—contd

v. Rajah F. O. Krishnayachandrala Varu, I. L. R. 38 Mad. 193, not followed. A Revenue Court can award mesne profits against persons in unlawful possession of lands holding over beyond the period of their lease. *JAMPANA BOMADU v. ZAMINDAR OF MUKLAPURAM* (1918) . I. L. R. 42 Mad. 315

ss 155 and 192 (a)—*Set-off of money allowances against claim for rent* Except in the case provided for by s. 155 a tenant has no right under the Madras Estates Land Act to set off amounts due to him from the landholder against a demand for rent. *RAJA OF RAMNAD v. VENKATASAMA AYYAR* (1920) . I. L. R. 43 Mad. 69

— s 157—

See S. 3 . I. L. R. 38 Mad. 163, 459

See S. 8 . I. L. R. 38 Mad. 843

See S. 9 . I. L. R. 37 Mad. 432

— s 163—

See S. 8 . I. L. R. 38 Mad. 843

ss 164 to 167—*Officer, preparing record of rights under—Criminal Procedure Code (Act V of 1893), s. 476*, not a Court within the meaning of a revenue Officer preparing a record of rights under ss 164-167 of the Madras Estates Land Act, is only discharging an executive function of Government and is not a Court within the meaning of s. 476 of the Code of Criminal Procedure. *Re HANUMANTHA RAO* (1915) I. L. R. 39 Mad. 414

— s 165—

See s. 3.

See EVIDENCE . I. L. R. 38 Mad. 168

— s 189—

See S. 3 . I. L. R. 36 Mad. 7, 126

I. L. R. 38 Mad. 33, 738

I. L. R. 43 Mad. 168

Civil Procedure Code (V of 1908), s. 11—*Res Judicata—Suit to enforce acceptance of patta—Decision by Revenue Court—Decision as to occupancy right or title to land claimed as part of the holding—Subsequent suit in a Civil Court for ejectment of tenant as trespasser—Decision of Revenue Court, whether binding as res judicata in the suit in Civil Court* S. 189 (3) of the Madras Estates Land Act does not constitute the decisions of the Revenue Courts, on an issue as to title to land or occupancy rights therein arising incidentally in suits to enforce the acceptance of pattas which are cognizable exclusively by such Courts, res judicata in a subsequent suit in a Civil Court instituted by the landlord for ejectment of the tenant from such land. *APPA RAO v. GURURAJU* (1920) . I. L. R. 43 Mad. 859

s 189 and cl. (12) of Part A of Schedule—*Suit to recover lands under the Act for non payment of rent non-maintainability of in Civil Courts* S. 189 and cl. (12) of Part A of schedule to the Madras Estates Land Act (I of 1908) preclude a Civil Court from taking cognizance of a suit by a ryot to recover possession of a holding sold under the Madras Estates Land Act, for non payment of rent, on the ground that the landholder had no right to sell the holding. Cl. (12) is not confined to a suit to question an intended sale of the holding. *Goust Mundeen Saib v. Muthiah*

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—contd

Chethar, 26 Mad. L. J. 36, distinguished. *RAMA-NATHAN v. RAMASWAMI* (1914)

I. L. R. 39 Mad. 60

ss. 160, 213, 134, 91 and 77—*Ryot wari landowner—Illegal distraint—Suit for damages—Jurisdiction—Revenue Court—Madras Rent Recovery Act (VIII of 1883), ss 49 and 78* A suit by the tenant of a ryotwari landowner or of any sub tenant of such for damages for illegal distraint of moveable property, growing crops of the produce of land or trees in the default of a holding is solely cognizable by the Revenue Court. *Per WALLIS, C. J.*—Sub ss (2) and (3) of a. 213 of the Madras Estates Land Act are in the nature of provisos and it would not be legitimate to cut down the operative portion of s. 189 to which these provisos do not in terms apply merely because otherwise, the provisos would be "meaningless and even senseless." *West Derby Union v. Metropolitan Life Assurance Society, [1897] A. C. 617*, referred to. Sub ss. (2) and (3) which were drafted in place of ss. 49 and 78 of the Rent Recovery Act were probably retained by inadvertence after the jurisdiction of the Civil Court had been taken away by s. 189 in its present form. *Obiter* Suits under a. 91 of the Madras Estates Land Act are exclusively within the jurisdiction of the Civil Court. *Per SADASIVA AYYAR and SRINIVASA AYYANGAR, JJ.*—Cl. (2) of a. 213 saves the Civil Court's jurisdiction only where the suit is not brought for the relief of pecuniary damages for proceedings taken under colour of the Act that is where it is brought for other remedies such as injunction, declaration, possession, etc. *Per SADASIVA AYYAR, J.*—The proviso forming cl. (3) of a. 213 takes away the jurisdiction of the Civil Court even in respect of cases claiming other redress than pecuniary damages if the redress of damages had been already claimed by the plaintiff in a suit filed before the Collector under cl. (1) of a. 213. *Quere* Whether the remedy by a suit in the Collector's Court to set aside a distress under s. 90 can be availed of by a Government ryot's tenant whose moveables have been distrained under s. 77 and whether as suming that he could do so, the jurisdiction is an exclusive one in the Revenue Court. *NARAYANASWAMY v. VENKATARAMANA* (1915)

I. L. R. 39 Mad. 239

— s 192—

See S. 131 . I. L. R. 42 Mad. 310

See S. 155 . I. L. R. 43 Mad. 69

See CIVIL PROCEDURE CODE (ACT V OF 1908)—

O XXII, p. 2 . I. L. R. 42 Mad. 78

O XLIII p. 1 and s. 115.

I. L. R. 41 Mad. 554

Presentation of plans to Head Clerk not authorized to receive—*Limitation Act (IX of 1908), s. 4—Court not closed, if the officer on tour only and not on leave—R. 14 of Civil Rules of Practice* Plaints under the Madras Estates Land Act (I of 1908), cannot be said to be validly presented, if presented to the Head Clerk of the Collector, unless the Collector has appointed him to receive them. A Court cannot be said to be closed within the meaning of s. 4

MADRAS ESTATES LAND ACT (I OF 1908)—*contd*— s 192—*contd*.

of the Limitation Act (IX of 1908) merely because the presiding officer is not in head quarters but is in camp on tour. R 14 of the Civil Rules of Practice does not apply to proceedings before a Revenue Court. **THE PEKIVEN OF THE NIDADA VOLK AND MEDEH ESTATES v SCRAPARATO (1913)** I. L. R 38 Mad. 295

— *Suit under s 213—*

Appellate decree—Second Appeal—Limitation Act (IX of 1908) s 23—Disturbance of possession—Cause of action. A second appeal lies to the High Court under the provisions of the Code of Civil Procedure from an appellate decree passed in a suit instituted under s 213 of the Estates Land Act. S 192 of the Act makes the provisions of Chapter XLII of the Code of 1882 applicable and the provisions that give a right of appeal cannot be struck out and those only which prescribe in what manner an appeal is to be heard and determined retained. Where the proceedings which give rise to a cause of action consist in a wrongful distraint that distraint is not a continuing wrong and will not therefore give rise to a continuing cause of action under s 23 of the Limitation Act. **Pannu Samyay v Zamindar of Jeypur I L R 25 Mad. 540** followed. Continuing cause of action under English law considered. **Hole v Chard Un on (1884) 1 Ch. 293** referred to. **VENKATAPATI v VAITHILINGA THANDIRAM (1913)** I. L. R 38 Mad. 655

— s 205—

— s 131 I. L. R 42 Mad. 310

See CIVIL PROCEDURE CODE 1908 s 11.
O LAL v S I. L. R 42 Mad. 76

— ss 210, 211, cl (2), art 8 of sch

part A—

— See LIMITATION I. L. R 38 Mad. 101

— ss 210 211 and Art 8 of Part A of Schedule—Limitation Act (XV of 1877) s 7—*Suits for arrears of rent—Minority as a ground of exemption—Statutes of Limitation, when retrospective—Principles to be applied—Madras General Clauses Act (I of 1891) s 6 cl (e) and s 8 cl (d).* A 'landholder' under the Madras Estates Land Act, who became a major on 5th October 1906 brought suits for recovering arrears of rent due for each 1915 after the Estates Land Act came into force, but within three years of his attaining majority. On the date the suits were brought more than three years had elapsed after the rents had become due. The lower Courts dismissed the suits as barred by the limitation of three years prescribed by ss 210 and 211 and Art. 8 of Part A of the schedule to the Estates Land Act. **Held** by WALLIN, C.J. and KUMARASWAMI SASTRIAR J., agreeing with SADASIVA AYYAR, J. [SESHAGIRI AYYAR J. dissenting] (a) that notwithstanding s 211 which prohibited the application of s 7 of the Limitation Act (XV of 1877) to suits under the Estates Land Act the plaintiff was entitled to the exemption and extension given by s 7 of the Limitation Act, and (b) that the suits were therefore within time. S 211 of the Estates Land Act should not be construed retrospectively so as to destroy or practically destroy rights of action existing on the date that Act came into force. Retrospective operation of statutes considered.

MADRAS ESTATES LAND ACT (I OF 1908)—*contd*— ss 210 211—*contd*

Ramkrishna Chetty v Subbaraya Ayyar I L R 38 Mad. 191 and **Gopeshwar Pal v J Ban Chandra, I L R 41 Cal 1155** followed. **1st SESHAGIRI AYYAR J.**—As s. 211 of the Estates Land Act expressly prohibited the application of s. 7 of the Limitation Act the suit was barred by the three years rule of limitation prescribed by the Estates Land Act. It is the rule of limitation that is in force at a time the suit is instituted that governs the action and not the one under which the rights accrued. **Soni Ram v Kanyalal, I L R 35 All 227** followed. **RAJAH OF ITTAPPA v VENKATA SUBBA ROW (1915)** I. L. R 39 Mad. 645

— s 212—

— See PENAL CODE s 421

I. L. R 38 Mad. 793

— s 213—

— See s 189 I. L. R 39 Mad. 293

MADRAS FOREST ACT (V OF 1882)

— offences under—

— See PENAL CODE (ACT XLV OF 1860)

ss. 40 '9 I. L. R 38 Mad. 773

— ss 3, 16, 25—

— See POSSESSION NATURE OF

I. L. R 34 Mad. 353

— ss 6 10 16 and 17—*Notification under s 16—Notice under s 6 a condition precedent—Irregularity due to absence of notice not cured by knowledge under s 17—Grant of personal names of lands including poramboke meaning of A Forest Settlement Officer who is constituted a Court for the decision of claims to lands which it is proposed to include in a reserved forest has in the absence of notice required by s 6 of the Act no jurisdiction to make any decision affecting the right to those lands.* **Auserramjee Pistonjee v Meer Mynoodeen Khan Bulud Meer Sudroodeen Khan Lakadur, 6 Moo I A 134** and **Saunby v London (Ont), Water Commissioners [1906] A C 110**, followed. **Poramboke** in the phrase grant of lands *les des poramboke*, means *poramboke* or unassessed waste. **Secretary of State for India v Pophunatha thatha Channar 24 Mad L J 31** followed. **Narayanasami Naidu v Secretary of State for India, 24 Mad L J 36**, distinguished. **BALKRISHNA RAO v THE SECRETARY OF STATE FOR INDIA (1915)** I. L. R 39 Mad. 494

— ss 10 18—

— See LIMITATION I. L. R 39 Mad. 617

— ss 16, 25—

— See POSSESSION NATURE OF

I. L. R 34 Mad. 353

— ss 28, 53 and 55—*Compounding offence.* The words "no further proceedings shall be taken in s 53 of the Forests Act (Madras Act V of 1882) mean that proceedings then in progress must lapse. **Re NARAYANA LADAYACHI (1912)** I. L. R 37 Mad. 260

MADRAS GENERAL CLAUSES ACT (I OF 1891)

— s 8—

— See MADRAS ESTATES LAND ACT, 1908,
ss 210 AND 211

I. L. R 39 Mad. 645

MADRAS HEREDITARY VILLAGE OFFICES ACT (III OF 1895)

See HEREDITARY VILLAGE OFFICES ACT

See UNSETTLED PALAYAM.

I. L. R. 41 Mad 749

s 2—

See MADRAS LAND REVENUE ASSESSMENT ACT (I OF 1876), s 2

I. L. R. 38 Mad 1128

ss 3 and 5—Applicability of—Emolument of hereditary offices in s 3, cl 4—Statute, construction of s 5 of Madras Act III of 1895 is applicable to emoluments of hereditary offices in proprietary estates of the classes mentioned in s 3, cl 4 *Muthaya Eapanya v Kosuru Muramulu*, (1912) Mad II N. 7, approved *Peerabadrar Achari v Suppaiah Achari*, I L R 33 Mad 488, overruled. *Per Sadasiva Aiyar, J.*—In case of ambiguity as to the construction of a statute, considerations based on the scheme of the Act and the previous history of the legislation relating to the matters dealt with in the Act might properly be referred to for deciding which of two views ought to be taken *KANDAPPA ACHARY v VEJOHANA NAIDU* (1912) . . . I L R. 37 Mad 548

ss 13, 21—S 21 is no bar to suit for recovery of land. A suit in the Civil Courts for land, not based on the ground that such land constituted part of the emoluments of any of the offices described in s 13 of Madras Act III of 1895, is not barred by s 21 of the Act. The effect of the words in s 13 of the Act, "but such decision etc.", is to preserve the jurisdiction of the Civil Courts even in cases where the Collector decided the case on the assumption mentioned therein and not to oust such jurisdiction where he did not *GAYARA RAMAN v ADARALA PATTAYYA* (1909)

I. L. R. 33 Mad. 235

Prohibition in s 21 applies only when jurisdiction is conferred on Revenue Courts by s 13—Construction of statute. Notwithstanding the apparent generality of the language of s 21 of Madras Act III of 1895, it must be held that the section takes away the jurisdiction of Civil Court only in those cases in which jurisdiction is conferred on Revenue Courts by s 13. A suit for a village officer's inam land on the expiry of a lease granted by such village officer to the defendant, is cognizable by the Civil Courts as the plaintiff has only to prove the letting and expiry of the term and he is not called upon to prove his title which the defendant will be stopped from disputing. *The plaintiff cannot, however, lease his claim on his title to the land Narasimulu v Narasimulu*, 16 Mad I J 336 referred to. *Aswath Narasimulu v Narasimulu Panthulu*, I L R 30 Mad 126, referred to. It is a general principle of law that every presumption shall be made in favour of the jurisdiction of a Civil Court and that it shall not be taken away except by express words or by necessary implication. *MUVVELA SETHUPAN NAIDU v DODDI RAM NAIDU* (1909) . . . I. L. R. 33 Mad. 208

MADRAS HIGH COURT RULES

See HIGH COURT RULES AND ORDERS

(a) Appellate.

See LETTERS PATENT, CL. 15 AND 26.

I. L. R. 41 Mad. 943

MADRAS HIGH COURT RULES—contd

(b) Civil—

r 14—

See MADRAS ESTATES LAND ACT (I OF 1908), s 192 I L R 38 Mad 295

r 161 (a)—Filing of six months for applying for execution in Court to which decree is sent for execution—Object of the rule—Execution application after six months and partial execution thereon, validity of—Time not the essence of the rule—Civil Procedure Code (Act V of 1908), s 24, c (1) (b)—Right of District Court to recall a case sent to a Subordinate Court for execution. R 161 (a) of the Civil Rules of Practice which enacts that if after a decree has been sent to another Court for execution, the decree-holder does not, within six months from the date of the transfer, apply for the execution thereof, the Court to which the decree has been sent shall certify the fact that no application for execution has been made to the Court which passed the decree and shall return the decree to that Court" is in the nature of instruction or direction to the Court to return the papers to the transmitting Court if no steps are taken by the decree-holder within six months to execute the decree. A violation of this rule does not render the proceeding taken, as in this case after six months after transmission, void *ab initio*. The rule is only directory and not mandatory and the time mentioned is not of the essence of the rule *Coldew v Puzell*, 2 C P D 562, followed. Where a decree is sent to a District Court for execution by another Court and the District Court transfers the decree for execution to a Subordinate Court, the period of six months allowed by the rule for execution in favour of the decree holder is to be counted from the time the decree is sent to the District Court and not to the Subordinate Court. Under s 24 (1) (b), Civil Procedure Code, the District Court is entitled to withdraw to its own file the execution proceedings transmitted by it to the Subordinate Court and to dispose of it. *VELLAPPA v SUBRAHMANYAM* (1915)

I. L. R. 39 Mad. 483

r 277—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 115 I L R 38 Mad. 650

(c) Criminal—

r 1 (b)—

See CRIMINAL PROCEDURE CODE, ss 233, 421 AND 537 I L R 29 Mad 527

r 1 (f)—

See CRIMINAL PROCEDURE CODE, ss 233, 423 AND 537

I. L. R. 39 Mad. 527

MADRAS HINDU TRANSFER AND BEQUESTS ACT (I OF 1914)

See HINDU TRANSFER AND BEQUESTS ACT

MADRAS INAM ACT (VIII OF 1863)

See INAM

I L. R. 44 Mad. 421

MADRAS IRRIGATION CESS ACT (VII OF 1863).

Water Rights—Artificial Channels—Right of Zamindar—Permanent Settlement—Engagements with Government—Madras Irrigation Cess Act VII of 1863 and F of 1900.

MADRAS IRRIGATION CESS ACT (VII OF 1905)—*contd.*

By the Madras Irrigation Cess Act (VII of 1885), as amended by Madras Act V of 1900, s 1, whenever water is supplied or used for purposes of irrigation from any river, stream, channel, tank, or work belonging to, or constructed by, Government, a separate cess for such water may be levied on the land so irrigated, provided (*inter alia*) that where a zamindar or inamdar is by virtue of engagements with the Government entitled to irrigation free of separate charge, no cess under this Act shall be imposed for water supplied to the extent of this right and no more." At the permanent settlement the Government settled in four zamindari lands contiguous to a river together with four artificial irrigation channels and sluices connecting them with the river. The sanads did not refer to the channels or sluices. The appellants were the present holders of one of the four zamindaris the sluices of one only of the channels being upon their lands. The other three zamindaris had been purchased by the Government. The appellants used for irrigation water derived from the river through all four channels. The Government claimed to be entitled to levy cess under the above Act upon the appellants' lands for the irrigation so far as it included crops not customary at the time of the permanent settlement. *Held*, assuming, but not deciding, that the river belonged to the Government, (i) that the settlement was an engagement with the Government within the meaning of the proviso (ii) that under the sanads the zamindar in whose estate the sluices of each of the channels were situated acquired the right to take from the river for irrigation an amount of water limited by the then size of the channels and nature of the sluices but not limited by the irrigation then customary, (iii) that after the water had passed into the channels the Government had no rights in respect of it save as owners of the three zamindaris (iv) that the rights of the owners *inter se* in the water flowing in the channels were analogous to those of the riparian owners in a natural stream, (b) that, there being no evidence that more water was being taken from the river than was justified by the sanads, the appellants were not liable to pay cess. The law of the Madras Presidency as to rivers and streams differs in some respects from English law, and it is quite possible that the former law recognises some proprietary right of the Government in water flowing in them. **KANDUKUR BALASUBRYA ROW v SECRETARY OF STATE FOR INDIA (1917)**

L L R. 40 Mad 886

L R 44 I A 168

MADRAS IRRIGATION CESS ACT (VII OF 1905)—*contd.*

of 1900. *Held*, that there was to be inferred from the circumstances an engagement to the Government within the meaning of the proviso of Madras Act VII of 1905 as amended and that the respondent consequently was not liable to pay the cess. **SECRETARY OF STATE FOR INDIA v MAHARAJA OF ROBERTS (1919)** . . . L R. 40 I A 302

See GRANT, CONSTRUCTION OF

I L R. 28 Mad. 424

s 1—

See ante . . . I L R. 40 Mad. 226

L R. 46 I A. 302

See IRRIGATION CESS ACT

I L R. 40 Mad. 58, 809

Held, that it was not obligatory under s 1(b) for the Collector to certify that the irrigation is beneficial and that the words "irrigation by percolation" mean not only irrigation by means of water flowing on the surface but cover cases where subsoil is taken by roots of trees. **SECRETARY OF STATE v MAHARAJA GASTRITAL . . . I L R. 40 Mad (F.B.) 58**

"Engagements" construction of.—Underlying by Government to supply water for wet lands free of charge.—Engagements at the time of the Permanent Settlement.—Subsequent engagements, express or implied, if included under the section.—Unauthorised acts of subordinate officers, how far binding on Government.—Ratification, essential of.—Communication of, to the other party, if necessary.—When complete.—Government Orders, how far enforceable.—Indian Contract Act (IX of 1872), ss 195 to 200 and 3 to 6. In all cases of permanently settled estates, where the income derivable from wet lands have been taken into consideration in settling the peshkash payable to Government, there is an implied undertaking of the nature of an enforceable contract on the part of the Government to allow the use of Government water to such wet lands without charge and thus implied undertaking amounts to an engagement within the meaning of the Act. There is a similar implied engagement as regards inams. The word "engagements" in s 1 of Act VII of 1905 is not qualified in any way and is not limited to the cases of engagements deductible from the circumstances under which the peshkash (or quitrent in the case of an inam) was determined at the time of the Permanent Settlement, but includes all engagements between the Government and the landholder that might have been made or be deductible from the circumstances, at any time after the Permanent Settlement. **PERATHUR J.—Held** (on a construction of the Government Orders and other proceedings), that no implied engagement of the latter kind or a ratification thereof by the Government was established. An express ratification by one party within the meaning of s 197 of the Indian Contract Act, cannot become complete until it is communicated to the other party. Till then it is liable to revocation. This is in accordance with the principles embodied in the provisions of s 3 to 6 of the Act which deal with proposals, acceptances and revocations. An order of Government which stated that an unauthorised act of a subordinate officer should not be repudiated must be treated as an incomplete ratification before communication to

Artificial Channel—
Reversion—Forfeiture of Servient Estate—"Engagement with the Government"—Madras Acts VII of 1885 and V of 1900. In 1814 a zamindar who before the permanent settlement had constructed an artificial channel through the estate now enjoyed by the respondent, admitted the right of the then holder to take water therefrom for the irrigation of a village, and from that date until 1907 the respondent's predecessors and the respondent exercised that right without any claim to payment. In 1833 the estate of the zamindar who had constructed the channel was forfeited to the Crown. In 1907 the Government imposed upon the respondent in respect of the village an irrigation cess under the Madras Irrigation Cess Act (VII of 1905), as amended by Madras Act V

MADRAS IRRIGATION CESS ACT (VII OF 1900)—contd

the landholder is concerned, and the same, having been revoked by a later Government Order, is not binding upon the Government. It is not advisable to interpret the plain words of an Act in the light of expressions of the views of Government before its enactment. *Administrator General of Bengal v Premal Mullick*, 1 L R 22 Cal 753, *Kadir Baksh v. Bhawan Prasad*, 1 L R 14 All 148, *Queen Empress v Bal Gangadhar Tilak*, 1 L R 22 Bom 112 and *Hilder v Dexter*, [1902] A O 474, referred to. *Per SADVIVA AYYAR, J*—A deliberate and considered ratification by Government reduced into a formal Government Order is conclusive just as a person's declaration in a registered document would stand even if not directly communicated to third persons. Ratification by a long course of conduct is not less effective than a ratification by a formal declaration. Construction of orders of Government and acts of public officers and ratifications of such acts as well as the mode of their communications considered. *Chidambaram Row v The Secretary of State for India*, 1 L R 26 Mad 66, *Lutchmee Doss v Secretary of State for India*, 1 L R. 32 Mad. 456, *Kandukuri Mahalakshamma Garu v The Secretary of State for India*, 1 L R 34 Mad 295, *Sri Raja Venkata Ranganay v The Secretary of State for India*, (1913) Mad W N 417, *Kezars Venkatesubrah v The Secretary of State for India*, 14 Mad L T 131, *Secretary of State for India v Ambalawana Pandarasannadhi*, 1 L R 34 Mad 369, *Maria Susan Mudaliyar v The Secretary of State for India*, 14 Mad L J 350, *The Secretary of State for India v Peruma Pillai*, 1 L R 24 Mad. 279 and *Venkata Ranganay Appa Row v Secretary of State for India*, 24 Mad L J 689, referred to. *RAJAGOPALACHARYULU v SECRETARY OF STATE* (1913). 1 L R 38 Mad. 937

ss 1 and 4—as amended by Madras Act V of 1900—Right to take water for irrigation through artificial channel—Recognition of—Forfeiture of estate to Government—Easement—Engagement with Government—Non liability for cess after period of 80 or 90 years—An artificial channel from a non tidal river through which water for irrigation ran through an estate belonging to the respondent was constructed upwards of a century ago by the zamindar of Palkonda, a neighbouring landholder and the evidence showed that in 1814, the zamindar recognized the right of the respondent's predecessor in title to irrigate his lands with water from the channel. In 1833 on forfeiture of the Palkonda zamindari for rebellion, it came into possession of the Government but no attempt was made by the then Government to change the form on which the irrigation rights were enjoyed by the predecessors in title of the respondent and of the respondent himself, or to lessen or interfere with the continued enjoyment of the easement as of right and without any exaction or charge. No claim in respect of the lands in suit was made until 1907 when a sum was levied on the respondent under the Madras Irrigation Cess Act (Madras Act VII of 1865 as amended by Madras Act V of 1900) which he paid under protest, and brought a suit for a refund of the amount, and for a declaration that he was not liable to pay any cess under that Act. The Act as amended enacts in a proviso "that where a zamindar or any other description of landholder not holding under ryot

MADRAS IRRIGATION CESS ACT (VII OF 1865)—contd

ss. 1 and 4—could war settlements is by virtue of an engagement with the Government entitled to irrigation free of separate charge no cess shall under this Act be imposed for water supplied to the extent of this right and no more. *Ibid*, that "an engagement with the Government" had been created within the meaning of the proviso to the Act by the transaction of the zamindari having passed to the Government and had been accepted by them as binding the parties for a period of between 80 and 90 years during which (including 40 years since the Act was passed) the respondent's zamindari had been enjoyed without any question or doubt that the respondent held under a tenure which gave him the benefit of the proviso in Act VII of 1865. *THE SECRETARY OF STATE FOR INDIA IN COUNCIL v MAHARAJAH OF BOBBILI* (1920) 1 L R 43 Mad (PC) 529

s 2—
1—Ownership of bed of channel—Owner of channel bed not on that account alone entitled to water free of cess—Engagement to supply water free of charge how proved—Nature of engagement to be inferred from permanent settlement—Act III of 1905, s 2—Stream, what is—Voluntary payment—Money paid on a decree and under Act II of 1864 not voluntary. Where in a grant by Government of land no reservation is made of channel beds and nothing is proved to show that the Government must have intended to reserve them and it is shown that the grantee exercised full control over the channel, it must be presumed that the bed of the channel was included in the grant. The ownership of the bed will not however, carry with it the right to use the water of the channel free of charge under Act VII of 1865. If water from a Government channel or river is distributed through channels provided by a private person such irrigation is not free of cess. S 2 of Act III of 1905 is declaratory, and effect must be given to the clear declaration, without confining its operation to the matter of encroachments on land. The channel or river is the flowing body of water. Under a 2 of Act III of 1905 where it is not shown to belong to a private person it belongs to Government although private persons may be proprietors of the bed. The riparian proprietors have easement rights, but they are not on that account owners of the channel, and they cannot use water which belongs to Government free of cess in the absence of an engagement with Government to that effect. The abstention of Government from charging water cess for a number of years, and the fact that the Government and the zamindar apportioned the cost of the upkeep of the channel according to the extent of zamindari and ryotwari land under it do not raise a presumption of any such engagement. The only engagement which can be inferred from the Permanent Settlement is that the peshkush being fixed with reference to the area of land then under irrigation no further charge for the use of water should be made in respect of that area. The burden of proving that any kind of crop is exempt from water cess lies on the zamindar. *Maria Susan Mudaliyar v The Secretary of State for India in Council* 14 Mad L J 354. Where capacity to grow a second crop is taken into account in fixing the peshkush, no separate charge

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd.*

s. 2—*contd.*

can be made for the second crop. Money paid on a demand by Government and enforceable by attachment under Act II of 1864 is not a voluntary payment. *KANDUKURU MALALAKSHMANNA GARU v SECRETARY OF STATE FOR INDIA* (1910)

I L. R. 34 Mad. 205

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Conditions necessary to entitle Government to levy water cess—Government irrigation source, what is—Engagement, nature of, to be implied from title-deed—Extent of water right, how ascertained—Cultivation of larger area without increase of water not liable to cess—Injunction, granting of. The essential conditions for the levy of water cess under Madras Act VII of 1865 are:—(i) The irrigation must be effected by means of the water of a river stream, tank or channel or work belonging to or constructed by Government. (ii) If the water from such a source is received by indirect flow or used after storage in an intermediate reservoir, the irrigation must, in the opinion of the Collector (subject to the control of the Board of Revenue and Government) be beneficial to and sufficient for the requirement of the crops. (iii) The charge must not be contrary to any engagement between the landholder and Government whereby the latter is entitled to irrigation free of charge. Where water from two hills—one belonging to Government and the other to a private party—combine and flow in a channel between Government and private lands and through Government and private lands alternatively and afterwards drawn for irrigation through channels owned by private parties, such irrigation is effected by means of water drawn from a Government source within the meaning of s. 2 of Act VII of 1865. *Palani Proprietors v The Secretary of State for India*, I L. R. 34 Mad. 230, followed. Where Government waters mingle with those of another stream, the combined water must be treated as Government water and the fact that it is drawn for use through private channels is immaterial. The question whether the irrigation is beneficial and sufficient must be decided by the Collector and his decision, when not impeached by the Board of Revenue, or Government, cannot be questioned by the Civil Courts. The only undertaking which may be implied from a grant of land by Government is an undertaking to supply water free of charge to the extent of the accustomed flow at the time of the grant. Where the quantity of the customary flow cannot be ascertained, the area irrigated will be presumed to be the measure of the quantity of water used at the time of the grant. Where a larger area is irrigated subsequent to the grant, it will be open to the landholder to show that the increase is not due to the use of a larger quantity of water but to a more economical use of it, in which case no cess can be levied for the increased extent. *Maria Susa Mudalar v The Secretary of State for India*, 11 Mad. L. J. 354, referred to. An injunction ought not to be granted when there are no sufficient data for determining whether an infringement of it has taken place. *SECRETARY OF STATE FOR INDIA v AMBALAVANA PANDARA SAH, MADRI* (1910). I L. R. 34 Mad. 368

3.—'River belonging to Government,' meaning of—*Madras Land Encroachment Act* (III of 1905), effect of. A river which, after rising in certain Government hills, flows through ryotwari tracts and then through a zamindari

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd.*

s. 2—*contd.*

dari and lastly through a Government village, is not a 'river belonging to Government' within s. 2 of Madras Act VII of 1865 at the place where it passes through the zamindari wherein both the banks and the bed of the river belong to the zamindar; and a ryot of the zamindar taking water from the river within the limits of the zamindari for irrigation is not liable to pay water-cess to Government under the Act. *Madras Act III of 1905* has not taken away pre-existing natural and easement rights of private proprietors in flowing waters of natural streams. *CHINNAPPAN CHETTY v THE SECRETARY OF STATE FOR INDIA* (1918). I L. R. 42 Mad. 239

s. 4—

See s. 1. I L. R. 43 Mad. 529

Levy of cess, what is—Effect of levy not retrospective—"Arrears" in s. 2 of the Act means payments which become due and remain unpaid after levy. Under Madras Act VII of 1865, Government have the right to levy at pleasure a separate cess for water. The liability to pay water cess is not incurred in each fall by the mere fact of taking Government water but only when Government indicates its intention to charge the cess. The cess must be imposed during the fall. "Arrears" in s. 2 of the Act means payments which have become due and remain unpaid after the levy was made. An "arrear" under the Act presupposes an engagement to pay and the mere use of water implies no such engagement. The Government cannot by the mere act of levying water cess in a subsequent fall indicate an intention to claim rent for previous fall. *RAMA CHANDRA APPA ROW v SECRETARY OF STATE FOR INDIA* (1911). I L. R. 35 Mad. 197

Water-cess—Zamindars' lands—Excess area, whether liable to pay water-cess—*Madras Land Encroachment Act* (III of 1905), effect of. Where a right to take water is proved, even though no express agreement on behalf of Government not to levy any charge is proved, an engagement under Act VII of 1865 will be implied and no cess can be levied. *Per SANKARAN NAIR, J.* Act III of 1905 did not take away any rights that existed at the time the Act was passed and the Government are not by reason of that Act coupled with Act VII of 1865 entitled to impose any cess upon those landholders who were before the Act not liable to pay cess for their using the water. *Kandukuru Malalakshmanna Garu v The Secretary of State for India*, I L. R. 34 Mad. 295 and *Venkataramanmal v Secretary of State* I L. R. 37 Mad. 366, followed. *ERI RAJAH SIVNADH RAJU v SECRETARY OF STATE FOR INDIA* (1914).

I L. R. 39 Mad. 67

Inam lands irrigated by water coming from Government source—Water-cess liable to be levied on, where inamdar has no option to refuse use—Phrase "used for the purpose of irrigation," meaning of. Certain dry inam lands were submerged by water flowing from a Government source and by reason thereof the inamdar was compelled to raise wet crops with the help of the water which he enclosed in his adjoining land out of the flood water. Field, that under Madras Act VII of 1865, he was liable to pay water cess. *Madras Act VII of 1865* is not based upon any

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd.*

s 4—*contd.*

theory of the ownership of the bed of a tank or water course being the foundation of a right to use the water free of charge. The fact that before irrigating the inamdar's lands the water had flowed through two-fifths of a sheet of water included in the inam does not make it any the less water from a Government source. *Held*, further, the fact that rain water had got mixed with the flood water is no ground for getting rid of the liability. *Secretary of State for India in Council v Perumal Pillai, 1 L R 24 Mad 279*, distinguished. *Maria Susan Mudali v The Secretary of State for India, 11 Mad L J 350*, distinguished. SECRETARY OF STATE FOR INDIA v SWAMI NARATHESWARAN (1910)

I L R 34 Mad 21

Madras Act II, 1864—'Defaulter,' who is—Person liable to pay cess under Act VII of 1865—The zamindar and not the tenant in occupation liable. Where water-cess is leviable on zamindari land under the provisions of Madras Act VII of 1865, the person bound to pay such cess is the zamindar and not the tenant in occupation of such land. Nynapan Serran v Secretary of State, Mad W N 322, dissented from. Subramanya Chetty v Mahalingasami Sivan, 1 L R 33 Mad 41, followed. The zamindar is the proprietor and landholder within the meaning of Act II of 1864. He is the defaulter whose right and interest passes by the sale under s 39 of the Act. The security for the public revenue and for the cess which is recoverable as such revenue is the full proprietary right and not the right of the tenant. KOTTILINGA SETHU ROYER, ZAMINDAR OF URKAD v SAMASRAMA IYER (1911)

I L R 34 Mad 520

"River belonging to Government," meaning of—Zamindars and Rajas, rights of, to waters of rivers passing through their lands—Water, proprietary rights in, discussed—*Madras Land Encroachment Act (III of 1905) effect of, upon such rights. Per MILLER, J.—In a suit for the recovery from Government water cesses illegally levied, the cause of action arises on each occasion on which the cess is demanded and Art 131 of Schedule II of the Limitation Act does not apply. The High Court having held in *Kandukur Mahala Krishnamma Garu, Proprietrix of Urilom v Secretary of State for India, 1 L R 34 Mad 295*, on facts similar to those relied upon in the present case, that the Vamsadhara river is a river belonging to Government, such finding was a matter of law which should be followed until overruled by a Full Bench or a higher Court. Followed accordingly. Per SANKARAN NAIK, J. Under the customary law of the country water belonged to the owner of the estate through which it passes, so long as the water remained on the land, subject to the claims of the proprietors below. The members of the village community and the zamindars or poligars were entitled to the water which flowed through their lands. If Government are the proprietors of the land, they are the owners of the water thereon and those rivers and streams of which they own, the bed and the banks belong to Government. It was the policy of the East India Company in granting the permanent sanads to recognise private proprietary rights and to divest themselves of such rights which may have been vested in them. It is against the policy and the spirit of the permanent*

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd.*

s 4—*contd.*

settlement regulation to hold that the Government reserved to themselves any power to increase the revenue on the zamindari or to levy any assessment for the use of water. The permanent sanads granted to Rajas and chieftains did not interfere with their use of the waters of natural streams for the cultivation of all lands within the *agavat* (i.e., the area of land that can be irrigated according to the customary methods) subject to the claims of the ryots. The new zamindaris created by the East India Company were placed on the same footing as the old. Speaking generally, whenever the Government contend that these zamindars are not entitled to exercise any of the rights which are capable of private ownership, and that such rights are vested in the Crown, it lies on the Government to prove that such zamindars were deprived of them either expressly or by necessary implication under the sanads granted under that Regulation (Regulation XXV of 1802) the new zamindars were placed on the same footing. The sanads referred to are those which were granted by Lord Clive, a copy of which will be found in the earlier editions of the Standing Orders of the Board of Revenue. Under the Regulation of 1802, the Government did not enter into any engagements with the landholders to supply water. The circumstances under which the permanent sanads were granted preclude any such engagement. In the case of new zamindaris created there may be cases in which the Government reserved to themselves the control of water courses. Act VII of 1865 was intended by the Legislature to refer to all rivers and streams in those ryotwari districts where no *miras* or any corresponding right prevailed and the words "rivers belonging to Government" do not apply to rivers running through or by zamindaris. The Act was not intended to effect any change in the substantive law but to enable Government to levy a cess on account of the large expenditure incurred by Government in the construction and improvement of irrigation works. The ryotwari lands were assumed to be Government property, and all rivers running through ryotwari lands were accordingly treated as belonging to Government. But it does not enable the Government to levy a water cess where the landowners use the waters of rivers in accordance with the rights they had before. The exemption clause in s 1 of the Act—"Where a zamindar or inamdar by virtue of engagements with the Government is entitled to irrigation free of separate charge, no cess under this Act shall be imposed for water supplied to the extent of such right and no more"—does not apply to those zamindaris and proprietors who themselves take and are entitled to take the water for irrigation from the rivers and streams in their zamindaris without its being supplied to them by Government. Even if the section with the exemption clause applied, the "engagement" to be implied is one to allow the proprietors to irrigate all their lands within the *agavat* which could be irrigated without any fee and without any charge. As Act III of 1905 does not interfere with vested rights, it cannot be used to interpret Act VII of 1865 to take away such rights. Therefore under Act VI of 1865 (standing unaffected by subsequent legislation) it was not competent to the Government to levy any cess for any water taken from the Vamsadhara river with

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd.*

— s 4—*contd.*

out the aid of Government works. [See the end of the judgment for a summary of the conclusion.] **SECRETARY OF STATE v JANAKINAYAKA** (1912) **I L R 37 Mad. 323**

MADRAS LAND ENCROACHMENT ACT (MAD III OF 1905)

— ss 1 and 2—

See **MADRAS IRRIGATION CESS ACT (VII OF 1865)**

— ss 3, 5 and 14—*Penal assessment*
Levy of—Suit for declaration of title and recovery of penal assessment—Suit brought after six months from date of notice and levy of penal assessment—Suit barred—Limitation Where the plaintiff brought a suit against the Secretary of State for a declaration of his title to certain immovable property and for recovery of penal assessment levied from him by Government under s 3 of the Madras Act III of 1905 more than six months after the issue of notice and levy of the assessment from him. Held that the suit for declaration of title as well as for recovery of penal assessment was barred under s 14 of the Madras Act III of 1905. **PHANAKARADU v SUBHARAYUDU** (1913) **I L R 38 Mad. 674**

— ss 5, 6, 7 and 14—*Notice under s 7—Levy of penal assessment—Suit for declaration—Cause of action—Limitation* A notice under s 7 of the Madras Land Encroachment Act (III of 1905) was issued to the plaintiff and penal assessment was thereafter levied from him. More than six months after such levy the plaintiff brought this suit for a declaration of his title to the land in question and for the refund of the assessment levied. Held that the notice under s 7 of the Madras Land Encroachment Act calling on the person in occupation to show cause why he should not proceed against under s 5 or 6 of the Act does not give rise to a cause of action, but that the suit was barred having been filed more than six months after the levy of assessment. **NARAYANA PILLAI v SECRETARY OF STATE** 27 Mad. L. J. 167, approved. **BHASKARADU v SUBHARAYUDU**, **I L R 33 Mad. 674** considered. **THE SECRETARY OF STATE FOR INDIA v ASSAN** (1915) **I L R 39 Mad. 727**

— ss 5, 7, 14—*'Levied' in s 14 means—Levy of penal assessment—Suit for refund of penal assessment, declaration of title to property and injunction—Injunction* In a suit under s 14 of Madras Land Encroachment Act (III of 1905) for (a) refund of penal assessment levied from the plaintiff (b) declaration of the plaintiff's title to the property in respect of which penal assessment was levied and (c) an injunction restraining Government from interfering with the plaintiff's possession, the cause of action for the refund arises not from the date of imposition of the penal assessment but from the date on which it was actually collected, and the cause of action for the declaration and injunction arises not from the date when the Collector issues his order for the eviction but from the date on which some steps are taken under s 8 of the Act to evict the plaintiff. 'Levied' in s 14 means 'collected' and not merely imposed. **The Secretary of State for India v Assan**, **I L R 39 Mad. 727**, explained and distinguished. **ARAYANA**

MADRAS LAND ENCROACHMENT ACT (MAD III OF 1905)—*contd.*

— ss 6, 7, 14—*contd.*

CHETTY v THE SECRETARY OF STATE FOR INDIA (1918) **I L R 42 Mad. 431**

MADRAS LAND-REVENUE ASSESSMENT ACT (MAD I OF 1876)

Partly driven to sue for separate registration not entitled to damages for refusal to register—Action for money had and received—Request when implied The alienor of a portion of an estate who is driven to a civil suit to enforce separate registry, under Act I of 1876, all the parties to the alienation not consenting to the transfer, is entitled to recover only the costs of such suit and not any further damages. In an action to recover money paid by plaintiff for the defendant at his request a request will generally be implied where the defendant has notice of the payment being made for him and does not dissent. Where the circumstances show that the owner of property which is saved by another party knew that the other party was laying out his money in the expectation of being repaid, the inference of an understanding between the parties amounting in law to an implied contract will unless satiatingly be drawn. **FALKE v BRITISH IMPERIAL INSURANCE COMPANY** 35 CA D 217 referred to. Where a portion of an estate is alienated and the vendor and vendee agree that the vendee should pay the vendor for a certain amount as the vendee's share of *peishkash* on the portion alienated which amount is in excess of the amount ascertained on separate registry to be due on such portion the vendor is interested in paying the *peishkash* as he makes a profit in doing so and he can recover the amount so paid. **NARAYANA-SWAMI NAIDU v VELLAYUTHI SREENIVASA JAGAN-NADHA PAO** (1909) **I L R. 33 Mad. 189**

— s 2—*Owner under no obligation—Permanent lease not an owner—Non liability to separate registration and assessment—Proprietor or owner under Regulation (XXI of 1876)—Madras Hereditary Village Officer (Act III of 1855)* Grants, holding under perpetual grants subject to payment to the zamindar (the grantor) of a small rent under the name of *jali kuttubadi* or *poroppu* are not liable to have their lands separately registered and to have separate assessment imposed upon them under the provisions of the Madras Act I of 1876. A permanent leasee is not included in the term owner as used in s 2 of the Madras Assessment of Land Revenue Act (I of 1876). A permanent leasee is not a proprietor or owner under Regulation XXV of 1802 or the Madras Hereditary Village Officer Act (III of 1855). **VELAKUTSWARI v APPALA NAIDU v ALAGOO MEETHOO SERRANGORE & MOO** 1 A 327 **HARI NARAYAN SINGH v SIVRAM CHAKRAVARTI**, **L R 37 I A 155** **DURGAPRAMAD SINGH v BHOJA NATH BOSE**, **L R 39 I A 133** and **AKHTRABARA FISAOJI v SOLHANAPURAM HARI KRISHNA NAIDU**, **I L R 33 Mad. 311**, followed. **ROBERT FISCHER v THE SECRETARY OF STATE FOR INDIA**, **I L R. 29 Mad. 270** distinguished. **KOMALAKMAL v BAYA NAIDU**, **I L R 19 Mad. 393** distinguished. **MAHARAJA OF VIZIANAGARAM v THE COLLECTOR OF VIZIANAGARAM** (1914) **I L R 38 Mad. 1128**

MADRAS LOCAL BOARDS ACT (MAD V OF 1881)

— ss 33, 35 (1) and (2)—*Delegation of duty to give notice of removal of obstruction to a*

MADRAS LOCAL BOARDS ACT (MAD. V OF 1884)—contd

ss 33, 98 (1) and (2)—contd.

public road by the president of a Taluk Board to a chairman of a union, validity of—“Other person duly authorized by him as aforesaid” in s 93 (2), meaning of S 33 of the Madras Local Boards Act (V of 1884) does not restrict the specific delegations of duty allowed to the president of a Taluk Board by other sections of the Act. The words “other person duly authorized by him as aforesaid” in s. 93, cl (2), mean “any person duly authorized by him in that behalf,” viz., the one mentioned in s. 93, cl. (1) and do not mean only the vice president of the Taluk Board. Hence a notice to remove an obstruction to a public road given by the chairman of a union to whom the president of the Taluk Board within which the union was situated delegated the power to give such notice is a legally valid notice, and disobedience to the notice is an offence under the Act. PUBLIC PROSECUTOR v. SANKARALINGA MOOPAN (1919). I L R 42 Mad. 787

s. 51—

See CHARITABLE TRUST

I L R. 34 Mad. 375

Taluk Board taking over management of charity not bound to keep account accessible to all persons, when they take the place of trustees who are under an obligation to do so—Power of Taluk Board to transfer management—Madras Regulation VII of 1817, ss 2, 3, 5, 7, 8, 13—Under s 51 of Act V of 1884, the Taluk Board is vested with powers of supervision and management and not with the power of appointing trustees conferred on the Board of Revenue. Where a Taluk Board under s. 51 of Madras Act V of 1884 takes the place of trustees appointed by a will, which directs the trustees to keep accounts accessible to all persons, such Board will not in the absence of a charge of mismanagement be under an obligation to keep such accounts. The management being transferred by a special law to a statutory body, we must look to that law and not to the will to determine the duties incidental to such management. The Board is not bound to give inspection of accounts when no charge of mismanagement is made. The Taluk Board which has taken over the management under s. 51 of the Act cannot appoint an independent trustee so as to divest itself of the duty of management. The power and duties of the Board of Revenue which devolve on the Taluk Board under s. 51 of the Act do not include the power to appoint trustees vested in the Board under s. 13 of Reg VII of 1817. NELAYATHARSHI AMMAL v. THE TALUK BOARD, MAYAVARAM (1910). I L R. 34 Mad. 333

ss 54, 144 to 147—

See NEGOTIABLE INSTRUMENTS ACT 1881,
ss 5 AND 6 I L R. 43 Mad. 816

ss 63, 68 and 73—

See MUTT, HEAD OF

I L R. 38 Mad. 356

s. 73—Mortgages with possession, whether intermediate holder—His right to recover rent. A mortgagee with possession is an intermediate tenure-holder within the meaning of s. 73 of the Local Boards Act (V of 1884), and is entitled to recover rent by summary process. The tenant's liability to pay him is not abrogated by a contract

MADRAS LOCAL BOARDS ACT (MAD V OF 1884)—contd

s. 73—contd

to which he was not a party. JAGANNATHULU v. MANAGER OF NANDIGAM ESTATE (1914)

I L R. 39 Mad. 289

ss 73, 74—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 77. I L R. 37 Mad. 319

s. 95—Taluk Board—Planting of trees along a road—Statutory duty—Branches of trees overhanging plaintiff's land—Omission to remove, if actionable—Non-feasance—Absence of negligence—Cause of action—English and Indian Law. Where a Taluk Board, acting under s. 95 of the Local Boards Act (V of 1884), planted, on the sides of a road certain trees, whose branches spread over the land of the plaintiff, who thereupon sued for an injunction directing the Board to lop off the branches. Held that the suit was not sustainable as (i) the Taluk Board in the discharge of its statutory duties had not acted carelessly or negligently, and (ii) the omission to remove the branches, even if it ought to have been done, is only a non-feasance for which no action at the instance of a private individual would lie. English and Indian Cases on the subject, reviewed. KRISHNAMOORTHY AIYAR v. THE TALUK BOARD OF MAYAVARAM (1918). I L R. 42 Mad. 331

s. 100—Order of a Taluk Board, to an owner to fill up a tank without regard to attendant circumstances, validity of. A Taluk Board passed an order under s. 100 of the Madras Local Boards Act (V of 1884) asking the owner of certain tanks to fill them up on the ground that they were in an insanitary condition without taking into consideration (1) that such condition was brought about not by any act of the owner, but by the Taluk Board allowing drainage water to escape into the tanks and (2) that filling up the tank was far more expensive than raising a bund all round the tanks which would have equally served the purpose. Held, that the power conferred by s. 100 of the Local Boards Act, though a very wide power must not be exercised for ulterior purposes, or in a capricious wanton and arbitrary manner, and, if so used can be controlled by the Civil Courts and that the order passed by the Board in this case was one that should be set aside. TALUK BOARD, BANDER v. ZEMINDAR OF CHELLAPALLI (1921).

I L R. 44 Mad. 168

MADRAS MOTOR VEHICLES ACT (MAD I OF 1907).

See TORTS I L R. 41 Mad. 538

MADRAS PERMANENT SETTLEMENTS

See MADRAS IRRIGATION CHES. ACT, 1865
I L R. 40 Mad. 886

See MADRAS REGULATION XXV OF 1802

MADRAS PLANTERS' LABOUR ACT (I OF 1903)

See PLANTERS' LABOUR ACT (MAD)

I L R. 36 Mad. 467

ss. 21 and 35—Breach of contract by master or labourer—Prosecution of master. Successive prosecutions and convictions, if permissible under the Act—Directions by the Magistrate to com-

MADRAS PLANTERS' LABOUR ACT (I OF 1903)—*contd.*

ss. 21 and 35—*contd.*

plete performance.—*Successive directions*, if permitted by the Act. Under s. 25 of the Madras Planters' Labour Act (I of 1903), the Magistrate has power to issue successive directions to a master labourer to complete the performance of his contract. *Re Panja Madry*, 1 L. R. 38 Mad. 417, disapproved from. Successive prosecutions can be instituted and convictions obtained against a master in respect of successive defaults made by him under s. 24, (a) (b) and (c) of the Act. *Unwin v. Clarke*, 1 L. R. 1 Q. B. 417, and *Culler v. Turner*, 9 Q. B. 592, followed. *Whitton v. Niam Mad Maistry* (1915) 1 L. R. 39 Mad. 889

MADRAS PORT TRUST ACT (II OF 1905).

by-law 22—

See MADRAS CITY POLICE ACT (III OF 1883), s. 75 1 L. R. 39 Mad. 835

MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1934).

See CIVIL PROCEDURE CODE 1908, s. 47

1 L. R. 41 Mad. 418

ss. 5 and 10 cl. (2)—*Service inam*—

Emolument, partition of, whether prohibited—*Alienation, validity of*—*Subsequent suit for ejectment*—*Transfer of Property Act (IV of 1902), s. 43*—*Ancestral property*—*Property inherited by maternal grandsons*—*Interest, nature of*. The enfranchisement of a service inam under s. 10 cl. (2) of the Madras Proprietary Estates Village Service Act (II of 1934) does not destroy the rights of any member of a joint family who has a hereditary interest in it. The alienation of a service inam is void and though it is subsequently enfranchised the alienee cannot invoke the aid of s. 43 of the Transfer of Property Act in his favour. *Ramaswami Sankar v. Ramaswami Chetty*, 1 L. R. 39 Mad. 255, *Narayan Sita v. Siva Narayan Naidu* (1913) Mal. W. N. 411 and *Bala Ramayya v. Pharasathi* (1913) Mal. W. N. 229, referred to. Property which devolves on daughter's sons from their maternal grandfather is ancestral property in which the grandsons take an interest by birth according to the Mitakshara law. *Case reviewed*. *Ramappa v. Jagannadham* (1915) 1 L. R. 39 Mad. 930

MADRAS REGULATION (XXV OF 1802).

See IMPARTIBLE ESTATE

1 L. R. 36 Mad. 325

See MADRAS LAND REVENUE ACT 1901

1 L. R. 40 Mad. 830

See MADRAS LAND REVENUE ASSESSMENT ACT (I OF 1908), s. 2

1 L. R. 38 Mad. 1108

See MADRAS PERMANENT SETTLEMENT

See UNATTAINED ESTATE

1 L. R. 41 Mad. 749

See REGULATION

17 C. W. N. 1221

ss. 3 and 4—*Zamindar*—*Permanent settlement*—*Sansad*—*Construction of Sansad*—*Right of Government to resume inam lands*. A sansad issued by the Government on August 21st 1902, to a zamindar in the Presidency of Madras (Trent) stated that in consideration of the relief which the

MADRAS REGULATION (XXV OF 1802)—*contd.*

ss. 3 and 4—*contd.*

zamindar's finances would derive from the relinquishment of his military services, and of the Government charging itself with the duty of protecting his territories, "the British Government has fixed your annual contribution, including equivalent for military service and the established postkhush for every year at the sum of six pagodas 1 11 98, which said amount shall never be liable to changes under any circumstances." Cl. (5) reserved to the Government the revenue derived from salt and saltpetre, and certain other subjects, without making any mention of lakhurs or sum lands. It appeared from other documents that the assessment had been fixed on the whole zamindari, irrespective of the assets derived from each particular unit of property within it. Madras Regulation XXV of 1802 which was passed on July 13th, 1802 provided by s. 3 that in all cases of disputed assessment reference was to be had to the sansad and kabulats executed, and by s. 4 that the Government having reserved to itself certain articles of revenue including "lakhurs" lands (or inam) exempt from the payment of Government revenue) and of all other lands paying only favourable quit rents, the permanent assessment of the land tax shall be made exclusively of the said articles now recited." At the time of issue of the sansad there were in the zamindari certain religious and charitable inams and lakhurs lands granted by the zamindar or his predecessors. Held that having regard to the terms of the sansad, and the circumstances in which it was issued, the Government was not entitled to resume them or assess them to the public revenue. *Judgment of the High Court affirmed*. *Secretary of State for India v. Raja of Venkatagiri* (1921)

1 L. R. 44 Mad. (P.C.) 884

s. 4—*Pre-settlement inam*—*Lands held on service tenure in addition to payment of quit rent*—*Service to Zamindar*—*Service quasi-public before settlements*—*In discontinuance thereafter*—*Resumption by Government, right of*—*Presumption*—*Onus of proof, as to exclusion prior to Settlement*—*Evidence Act (I of 1922) ss. 108 and 111, ill. (g)*. Where lands in a Zamindari were pre-settlement inams granted on condition of rendering personal service to the zamindar and paying a favourable quit-rent, and the Government resumed such inams on the ground of discontinuance of such services. Held, that as the grant was for services purely personal to the zamindar, *prima facie* the inams formed part of the assets of the zamindari and the zamindar, and not the Government, was entitled to resume. Held, also, that where such services are rendered in addition to quit rent, the proviso to s. 4, Regulation XXV of 1802, has no application. The onus of proving that such lands were excluded from the assets of the zamindari, and that the Government had the right to resume lay on them. *Per TRAVIS, J.*—The Government having special means of knowledge as to exclusion or otherwise, of these lands, at the settlement, from the Zamindar, the burden was upon them according to s. 109 of the Evidence Act and the necessary presumption against the non-production of the records in their possession should be drawn against them. *See RAJA PARTHASARATHY APPA RAO BARADER v. SECRETARY OF STATE* (1913)

1 L. R. 35 Mad. 620

MADRAS REGULATION (XXXI OF 1802).See **MADRAS ESTATES LAND ACT, s 3****I. L. R. 41 Mad. 1012****MADRAS REGULATION (XI OF 1816).****s. 10—***Village Magistrate*

—Power to sentence confinement—Village choultry—Confinement to be only in village choultry and nowhere else—Sentence of confinement before a temple, legality of— Under s 10 of Madras Regulation XI of 1816, the village magistrate has power to pass sentence of confinement only in the village choultry and not in front of a temple, although a public place. Criminal Revision Petition 190 of 1898 **1 Weir, 924**, referred to **PONNUSAMI PILLAI** in re (1921)

I. L. R. 44 Mad. 113**MADRAS REGULATION (VII OF 1817).**See **CHARITABLE TRUST****I. L. R. 34 Mad. 375**See **MADRAS LOCAL BOARDS ACT, 1894****I. L. R. 34 Mad. 333****MADRAS REGULATION (VI OF 1831)**See **PENSIONS ACT 1871, s 4****I. L. R. 36 Mad. 559**See **SERVICE INAM****I. L. R. 35 Mad. 705****MADRAS REGULATION (X OF 1831)**See **MADRAS REVENUE RECOVERY ACT****I. L. R. 41 Mad. 733****MADRAS RELIGIOUS ENDOWMENTS ACT (X OF 1863).**See **CHARITABLE TRUST****I. L. R. 34 Mad. 375****MADRAS RENT RECOVERY ACT (VIII OF 1865).**See **MADRAS ESTATES LAND ACT (I OF 1918), s 13, cl. (3)****I. L. R. 39 Mad. 84**

Tenant, who is—Transfer puts an end to holding without notice to landlord—Tenant at the beginning of fasli is tenant for the fasli, notwithstanding subsequent transfer— A transfer of the holding by the tenant puts an end to the tenancy without notice to the landlord, unless the tenant under certain circumstances is estopped from denying its continuance. There is nothing in the Rent Recovery Act to warrant a contrary view. A tenant who is a tenant at the beginning of the fasli continues to be the tenant for the fasli, notwithstanding a subsequent transfer of the holding, and is liable to be proceeded against under the Rent Recovery Act. **RAMASWAMI AYYANGAR v BRUNNIGAN PILLAI (1910)**

I. L. R. 34 Mad. 179

Implied contract by ryot to pay enhanced rent—Consideration—Zemindar refraining from raising a hopeless dispute, if valid consideration—Contract Act (IX of 1872) s. 2—Payment of increased rent for several years, if estoppel ryot from challenging it—New plea not entertained by Privy Council— Where the contract of tenancy between zemindar and ryot was that the ryot was to hold the lands at the uniform punja rate of 4 fanams a guli, and was to remain in occupancy so long as circumstances affecting the hold-

MADRAS RENT RECOVERY ACT (VIII OF 1865)—contd.

ing remained unchanged otherwise than by the labour and outlay of the ryot himself, and the landlord pleaded that the tenant having subsequently (by making a well or tank at his own expense) resorted to "garden" cultivation thenceforward agreed to pay rent at 8 as. per guli, and that this contract to pay enhanced rent was to be implied from the fact of the zemindar having demanded and realised such rent for several years thereafter. *Held*, that the term "implied contract" as used in the Madras Rent Recovery Act (VIII of 1865) which governed the case was an English term of art and must be so construed. That there was no consideration for the promise to pay increased rent and the "implied contract" was not therefore enforceable. That the fact, if proved, of the zemindar having consented not to raise a hopeless and groundless dispute as to the right of the tenants to hold the lands at the 4 fanams rate would not be a valid consideration for the tenant's promise to pay enhanced rent. That in the absence of evidence showing an implied representation by the ryot of some existing fact on the faith of which the zemindar had changed his position, there was no estoppel in pais which would bind the ryot to pay the enhanced rent. The Judicial Committee refused to entertain new pleas for the first time raised before it, and held the Appellant to the position taken up in the lower Courts. **JAGAVEERA RAMA VENKATESWARA ETTAPPA v ALAWARASA ASARI (1918)** **23 C W N. 225**

ss. 3, 11—Varam rate—Rate of rent, ascertaining of—Right of landlord to varam rate on wet crop raised on dry lands, when no contract for the rent chargeable— By agreement between the landlord and tenant, a permanent money rent was fixed for dry cultivation and the agreement provided for extra charge for wet and garden crops without however stating the amount of such charge. The land was subsequently cultivated with wet crop, without any assistance from the landlord and the tenants took objection to the varam rate claimed by the landlord. *Held*, that the landlord had the right to claim the varam rate, as there was no contract in regard to the rent payable for wet cultivation. The contract having left the rate for wet cultivation undetermined was not a contract within the meaning of s 11 of the Act. Where, under the circumstances the landlord becomes entitled to varam rate under s 11 of the Rent Recovery Act, his claim to such rate cannot be objected to on the ground that the rent is thereby increased and it is not necessary to obtain the sanction of the Collector. In the absence of contract or survey rates, the landlord is entitled to varam rate under cl 3 of the section. An enquiry to determine the rate according to local usage is not necessary to enable the landlord to claim varam rates. **SIR RAJA BOMMADEVARA VENKAYA NARASIMHA NAYUDU v KASARANEVI CHINNA RAOYAPPA (1908)**

I. L. R. 33 Mad. 12

Right of landlord to enhance rents on dry land cultivated with garden crop by wells dug at tenant's cost—No such right in the absence of a contract supported by consideration— Dry lands liable to pay a fixed rent were cultivated with garden crops by the tenant by means of wells excavated at his cost with the consent of the landlord. The landlord claimed, and the tenant for some years paid, an enhanced rate of rent for the

MADRAS RENT RECOVERY ACT (VIII OF 1863)—*contd.*ss. 3, 11—*contd.*

crop so raised. In a suit by the tenant to compel the landlord to grant patta at the usual dry rate, it was contended for the landlord that a contract to pay the enhanced rate must be implied from the payment for a number of years of such rate and that such contract was supported by consideration as the landlord had consented to the digging of wells and as he had forbore from claiming the *varum* rate, which he had a right to do under s. 11, cl 3, of the Rent Recovery Act. There was no evidence that rent was chargeable according to the nature of the crop raised. *Held*, (i) that the word "contract" in s. 11 cannot be construed as a mere agreement but as an enforceable contract supported by consideration, (ii) that the consent of the landlord not being necessary to entitle the tenant to sink the well, such consent was no legal consideration for an agreement to pay the enhanced rate, (iii) that payment of a fixed rate of rent prior to the sinking of the wells was evidence of an implied contract to pay rent at that rate, and in the absence of evidence to show that the rate was fixed not on the holding but on the nature of the crop and was liable to be altered with a variation in the crop raised, that the existence of such a contract debared the landlord's claim to *varum* rates under s. 11, cl 3, of the Rent Recovery Act. The promise not to press such an un-enforceable claim was no legal consideration. **ABEYLOAM CHETTIYER v. RAJA JAGANNATHA KAMA VENKATESWARA ETTAPPA MAHARAJA AJYAR** (1910).

I. L. R. 35 Mad. 134

ss. 4, 5, 16—

See EXECUTION OF DECREE

I. L. R. 40 Calc. 623

s. 7—*Distrain for larger amount than is legally due not good even for the amount due.* Where, after tender by landlord and refusal by the tenant of a patta providing for a larger rent than is really due, the landlord distrains property of the tenant for such larger amount, such distrain will not hold good even for the amount properly claimable. **VENKATA NARASIMHA NAIDU BHARADUR v. SAGGA S. MATHA** (1911). I. L. R. 35 Mad. 139

s. 8—*Tender of Pattas on produce sharing system.*—*Allegation by tenants that money system prevailed.*—*Prevalence of money rent for series of years.*—*Alleged express contract to make prevailing rate permanent.*—*Implied contract, presumption of.*—*Convenience in considering usage prevailing.*—*Remand of cases for determination of proper rate when no contract exists.* The appellants, a samindar, brought suits against the respondents, the tenants in a village on his estate, under s. 9 of the Madras Rent Recovery Act (Madras Act VIII of 1863) to enforce patta tendered by him, and the execution of corresponding *muchilka*. The patta tendered were under the *Asara*, or produce sharing system, which the respondents denied was in force in their village, money rates, as they alleged, being the proper form of rent. It appeared that in 1299 (1889) different rates of rent prevailed in the village, some being higher than Rs. 5, and others lower, than in that year a uniform rate of Rs. 5 per acre was introduced by mutual agreement between the appellants and respondents, and leases were exchanged on that basis for a term of 5 years. The respondents alleged that the appellants at that

MADRAS RENT RECOVERY ACT (VIII OF 1863)—*contd.*s. 9—*contd.*

time expressly agreed that the rate of Rs. 5 should be permanent. The High Court did not uphold the express agreement, but found there was an implied contract to be inferred from the fact that rents at the same rate were paid and received for four years after the expiration of the term fixed by the leases of 1293, the presumption being that such rate of rent should continue the same in perpetuity. *Held*, by the Judicial Committee, that there was, alongside of the express contract embodied in the leases exchanged between the parties, no proof of any such collateral implied agreement relating to fixity of rent. Any understanding of the kind was denied by the appellants, and no credible explanation was given by the respondents why, if it existed, such an important arrangement was not reduced to writing. Whilst agreeing with the High Court that it was not open to Courts to imply, from the mere circumstance that the rent had been paid in money for a series of years, an agreement to pay money rent, their Lordships saw no reason why the fact that money rent had prevailed in a particular locality for a considerable number of years might not form an element in the consideration of usage. The real question between the parties not having been decided, namely, whether the patta tendered by the appellants were such as he was entitled to impose on the respondents, a question which, it having been found that there was no express or implied contract, must be decided in accordance with the rules contained in cl (iii) of s. 11 of Act VIII of 1863 which dealt with the mode of determining the rate when no contract exists, their Lordships remanded the cases to the proper Court in India to determine under those provisions the rates the appellants were entitled to receive. **PARTHASARATHY APPA ROW v. CHANDRA VENKATA NARAYAN** (1910).

I. L. R. 33 Mad. 177

ss. 9 and 10—

See LIMITATION ACT, 1908, SCH. II, ART. 110

I. L. R. 36 Mad. 438

s. 11—

See s. 3. I. L. R. 43 Mad. 1074

See PATTAS

I. L. R. 36 Mad. 4

Payment of enhanced rent.—*Implied contract.*—*Absence of consideration.* The Madras Rent Recovery Act, 1863, s. 11, among rules to be observed in the decision of suits regarding rates of rent, provides "all contracts for rent, express or implied, shall be enforced." A tenant of dry lands sank a well at his own cost and there after cultivated the land with garden crops. Prior to the sinking of the well the tenant had always paid a uniform rent on a dry basis, subsequently the landlord claimed and the tenant for some years paid, an enhanced rent, namely, at the garden crop rate. In a suit by the tenant to obtain patta at the usual dry rate. *Held*, that there was an implied contract to pay rent at the dry rate and that there was no consideration to support an implied contract to pay at the enhanced rate; further, that to construe the original contract as a contract to pay at the dry rate only so long as the land remained dry, having the subsequent rent to

MADRAS RENT RECOVERY ACT (VIII OF 1865)—contd**s 11—contd**

depend upon the produce, would be repugnant to the Act *JAGANNATHA RAMA ETTAPPA v ARUMUGAM CHETTI* (1918). . . I L R 45 I A 195

ss 33, 35, 39 and 40—

See *LIMITATION ACT* (IX OF 1908), s 22, I L R. 38 Mad. 837

ss 49, 78—

See *MADRAS ESTATES LAND ACT* (I OF 1908), 13, cl. (3) I L R 39 Mad. 239

s 69—

See *SPECIAL OR SECOND APPEAL* I L R 37 Mad 443

MADRAS REVENUE RECOVERY ACT (MAD. II OF 1864).

ss 1, 42—Sale for arrears of water-cess due under Madras Act VII of 1865—Discharge of encumbrances Under s 42 of Madras Act II of 1864 (Revenue Recovery Act), a sale for arrears of water cess due under Madras Act VII of 1865 conveys a title to the purchaser free of encumbrances water cess being included in the term "public revenue" as per s 1 of Madras Act II of 1864. Cases relating to sales for arrears of income tax and abkari revenue have no bearing on this question *VELLAPPAYAL ANBALAM v KARUPPIAN PILLAI* (1911). . . I L R 37 Mad. 49

ss 2, 5, 42—Provisions of s 42 not confined to land on which the arrears become due—Land mortgaged by defaulter does not cease to be his property Land belonging to the defaulter does not, because mortgaged by him, cease to be his property within the meaning of s 5 of Act II of 1864. There is nothing in s 2 or 5 to restrict the land that may be sold thereunder to the land in which the arrears of revenue have accrued. When therefore land belonging to the defaulter is sold for arrears accruing due on their lands belonging to him, the sale under s 42 of the Act is free of all encumbrances. *SECRETARY OF STATE FOR INDIA v PISHAYAT SIV KARATYA* (1910). . . I L R 34 Mad. 493

ss 3 to 5, 26—Defaulter, who is Registered proprietor is defaulter in respect of arrears accrued before registry The Madras Revenue Recovery Act lays the obligation to pay the revenue including all the arrears on every land holder irrespective of the time when he becomes the holder and if he does not do so he becomes a defaulter. A person, on being registered as the holder, becomes a defaulter in respect of arrears accrued before the registry, as if he were the registered owner when the arrears fell due. *HOTA SUBHAYA KUPPA GARU v THE SECRETARY OF STATE FOR INDIA* (1912). . . I L R 35 Mad. 555

ss 3, 35—'Defaulter' who is—Defaulter means registered pattadar—Contract Act, s 69 Where one person is the real owner of a share in land and another is the registered proprietor of the whole, the latter and not the former is the 'defaulter' within the meaning of the Revenue Recovery Act, and where the latter as mortgagee of a share of the land not owned by the former has paid the arrears of revenue due on the whole land and the former has paid the revenue, of his share, he cannot, being himself the defaulter,

MADRAS REVENUE RECOVERY ACT (MAD. II OF 1864)—contd**ss. 3, 35—contd**

recover the amount from the former under s 35 of the Revenue Recovery Act. The latter cannot recover under s 69 of the Contract Act as the former is not bound by law to pay the money which the latter has paid. *SUBRAMANIAM CHETTI v MAHALINGASAMI SIVAN* (1909)

I L R. 33 Mad. 41

ss 32 and 42—

See *MUTT, HEAD OF* I L R. 38 Mad. 356

ss. 37 (A), 38 and 59—Sale for arrears of revenue—Applicability of Act s 37 (A) and 59—Dismissal by Deputy Collector and Collector—Confirmation of sale, whether final—Application to Board of Revenue—Powers of general supervision of Board of Revenue—Power to direct Collector to cancel sale—Cancellation by Collector—Adultery of title of purchaser, whether affected—Suit by purchaser for possession—Limitation—Material irregularity—Proof of substantial loss—Madras Regulations I, II of 1863 and VII of 1828 The plaintiff purchased the suit lands in a revenue auction sale held under the Madras Revenue Recovery Act (II of 1864). A petition to set aside the sale under s 37 (A) of the Act was filed by the defaulter before the Deputy Collector and was dismissed, another petition under s 38 (2) of the Act was also dismissed by the Deputy Collector who confirmed the sale, the District Collector also confirmed the sale, the first defendant then filed a petition before the Board of Revenue to set aside the sale. The Board of Revenue in the exercise of their powers of general supervision, directed the Collector to cancel the sale which was accordingly cancelled by him. The plaintiff thereupon instituted this suit to recover possession of the suit lands more than six months after the order cancelling the sale. The first defendant pleaded that the sale was validly cancelled by the Collector, that the suit was barred by limitation under s 53 of Act II of 1864, and that the sale should have been set aside on account of material irregularity. *Held*, that when a Collector is empowered by a statute to pass a certain order, it is not open to the Board of Revenue having only general powers of supervision over him to direct him to pass a special order contrary to that he had already passed, that the order cancelling the sale, though purporting to be passed by the Collector, was really the order of the Board of Revenue who had no power under Act II of 1864 to pass such an order, that after an order under s 38 (3) was passed by the Deputy Collector and confirmed by the Collector, it became final under that section, and neither of them had power under the Act to pass any further order, that the suit was not barred by limitation as s 59 of Act II of 1864 was not applicable for the reason that the order complained of was passed wholly without jurisdiction and not under any power conferred by the Act, and that, on the merits, the sale should not have been set aside, as no substantial loss was proved to be due to the irregularity. *SUNDARAM AYYAN GAR v RAMASWAMI AYYANAR* (1918)

I L R. 41 Mad. 955

s 59—

See *LIMITATION*. I L R 38 Mad 92

MADRAS REVENUE RECOVERY ACT (MAD. II OF 1861)—*contd.*s. 59—*contd.*See *MUTT HEAL* &

I. L. R. 33 Mad. 336

Sale of a minor's ryot
*was land-holder's lands for arrears of revenue, validity of—Madras Regulation (X of 1831), s. 2—Wrong entry of minor's mother as patta holder instead of minor, effect of—Suit to set aside revenue sale more than six months after sale, whether barred by limitation. On the death of a ryotwar landholder the Revenue authorities erroneously registered his widow as the patta holder instead of the plaintiff his minor adopted son. In default of payment of revenue having occurred the lands were sold for arrears of revenue during plaintiff's minority and he then sued to set aside the revenue sale and recover the land within twelve years of the sale but more than six months after attaining majority. Held by the Full Bench, (a) that s. 2 of Madras Regulation X of 1831 which prohibits the sale for arrears of revenue of minor's property applies to all lands of minors whether permanently settled or only ryotwar, whether the lands be considerable or so small as not to be taken charge of by the Court of Wards; (b) that the sale being ultra vires, the special period of limitation of six months prescribed by s. 59 of the Madras Revenue Recovery Act (II of 1861) did not apply to the suit and (c) that the fact that the Revenue authorities mistakenly registered the plaintiff's adoptive mother as patta holder did not in any way affect him. *Arishan v. Melam Perumal* I. L. R. 10 Mad. 41, considered. *Subramania Chetty v. Mahalingam Sivas* I. L. R. 33 Mad. 41, distinguished. *Secretary of State v. Ishamurthy* I. L. R. 13 Mad. 59, followed. *Bhanti Natha Attayar Govindasawami Padayathi* (1918)*

I. L. R. 41 Mad. 733

MADRAS SURVEY AND BOUNDARIES ACT (MAD IV OF 1897)

s. 11—*Decision of Survey Officer, on dispute as to boundary, not set aside on appeal or by suit within one year, effect of—Continued possession of unsuccessful party effect of—A decision of a Survey Officer passed under s. 11 of the Madras Survey and Boundaries Act (IV of 1897) on a dispute arising between two parties as to the boundary of a certain property, is final and conclusive as to the rights of the parties if not set aside either on appeal or by a suit brought within one year and it is none the less so, because the unsuccessful party who was in possession on the date of the order was not subsequently ousted from possession. *Arasammal v. Ichayya*, I. L. R. 2 Mad. 306, distinguished. *MUTHURELANDI PUDSARI v. SETHURAM AYYAR* (1918)*

I. L. R. 42 Mad. 423

s. 12—*Land with shifting boundaries—Dimagras—Lease—Lease, rights of—Where the boundaries of land to be leased are of a shifting character, the prospective lessee is entitled to rely upon the area stated in the lease and to be put into possession of an area which approximates to that which is mentioned in the lease. *Iyo Durga Prasad Singh v. Rajendra Narain Singh*, 10 O. J. 570, applied. Where the lessor is unable to put the lessee into possession of the area stipulated in the lease, he is liable to compensate the lessee by way of damages. Where the alteration to the land takes place after the lessee has been*

MADRAS SURVEY AND BOUNDARIES ACT (MAD. IV OF 1897)—*contd.*s. 12—*contd.*

put into possession the rule would be different. *PENNAIRASU VENNIAH v. THE SECRETARY OF STATE FOR INDIA* (1910)

I. L. R. 31 Mad. 103

ss. 12 and 13—*Decision of a Survey Officer. Finality of decision—Decision whether final for all or for what purposes—Effect of word final—s. 12, suby. (3). The effect of s. 12, suby. (3) of the Survey and Boundaries Act is to make the orders of a Survey Officer in cases falling under that section final for the purposes of the survey but it does not purport to preclude the land owners altogether from afterwards disputing its correctness in a Court of Law, unless there was a dispute before the Survey Officer and the order is one to which s. 13 of the Act applies. *McArdlands Ponnai v. Sathuram Ayyar* (1912); I. L. R. 42 Mad. 475 (F.B.), explained. *CHINNA VENKATRAYUDH v. HANAMANTH* (1921)*

I. L. R. 44 Mad. 86

MADRAS TOWNS NUISANCES ACT (MAD. III OF 1859)

*Held, that a Public Place was one where the Public go whether they have a right to do so or not. It is sufficient to constitute a place a public one even if only a section of the general public goes there. In this case the compound of a Hindu Temple. *KRAO PETERSON v. MUSA** I. L. R. 40 Mad. 537

s. 3 (10)—*Gaming*—*and public place, meaning of—The accused in this case held for stakes a game called 'Ring' in an open space in the compound of a Hindu temple. In convicting the accused under s. 3 (10) of the Madras Towns Nuisance Act (III of 1859), on the grounds that the place was a public place and the game was a game within the meaning of the above section as it was played for stakes. *Held*, (a) "Gaming," generally and in s. 3 (10) means "playing for stakes," (b) a public place is one where the public go whether they have a right to or not; it is sufficient to constitute a place a public one even if only a section of the general public such as Hindus have a right to go to it; and (c) the character of the game as one of skill or chance is not material under the section. *Hars Singh v. Jedu Nandan Singh*, I. L. P. 31 Cal. 442, followed. *KRAO PETERSON v. MUSA* (1916)*

I. L. R. 40 Mad. 556

ss. 6 and 7—

See *CRIMINAL PROCEDURE CODE*, s. 517.

I. L. R. 41 Mad. 644

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See *SPECIFIC RELIEF ACT* (I of 1877).
 s. 45. I. L. R. 40 Mad. 125

MADRAS VILLAGE COURTS ACT (I OF 1889)

s. 24—*Order of Deputy Collector debarring one from appearing as plaintiff for parties in village Courts, ultra vires—Specific Relief Act (I of 1877), s. 42—Suits for declaration of validity of order, maintainability of—Under s. 24 of the Madras Village Courts Act (I of 1889) any person holding a vakalatnama from a party may appear and plead in a village court, and there is no provi-*

MADRAS VILLAGE COURTS ACT (I OF 1889)

—could

— s 21—could

sion in the Act for debarring any one from this privilege. The power of removing suspending and dismissing village munsifs conferred on Divisional officers does not include the power of debarring a person from acting as a vakil for a party in village courts. A suit for a declaration that an order debarring one from acting as vakil for another in village courts is void is maintainable though it may not be covered by s 42 of the Specific Relief Act (I of 1877). **RAMACHANDRA RAO v SECRETARY OF STATE FOR INDIA (1915)**

I L R 39 Mad. 808

MADRAS WATER CESS ACT (VII OF 1865)

Where a right to take water is proved even though no express agreement on behalf of Government not to levy a charge is proved an engagement under Act VII of 1865 will be implied and no cess can be levied. **SRI RAJAH SETHUPATHI RAJU v SECRETARY OF STATE**

I L R 39 Mad. 67

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— not rent—

See **BENGAL TENANCY ACT 1885** s. 133
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— compelling attendance of witness—

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I L R 33 Cal 24

— deciding question whether he has jurisdiction—

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I L R 37 Bom 144

— duty of—

See **ATTACHMENT** I L R 40 Cal 105See **COMMITMENT** I L R 42 Cal 608See **CONDOMINIUM** I L R 45 Cal 816See **SECRECY** I L R 43 Cal 1024

— inquiry by—

See **CRIMINAL PROCEDURE CODE (ACT V OF 1898)** s 209 I L R 35 Bom 163

— in insolvency—

See **PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)** ss 17 103 and 104
I L R 35 Bom 63

— Jurisdiction of—

See **COSTS** I L R 47 Cal 974

See **CRIMINAL PROCEDURE CODE**, s 188
I L R 41 Bom 667

See **DISPUTE CONCERNING LAND**
I L R 43 Cal 882

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See **HABEAS CORPUS**

I L R 39 Cal 164

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178 (a) 130 I L R 43 Bom 688

— power and duties of—

See **CRIMINAL PROCEDURE CODE—**

s 206 I L R 37 All 355

s 145 I L R 37 All 654

See **MAGISTRATE (POWER OF)**See **SEARCH WARRANT**

I L R 47 Cal 164, 597

— offering bribe to—

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I L R 46 Cal 607

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I L R 41 Cal 806

— order of forfeiture passed by—

See **RIGHT OF SUIT**

I L R 40 Bom 200

— Power of—

See **SEARCH WARRANT**

I L R 47 Cal 597

I CHANGE IN BENCH OF DURING TRIAL.

*Magistrate committing case has not heard at the evidence—Criminal Procedure Code (Act V of 1898) s 530. Where the trial of the accused was commenced before a Bench of four Magistrates who heard part of the evidence and continued before the same four Magistrates and another who had joined as the fifth and all the five Magistrates deliver judgment convicting the accused. Held that the conviction was valid and that there must be a retrial. **Re SUBRAMANIA AYYAR (1913)***
I L R 38 Mad 304

II JURISDICTION OF

1. *Criminal Procedure Code (Act V of 1898) ss 100 552—Jurisdiction of first class Magistrate upon an application under s 552 of the Code to issue a search warrant under s 100 as a fresh complaint of facts alleging wrongful confinement—Warrant under s 100 drawn up on a printed form used under s 98 with the necessary alterations—Presumption that such alterations were made—Destruction of original warrant by the accused—Resistance to execution of such warrant and arrest on the police—Penal Code (Act XLV of 1860) ss 147 and 332. Where on an application made under s 552 of the Criminal Procedure Code to a Magistrate of the first class he examined the applicant on oath recorded a statement of facts alleging wrongful detention of his wife and directed the issue of a search warrant under s 100. Held, that he had jurisdiction to do so. A search warrant under s 100 of the Code drawn up in the absence of a printed form of warrant there under on a printed form used under s 98 with the necessary alterations is not illegal. **Bisw Halder v Probation Chunder Chuckerberty 6 C L J 127**, distinguished. Where the original warrant was in such a case not*

MAGISTRATE—contd.

produced at the trial owing to its destruction by the accused at the time of its execution. *Held*, that it must be taken that it contained the substance of s. 100 and that the necessary alterations were made. **GORA MAHAJI v. ABDUL MAJID (1911)**

I L R 33 Cal 403

2. ————— *Deputy Magistrate in charge of the office of the District Magistrate at his quarters—Subordination of the Sub-divisional Magistrate to such Deputy Magistrate—Power of latter after taking cognizance and examining the complainant on oath to direct a local investigation by the former—Irregularity, effect of—Power of the same to dismiss the complaint and order the prosecution of the complainant on evidence taken at the investigation and on the report of the Sub-divisional Officer—Criminal Procedure Code (Act V of 1938) s. 12, 200, 203, 476 and 529 (1). A Sub-divisional Magistrate is not under s. 203 of the Criminal Procedure Code subordinate to a Deputy Magistrate appointed to act in the district within the definition of the local limits of jurisdiction on who was in charge of the office of the District Magistrate at head-quarters during the latter's absence on tour and such Deputy Magistrate cannot therefore, after taking cognizance of an offence committed in the sub-division and examining the complainant on oath direct a local investigation by the Sub-divisional Magistrate, nor can he thereafter dismiss the complaint, and order the prosecution of the complainant under s. 476 of the Code on such report and the evidence taken at the investigation. Section 529 (1) does not in the circumstances confer jurisdiction on the Deputy Magistrate to make such orders of dismissal and prosecution but vests the Sub-divisional Magistrate with such power of the case and the latter alone can inquire into it and pass final orders. **LALIT HOSEIN v. EMPEROR (1912)***

I L R 39 Cal 1041

3. ————— Where a complaint was filed by a Sub-Inspector of Police before the Sub-divisional Magistrate of an offence under s. 399 of the Penal Code and the facts disclosed also an offence under s. 4 (b) of the Explosive Substances Act (VI of 1908) of which the Magistrate could not then take cognizance for want of the consent of Government under s. 7 and a complaint was subsequently filed by the Superintendent of Police with such consent before the Additional District Magistrate. *Held* that the latter had jurisdiction to take cognizance of the offence and that the institution and continuation of the proceedings by him were legal notwithstanding that he had not withdrawn the original case to his own file. *Held*, also that in any case having regard to ss. 521 to 531 of the Criminal Procedure Code unless it appeared that the proceedings wrongly held had in fact occasioned a failure of justice they could not be set aside and that s. 309 requires opinions of assessors to be given orally. **LALIT CHANDRA CROWDERY v. EMPEROR**

I L R 39 Cal 119

III. POWERS OF.

District Magistrate power of to cancel bond for keeping the peace or for good behaviour—Order directing prosecution for using forged rent-receipts in a proceeding before a subordinate Magistrate, for keeping the peace, and for abetment thereof—“Judicial proceeding”

MAGISTRATE—contd.

*Criminal Procedure Code (Act V of 1938) s. 4 (m), 125, 476. Section 125 of the Criminal Procedure Code gives the District Magistrate the power to cancel a bond for keeping the peace for reasons which appear to him sufficient but not the right to hear an appeal from an order in a proceeding under s. 107 passed by a subordinate Magistrate. A District Magistrate has no jurisdiction under s. 476 of the Code to direct a prosecution for dishonestly using a forged document and for abetment in respect of rent receipts filed before a subordinate Magistrate in a case under s. 107 of the Code which has been disposed of by him under s. 125, the proceeding under which is not a “judicial proceeding”. **DAYAVATH TRIKUR v. EMPEROR (1909)***

I L R 37 Cal 72

A Magistrate may, on taking cognizance of a complaint issue either a summons under s. 94 or a search warrant under s. 96 of the Criminal Procedure Code but is not competent to pass an order directing the police to take possession of account books forming the subject of the charge. If the Magistrate, after first having examined the complainant under s. 200 is not satisfied that process should issue, he can under s. 202, either hold an inquiry and take evidence himself, or direct a local investigation by a subordinate officer. After ordering a police investigation he may if dissatisfied with the materials personally make a further inquiry and take evidence or direct a further local investigation but not an inquiry and report by another Magistrate. If he thinks it proper to send the case to a Magistrate for inquiry, other than a local investigation, he should transfer it under s. 192 to the latter for disposal, and not for a report. Where the complainant made no specific allegations of facts in the complaint but stated in his examination on investigation under s. 202 that when the jabba books were first opened the title pages contained the name of his son as a partner, and that he later discovered that a substitution of pages had been made showing the name of his father in law as a partner and the statements in the complaint and such examination were not consistent as to the names originally entered, and he was contradicted by his only witness in several particulars and his story was not supported by the original deed of partnership or the payment of the contributions it was held that the proceedings must be quashed as the materials before the Magistrate disclosed no offence. *Criminal Revision, No. 835 of 1910 against the order of D. Srinibho, Officiating Chief Presidency Magistrate of Calcutta, dated June 7, 1910. Jagat Chandra Mazumdar v. Queen Empress (1) Choa Lal Dass v. Anand Pershad Mitter (2) and Chandi Pershad v. Abdur Rahman (3) referred to. See also A title page in an account book containing the names of the partners and the amount of the capital contributed by each is, if signed by them, a “valuable security” within s. 30 of the Penal Code. **HARI CHARAN GORAI v. GIRISH CHANDRA SADRUKHAN***

I L R 35 Cal 68

IV. TRANSFER OF

Inquiry—Continuance of inquiry by another Magistrate without the examination of the witnesses de novo—Criminal Procedure Code Act (V of 1938) s. 145, 350, 353 of the Criminal Procedure Code applies to an inquiry

MAGISTRATE—contd

under s 115 Where a Magistrate who has commenced a criminal enquiry is transferred and the District Magistrate has made over the case to another Magistrate the latter has power under s 350 of the Code to proceed with the trial without examining the witnesses de novo *ANUSHE KHAN FEROZ* (1910) I L R 37 Cal 812

MAHA BRAHMIN

See CIVIL PROCEDURE CODE (1908) s 60
I L R 41 All 656

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 6 58 I L R 33 All 196

Agreement as to distribution of offerings—Construct of agreement
The members of a family of Maha Brahmins entered into an agreement amongst themselves whereby certain members of the family were to take the offerings made on certain days of the month, and the other members of the family the offerings made on the other days. *Held* by BANERJI and LYALL, JJ (PICKARDS C J dissenting) that the effect of such an agreement was that if an offering was made to a member of the family on a day which belonged to the other branch he was bound to account for it to the branch to which the day belonged. *Per* RICHARDS C J—Such an agreement as above described would not prevent a person who wished to do so from making a special individual gift to a member of the family even on a day which was appropriated by the agreement to the other branch. *Doorga Peshad v Budree* 6 N W P H C 189 191 and *Oochi v Ulfat* I L R 20 All 231 referred to *SONA DEVI v FAKIR CHAND* (1913) I L R 35 All 412

Right of tresspass to alms
Apart from the possession of specific property—Suit for declaration and injunction—Cause of action—*Act No I of 1877 (Specific Relief Act)* ss 42 and 54 Certain Maha Brahmins alleging that the collection of alms by them at a particular spot on the banks of the Ganges had been interfered with by the defendants who were Gangaputras sued the Gangaputras claiming first a declaration of their right to receive offerings at the particular place named, and secondly an injunction restraining the defendants from interfering with their so doing. *Held* that as the giving of such offerings was a purely voluntary act and the receipt thereof was not claimed in virtue of the possession on by the plaintiffs of any temple or other holy place to which people were in the habit of resorting the plaintiffs had no cause of action on which would support the suit. *BANSTI v KAN HAIYA*. I L R 43 All 159

MAHAD

See HINDU LAW—MITAKSHARA
I L R 40 Bom 621

MAHAL

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) s 37 (d)
I L R 36 All 231

MAHANT

See AGRA TENANCY ACT (II OF 1901) s 11 et seq I L R 35 All 474

MAHANT—contd

See HINDU LAW—ENDOWMENT
I L R 37 All 298
I L R 43 Cal 707

Held that a Mahant is entitled to grant a lease of Math Lands in the ordinary course of management. *MA ANTH JAI KRISHNA PURI v BHUKAI AL GOPE*

6 Pat L J 638

MAHAP WATAN LAND

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 4 (a)
I L R 43 Bom 277

See HEREDITARY OFFICES ACT (BOM ACT III OF 1874) ss 10 and 13
I L R 35 Bom 146

MAHOMEDAN

See LIMITATION ACT (IX OF 1908) SCH. I ART 127 I L R 41 Bom 589

Ahmadias and Khadiwas—Disenters right of to worship in a mosque used by orthodox Muhammadans—whether dissenters are entitled to choose their own Imam
The sect known as Ahmadis or Khadiwas are Muhammadans notwithstanding the fact pronounced dissent on several important matters from the orthodox Muhammadan faith. The Khadiwas are entitled to enter a mosque if they please and to offer up prayers with the regular congregant and behind the recognized Imam but they are not entitled to pray as a separate congregant on behind an Imam of their own in a mosque which has always been used by orthodox Muhammadans. *HAKIM KHALIL AHMAD v MALIK ISRAFI* 2 Pat L J 108

MAHOMEDAN FAMILY

See DECREE I L R 43 Bom 412

See LIMITATION ACT (IX OF 1908) ss 6 7 and ART 144
I L R 43 Bom 487

See MORTGAGE I L R 40 Cal 378

Breach of promise of marriage—

See CONTRACT I L R 42 Bom 499

MAHOMEDAN LAW

See ADMINISTRATION SUIT
I L R 45 Bom 75

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See EVIDENCE ACT 1892 s 108
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MAHOMEDAN LAW—ACKNOWLEDGMENT OF SONSHIP

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Knowledge of illegitimacy—Effect on acknowledgment. A Mahomedan cannot legally acknowledge as his son, a person who is shown to be the son of another man. The acknowledgment must not be merely of sonship but of legitimate sonship, but the fact that the acknowledgment was of legitimacy as well as of sonship may be inferred from circumstances. *See* *MAHOMEDAN LAW—LEGITIMACY* (1715). I. L. R. 43 Bom. 28

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I. L. R. 1 LAH. 223

MAHOMEDAN LAW—ADOPTION

See *MAHOMEDAN LAW—ADOPTION* (1715). I. L. R. 23 Cal. 418

Adoption—Effect on adoption. A Mahomedan cannot legally adopt a person who is shown to be the son of another man. The acknowledgment must not be merely of sonship but of legitimate sonship, but the fact that the acknowledgment was of legitimacy as well as of sonship may be inferred from circumstances. *See* *MAHOMEDAN LAW—LEGITIMACY* (1715). I. L. R. 43 Bom. 28

MAHOMEDAN LAW—ADOPTION—*contd*

necessary consequence of conversion the law of adoption recognized by Hindu Law has been abandoned by him. He who alleges that the usage and law in question had been retained must prove it. *See* *MAHOMEDAN LAW—ADOPTION* (1715). I. L. R. 35 Bom. 264

MAHOMEDAN LAW—ALIENATION

See *MAHOMEDAN LAW—ALIENATION*See *MAHOMEDAN LAW—ALIENATION*See *MAHOMEDAN LAW—ALIENATION*

I. L. R. 45 Cal. 878

Alienation—Effect on adoption. A Mahomedan cannot legally adopt a person who is shown to be the son of another man. The acknowledgment must not be merely of sonship but of legitimate sonship, but the fact that the acknowledgment was of legitimacy as well as of sonship may be inferred from circumstances. *See* *MAHOMEDAN LAW—LEGITIMACY* (1715). I. L. R. 43 Bom. 28

I. L. R. 35 Bom. 217

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MAHOMEDAN LAW—ALIENATION—contd.

attaining his majority to treat the transaction of the 15th of June, 1830, as being void as against him *Held*, also, that the possession of the appellant did not become adverse to the respondent until the expiry of the term of the mortgage of 1835, namely, the 2nd of December, 1893, and therefore the suit was not barred by the 12 years' period provided by Article 144 of Schedule II of the Limitation Act (XV of 1877) Article 44, Schedule II, of the same Act was not applicable, as the sale was made not by a guardian but by an unauthorized person **MATA DIN v AHMAD ALI** (1912) . . . **I L R 34 All 213**

Private sale by one of several heirs of a deceased Mahomedan, in possession of the estate, for discharging a debt binding on the estate, not binding on co heirs or other creditors of the deceased When one of the co heirs of a deceased Mahomedan in possession of the whole or part of the estate of the deceased, sells property in his possession forming part of the estate for discharging the debts of the deceased such sale is not binding on the other co heirs or creditors of the deceased **Pathumathi v Vittal Ummachadi**, **I L R 26 Mad 734**, overruled **Hasan Ali v Mehdi Hussain**, **I L R 1 All 533**, dissented from *Quare* Whether a decree against one of the heirs of a deceased Mahomedan binds the others **ABDUL MAJEETH v. KRISHNAMACHARIAR** (1916) . . . **I L R 40 Mad 243**

Unlawful alienation of endowed property by mutawallis of mosque—Ahl-i-masjid, a daily worshippers, if may sue for declaration that alienation void without special damage—Representative suit if hee, under Civil Procedure Code (Act V of 1908), O 1, r 8—S 92 of the Code or s 14 of Act XX of 1863, if bare suit A suit brought by two worshippers of a mosque for themselves and as representing other worshippers in the locality for a declaration that a permanent lease granted by the mutawallis is void and inoperative is maintainable, the requirements of O 1 r 8, having been complied with by the plaintiffs. No special damage need be alleged or proved for the maintainability of such a suit, since worshippers living in the vicinity of a mosque have rights as daily worshippers to it over and above those possessed by the Mahomedan public and have a more direct interest in its maintenance and in the proper administration of the properties endowed for its benefit S 14 of Act XX of 1863 contemplates a suit instituted primarily against the Trustee, Manager or Superintendent of a mosque, temple or religious establishment or the members of any committee appointed under that Act, and the only relief that can be asked for in such a suit is a decree directing the specific performance of any act by such Trustee, Manager, etc., a decree for damages and costs against them and a decree directing their removal A suit under s 92 of the Civil Procedure Code is primarily a suit against a Trustee and can only be instituted either on the ground that there has been a breach of trust or that direction of the Court is necessary for the administration of the trust In the present case the mere fact that the Trustee was a defendant in the suit did not attract the application of s 92 of the Civil Procedure Code, since no relief was claimed against him, nor was the Court asked to give any direction for the administration of the trust **ABRAHAM ALI v MAHOMMAD AL-KHOLJONA** (1918) . . . **23 C W. N. 115**

MAHOMEDAN LAW—BIGAMY.

Effect of apostasy of husband after marriage, and reconversion to Islam during the period of iddat—Second marriage of the wife with another man during such period—Alet ment—Penal Code (Act XLV of 1860), ss 494 and 494 Under the Mahomedan Law the marriage of a man, who subsequently embraces Christianity becomes *ipso facto* void, notwithstanding his reconversion to Islam during the period of *iddat*, and the wife, in contracting a second marriage during such period, does not commit bigamy under s. 494 of the Penal Code *Per HOLMWOOD, J*—A second marriage contracted by the wife during the period of her *iddat* is not void by reason of its taking place during the life of the first husband, but by reason of a special doctrine of the Mahomedan Law with which the Penal Code has nothing to do Where the parties have acted in good faith or what they believe to be a sound interpretation of a very difficult point of Mahomedan Law even though they are mistaken, the consequences cannot be visited upon them in a Criminal Court in a trial for bigamy **ABDUL GHANI v ABIZUL HUQ** (1911) . . . **I L R 39 Calc 409**

MAHOMEDAN LAW—CONVERSION*See JURISDICTION***I L R 35 Bom 264***See MAHOMEDAN LAW—BIGAMY***I L R 39 Calc 409**

Marriage—Conversion of wife to Christianity—Dissolution of marriage—Suit for restitution of conjugal rights Under the Mahomedan Law a wife a conversion from Islam to Christianity effects a complete dissolution of marriage with her Mahomedan husband The fact of such a conversion is therefore a bar to a suit by the husband for restitution of conjugal rights **Zuburdul Kfan v His wife 2 A W P H C Rep 370**, and **Imamdin v Hasan Bibi Punj Rec (1906) 309**, followed **AMIS BEO v SAMAN** (1910) . . . **I L R 33 All 90**

MAHOMEDAN LAW—CUSTOM*See CUSTOM**See CLTCH MEMOIRS***I L R 41 Bom 181***Exclusion of daughters—**See CUSTOM* **I L R 45 Calc 450***of Pre-emption—**See MAHOMEDAN LAW—PRE EMPTION*

Subbas of Coimbatore district—Right of succession—Exclusion of females—Custom—Petition of rule of Hindu Law—Pecol of Custom, standard of—Family Custom proof of—Abandonment of Custom Among the Subbas of the Coimbatore district who are Hindu converts to Mahomedanism a custom prevails under which they retain the rule of Hindu Law which excludes females from the right of succession **Murali v Vellayanna 1 J R S Mch 464**, and **Kunjomla v Kalandhar, 27 Mad J J 150**, referred to It is open to them to abandon the custom and follow the ordinary rule of Mahomedan Law **Jaisankar Singh v Pampay Surma Moosoodar, 1 J 1 1 Calc 186**, referred to *Per SRINIVASA AYYANGAR J.*—Custom in its legal sense means a rule excep-

MAHOMEDAN LAW—*contd*

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MAHOMEDAN LAW—ACKNOWLEDGMENT OF SONSHIP.

See MAHOMEDAN LAW—LEGITIMACY

Acknowledgment of legitimate sonship—Inference of acknowledgment. A Mahomedan cannot legally acknowledge as his son, a person who is shown to be the son of another man. The acknowledgment must be not merely of sonship but of legitimate sonship but the fact that the acknowledgment was of legitimacy as well as of sonship may be inferred from circumstances justifying that inference. *USMANIYA V VALI MAHOMED* (1915) I L R 40 Bom. 23

Acknowledgment as son, what is necessary to its validity—Valid acknowledgment, operates as declaration of legitimacy and not as legitimization—Presumption of fact, rebuttable by proof of impossibility of marriage or no marriage—Concurrent findings of fact. In Mahomedan law, the acknowledgment by one person of another as his legitimate son is of no avail, in the face of a finding that there was no marriage. In Mahomedan law, such an acknowledgment is a declaration of legitimacy and not a legitimization—a declaration which though it cannot be withdrawn may be contradicted. *BYED HANIF V RABIA CHOWDHURY V BYED ALI CHOWDHURY*

20 C. W. N. 81

Acknowledgment by a father of a son by a female slave legitimizes the boy in the absence of direct proof that no marriage had taken place. The law requires to declare a man a bastard except on the clearest evidence. *IBRAHIM ALI KHAN V Mst MURARIK BEGUM*

I L R 1 Lah. 220

MAHOMEDAN LAW—ADOPTION

See CUSTOM I L R 39 Cal. 418

Adoption by a convert from Hinduism—Custom of adoption—Furder of proof. The Mahomedan Law does not recognize adoption. Hence, where a Hindu is converted to Mahomedanism, the presumption is that as a

MAHOMEDAN LAW—ADOPTION—*contd*

necessary consequence of conversion the law of adoption recognized by Hindu Law has been abandoned by him. He who alleges that the usage and law in question had been retained must prove it. *BAT MACHIMRAY V BAT HIRBAT* (1911)

I L R 35 Bom. 264

MAHOMEDAN LAW—ALIENATION

See MAHOMEDAN LAW—GUARDIAN*See* MAHOMEDAN LAW—MINOR*See* MAHOMEDAN LAW—MARRIAGE

I L R 45 Cal. 878

Minor—Right to sell minor's property—Necessity—Bond fide purchaser without notice. By a deed of conveyance dated 19th January 1904 one N purported to convey on behalf of herself and her minor son, the plaintiff, certain immovable property to the defendant for the consideration of ₹1000. On the same day N passed an indemnity bond in favour of the defendant indemnifying him against the claim of the plaintiff. The plaintiff sued to have the said deed of conveyance declared void and for a declaration that the plaintiff was entitled to the whole of the property purported to be conveyed. *Held*, that the plaintiff was entitled to succeed on the grounds (i) there was absolutely no evidence that the sale was in any way necessary for the maintenance of the minor, (ii) the purchaser was not a bond fide purchaser without notice of the plaintiff's rights. The purchaser of an estate who takes with notice of a breach of trust is in the same position as the vendor who committed the breach of trust. *FAKIRUDDIN V ABDUL HUSSAIN* (1910)

I L R. 35 Bom. 217

Guardian—Construction of will—Alienation of property of minor by his brothers acting as executors of will and guardians of minor—Sale not binding on minor—Right of suit to redeem mortgage—Limitation Act (XV of 1877) Schedule II, Articles 44 and 44 A. A Mahomedan testator by his will left all his property to his four grandsons (brothers) but did not expressly appoint any executors of his will or guardians of such of his grand children as might be minors at his death nor was there in the will any intention to entrust the administration of the property to any particular individuals. The testator died in 1847 and on the 15th of June 1899 the three elder grandsons on their own behalf and purporting to act also as the guardians of the fourth grandson, the respondent (plaintiff) then a minor sold some of the property to the appellant (defendant). The appellant was a mortgagee of two villages on the estate under two mortgages executed by the testator on the 2nd of December 1837, and the 7th of August 1838 for ten years and seven years respectively, and the effect of the sale had been to pay off the later mortgage on the smaller village, and other debts, by selling the larger village to the mortgagee. The respondent attained his majority in 1892 or 1893, and treating the sale of the 15th of June 1891, as a nullity, and the mortgage as still subsisting he tendered to the appellant the amount of mortgage money necessary to redeem the larger village, and on the appellant refusing to accept it, brought a suit for redemption on the 14th of September, 1905. *Held* that the elder brothers were not authorized either by the will or by the Mahomedan Law to act as guardians of the minor, and that he was entitled on

MAHOMEDAN LAW—CUSTOM—*contd*

tional to the general rule of law. In 114 in many cases, it is impossible to say that any particular usage which is pleaded is in derogation of a general law consequently the inquiry in many cases is as to what is the law and not what is the usage at variance with law. Nature of custom an illustration of principle thereof requires in England as in India compared. *Habib v Gorla 17 Bom H C R 201* *Rasulan v Perachi 11 R 10 Mad 251* *Auntie Panna v Aunty Larna 15 (1910) M d B N 442* and *Fanudin Deb v Papenar Dass 11 R 12 I A 70* referred to SHAIKH v MUHAMMAD (1915)

I L R 33 Mad 664

Proof of custom in derogation of if permissible—standard of proof—Unusu— *Subba Mahomedans of Coimbatore—Custom excluding females from access on* The parties to the litigation were Libbal Mahomedans of the Sunni sect residing in the District of Coimbatore in the Madras Presidency the question was whether success on to the estate of a deceased member of the sect was governed by Mahomedan Law or by a rule of descent excluding females. Held that in view of s. 16 of the Madras Civil Courts Act III of 1873 *prima facie* all questions of succession amongst the parties who were Mahomedans were to be decided according to Mahomedan Law but it is now well established that in India a custom at variance even with the rules of Mahomedan Law governing the succession in a particular community of Mahomedans may be proved. The onus of proof is on the party alleging the custom. The custom should be ancient and invariable and established to be so by clear and unambiguous evidence. *Ramalakshmi Ammal v Chinnaswami Perumal Sethurayar (4) and Abdul Hussein Khan v Biba Soma Devi (3)* referred to. Held that the evidence fell short of the standard proof requisite to establish a custom. (3) L R 45 I A 70 s c I L R 45 Calc. 450 22 C W N 333 (1917) (4) 11 M I A 570 (1872) MUHAMMAD IBRAHIM ROWTHEN v SHAIKH IBRAHIM

26 C W N 793

MAHOMEDAN LAW—DIVORCE

Hanafi Law—Divorce—Talak need not be addressed directly to the wife to constitute a valid divorce. According to the Hanafi Law it is not necessary that the Talak or words of repudiation should be addressed directly to the wife to constitute a valid divorce. The expressions mentioned in the Hedaya as constituting express divorce are not exhaustive but merely illustrative of the different forms in which the Talak may be pronounced. The incidents of marriage and divorce under the Mahomedan Law fully discussed. *Furund Hussein v Janu Bibi 1 L R 4 Calc. 558* doubted ASHA BEE v KADIR IBRAHIM ROWTHEN (1909)

I L R 33 Mad. 22

Sunni sect—Divorce—Evidence—Burden of proof No special form of formula is prescribed for a divorce under the Hanafi law. All that the law requires is to see that the words of divorce pronounced by a husband should show a clear intention on his part to dissolve the contract of marriage. Where witnesses depose that a divorce was effected, in their presence it is for the party alleging the con-

MAHOMEDAN LAW—DIVORCE—*contd*

trary to prove by cross-examination that the words used by the husband when pronouncing the divorce were insufficient and inconclusive to support a valid divorce. *WAHID KHAN v ZAFAR BEG (1914)*

I L P 26 All 458

Kolinnamoh—Condition that husband should live with wife in wife's father's house as Khandamad and for divorce upon breach if void. A condition in a *kolinnamoh* that the husband shall live with the wife in her father's house and that if he broke this condition she would be entitled to divorce him is invalid under the Mahomedan Law and her claim for deferred dower following upon such a divorce must fail. *IMAN ALI PATWARI v ARPATYVENNA (1913)*

18 C W N 293

Divorce—Revocation—Validity of the bedai form of divorce Held that it is not every kind of divorce which is revocable according to the Mahomedan Law but only those made in certain forms. The *bedai* form of divorce is a perfectly legal form and is irrevocable. *In re Abdul Ali Ismailji 1 L R 7 Bom. 150* followed. *AMIR UD-DIN v KHATUN B 11 (1917)*

I L P 39 All 371

Post nuptial agreement by husband not to take another wife and delegation to wife of power of divorce on breach—Validity—Breach of agreement followed by husband's suit for restitution of conjugal rights—Divorce given after suit by wife, if valid A post nuptial delegation of the power of divorce is valid under Mahomedan Law. Where by a *kolinnamoh* executed after the marriage, the husband undertook not to take a second wife without the wife's permission and delegated to her the power of giving three *tala's* in cases of violation of the said amongst other conditions "whenever she chose" and afterwards having taken a second wife without the first wife's permission used the latter for restitution of conjugal rights, whereupon she gave herself the three divorces according to Mahomedan Law. Held that the authority to divorce was validly given and exercised and the suit must fail. *SAIFUDDIN v LATIFVENNA B 11 (1918)* I L R. 48 Calc. 141

22 C W N 924

Talaknama—Registration of the deed—Whether Kazi now wife present at the time of the execution of the deed—Deed not immediately communicated to wife—If wife's knowledge of the deed within a reasonable time—Validity of Talaknama A Mahomedan executed a *talaknama* (deed of divorce) in the presence of witnesses and got it duly registered under the Indian Registration Act 1908. Neither the Kazi nor the wife was present at the time the deed was executed. The deed was not immediately communicated to the wife but it came to her knowledge within a reasonable time. Held that the *talaknama* was valid according to Mahomedan law. *PAJASARER RASULBAKSH In re (1919)*

I L R. 44 Bom. 44

Marriage—Suit for dissolution—False charge of adultery made by the husband a ground for dissolution of marriage A Mahomedan wife is entitled to bring a suit for divorce and obtain a decree for dissolution of marriage on the ground that her husband has falsely charged her with adultery. *Jauk v Biparee 3 W R 18* doubted. *ZAFAR HUSAIN v UMMAIR RAHMAN (1919)*

I L R 41 AU 278

MAHOMEDAN LAW—DIVORCE—*concl'd*

Divorce by writing—Pregnancy followed by miscarriage—Divorce in khula form—Date on which period of iddat commences—Circumstances by which iddat may be terminated earlier A Mahomedan husband executed and registered a deed of divorce in favour of the wife and a few days later saw her, pronounced the legal formulas made over the document to her and went away. Subsequently she went through ceremonies of marriage with two persons one after the other, the marriage with the Plaintiff taking place last. In a suit for restitution of conjugal rights by the Plaintiff on the allegation that the first marriage after the divorce took place within the period of iddat and as such was void the defence set up was that the period of iddat commenced on the date of the execution of the document and expired before the first marriage after the divorce took place, that the lady was pregnant at the time of the divorce and miscarried and this had the effect of terminating the period of iddat, and that the divorce was in khula form. *Held*, that the divorce took effect from the date of the writing and not from the date of its receipt by the wife unless there were words in the instrument showing a different intention. *MOHAM MOLLA v BART BIRI*

28 C. W. N. 261

Divorce for consideration—Khulanama—Whether invalidated by non-payment of consideration The plaintiff sued her husband, the defendant, for a declaration that she had been divorced by him, and was no longer his wife. It was found that the defendant made a written deed of divorce (khulanama) in consideration of Rs 150, which amount had however not been paid to him and the document had not been delivered to the wife. The first Court found that the non payment of the Rs 150 did not invalidate the divorce. On appeal the District Judge held that the transaction was a mere promise to divorce if his wife paid him Rs 150. *Held*, that it must be presumed that prior to the writing of the deed the wife offered and the husband accepted Rs 150 as compensation for the release of his marital rights, the deed (khulanama) was then written securing to the husband the stipulated consideration, but it did not constitute a divorce. It assumed it and was founded upon it. Consequently there was a complete and irrevocable divorce which was not invalidated by the non payment of the consideration. *MOONSHI BAZUL PAHIM v LATIF ULLAH* (8 Moo I A 379 396 P C), followed. *Mulla's Muhammadan Law*, 5th Edition, page 179. *Wilson's Digest of Anglo-Muhammadan Law*, 3rd Edition, page 144. Articles 69 and 70, and page 143, Article 143, and *Tyabji's Principles of Muhammadan Law*, page 141, paragraph 143, referred to. *MRS. ZAMMAT SADDAN v FAIZ BAKRISH*

I L R. 1 Lah 402

MAHOMEDAN LAW—DOWER

See *HERRA BIL-FWAZ* 24 C. W. N. 928See *MAHOMEDAN LAW—GIFT*

I L R. 42 Cal. 261

See *MAHOMEDAN LAW—MARRIAGE*

I L R. 32 All 477

See *MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS*

I L R. 1 Lah 597

MAHOMEDAN LAW—DOWER—*cont'd*See *MAHOMEDAN LAW—WIDOW*.See *SUCCESSION CERTIFICATE ACT (VII OF 1889)—*

SS. 2 AND 4 . I L R. 33 All. 327

s 4 . I L R. 43 All 341, 493

SS. 4 AND 7 . I L R. 32 All 335

1. ——— *Dittham*, value of—*Dower* The money value of ten dirhams in India is something between three and four rupees. *Sughra Bibi v Musa Bibi*, I L R. 2 All 473, referred to. *ASMA BIBI v ABDUL SAMAD KHAN* (1900)

I L R. 32 All 167

2. ——— *Jurisdiction—Marriage—Dower—Act No. XVIII of 1876 (Oudh Laws Act)* *Held*, that the mere fact that a marriage was celebrated in Lucknow, the parties being afterwards domiciled in the province of Agra, was not sufficient to authorize a Court in the province of Agra to apply to a suit brought by the wife against the heirs of her deceased husband for recovery of her dower, the provisions of the Oudh Laws Act, 1876. *Zakari Begum v Sakina Begum*, I L R. 19 Cal. 639, followed. *RUKIA BEGUM v MUHAMMAD NAZIM* (1910)

I L R. 32 All 477

3. ——— *Prompt dower—Payment of—Restitution of conjugal rights—Consummation of marriage—Suit for prompt dower not premature before consummation* Under Mahomedan Law, the Court may hold that the whole of the dower is exigible, in cases where no specific amounts of the dower has been declared exigible and there has been no evidence of what is customary. *Fatma v Sadruddin*, 2 Bom H C P 291, followed. *Prompt dower (i.e., muqaddar)* is payable immediately on the marriage taking place, and it must be paid on demand. It is only by payment of the prompt dower that the husband is entitled to consummate the marriage or enforce his conjugal rights. Therefore the right to restitution so far from being a condition precedent to the prompt dower, arises only after the dower has been paid. *Ranee Khe Joorunissa v Ranee Ryeesunissa*, 13 W R 371, followed. *HUSEINKHAN SARDARKHAN v GULAB KHATUN* (1911)

I L R. 35 Bom 386

4. ——— *Liability of widow in possession to account for profits—Dower—Interest* *Held*, by the Full Bench, that a Mahomedan widow who has been put in possession by her husband of his estate in lieu of her dower debt, is entitled when called upon by her husband's heirs other than herself, to account for rents and profits received by her during the time of her possession, to claim interest at a reasonable rate upon her dower debt. The liability of the heirs of the husband not being personal, the heir who sues the widow for possession of his share is only liable to pay the proportionate part of the dower debt. *Abdul Karim v Maghulani*, I L R. 39 All 315. *Soorma Akaloon v Aluffoon* and *Akhaloon*, 2 Hay 219, followed. *Fatima Begum v Meerwan Khanum*, 9 W R 318, followed. *Ammal Fatima* 3 C L R. 511. *Musa Jan v Lubana*, 6 B L R. 590, and *Chaudhri Hussain Ahmad v Musammat Masara Bibi*, F A No 65 of 1901, decided 3rd July 1906 referred to. *IRAMBA BIBI v ZUNAIDA BIBI* (1910)

I L R. 33 All 162

5. ——— *Presumption—Sunni—Dower—Void termination of marriage whether dower to be prompt or deferred—Civil Procedure Code, 1908, O 11, r 2—Fittippel* In the case

MAHOMEDAN LAW—DOWER—contd

how much of the wife's dower is to be prompt, it is to be presumed that a reasonable proportion thereof will be prompt. A proportion of 72 per cent is certainly reasonable. *Umda Begum v. Muhammad Begum*, I L R 35 All 291, followed *Mirza Badur Bukht Muhammad Ali Lohadur v. Mirza Khurruza Bukht Yahya Ali Khan Lohadur*, 19 W R 315, distinguished. *MOHAMMAD SUBHAN ULLAH v. BAGHIR UY YAKSA* (1918)

I L R. 41 All. 562

17 ——— *Sunnis—Prompt dower, payment of—Marriage of a pregnant woman but pregnancy not known to husband—(annulment of marriage)—Husband turning away wife on her pregnancy coming to his knowledge—Divorce not given—Wife's right to claim dower—At the time of her marriage, the plaintiff, a Sunni Mahomedan woman, was pregnant, but her pregnancy was not known to her husband (defendant). The marriage was duly consummated. Within five months of the marriage the plaintiff gave birth to a fully developed child; whereupon the defendant turned her out of his house, but did not divorce her. The plaintiff having sued to recover her prompt dower from the defendant—Held that the defendant was liable on the suit by the plaintiff for her prompt dower, since the concealment of pregnancy by the plaintiff at the time of her marriage did not render the marriage invalid. *Per MacLEOD, C. J.* "Where concealment of pregnancy is not by itself a ground for cancelling the marriage, the husband has remedy by divorce." *KERSEBAI v. ABDUL KADIR* (1920)*

I. L. R. 45 Eom 151

18 ——— *Relinquishment of dower during the funeral ceremony—Of the husband, validity of—Where a Mahomedan lady, when overwhelmed with grief at the death of her husband, orally relinquished her right to dower, on the suggestion of her mother and sister—Held, that under the circumstances of the case, there was no exercise of free and deliberate judgment, and the relinquishment made was invalid. *Aurangzeb Khanum v. Khayy Mahomed Sakroo* (1919) I L R 47 Cal*

I L R 47 Cal 537

19 ——— *Interest when may be decreed on dower—Appellant's burden—In every appeal it is incumbent upon the appellant to show some reason why the judgment appealed from should be disturbed. In decreeing a widow a suit for dower against the heirs of the deceased husband the committee allowed 6 per cent not strictly as interest but as a means of preventing her position being adversely prejudiced by the unsuccessful controversy raised by the heirs as to her rights. *Mohammad Tarkunissa v. Motun Nizam Sadiq* . . . 25 C W. N. 867*

MAHOMEDAN LAW—ENDOWMENT.

See MAHOMEDAN LAW—MUTUALLI

See MAHOMEDAN LAW—WAKF

1 ——— *Mortgage—Wakf—Mortgage of wakf property by Mutualli for receipt of urgent character, whether valid—Effect of obtaining permission of Cadi after the mortgage—Loan by a trustee at a high rate of interest—Under the Mahomedan Law, mortgage of wakf property by the mutualli in case where necessity is established is valid even if the permission of the Cadi is obtained subsequent to the mortgage. Where, therefore, a Court found that a mortgage by a mutualli of*

MAHOMEDAN LAW—ENDOWMENT—contd

wakf property was for urgent necessity and that the mortgage was proper, the mortgage is valid in law, inasmuch as it might be taken to have been retrospectively approved by the Court. A loan by a trustee of endowed property at the rate of interest at 12 per cent per annum with quarterly rests, could not be considered beneficial to the endowment although the principal sum itself might have been urgently raised for the protection of the endowment, and in such a case the Court is justified in allowing interest at a reduced rate. *Nizam Chand Audya v. Golam Hossain* (1909)

I. L. R. 37 Cal 179

2 ——— *Mutualli, suit for office of—Half—Direction of founder, Court's power to disregard—Surrender of the office of Mutualli and appointment of a successor by a person who is not a general trustee, effect of—Limitation Act (XI of 1877) Sch II Art 120. In appointing a mutualli a Court will not disregard the directions of the founder except for the manifest benefit of the endowment. *In re Tempest I R 1 Ch App 455* 14 L T 684, referred to. It created a wakf on the 22nd April 1861 by the *wasfiyah* he appointed himself the first mutualli, and also gave directions as to the appointment of his successors. The deed further provided that after the death of the founder his widow would remain in possession of the endowed properties, and the mutualli would act under her orders. During the lifetime of the founder the person who was nominated as the successor in the office of mutualli died subsequently on the founder's death in 1868, his widow obtained certificate and undertook the performance of the duties of mutualli, and continued to do so till the 20th of January 1877 when she executed a *faukhnamah*, by virtue of which she surrendered the office of mutualli, and appointed a third party as her successor in that office, who accordingly took possession of the endowed properties. Upon a suit by the plaintiff as one of the representatives of the founder for declaration of his right as mutualli and for recovery of possession of the endowed properties, held, that inasmuch as the widow of the founder was in no sense a general trustee and that she had no authority express or implied, to modify in any way the terms of the trust deed nor she had the authority to renounce the office and appoint a successor her acts were illegal under the Mahomedan Law, and that Art 120 of Sch II of the Limitation Act applied to the case, and the plaintiff's suit was barred by limitation. *Arariz Salimullah v. Abdul Kham M. Muttah* (1909)*

I L R 37 Cal 263

3 ——— *Declaration of wakf, suit for—Right of Mahomedans entitled to use such property to sue for a declaration that property is wakf. The plaintiff Mahomedans resident in the city of Kanauj sued for a declaration that a certain *idgha* and the land adjoining it situated in a village in Jazirana Kanauj was wakf property. Held, that as Mahomedans who had a right to use the *idgha* they were entitled to sue and that no special permission was required to enable them to do so. *Zafaryab Ali v. Balmaur Singh*, I L R 5 All 497, and *Jauabra v. Akbar Hussain*, I L R 7 All 178 followed. *Wajid Ali Shah v. Deewatullah Beg*, I L R 8 All 31, distinguished. *Mohammad Akbar v. Akbar Hussain* (1910)*

I L R 32 All. 671

MAHOMEDAN LAW—ENDOWMENT—contd

4. ————— Subject of wakf—Wakf—Right to recover money under a decree cannot be made the subject of Wakf. Right to recover money under a decree cannot be made the subject of wakf in the absence of a custom authorising such appropriation. *Ansom Dabee v. Gulam Hossein Cassim Arif*, 10 C W N 449, 491, referred to in *followed Kishooia Sahib v. Anwaruddeen Sahib*, 1 L P 18 Mad 201, 203, referred to *KADIR IBRAHIM ROWTHER v. MAHOMED RAHMATULLA ROWTHER* (1909) 1 L R 33 Mad 118

5. ————— Sale of wakf property—Sanction to sell Jurisdiction—Practice—Trustees Act (XXI of 1866) s 3—Trustees' and Mortgagees' Powers Act (XXVIII of 1866) s 45—Cases to which English law is applicable. On an application made by the trustees to a wakf, for sanction to sell wakf property—Held, that there being no statute authorising such an application, such sanction could only be obtained by means of a suit. In the matter of *Woozatusseha Bilee*, 1 L R 36 Cal. 21, not followed. Although a Judge of the High Court exercises the functions of a *Qazi* when administering Mahomedan law, the procedure to be adopted is to be regulated by the Code of Civil Procedure, and the Rules and Orders of the High Court. *Shama Churn Roy v. Abdul Karber*, 3 C W N 153, and *Aemai Chand Addya v. Goolam Hossein*, 1 L R 37 Cal. 179, referred to. Such an application does not come within the purview of Acts XXVII and XXVIII of 1866. These Acts govern only such trusts as are in the form of an English trust and are constituted by persons of purely English domicile, or persons governed by the Indian Succession Act. In *re Kahandas Narrandas*, 1 L P 5 Bom 151, and *In re Nilmoney Dey Sarkar*, 1 L R 32 Cal. 143, not followed. In *re HALIMA KHATUN* (1910)

1 L R 37 Cal. 870

6. ————— Agreement by Hindu to dedicate property for maintenance of mosque—Mahomedan Law—Validity—Agreement interfering with work of Peshcar. An agreement by a Hindu to dedicate property for maintenance of a mosque is not enforceable according to Mahomedan Law. *FUTUR RAHAMAN v. ANATH BANDHU PAL* (1911) 16 C W N 114

7. ————— Khanga attached to Darga—Religious institution—Right of management—Exclusion of females—Prevailing usage—Usage as indication of the direction of the founder. The right of management of a religious institution such as Khanga attached to Dargah is to be decided according to the prevailing usage, that usage being taken as indication of the direction of the founder. Even in cases where appointments have been regularly made by the last holders an inquiry into the usage governing such appointments has been considered relevant. *Shah Gulam Rahmatulla Sahib v. Mahomed Akbar Sahib*, 8 Mad H C 63. *Sayed Abdulla Edrus v. Sayad Zain Sayad Hasan Edrus*, 1 L R 13 Bom 553, *Sayed Muhammad v. Fattah Muhammad* 1 L P 221 A 4, referred to. *ISMAILIYA v. WAHADAT BEGAM* (1911) 1 L R 36 Bom. 308

8. ————— Endowment—Creation of endowment—Wakf by dedication or user—Graveyard, land used as—Presumption of ancient origin of shrine and burial place—Punjab Land Revenue Act (XVII of 1887) s 44—Entry of owner ship in record of rights at settlement. In this case the

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Judicial Committee (affirming the decision of the Chief Court of the Punjab) held, on the evidence that the land in suit (known as the Mai Pak Lan an graveyard) which had been used from time immemorial by the Mahomedan community of Multan for the purpose of burying their dead, formed part of a graveyard set apart for the Mahomedan community, and that by user if not by dedication, the land was wakf. In the record of rights of the last settlement an area of land, which comprised the land in suit was entered as in the possession of Mahomedans, and was described as *kabristan* or *ghaur min kabristan* (graveyard or unculturable land forming portion of a graveyard) and in the ownership column the name of the defendant (now represented by the Court of Wards) was entered as owner. Their Lordships said: "It would seem that he was properly entered as owner, being trustee and custodian of the shrine of the saint Mai Pak Dairan, and being or claiming to be the recognised head of the Mahomedan community in Multan," and held, that, under s 44 of the Punjab Land Revenue Act (XVII of 1887), the entry not having been disproved, must be presumed to be correct. *COURT OF WARDS v. ILAHI BAKSH* (1912)

1 L R 40 Cal. 287

9. ————— Public Mosque—Right of management—Civil Procedure Code, 1882 s 539—Suit for appointment of Trustees and for settlement of a scheme of management—Community composed of Sunni Mahomedans from various districts and places—Trust deed giving managements exclusively to Rhandarias—Discretion of Kazi under Mahomedan Law—Discretion of Court—Obligation to adhere to intentions of founder, and objects of Trust—Right to vary details of management in accordance with changing conditions and circumstances. This appeal which arose out of a suit brought under s 539 of the Civil Procedure Code, 1882, for the appointment of Trustees and the settlement of a scheme of management related to the Sunni Jumma Masjid at Rangoon which was admittedly a public mosque dedicated to the performance of religious worship by all Sunni Mahomedans without restriction as to place of origin. The land on which the mosque was built had been granted by the Government on trust for that purpose in 1862 and it was, together with other land adjoining, purchased in 1871 from the Government by five members of the Sunni Mahomedan community who by a deed of trust in March 1872 dedicated it, and the mosque erected thereon for the purpose of divine worship by all Sunni Mahomedans and vested the control and management of the mosque solely in *Rhandarias* (Sunni Mahomedan from Rhandar near Suat). Held, that the transactions which took place in 1871 and 1872 in no way affected the original and then existing trust, and that the trust deed did not create a new dedication, but the mosque remained as before a public mosque dedicated to the performance of worship by all Sunni Mahomedans as originally founded. With respect to the public religious trust as distinguished from a private trust, the discretion under the Mahomedan Law, of the Kazi (a discretion now exercised by the Civil Court) was very wide, for though he could not depart from the intentions of, or the rules made by, the founder as to the objects of the benefactions yet as regards its management, which must be governed by circumstances he

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17 Cal 498 L R 17 I A 28, and *Muzhurool Hug v Puhay Dutray Mohapatra*, 13 W R 235, followed *Per BRAMS & HUDAJ*. The onus to prove that a suit by a *matrulli* to recover possession of *wakf* property is within time is on the plaintiff, it is for him to show that mortgago was not followed by possession. *NARAY DAS ARORA v HAJI ABDUL RAHIM* (1920)

I L R 47 Cal 806

MAHOMEDAN LAW—GIFT

See CIVIL PROCEDURE CODE 1882 ss 13 and 44 I L R 35 Bom 237

See LIS PENDENS I L R 41 All 534

See MAHOMEDAN LAW—WAKF

See TRANSFER OF PROPERTY ACT (IV of 1882) ss 193, 129

I L R 38 All 212

1. — Offerings at a shrine—*Gift of a fixed share of offerings made at a shrine—Possession of subject of gift*. *Held* that a gift of the right to receive a certain share of the offerings which might be made at a particular shrine was a valid gift and not repugnant to the doctrines of the Mahomedan Law. *Intal Nissa Begum v Mir Nureddin Hossain Khan* I L R 22 Bom 457 distinguished *ARMAN UDDIN v ILAMI BAKISH* (1912)

I L R 34 All 465

2. — *HANAFI* Law—*Gift of construction of a monument—Condition in derogation of the grant invalid*. A deed of gift of certain property provided as follows:—My son Naki Khan, will remain owner (*malik*) of the remaining two-thirds and of the said two-thirds Naki Khan will remain full and absolute owner of one third (*malik kamil katal*), and he shall have the powers of an owner with respect to it, and Naki Khan will be owner (*malik*) of the other third also, and his name will be entered in the *khata*, but the income of it is given for the maintenance of my minor grandson Muhammad Shah Khan son of Muhammad Taqi Khan deceased. According to law, Naki Khan is guardian of Shah Khan, he must give the income of that one third for the maintenance of the minor and Naki Khan will not have the power of transfer over that one third during the life of the minor. *Held* on a construction of the deed that the condition against alienation was invalid, but the condition as to the payment of one third of the income to Muhammad Shah Khan was valid and attached to the property in the hands of a transferee who was bound to have notice thereof. *Nurul Ahmad Dildly Khan v Muhammad Ullah Khan* I L R 11 All 414, followed. *LALI JAN v MUHAMMAD SHAH KHAN* (1912)

I L R 34 All 478

3. — Possession—*Gift of life of—Transfer of possession when acceptance—Donor as a donor necessary to hold a gift*. To make a valid gift under Mahomedan Law the donor must be put in possession. But when the gift is a usufruct of the gift and the donor remains in possession of the property as guardian of the donor or his life the gift would be valid under Mahomedan Law unless the subject matter of the gift is the possession of a trustee or agent of the donor who is not put in possession of the gift. The owner of a property then is put in possession, and a usufruct of it

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or rather a gift made by him will not pass the ownership of the property to the donee until the donor takes possession by the donor's consent. *FAKIR NYAR MUHAMMAD IOWTHY v KANDASA WAMY ALLATHU VANDAN* (1911)

I L R 35 Mad 120

4. — *Mushaa—Gift—Share in common property—Gift by some co-shares to the others—Possession delivery of necessary—Gift to adult and minor jointly—Gift by mother to minor son—Delivery of possession if necessary*. *Hiba bil mushaa* (gift of undivided joint property) is not void but only invalid and possession remedies the defect. When persons own a property jointly by any sharer may make a gift of his share in that property to any other sharer without the formality of a delivery of possession. There is no inherent illegality in a joint gift to an adult and a minor. When the interest of the two are sufficiently specified so that there can be no apprehension of any confusion or dispute the gift is unobjectionable. Where some of the co-shares of a *zimmudari* property simultaneously made over their undivided share to the remaining co-shares the doctrine of *mushaa* did not apply. In the case of a gift by a parent who is the *de facto* guardian of a minor to such minor a formal delivery of possession is not necessary. *JABEDANNA BEE v NAZIRAL ISLAM MOLLA* (1910) 15 C W N 328

5. — *Mushaa—Gift—Mushaa*. Where the defendant made a gift of a *four anna* share in a *kamra* *ra* *vali* holding to the plaintiff his nephew by marriage and admitted him to joint possession with himself and recognised the plaintiff as being in such possession for 14 years. *Held* that he could not be allowed to say that there had been no valid gift. The doctrine of *mushaa* is not applicable to such a case. *Imamuddin Arif v Sultan* I L R 35 Cal 1 *Imamuddin Hajirabai* I L R 13 Bom 351 *Jivan Lalish v Imal Begam* I L R 2 All 97 *Muhammad Mustafa Ahmad v Zulaidi Jan* I L R 11 All 466 referred to. *ABDUL AZIZ v LATIF MUHAMMAD HAJI* (1911) I L R 39 Cal 518

6. — Gift to a Mopla—*Verbal*. *Mahomedan Law on his marriage not void on his wife's death and divorce—Necessity to divorce*. Under the Mahomedan Law a girl when married passes over to her husband's family and there is no obligation on the members of her natural family to maintain her after her marriage, even if she is divorced. In the absence of any usage among Moplas governed by Mahomedan Law a gift made to the husband of a Mopla girl does not become void and does not revert to the members of her natural family when the girl dies or is divorced. The rule is otherwise among people governed by Marumakkattayam Law. *Haroon v Abdulaziz* [second Appeal No. 176 of 1903 (unreported)] referred to. *PANIKKURU PISHABANA* (1913) I L R 28 Mad 235

7. — *Ethias—Gift—Marriage—Mushaa*. *Gift of more than one share during life—The Shia Law a gift made in usufruct of the gift to the extent of the gift only if the donor's estate in the gift is not sufficient to give to his death. Under the Shia Law if a person dies of a disease of more than a year's duration, the disease is to be considered a death illness. But there is the exception attached to it that if the donor's intention is such as to extend as to*

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endorse with his own hand a statement that a document proved or admitted in evidence was proved against or admitted by the person against whom it was used, as laid down in a. 141 of the Civil Procedure Codes of 1877 and 1882, and practically re-enacted in O XIII, r. 4, of the rules and orders passed under the Civil Procedure Code, 1908. With a view of insisting on the observance of the wholesome provisions of these Statutes, their Lordships will, in order to prevent injustice, be obliged, in future on the hearing of Indian appeals, to refuse to read or permit to be used any document not endorsed in the manner required. **SADIK HUSAIN KHAN v HASRIN ALI KHAN (1916)**

I L R. 33 All 627

12. ———— **Deed of gift with a condition attached—Obligation in the nature of trust—Construction of document.** A Mahomedan woman made a deed of gift in favour of three persons: Mirza Vazir Beg, Imatiyaz Begum and Chaggan Bibi in the following terms: "The lands have been given to you three as gifts. All my rights of ownership are transferred to you. The *vahwat* or management of the lands should be made by one of you three, namely, Vazir Beg, and after paying Government dues Rs 40 should be paid out of the residue of the income annually to the Imatiyaz Begum, and the remainder should be divided equally between Mirza Vazir Beg and Chaggan Bibi. Mirza Vazir Beg should have *vahwat* and give income according to their shares to the two. They have no right of claiming division of the lands from Mirza Beg, but only a right of claiming income every year." A suit was brought by Imatiyaz Begum to enforce her right under the deed of gift. The second defendant, transferee of Mirza Beg a interest in the property, contended that the deed of gift in so far as it conferred benefits on the two women mentioned therein was void and that he was absolutely entitled. **Held** that the gift was good and complete under the Mahomedan Law and the deed could be supported in favour of the plaintiff. **TAVARAHNAT v IMATIYAZ BEGUM (1916)**

I L R. 41 Com 372

13. ———— **Gift made during his last illness by a son to his mother—*Maw'ul must*—Application of doctrine.** On a question of the application of the doctrine of *maw'ul must* to a disposition of property made by a Mahomedan during his last illness, if the transaction is a sale the doctrine would not apply at all, if the transaction is a waqf, it would be valid to the extent of one third, while if it is a gift, it would not be valid at all. In the case before the Court the particular transaction was held on the facts to be really a gift, to one of the heirs (the mother of the donor) and therefore invalid, although in form it purported to be a sale. **FAZL AHMAD v RAHIM BIKI (1917)**

I L R. 40 All 238

14. ———— **Heba-bil-e'was—Transfer of Property Act (1882), s. 11.** The ordinary rules applicable to gifts apply to the Mahomedan Law like any other system of law, and a gift under a *heba-bil-e'was* is not invalidated by an invalid condition being attached to it. **MAHARAJAN v BIKI v HOSSEINUDDIN NAZIR (1918)**

22 C W N 512

15. ———— **Heba-bil-e'was, it valid without passing of consideration.**—A Mahomedan executed a *Heba-bil-e'was* in favour of a

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minor daughter of his predeceased son. In a suit for enforcing the gift no evidence was adduced about the passing of any consideration. **Held**, that if the document failed as a *Heba-bil-e'was* it could take effect as a simple gift (*Heka*) if it satisfied the conditions of a deed of gift. **SHER AJUDIN HATTEP v ISAE HALDAR**

25 C W N 135

16. ———— **Accl-Tangible Property—*Held*,** that non-tangible property can be given by any appropriate method of transfer other than actual delivery of possession. **SAASUL NEHAR BIKI v MOULVI MAHMOUD AHMAD**

25 C W. N. 310

17. ———— **Gift by mortgagee of property in the possession of mortgagee, if void.** Where A, a Mahomedan mortgaged some lands to a third person putting the mortgagee in possession and while the mortgagee was in possession A made an oral gift to Defendant No. 1 and immediately after got Defendant No. 1's name recorded in the Settlement Record and put him also in physical possession of one of the properties, namely the Homestead. **Held**, that the gift was valid in law. In order to properly appreciate the judicial idea of gift as conceived by Mahomedan jurists it is to be borne in mind that gift is considered a class of contracts but as it is a voluntary contract without consideration it is not enforceable unless accompanied by possession in which case the devolution or transfer of right to the property becomes complete. By possession in connection with the law of gift is meant such possession as the nature of the subject of the gift is capable of. **Chaudhri Mehd Hasan v Mahmud Hasan, L. P. 331 A 68, s. c. 10 C W N 766 (1906)** relied on. As possession through a tenant may be constructive possession capable of being delivered so as to validate a gift of such property so property in the possession of the mortgagee should likewise be considered to be in the constructive possession of the mortgagor as in both cases some kind of right to property is left in the owner. The right of equity of redemption and such similar rights as are termed incorporeal rights may in view of the exigencies and necessities of modern conditions and conceptions of legal rights of property be subject of a valid gift, the mode of delivery of possession varying according to the nature of the right conveyed. **TARA PROBYNIA SING v SHANBI BIKI**

25 C. W. N. 762

18. ———— **Gift—Donor in possession of half of gifted land—Delivery of possession to donee—Other half mortgaged with possession not actually delivered to donee—Gift of the latter void under Mahomedan law.** A Mahomedan female who owned five lands made a gift of them to the plaintiff's father. At the date of the gift, she had possession of only two lands and a moiety of the third land; there she immediately put in possession of the donee. The remaining lands had been mortgaged by her to defendants, who retained their possession under the mortgage. In a suit by the plaintiff, the defendants contended that the gift of the mortgaged land was invalid, not having been perfected by delivery of possession. **Held**, overruling the contention, that the deed of gift must be looked at as a whole; and that reviewed the gift of the equity or redemption coupled with the completed gift of the remaining lands.

MAHOMEDAN LAW—HUSBAND AND WIFE—*contd*

convetance need have been executed *Pam Laksh v Moghiani Khanam*, I L R 26 All 266, followed *Quere* Whether an award is governed by Mahomedan Law *MUHAMMAD TALIB HUSANI v INAYATI JAN* (1911) I L R 33 All. 683

MAHOMEDAN LAW—INHERITANCE

Family custom at variance with the law, if may be proved—Bengal, A II P and Assam Civil Courts Act (VII of 1887) s 37 Where in a suit by a Mahomedan lady against her brothers for recovery of her share in their father's property, the defendants having set up the plea that according to family custom female descendants could not inherit in the presence of male descendants, the Courts in India refused to admit evidence in support of the alleged custom on the ground that evidence of custom at variance with the ordinary rules of Mahomedan Law was inadmissible in regard to matters mentioned in s 37 of the Bengal A W P and Assam Civil Courts Act *Held*, reversing the Courts below, that evidence with respect to the issue as to family custom should be admitted *ISMAIL KHAN v SHEOMUKH RAI* (1912) 17 C W N 97

Contingent right to inherit, transfer or renunciation of, whether prohibited A transfer or renunciation of a contingent right of inheritance is prohibited under Mahomedan Law *Musammam Khanum Jan v Musammam Jan Bee bee*, (1837) 4 S D A 210, followed *Kunhi Mamod v Kunhi Moidin*, I L R 19 Mad 176, considered *Musammam Hussain Ool Nussa Begam v Allahdad Khan Hajeer Hidayet* 17 B R (PC) 108, explained *ASA BEEVI v HABIBAN CHETTY* (1917) I L R 41 Mad 365

MAHOMEDAN LAW—JOINT PROPERTY

See LIMITATION ACT 1908, ART 123 AND 141 I L R 44 Bom 943

Joint business by two brothers—Death of one of them—Subsequent business by survivor and sons of the deceased—Properties purchased out of profits of joint business—Moneys collected by survivor—Suit by heirs of the deceased for their share—Nature of suit—Limitation Act (IX of 1908) Arts 106, 123 and 127—Joint family property, if exists in Mahomedan Law—Exclusion, proof of, if necessary Two Mahomedan brothers carried on a joint business and one of them died nineteen years before suit leaving three sons and three daughters. Some properties were purchased out of the profits of the joint business, and the names of the surviving brothers, the latter subsequently carried on several other businesses along with two of the sons of the deceased brother and with a stranger who died more than three years before suit. The heirs of the deceased brother brought the present suit against the surviving brother and others to recover their share of the properties acquired out of the profits derived from the several businesses and their share of the moneys collected in the same. *Held*, that the suit was one for an account and a share of the profits of a dissolved partnership and was barred under Art 100 of the Limitation Act (IX of 1908). Under the Mahomedan Law there is no such thing as joint family property. If the members of a Mahomedan family succeeded to property on the death of a relation, each of them takes a share of each

MAHOMEDAN LAW—JOINT PROPERTY——*contd*

item of the property, and a suit by such a member for a share is governed by Art 123 and not Art 127 of the Limitation Act *Abdul Kader v Aisla mma*, I L R 16 Mad 61 distinguished *Mou DEEN BEK v SYED MIFRA SAHED* (1915) I L R 38 Mad. 1099

MAHOMEDAN LAW—LEGITIMACY

See MAHOMEDAN LAW—ACKNOWLEDGMENT I L R 40 Bom 28

See MAHOMEDAN LAW—GIFT

I L R 38 All 627

Acknowledgment of child as son—Illegitimate son—Zin—Son by adulterous intercourse cannot be legitimised Under Mahomedan Law, a person can acknowledge a child as a son, when there is no proof of the latter's legitimate or illegitimate birth and his paternity is unknown in the sense that no specific person is shown to have been his father. It is not permissible to acknowledge a child born of zin (i.e., fornication, adultery or incest) *Muhammad Allahdad Khan v Muhammad Ismail Khan*, I L R 10 All 259, followed *MARDAN SAHER v PAJAK SAHER* (1909) I L R 34 Bom 111

Acknowledgment

Status of son born of a concubine—Admission in document—Conduct—Intention to legitimise—Presumption of marriage Where a child is proved to be illegitimate by reason of the marriage of his parents being disproved, such a child cannot be rendered legitimate by any acknowledgment or recognition of legitimacy. Where an acknowledgment is alleged it may be shown that there was no acknowledgment either in fact or law, that is, that there was never an acknowledgment at all. But an acknowledgment once made and proved cannot be rebutted. It cannot even be repudiated by the man who made it. There is no valid acknowledgment where it has been proved that there was a legal bar to the marriage of the acknowledger and the woman whose son the claimant to the legitimacy is said to be. Where there is no valid acknowledgment in the sense of an intention to confer legitimacy, then the onus lies on the plaintiff who claims legitimacy to prove the marriage. On the other hand, if acknowledgment is valid then the onus lies on the defendants denying the legitimacy to disprove not only marriage but also semblance of marriage. If the marriage is proved there is no need to have recourse to the acknowledgment, if a marriage or semblance of marriage is disproved so as to establish that the plaintiff is *zina*, then the alleged acknowledgment is not valid. If in the evidence the marriage and legitimacy are left in doubt, then a valid acknowledgment is conclusive *Asraf-ood-doula Ahmed v Hyder Hussein*, 11 Moo I A 94 *Muhammad Allahdad Khan v Muhammad Ismail Khan*, I L R 10 All 239, *Muhammad Asad Ali Khan v Lalji Begum*, I L R 3 Cal 422, *Dhan Lal v Laloo Bhai*, I L R 27 Cal 801, *Mir Aqadik Hussein Khan v Hashim Ali Khan* I L R 38 All 627 21 C W A 120, *Aslamkhan v Aslamkhan*, I L R 23 Cal 136, *Lingaji Ali v Aslamkhan*, I L R 15 All 390 *Sadaiat Hussein v Mahomed Ismail*, I L R 10 Cal 663, referred to *HABIBAR RAHMAN CHOWDHURY v ALTAF ALI CHOWDHURY* (1918)

I L R. 46 Cal 259

MAHOMEDAN LAW—MARRIAGE—*contd*

conceived while it exists are legitimate and capable of inheriting from their father. A *nika* marriage is a religious ceremony and confers on the woman the full status of wife and children born after it are legitimate. The term of a *nika* marriage may from time to time be extended by agreement. Where it was alleged by the plaintiff who claimed to be the only legitimate child and sole heiress of *M* a *Shiah* Mahomedan that her (the plaintiff's) father *M* and mother *A* had lived together as man and wife for many years but that they were married in a *nika* from only 1½ years before her birth and it was urged in defence that she was illegitimate and that if she was legitimate so were two other daughters of *M* and *A* born before the plaintiff and that in the latter case plaintiff could recover one third only of the inheritance the claim of her sisters being time barred and in evidence the plaintiff tendered a deed of dower executed by the father at the time he was alleged to have contracted the *nika* marriage in which however *M* had expressly declared that he had contracted *nika* with *A* in the beginning but now for reasons stated in the deed had married her in *nika* form and examined witnesses who deposed to the marriage ceremony taking place on the same date and the Subordinate Judge (who however had not seen the witnesses examined) disbelieved the witnesses and held the deed to be a forgery but on appeal the High Court having before it additional evidence of considerable importance held that the deed was genuine and that the *nika* marriage had been performed as deposed to by the witnesses. *Held* by the Judicial Committee after a careful consideration of the evidence that they ought not to reverse the High Court's findings though they thought there were good reasons why both the deed itself and the evidence of the witnesses in question ought to be looked upon with suspicion and scrutinised with great care. The Judges of the High Court who came to these findings had necessarily a large experience in matters of this nature and the Subordinate Judge had no more opportunity than they of seeing and observing the demeanour of the witnesses, and they on the other hand, had evidence before them which was not before the Subordinate Judge. *Held* also on the evidence that if the deed were treated as valid and the plaintiff's witnesses as reliable there was considerable evidence that cohabitation of *M* and *A* commenced in a *nika* marriage and that in the absence of evidence to the contrary such marriage must be taken to have subsisted throughout the period which covered the conception and birth of plaintiff's sisters. That their claim as such being statute barred the expiration of the period of limitation would accrue for the benefit of the defendant and not for the benefit of the plaintiff. *See* *Shahamat Begum v. Javed Ali* (1914).

13 C W N. 225

7 ——— Marriage of a woman's natural son with her foster-daughter.—*If valid* The prohibition of Mahomedan Law to the marriage of a woman's natural son with her foster-daughter is absolute and not conditional upon the birth of the one and the death of the other occurring within any limited period. The principle of *fictum* *culd* does not render good in law a marriage which ought not in law to have been celebrated.

MAHOMEDAN LAW—MARRIAGE—*contd*

Fadha Mohun v. Haddad Bhai 1 I L R 22 Mo 1 898 followed. *JANAR ALI KHAN v. NAZAMUDDIN* (1913) 19 C. W. N. 897

8 ——— Marriage with a wife's sister during the continuance of first marriage.—*Whether invalid or wholly void—Legitimacy of the issue of such marriage* Under the Mahomedan Law the marriage with a wife's sister during the subsistence of the first marriage is only *fand* (invalid) and not *bahil* (void). The issue of such marriage is legitimate and can inherit. *Aftarkhan Akhatoon v. Karimunnissa Akhatoon* 1 L R 23 Cal 130 dissented from. *Tajul v. Mowla Khan* (1917) 1 L R 41 Bom 485

9 ——— Marriage of girl of below the age of 15 after death of her parents.—*Entire or grand other if entitled to consent—Proof that she had attained puberty and consented to marriage, in the absence of guardian's consent essential—Burden of proof—Legal evidence—Hearsay evidence, objection to admission of—Hearsay statements recorded by Commissioner, if should be allowed to be read in Court* According to Mahomedan Law a girl becomes a major on the happening of either of two events first, the completion of her fifteenth year and second on her attainment of a state of puberty at an earlier period. The burden of proving that a girl has in either of these ways reached her majority rests upon those who allege it and rely upon it. And this must be done by legal evidence. The evil consequence of the admission of hearsay evidence is not merely that it prolongs litigation and increases its cost but that it may unconsciously be regarded by judicial minds as corroboration of some piece of evidence legally admissible and thereby obtain for the latter quite undue weight and significance. The reading of undoubtedly hearsay evidence recorded by a Commissioner who is not empowered to rule out evidence on the ground of inadmissibility disapproved. *ATKIA BEGUM v. ISRAHIM PASHTU* (1916) 21 C W N 345

10 ——— Validity of Marriage.—*Guardianship of minor—Power of mother as de facto guardian to alienate her minor children's interests in immovable property so as to bind the infants—Absence of entries in account books as evidence against validity of marriage where regular payments in other ways are shown by other entries—Production at first hearing of all documentary evidence relied on by parties—Civil Procedure Code, 1908 O VIII, r 1—Practice of Indian Courts in settling decrees of Foreign Courts* A wealthy Mahomedan died leaving widows, two admittedly his lawful wives and children by each of them, and a third one *Z* who claimed to be his married wife but the validity of whose marriage was disputed. She had two minor children and by a deed of 10th June 1906 without having been legally appointed the guardian she purported to transfer the shares of both herself and her children in the property of the deceased to the plaintiffs who sued for a declaration of the title and status of their vendor and for a decree for possession of the shares covered by the deed of sale. As to the validity of the marriage of *Z* entries in the books of account of the deceased tendered in evidence by the contesting defendants (the sharers other than *Z* and her children) showed regular payments to the admittedly lawful wives, but the books contained no entries of payments to

MAHOMEDAN LAW—MARRIAGE—*concl'd*

Z They were not admitted in evidence by the lower Courts. *Held* by the Judicial Committee (who held the books of account admissible) that there was clear evidence of a reliable character regarding the acknowledgment by the deceased of the children of *Z* as his legitimate issue, which gave rise to a legal presumption of her marriage, and that such presumption was not displaced by the mere inferences, the contesting defendants sought to draw from the absence of entries in her favour in the account books. The marriage was, therefore, valid under the decision in *Mahatula Bibee v Haleemossaman*, 10 C L R 293, and *Z* and her children were entitled to their shares in the inheritance. *Held*, also, that *Z* had no power to deal with the minor's shares as she had done, and that only her own shares passed under the deed of sale. By Mahomedan Law the mother is entitled only to the custody of the person of her minor child up to a certain age according to the sex of the child. But she is not the natural guardian, the father alone or, if he be dead, his executor (under the Sunni law) is the legal guardian. *Mafa Dun v Ahmed Ali*, 1 L R 31 All 213, 1 L R 39 I A 49, referred to and discussed. On a review of the provisions and principles of the Mahomedan Law on the question of how far, and under what circumstances a mother's dealings with the property of her minor child are binding on the infant. *Held*, that one who has charge of the person or property of a minor without being his legal guardian, and who may therefore be conveniently called a *de facto* guardian, has no power to convey to another any right or interest in immovable property which the transferee can enforce against the infant nor can such transferee, if let into possession of the property under such unauthorised transfer resist an action in ejectment on behalf of the infant as a trespasser. It follows that being himself without title he cannot seek to recover property in the possession of another equally without title. *Ayderman Kuttu v Syed Ali*, 1 L R 37 Mad. 514, referred to and commented on O XIII, r 1 of the Civil Procedure Code, 1908, requires the parties or their pleaders to produce at the first hearing of the suit all the documentary evidence of every description in their possession or power on which they intend to rely. But it does not exclude the discretion of the Court to receive any such documentary evidence at any subsequent stage. Their Lordships of the Judicial Committee deprecated the practice in some of the Indian Courts referring largely to decisions of Foreign Courts to which Indian practitioners could not be expected to have access, which were often based on consideration and conditions totally differing from those applicable to or prevailing in India, and are only likely to confuse the administration of justice. *IMAMBANDI v MUTSADDI* (1914). 1 L R 45 Cal 878

MAHOMEDAN LAW—MINOR

See MAHOMEDAN LAW—ALIENATION
GUARDIAN—MARRIAGE.

Minor—De facto guardian's powers over minor's properties—Sale by mother for expenses of minor's sister's marriages or for the discharge of proper family debts not binding. Under the Mahomedan Law the general rule is that the dealings of a *de facto* guardian of a minor with the minor's properties do not bind the minor. The rule is, however,

MAHOMEDAN LAW—MINOR—*cont'd*

subject to exceptions. In cases of urgent and imperative necessity, or where the transaction from its nature must necessarily be beneficial to the minor, a *de facto* guardian can alienate the property of the minor, whether moveable or immovable. According to Mahomedan Law, sale of a minor's property by an unauthorised guardian, even if it was not made for a valid cause, is neither void nor voidable in the ordinary sense of the terms, but is regarded as *manquf* or dependent, that is, in a state of suspense, its validity or invalidity being determined by the minor adopting or not adopting after he has attained majority, though the effect of his decision will relate back to the date of inception of the transaction. A person who chooses to buy a minor's property from a person who has no power to deal with it, however, *bona fide* his action may have been, cannot invoke any principles of justice and good conscience to support the transaction itself, though such considerations may be a good ground for the Court refusing to give relief to the minor except on condition of his restituting whatever benefit he has derived from the transaction. A sale by a mother of the minor's property for finding money for the marriage expenses of the minor's sisters or for the discharge of family debts and for other family purposes, is not binding on the minor. *AYDERMAN KUTTI v SYED ALI* (1912) 1 L R 37 Mad 514

Sale of minor's property by mother. The mother of a Mahomedan minor is not the natural guardian of the minor and if she is not his authorised guardian a sale of the minor's property by her not shown to be for his benefit or advantage is void.

1 Pat L J 188

Right to sell minor's property—Necessity—Bona fide purchaser without notice. By a deed of conveyance dated 19th January, 1904, one purported to convey on behalf of herself and her minor son the plaintiff certain immovable property to the defendant for the consideration of Rs 7,000. On the same day *N* passed an indemnity bond in favour of the defendant indemnifying him against the claim of the plaintiff. The plaintiff sued to have the said deed of conveyance declared void and for the declaration that the plaintiff was entitled to the whole of the property to be conveyed. *Held*, that the plaintiff was entitled to succeed on the grounds that (1) there was absolutely no evidence that the sale was in any way necessary for the maintenance of the minor, (2) the purchaser was not a *bona fide* purchaser without notice of the plaintiff's rights. The purchaser of an estate who takes with notice of a breach of trust is in the same position as the vendor who committed the breach of trust. *FAKIRUDDIN v ABDUL HUSSAIN*

1 L R 35 Bom. 217

MAHOMEDAN LAW—MUTAWALLI

See MAHOMEDAN LAW—ENDOWMENT—
WAKF

Mutawalliship of property annexed to a mosque—Right to succeed by principle of hereditary—Proof and validity of such right. *Held*, on the facts of the case, that the plaintiff mosque who claimed to be the mutawalli of the plaintiff mosque by right of hereditary had not established by clear proof that that was the method of succession to the office and that he was there

MAHOMEDAN LAW—MUTAWALLI—contd.

fore the lawful mutawalli. *Held*, also, as a valid appointment of a mutawalli could be made only in one of three modes, viz (a) by the original author of the waqf or by some person expressly authorized by him, or (b) by the executor of the author or (c) lastly by the Court any person claiming to be a mutawalli by hereditary must show by strict proof of precedents that that mode of appointment was one which must be necessarily deemed to have been sanctioned by the author of the trust. It is frequently provided that each mutawalli should have the power to appoint his successor, where there has been a long established practice for the mutawallis to nominate his successor it is assumed (and as the contrary is proved) that power to do so was given by the founder of the waqf. But where from past practice it is sought to be established that the mutawalliship is to devolve hereditarily, there must be something from which a rule of hereditary succession sufficiently precise or definite may be deduced and the mere fact that for some time prior to 1874 three persons from the family of the plaintiff were successively mutawallis does not show that mutawalliship devolved by hereditary in the absence of proof that they were not appointed or nominated by somebody. *Sayad Abdulla Edrus v Sayad Zain Sayad Hasan Edrus, I I R 13 Bom. 553, 562 referred to Per BADA SIVA AYYAR, J.* Hereditary as a principle of succession to any office is highly objectionable. *THAT MARI v HAZI MUSA SAHIB (1913)*

I L R 38 Mad. 491

*Mortgage of the office of a mutawalli, if valid and enforceable in law—Such office, if alienable at all. One Ahadali, a priest of Peer Sahib, mortgaged his right in the office to three persons and subsequently one of the mortgagees brought a suit against Ahadali a minor son to enforce the mortgage by sale of the mortgaged turn of worship. The latter too brought a suit for getting the mortgage set aside. *Held* that the office of a priest in such cases is not alienable and therefore the mortgage cannot be enforced. *SAHIB BUKSH v GOLAM NABI KHANDEAR (1913)**

22 C W N 996

MAHOMEDAN LAW—PRE-EMPTION

See PRE-EMPTION

— In Bulshar district—

See PRE-EMPTION I L R 44 Bom. 387

— Sale by Mahomedan to Hindu—

See PRE-EMPTION I L R 45 Bom. 1058

*Shafi-i-sharik—Shafi-i-khalit—Shafi-i-jar—Effect of perfect partition. When a mahal has been perfectly partitioned, no right of pre-emption under the Mahomedan Law subsists in favour of the owner of one of the new mahals in respect of the other new mahal or any portion of it on the ground of vicinage alone. *Mahadeo Singh v Mussamat Zarnat-un-nisa II W P 169 Shakh Mahomed Hossain v Shaw Mohsin Ali, 6 B L R 41, and Abdul Rahim Khan v Kharag Singh, I L R 15 All 104 referred to. Nor will the fact that a village chaupal has remained undivided give the owner of either of the new mahals a right of pre-emption against the owner of the other as a shafi-i-khalit. *Rahim Singh v Talab Musar 10 W R 314 and Shakh Karim Buksh v Kamr-ud-deen Ahmad, 6 N W P H C 377, distinguished. Abdul Rahim Khan v Kharag***

MAHOMEDAN LAW—PRE-EMPTION—contd.

*Singh, I L R 11 All 101, and Lalla Parag Dutt v Shakh Bunde Hossain, 15 W R 225 referred to. But a right of pre-emption as shafi-i-sharik may subsist in relation to villages, in large estates equally with houses gardens and small plots of ground. *Shakh Mahomed Hossain v. Shaw Mohsin Ali, 6 B L R 41 and Shakh Karim Buksh v Kamr-ud-deen Ahmad 6 N W P H C 377, referred to. MUNNA LAL v HAJIRA JAN (1910)**

I L R 33 All 23

2. ——— Hindus in Bihar—Pre-emption—Customary right—Right of pre-emption—Co-sharers—Assertion of right of pre-emption delay in making—Power to perform ceremonies of assertion—Manager appointed by Court of Wards of estate of “disqualified proprietor” under the Court of Wards Act (Ben Act IV of 1879)—Powers and duties of manager under section 4 of Act—Issue of right of pre-emption among co-sharers in undivided mahal—Sanction of Court of Wards. The Mahomedan Law of pre-emption has long been judicially recognised as existing among the Hindus in Bihar to which the district of Champaran appertains. *Fakir Rowat v Enambaksh B L R Sup Vol 35 W R P B 143 followed. In a suit for pre-emption in respect of certain undivided shares in a number of villages comprised in a mahal, the estate of the plaintiff was in charge of the Court of Wards as that of a disqualified proprietor under Bengal Act IX of 1879 s 40 of which provides that the manager shall manage the property*

*diligently and faithfully for the benefit of the proprietor and shall in every case act to the best of his judgment for the ward's interest, as if the property were his own. Held, that the manager appointed by the Court of Wards was independently of the provisions of section of the Court of Wards Act competent on behalf of the plaintiff, to perform the preliminaries essential to the assertion of the right to pre-emption though if, in that case, the validity of his action depended on the sanction of the Court of Wards, their Lordships were of opinion that s 40 gave him full authority to act as he had done and in that view the adoption of his acts by the Court of Wards became unnecessary. A “mahal” is a unit of property and though all the villages of which it consists may be separately assessed for revenue purposes and each of the sharers may not have an interest in them all, the sharers are all co-sharers in the whole mahal, and jointly liable for the Government revenue. Each co-sharer therefore has a right of pre-emption against the other in respect of any part of the mahal sold by any of them to a stranger. After partition by the Revenue authorities each share so partitioned becomes a unit of property. *JADU LAL SAHU v JANKI KORR (1912)**

I L R 39 Calc 915

3. ——— Survival of the action to executors and administrators on the pre-emptor's death—Personal action—Probate and Administration Act (V of 1881) s 39—Action personal—monitor cum person. The right of pre-emption under Mahomedan Law does not abate at the pre-emptor's death, but survives to his executors and administrators under s 39 of the Probate and Administration Act (V of 1881). *SYAD JAUH HUSSAN v SITARAM BHAD (1911)*

I L R 36 Bom 144

4. ——— Shafi right of—Delay in assertion—Waiver—Right of pre-emption, accrual of—General law to govern the incident of sale in apply

MAHOMEDAN LAW—PRE-EMPTION—contd

ing the law of pre-emption and not the pure Mahomedan Law. *Per CHANDLER, J.* The right of *shafa* cannot arise until there has been a sale to a third party, for the right of *shafa*, recognised by the Mahomedan Law, is not the right of pre-emption known to the Roman Law, that is to say, the right arising out of an obligation on the part of an intending vendor to sell preferentially to the obligor if he offers as good conditions as any intended vendee, but rather the obligation attached to a particular status, which binds the purchaser from the person obliged to hand over the subject matter to the other party to the obligation on receiving the price paid by him for it. The right accrues only when the property has passed from the original owner to a purchaser. The general law, which is paramount and has superseded the Mahomedan Law, should govern the incident of sale in applying the law of pre-emption. *Per RICHARDSON, J.* Where possession is not given and the price is not paid till registration, the right of pre-emption arises upon registration and not before. *Jadu Lal Sahu v Janki Koor, I L R 35 Cal 575*, referred to. *Begum v Muhammad Yakub I L R 16 All 344*, *Ladun v Bhayro Ram, 8 W P 255*, *Najm-un-nissa v Ayub Ali Khan, I L R 22 All 343*, *Oyemussa Begum v Rustam Ali (1864) W R 219*, *Torai Kombar v Mussammat Achhee, 18 W R 401*, *Koddeep v Ram Deen Singh 24 W R 198*, *Skeo Tahul v Ramkoer, (1864) W R 311*, *Brojo Kishore v Kartee Chander, 15 W P 247*, *Jehanpur v Lala Bhikari & B L R 42 note Kanhai Lal v Kaika Prasad I L R 27 All 670*, discussed. *BUDHAI SARDAR v SOYAVALLAH MEIDHA (1914) I L R 41 Calc. 943*

5 ———— **Hindus—Adoption of pre-emption as usage—Burden of proof—Ancient and invariable custom—Pre-emption, a personal right not descendible to heirs—A custom cannot be proved by the admission of parties or their counsel.** In litigation between Hindus where one party alleges the adoption of a whole branch of the Mahomedan Law, such as that of pre-emption, and the other party repudiates the application of the foreign law, it lies very heavily on the party alleging to prove that that law has been adopted as a usage and could be proved to have been so adopted by proof of ancient and invariable custom. Such a party must stand or fall by the strict Mahomedan Law of pre-emption. Generally speaking the right of pre-emption is a personal right which, under the Mahomedan Law, would not descend to heirs. *Per MACLEOD, J.* A custom must be proved by evidence in the first instance and once it is proved the Courts are entitled to recognize its existence. A custom cannot be proved by the admission of the parties or their counsel before the Court. *DANVABHAI MOTIRAM v CHUNILAL KESORNIDAS (1913) I L R 38 Bom. 183*

6 ———— **Sale—Demands—Assignment in lieu of dower debt.** If at the time of *talab-i-mauasat* the pre-emptor has an opportunity of invoking witnesses, in the presence of the seller or the purchaser or on the promises, to attest the immediate demand, it would suffice for both the demands and there would be no necessity for the second demand. *Nundo Pershad Thakur v Gopal Thakur, I L R 10 Cal 1068*, referred to. *Hida*, further, that when property is sold by a husband to his wife in lieu of dower a suit for pre-emption can be maintained by a person entitled to a preferential

MAHOMEDAN LAW—PRE-EMPTION—contd.

right to purchase that property. *Fida Ali v Musaffar Ali, I L R 5 All 65*, followed. *NATHU v BHADRI (1915) I L R 37 All 522*

7 ———— **Question of law, at what stage of case can be raised—Decree of nature—When Court should give notice of events happening after institution of suit.** A person who seeks the assistance of a Court with a view to enforce a right of pre-emption is bound to establish that the right existed at the date of the sale, at the date of the institution of the suit and also at the date of the decree of the primary Court. *Ram Gopal v Piers Lal, I L R 27 All 441* and *Tafazzul Hussain v Than Singh I L R 32 All 567*, followed. When a question of law is raised for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea. *Connecticut Fire Insurance Co v Kavanagh, (1892) A C 473*, followed. Ordinarily the decree in a suit should accord with the rights of the parties as they stand at the date of its institution. But where it is shown that the original relief claimed has, by reason of subsequent change of circumstances become inappropriate or that it is necessary to have the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties, it is incumbent upon a Court of justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made. *Ras Charan Mandal v Birno Nath Mandal, 20 C L J 107* referred to. *NUZ MIAH v AMBICA SINGH (1916) I L R 44 Calc 47*

8 ———— **Kolaba District—A co-sharer selling his share to a Hindu purchaser—Applicability of the law of pre-emption by agreement of parties—Observance of the formalities of *Talab-i-Mauasibat* and *Talab-i-Ishhad* before the completion of sale, whether premature—Right of an administrator to continue the suit on the death of the pre-emptor pendente lite—Probate and Administration Act (V of 1881) s 82.** S, a Mahomedan owner of an undivided one fourth share in certain Inam villages in Kolaba District entered into an agreement with the defendants on the 14th October 1908 for the sale of his share for Rs 30,000, the terms of the agreement being that if the owner of the three fourths share (i.e., the plaintiff) was willing to purchase S's share and if S agreed to the purchase he should immediately return the amount received from the defendants. On the same day a notice was accordingly served on the plaintiff by S asking him if he was anxious to pre-empt the quarter share. On receipt of this notice the plaintiff on the 15th October performed the *Talab-i-Mauasibat*. On the 17th October the plaintiff through his attorneys wrote a letter to S declaring his intention to exercise the right of pre-emption and at the same time performed *Talab-i-Ishhad*. The copies of S's notice and plaintiff's solicitor's reply of the 17th October were duly forwarded to the defendants and what the correspondence between S and the plaintiff was going on the former received the full amount of the purchase money from the defendants and executed a sale deed in their favour. The plaintiff thereupon sued to recover the share by right of pre-emption. The defendants con-

MAHOMEDAN LAW—PRE-EMPTION—could

tended *inter alia* that the right of pre-emption could not be exercised against them as they were Hindus that the property over which it was claimed was not a small one that the law of pre-emption was not made applicable to Kolaba District, that the *talabs* performed before the completion of the sale were premature. On these facts, *Held*, (i) that the defendants were bound to comply with the plaintiff's demand for a transfer of the quarter share in the villages to him since it was clear from the contract and the subsequent correspondence that the defendants agreed with the vendor that the law of pre-emption applying between the vendor and his co-sharer should be applicable to the defendant's purchase (ii) that the action of the plaintiff in performing the *talabs* was not premature as the intention of the parties as to the date when the bargain was to be considered as concluded was the date of the contract itself, (iii) that there was no limit to the size of the property of which pre-emption might be claimed by a co-sharer though there was a limit in the case of those who based their claim on vicinage. A question being raised as to whether on the death of a pre-emptor *pendente lite* a suit can be proceeded with by his administrator under s. 80 of the Probate and Administration Act 1881 *Held* that the suit could be proceeded with by the administrator as the relief sought, namely conveyance of a share could be enjoyed by a personal representative after the death of the pre-emptor inasmuch as it added the property in suit to the estate of the deceased **SITARAM BHATRAO v SATAD SHRAJLE** (1917) **I L R. 41 Bom 636**

9 ——— **Sale disguised as a lease—In order to defeat pre-emption—Device not permissible under the Mahomedan Law.** In a suit for pre-emption whether the right is claimed under the Mahomedan Law or by virtue of a custom of pre-emption it is the duty of the Court, if the question is raised, to consider and decide whether the transaction in respect of which the claim is brought is or is not in substance a sale though it may be disguised in some other form, as for instance, in that of a lease. There is no rule of Mahomedan Law which renders it permissible for a transaction of sale to be framed as a lease so as to avoid claims for pre-emption. **MURHAMAD NIAZ KHAN v MUHAMMAD IDRIS KHAN** (1918)

I L R. 49 AU. 322

10 ——— Though the Hindustani *Sunnat* have adopted the Mahomedan Law of pre-emption by a long established custom with regard to houses it is an open question whether they have adopted the law with regard to agricultural land. **JAGJIVAN HARIBHAI v KALIDAS MULJI** . . . **I L R. 45 Bom 604**

MAHOMEDAN LAW—RELIGIOUS OFFICE

See MAHOMEDAN LAW—WITNESS

Aspir—Miserror—Religious office—Competency of women to hold or succeed to such office—Fighi to perform family—Rule of Mahomedan Law. A religious office can be held by a woman under the Mahomedan Law unless there are duties of a religious nature attached to the office which she cannot perform in person or by deputy and the burden of establishing that a woman is precluded from holding a particular office is on those who plead the exclusion. Though there is no general rule of Mahomedan Law prohibit-

MAHOMEDAN LAW—RELIGIOUS OFFICE—could

ing a woman from holding a religious office, prohibition may arise by local usage or custom. **Imam Bee v Mulla Akhram Sahib**, (1916) **5 L. W. 226** followed. **Akhaee Danoo v Aga Mahomed Jaffer Baidineem** **I L R. 34 Cal 118**, referred to. *Held* (on the facts of the case) that a woman was competent to succeed to the office of Head *Murwar* of the suit *Astan*. **MUKHAYARU BEGAN SAHIB v MIR MAHAPALLI SHAHIB** (1918)

I L R. 41 Mad. 1033

MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS

— *Suit for restitution of conjugal rights—Defence to suit—Cruelty.* In a suit by a Mahomedan husband against his wife, for restitution of conjugal rights it was found on issues remitted by the High Court that there was no very satisfactory evidence of actual physical cruelty but that the parties were on the worst possible terms and the reasonable presumption was that the suit was brought for the purpose of getting possession of the defendant's property. There had been a good deal of ill treatment short of physical cruelty and the court was of opinion that by a return to her husband's custody the defendant's health and safety would be endangered. In these circumstances the High Court refused to interfere with the decree of the Court below dismissing the suit. **Armar v Armar** **I A L J. 318** referred to. **HANID HUSSAIN v KUBRA BEGAM** (1918)

I L R. 40 AU. 322

— *Suit by husband for restitution of conjugal rights where he had entered into agreement that his wife should live permanently in the house of her parents—payment of dower—discretion of Court.* The plaintiff sued his wife for restitution of conjugal rights and for an injunction against her parents and friends who were alleged to prevent her from living with him. On their marriage the plaintiff had agreed to the dower being fixed at Rs. 500, without specifying what part of it was prompt or deferred and also that the girl should live for the whole of her life with her parents. Defendants pleaded that in the face of those agreements plaintiff was not entitled to restitution of conjugal rights till he had paid the dower of Rs. 500, and could not claim that his wife should live with him at his house and not at her parents. The first Court decreed plaintiff's suit and the Lower Appellate Court upheld the decree of the first Court with the condition that plaintiff before applying for execution shall pay 1-5th part of the dower fixed, viz., Rs. 100. The defendants appealed to this Court. It was found as a fact that the wife did live with her husband for a time at his residence and there gave birth to a child. *Held*, that the agreement that the wife should live with her parents was not legal and could not be used to defeat the husband's claim for restitution of conjugal rights and that in any case the wife by living with her husband for a time away from her parents' house had waived the right, if any, acquired under the agreement. **Imam Ali Pet v Arifatusseena**, (18 Cal W N 693) followed. **HANID AH-NUVA BINA v Zahir ud Din** (I L J. 17 Cal 670), referred to also. **Ameer Ali's Mahomedan Law Volume II** 1917 Edition pages 369 and 478—80. **Tajuddin's Mahomedan Law**, II Edition (1910) page 109, disapproved. *Held also*

MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS—contd

that the Lower Appellate Court in its discretionary power having fixed the part of the dower to be paid by plaintiff, this Court was not prepared to hold that it had not exercised its discretion properly *Musarat Fatima Bibi v Nur Muhammad* I L R 1 Lah 597

Direction by Court that conjugal rights should be exercised at the residence of the wife's parents, if strait? A Mahomedan husband executed a *Kabilnama* in which the wife was given the right to leave her husband's house in case of ill treatment. There was ill treatment by the husband and the wife went to her parents' house. The husband sued for restitution and got a decree with a direction that such rights must be exercised in the house of the wife's parents. *Held*, that the *Kabilnama* was good but the condition of the decree bad. *SABIR KHAN v BILATUNESSA Bibi* 25 C W N 888

MAHOMEDAN LAW—SALE

See MAHOMEDAN LAW—ALIENATION

—whether complete without Registration—

See TRANSFER OF PROPERTY ACT 1882
s 34 I P^r L J 174

Sale of minor's property by widow, validity of. The mother of a Muhammadan minor is not the natural guardian of the minor, and, if she is not his authorised guardian either, a sale of the minor's property by her not shown to be for his benefit or advantage, is void. *SHAIKH RAJA ALI v SHAIKH WAJIB ALI* I Pat L J 188

MAHOMEDAN LAW—SUCCESSION

See CUSTOM I L R 39 All 574

I L R 45 Cal 450

See KHOSAS I L R 39 Bom 449

See KUNJIPURA, STATE OF

I L R 39 Cal 711

See SUCCESSION CERTIFICATE ACT (VII OF 1880), ss 4 AND 7

I L R 32 All 335

—Heirs holding as tenants-in-common—*Suit* by a heir to recover his share—

See LIMITATION ACT (IX OF 1908), SEC. 1, ARTS. 133 AND 144

I L R 45 Bom 519

—Heir entitled to bring a suit for account and administration not bound to file a suit for partition—

See ADMINISTRATION SUIT

I L R 45 Bom. 75

—Succession by a Christian to the sons of a convert to Islam—

See ACT XXI OF 1850

I L R 1 Lah. 378

—Exclusion of female heirs—*Custom excluding females from succession in Oudh—Limitation—Relinquishment—Estoppel.* M, a Mahomedan of Oudh, died leaving two widows, B and J, and his mother. His estate passed first to his mother

MAHOMEDAN LAW—SUCCESSION—contd

and on her death to his widows in equal shares. After B's death on 24th January 1888, J retained possession of the whole estate until her death in 1894. When mutation was effected in favour of the sons of the brothers of B and J, a sister of B instituted two suits for recovery of her share. In the first suit the Subordinate Judge held that the succession was governed by the Mahomedan Law and that the custom of excluding female heirs was not proved and decreed the suit. The Judicial Commissioners affirmed these findings. *Held*, that the concurrent findings of fact were fatal to the appeal. The second suit was instituted on 11th February 1903. The dispute related to the estate left by the plaintiff's brother Mubarak who died on 7th February 1891, including in that estate the property he had inherited from B and his father. *Held* that limitation began to run against the plaintiff at once, from the death of J, and that therefore the suit was not barred. *Held* further that the plaintiff had not relinquished her claim nor was she estopped from pressing it. *MEHAMMAD KAMIL v MEHAMMAD IMTIAZ FATIMA* (1909) 14 C W N 59

—*Fideli acquisitions—Acquisition by member of family if to be presumed as acquired out of joint family funds—Estoppel.* Two sons of a deceased Mahomedan and his widow inherited 42,960lbs 42,900lbs and 12,960lbs respectively of his properties. The properties were however partitioned between them later on in equal halves by an arbitration award to which the widow was a party. The award specifically stating that the properties dealt with were the whole properties which were subject to division and that nothing more fell to be divided and provision being made for the grant by the sons of a maintenance allowance in money to the widow. After the death of the widow whom one of the sons predeceased, Plaintiff the surviving son, *sister also* claimed his share in certain items of property which were excluded from the award and which had been acquired in the name of his deceased brother after their father's death as the property of his father and the widow's share in certain other items of property dealt with by the award and divided half and half between the brothers by the award, as the widow's heir. *Held*—That the succession of a Mahomedan being an individual succession there is no presumption in the case of a Mahomedan such as exists in the case of a Hindu joint family that property purchased in the name of a member of the family was purchased out of joint undivided property. That *prima facie* therefore the property bought in the name of the deceased brother was bought with his money, and the statement in the award established that it was. That the Plaintiff was estopped by his own proceeding in the arbitration wherein he received his full half of the properties belonging to his father upon the footing of the exclusion of the mother, from claiming a share therein through his mother. *MEHAMMAD WAZI KHAN v MEHAMMAD MOHIDDIN KHAN* 24 C W N 321

—Where one of the co-heirs of a deceased Mahomedan in possession of the whole or part of the estate of the deceased sells property in his possession forming part of the estate for discharging debts of the deceased, such sale is not binding on the other co-heirs or creditors of the deceased. *ABDUL MAJEED v KRISHNAMACHARIAR*.

I L R 40 Mad. 243

MAHOMEDAN LAW—TRUST

1 ———— Revocation of trust—*Hafz*—*Gift*—*Essential elements for validity*—*Power of revocation*—*General principles*—*Executed remainder*. In 1902 a Shih Mahomedan by deed conveyed certain immovable property to himself and other trustees for himself for life and after his death for the payment of annuities to his widow and daughter, and the balance to certain charities. Further clauses provided that on the death of his widow her annuity was to go to certain other charities and that on the death of his daughter a lump sum was to be given to her son. A further proviso reserved power to the settlor at any time to revoke all or any of the above trusts. In 1908 he revoked the trust and executed a mortgage of the property. In 1909 he died and receivers of his estate were appointed. His daughter then filed a suit for a declaration, *inter alia*, that the revocation and subsequent mortgage were invalid, and that the original trusts still subsisted. *Held* that the conveyance in 1902 was invalid. Looked at from the standpoint of the Mahomedan law giver, a private trust would be no more than a private gift *inter vivos* through the medium of the third party, and therefore subject to all the conditions of a valid gift, but *quære* whether private trusts were known to Mahomedan law. *Banoo Begum v. Mir Abed Ali*, 1 L. R. 32 Bom 172, discussed and distinguished. JAINARAI v. R. D. BETHGA (1910) 1 L. R. 34 Bom 604.

2 ———— Khoja Mahomedans—*Settlement*—*Settlor himself trustee*—*No delivery of possession*—*Son born after settlement*—*Power of Settlor to revoke settlement*—*Settlor's intention not carried out owing to Settlor's death*—*Power of Court to aid defective execution*—*Suit by after-born son to set aside settlement*—*Limitation Act (IX of 1908) s. 10*—*Perpetual trust back to Settlor*—*Adverse possession*—*Difference between stoppage and rescission*—*Validity of Waqf contained in deed containing other gifts*—*Local usage cannot override Mahomedan Law*—*Prostitution*—*Was Major*. By an indenture of settlement dated 7th January, 1886, J. P., a Khoja Mahomedan, purported to convey certain immovable properties to trustees for the benefit of his family. The trusts were in effect for J. P. for life and after his death, subject to certain rights of residence and maintenance to pay the net income of the trust properties to N. M. for his life and in the event (which subsequently occurred) of the death of N. M. without leaving male issue, to divide the trust funds into ten equal parts to be held in favour of certain donees, four tenths being given to charity. The indenture also reserved to the settlor power to revoke or vary any of the trusts contained therein. There was no surrender of the property in fact to anyone except J. P. himself in his character as trustee for himself. The donees, however, agreed an agreement in two books of this property as trust property. On the 26th October, 1886, a second son, the plaintiff, was born to J. P., whereupon J. P. being desirous of providing for this second son, desired to vary the terms of the deed of the 7th of January, 1886 and to re-settle the same so that his two sons should share equally. A draft deed of declaration of new trusts was accordingly prepared by J. P.'s attorneys and on the 24th of July, 1887, was finally settled and approved by J. P. An engrossment was thereupon made and duly stamped but on taking the engrossment to J. P. for his execution on July 29th it was found that owing to an error of the engross-

MAHOMEDAN LAW—TRUST—*contd.*

ing clerk several pages of it were missing. Another engrossment was prepared forthwith, but on the same day before the new engrossment was ready J. P. died. The plaintiff thereupon brought a suit to have it declared whether or not the deed of 1886 was a valid deed and prayed that the defective execution of the second deed might be aided by the Court and the provisions of the said second deed declared to be valid. *Held*, (i) That the plaintiff was not time-barred as against the trustees from bringing the action. (ii) That however restricted the gift was in form to J. P. it was in effect a gift absolute to him for life, and that entirely irrespective of the power of revocation. (iii) That all the gifts in the trust settlement made contingent upon N. M. dying without issue were bad. (iv) That that portion of the instrument which purported to create a waqf in respect of four tenths of the settled property was bad and void. (v) That the gift was bad for want of contemporaneous delivery of possession. (vi) That this was a case, if ever there was a case, in which the Courts might act upon those principles which have always guided the Court of Equity in England and aid defective execution of a power, defective not through any fault on the part of the person intending to execute it but by reason of an act of God, and that the unsigned deed ought to be effectuated by the Court to the extent of making it binding on the conscience of the trustees. *Per Curiam*. It is only in the event of the trusts or some of them being bad that the question of limitation can arise. For if a trust deed in its entirety is good, then of course effect must be given to it irrespective of any question of lapse of time. Where what purports to be a trust-deed turns out to have been entirely void and therefore not to have passed the legal estate, the position of those who took possession believing themselves to be trustees but not in law real trustees necessarily assumes the character of possession by trespass and is therefore from its inception in law adverse against all the world. Where, however, the trust-deed in itself is good and valid to the extent of passing the legal estate but the trusts declared are in themselves wholly or partially bad, then there is a resultant trust to the author of the trust and the possession of the trustees, whatever they might think of it and however they might intend to use it for the purpose of carrying out of the bad trusts, could not in law be adverse to the *cestui que trust*, that is to say, the grantor. Widely different is the case of trustees who obtain the legal estate from the author of the trusts to apply the beneficial uses to specified objects which may or may not be good. For then from the beginning there is always a relation between the author of the trusts and the trustees in whom his confidence has been reposed and there is always the legal possibility of *least* of another relation coming into existence between them where owing to the failure of the declared trusts, there is a resultant trust back to the grantor who from that moment becomes in law the *cestui que trust* of the trustees. Where it was the intention that there should be an ultimate trust in favour of the grantor it is usual to express that on the face of the deed. A deed so framed as upon its very face to provide for the springing back of the trust fund or a part of it in certain events to the author of the trust does create what is at once an express and resultant trust. The current of authority seems to have set steadily against the extension of section 10 of the Limitation Act to all

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cases of resultant implied or constructive trusts. Where the ultimate resultant trust which is to spring back to the settlor is consistent with the discharge of the declared trust, then it may by loose use of language be said to be express on the face of the deed but when the extinction or failure of all the intended trusts is a condition precedent to the resultant trusts coming into being, then the latter is clearly a true resultant trust and is not express and never can be express on the face of the deed. The answer to the question—What is the true position when declared trusts failed and there is a resultant trust over to the settlor or his heirs—is to be found in the very elementary proposition that the possession of the trustee is always that of *cestui-que-trust*, and, therefore, however, he may think or wish to be holding as trustee for trusts which have failed in the eye of the law, he is really holding when those trusts failed, as trustee for the settlor. Then the position is simply this so long as he retains and professes to retain the character of a good and legal trustee, he is holding the legal estate as stake holder for two claimants, the intended beneficiaries of the declared trusts which have failed, and the resultant trustee, that is, the settlor. And no length of possession by a trustee can be adverse to his *cestui-que-trust* as soon as that legal person is discovered and ascertained. So long as a trustee occupies the position of a trustee as soon as declared trusts failed and there is a resultant trust in favour of the settlor, the trustee's possession is essentially that of his *cestui-que-trust* and can only be changed into adverse possession by a conscious and deliberate act, that is to say, that he must repudiate all intention of holding for the resultant *cestui-que-trust* and he must assert his intention of continuing to apply the trust fund to uses which the Court has declared or which are known to him to have failed. Then his possession might become adverse to his legal *cestui-que-trust* and if that person did not take steps within twelve years he might not be able to avail himself, under the Indian authorities, of the provisions of section of 10 the Limitation Act. Estoppel and *res judicata* are entirely distinct. *Res judicata* precludes a man averring the same thing twice over in successive litigations, while estoppel prevents him saying one thing at one time and the opposite at another. It is consistent with the Mahomedan Law that a Mahomedan may devote his property in *wakf* and yet reserve to himself and his descendants in a very indefinite manner the usufruct of property. *Jaisa Bai v R D Sakhia I L R 34 Bom 604*, considered. The power of revocation is inherent in the donor of every gift, so that expressing it, as is usually done by English draftsmen in these voluntary settlements, is merely surplusage and so far from invalidating the gift as a whole would necessarily be implied in it were it not expressed. Under the Mahomedan Law where a gift is conditioned by a power restricting alienation, the gift is absolute and the condition is void. A gift to the donor himself for his life and then over to others could not be reconciled with any recognised principle of the Mahomedan Law of gift and must necessarily therefore, so far as the remoter donees are concerned be bad ab initio. *Jaisabai v P D Sakhia, I L R 34 Bom 591*, followed. A vested remainder in the strictest sense of the English words and a *forfeiture* a contingent remainder could not possibly by any stretch of ingenuity be made the subject of a valid Mahomedan gift *inter vivos* consistently with the

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requirements of the Mahomedan Law on that head and for this very simple reason that no man can give possession *in praesenti* of that which may never come into possession at all. It is of the essence of a Mahomedan gift *inter vivos* that the donor should divest himself of the actual possession of the thing given and transfer it to the donee and if the donee does not take physical possession of it at the time of making the gift, then still he does the gift is revocable. There is no authority to be found anywhere in the Mahomedan Law books themselves for the proposition that a man giving *inter vivos* may give an estate first to himself and then to A for life and then to B absolutely. It is undoubtedly a rule of the Mahomedan Law that where a donor makes a gift and accepts in exchange something whether that something be independent of or part of the original gift, then the rest of the gift is irrevocable. No gift *in futuro* can be made by a Mahomedan *inter vivos*, in order to validate such a gift there must be an actual delivery of seisin to the donee, there must be a transfer of possession and that transfer of possession must be from the donor to the donee. While the Mahomedan Law insists that a gift to private persons should be free of all pious and religious purposes, this does not necessarily prohibit the making of the gift to *wakf* which may be contained in a deed which makes other gifts at the same time to private persons. It appears to be the Mahomedan Law that a donor may give his property in *wakf*, that is to say, appropriate and dedicate the *corpus* to the service of God, while reserving for himself a life interest in the usufruct. But as in the case of gifts to private individuals the Mahomedan Law never contemplated and will not allow a merely contingent gift in *wakf*. This necessarily flows from the juristic conception of a *wakf* which is the immediate appropriation and consecration of specified property to the service of God and the reservation of the donor's life interest in that property does not in any way clash with that conception for the *corpus* is there and then definitely and finally appropriated to its intended purpose. But it is plainly otherwise, while the gift is conditioned upon the happening of some future uncertain events. There can, in such circumstances, be no appropriation synchronizing with the declaration, because should the future events happen it is neither the donor's intention then nor after the happening of that event that the property ever should be appropriated to the service of God. It would be passing the limits of the application of the maxim *Usus et contractus vincunt legem* if it were sought to be shown that the Khojas are allowed to local usage to override the Mahomedan Law which prohibits any Moslem from disposing of more than one third of his property by will. *CASAMALLI JAJRABAI v SIB CURRIMHOY KERANIM* (1911)

I L R 26 Bom 214

MAHOMEDAN LAW—WAKF

See CIVIL PROCEDURE CODE, 1908 s 92

(1) . . . I L R. 25 All 98

See MAHOMEDAN LAW—ENDOWMENT

See MAHOMEDAN LAW—MUTAWALLI

See MAHOMEDAN LAW—WILL

I L R. 43 All 509

MAHOMEDAN LAW—WAKF—*contd*

See MUHAMMADAN WAKF VALIDATING ACT
(VI of 1913) s 3

I L R 39 Bom 563

See RELIGIOUS ENDOWMENT

6 Pat L J 218

See WAKF

1. ——— Valid wakf—Charitable objects—Expenses of *fateha* of *exculant*—Burning lamps in mosque—Salary of *Hafiz* Held by *BAKERJI J (STANLEY, C J, dubitante)* that a wakf by which a substantial portion of the income of the endowed property was appropriated for (i) expenses of the annual *fateha* of the wakf, of her husband and members of her family (ii) the annual expenses of burning lamps in a mosque and (iii) the salary of *Hafiz* and readers of the Quran, was a valid wakf, and that there was a substantial dedication of the property to religious or charitable purposes. *Muhammad Ahsanullah Chowdhury v Amur Chand Kundu*, I L R 17 Cal 498. *Luchmiput v Amur Alum* I L R 9 Cal 176. *Phul Chand v Albar Yar Khan* I L R 19 All 211 and *Bibi Jan v Kabi Husain* 6 All L J 115. I L R 31 All 136 referred to. *Kaidoola Sahib v Ameer ud-din* I L R 13 Mad 201 and *Fakhr ud-din Shah v Kiyasatullah* 7 All L J 1025 doubted. *Per STANLEY C J*—The general dedication of villages in the name of God is not sufficient to render the wakf valid in respect of so much of the property as has been dedicated expressly for specific objects which are not proper objects of wakf *fateha* ceremonies and the reading of the Quran in private do not seem to be such objects. *Mazhar Hussain Khan v Abdul Hadi Khan* (1911)

I L R 33 All 400

2. ——— Performance of *fateha*, when a valid object of wakf—Wakf when illusory—Rule to be adopted when one of the purposes of the wakf fails—Provision for heirs invalid as a wakf—Validity of direction to accumulate in a wakf. The performance of *fateha* (distribution of alms to the poor accompanied with prayers for the welfare of the souls of deceased persons) which so far as it involves the expenditure of any money, consists in feeding the poor, is a valid object of wakf. A gift for the benefit of a man's own family or descendants will not be valid as a wakf, and a gift, really for such a purpose, though ostensibly one for valid charitable purposes will be bad as only an illusory wakf. It can be no objection to the validity of a wakf that some provision is made for the donor's family provided such provisions are not inconsistent with the gift being one substantially for charity. If, however, such provisions in a deed purporting to be by way of wakf exhausts the bulk of the income or are to last for an indefinite period, the wakf will be bad as illusory. The fact that the donor did not direct the proportions in which the income should be divided between the charities and his heirs, who were appointed trustees will not raise the presumption that he intended the heirs to take the whole. It must be presumed that he intended the charities and his heirs to benefit equally. Where a donor mentions several purposes as objects of charity and one of such purposes fails, then if a general intention can be gathered of dedicating the property to charity the entire property will be devoted to the lawful objects, if any, mentioned in the deed and in the absence of any such to the poor, whether or not

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any definite portion of the income has been set apart for the purpose which fails. A gift by way of wakf partly for valid charitable purposes and partly for the donor's heirs will not be void because the latter is not a legal purpose of a wakf. The wakf will be valid and the whole income will be devoted for the valid purposes. A provision for accumulation which will ensure solely for the benefit of charitable purposes will not be bad as offending the law of perpetuities. *RAMANDRAM CHETTIYER v VADA LEVAT MARAKAYAR* (1910)

I L R 34 Mad. 12

See POST

I L R 40 Mad 116

3. ——— Sunni schools—Injunction be *inter co-owners*—Mahomedan burial ground for joint interests in. The Court will refuse to a co-owner an injunction to prevent the carrying out of a necessary work by another co-owner upon property held in common. According to the accepted view of the Sunni schools which comprise the followers both of Imam Abu Hanifa and Imam Shafai it is in the very conception of wakf, which is the name for a grant by which mosques and similar institutions are dedicated that all proprietary rights of men should be extinguished in the property so dedicated. *KUTTAYAN v MAMMANA RAYUTHAN* (1912)

I L R 25 Mad 681

4. ——— Subsequent failure of title of wakf—Right of mutawallis to sue on a indemnity bond executed in favour of wakf as purchaser—Right of plaintiff to shift basis of claim during suit—Produce. A purchased a village the venditor giving him an indemnity bond in case he should be dispossessed. A then made a wakf of the property purchased naming himself as mutawalli and after him his son M. A lost the property as the result of a suit, and subsequently (A meanwhile having died) M sued as mutawalli to enforce the terms of the indemnity bond. Held, that the wakf was invalid, and that M could not be permitted to change the character of the suit by claiming as one of the heirs of A. *Per CHAMBERS, J*—Even if the wakf was valid the mutawalli was not entitled to maintain the suit in the absence of a transfer to him as such of the vendee's rights under the indemnity bond. *MASHUD DIN v BALLASH DAS* (1912)

I L R 35 All. 66

4(a). ——— Right to worship in mosques—Every Mahomedan who has a right to use a mosque for purposes of devotion is entitled to exercise such right without hindrance and can bring a suit against anyone who interferes, but if he brings it in his personal capacity and not on behalf of the community the decision will be binding only as between plaintiff and defendant. *RAMCHANDRA v ALI MAHOMED*

I L R 35 All. 197

5. ——— Dedication subject to annuities—Payable to the members of the settlor's family. Where a *wakfnama* provided that about two-thirds of the income of the property were to be paid as allowances to the wife and children of the settlor and only about a third was to be spent for religious and charitable purposes and it was further provided that the allowances to the wife and children would have to be reduced in the event of the income of the estate being reduced but there was no provision that the amount to be spent for religious and charitable purposes was

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to be reduced for any reason though the amount might be increased with the increase of the income of the estate. *Held*, that the wakf was valid under the Mahomedan Law. **GHANI MIA v ADAK PATARI** (1913) . . . 17 C W. N 1018

6. ———— *Shia Sect—Wakf—Varz ul mauit—Validity of wakf made in marz ul mauit* Under the Shia law a wakf made in death illness is valid only to the extent of one third if not assented to by the heirs, even if possession has been delivered by the maker of the wakf. **Nazar Husain v. Rafeeq Husain, 8 All L J 1151**, approved **ALI HUSAIN v FAZAL HUSAIN, KRAY** (1914)

I. L. R. 36 All 431

7. ———— *Constitution of by deed of trust—Objects charitable and religious—Validity of wakf* Where with the object of dedicating a house to the service of the Imams, Hasan and Hussain, and for other religious purposes, the settler had conveyed the house to his grand daughter and his grand son on trust for the proper observance of the objects mentioned in the deed. — *Held*, that there was a valid wakf. **Delross Banoo Begum v Aahgar Ally Khan, 15 B L R 167**, discussed. **Phul Chand v Ablar Jar Khan, 1 L R 19 All 211**, **Baba Jan v Kalb Husain, 1 L R 31 All 136**, **Ma har Husain Khan v Abdul Hadi Khan, 1 L R 33 All 400**, referred to. **RAM CHARAN LAW v FATIMA BEGAM** (1913)

I. L. R. 42 Cal 933

8. ———— *Dedication for expenses of mosque—And maintenance of family members, how far valid* Where a person belonging to the Hanafi School of Mahomedan Law made a wakf whereby he provided for the payment of expenses of and in connection with a mosque and for regular monthly maintenance of the members of his family. — *Held*, that the dedication in connection with the mosque was valid, but not so the provision for the payment of maintenance to members of the family. **RAHIMUN-NISSA BIBI v SHAIKH MANIK JAV** (1914) . . . 19 C W N 78

9. ———— *Res judicata—Decision in previous suit between same individuals, but brought by plaintiff in another capacity—Decision of High Court on legal grounds declaring a wakf invalid, conclusive in later suit even when not strictly res judicata* Where in a suit by a creditor or representative of the wife of the original owner of property which the latter had made wakf before his death, it was declared by the High Court on appeal on legal grounds is that the wakf was invalid. — *Held*, that this adjudication by the High Court of the invalidity of the wakf was binding between the parties to a subsequent suit brought against the same defendant by the same plaintiff but suing now as the heir of the owner's daughter. **MOHAMMED BUKTH MAJUMDAR v DEWAY AJMOH RAJA** (1915) . . . 19 C W. N 967

10. ———— *Founder herself mutawalli, if may renounce office—and appoint another—Right of next in order of succession under original wakf to sue if arises immediately or on death of predecessor—Limitation—A mutawalli cannot renounce his office except in the presence of the founder of the wakf, but whether the founder is herself the mutawalli, a renunciation by her to herself would be valid and the appointment by her of another mutawalli would be valid at least during her lifetime and limitation would not begin*

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running against the person next entitled to succeed to the office under the original endowment until her death. **ABDUL GAFOOR MIAN v HAJI KHUND RAN ALTAF HOSAIN** (1915) . . . 20 C W N 605

11. ———— *Deed providing for charitable purposes, and also for support of grantors family—And descendants—Test whether deed is valid as a wakf or whether wakf is illusory—Property substantially given to charities the surplus to support family—Muslimans Wakf Validating Act (VI of 1913)* The test of whether a deed was, or was not, valid as a wakf in the cases decided before Act VI of 1913, was that if the effect of the deed was to give the property substantially to charitable uses it would be valid, but if the effect of it was to give the property in substance to the settlors' family it would be invalid under Mahomedan Law. **Mahomed Ashanulla Chondhray v Amarchand Kundu, 1 L P 17 Cal 493 L R 17 I A 28** **Abdul Fata Mahomed Isahak v Rasmaya Dhur Chondhuri, 1 L R 22 Cal 619 L R 22 I A 76**, and **Majubunissa v Abdul Rahim, 1 L R 23 All 233 242 L R 23 I A 15, 23** referred to. To determine whether any particular case answers the test, all the circumstances existing at the date of the deed must be taken into consideration such as the financial position of the grantor, the amount of the property, the nature and the needs of the charity, their probable or possible expansion, the priority of their claim upon the settled fund and such like. It does not follow because the share of the income going to the family which may be a dwindling sum is for a time larger than that going to the charities, that the effect of the deed is to give the property in substance to the family and that it is therefore invalid as a wakf. In the present case the sum devoted to the charities was not large though for the present it was abundant for their needs, but having regard to all the circumstances of the case, the dominating purpose and intention of the grantors in executing the deed was to provide adequately for those charities. That was their main and paramount object. The secondary and subsidiary object was to secure for their family and descendants any surplus that might remain after the needs of the charities had been satisfied. As the gift for the charities was perpetual it was necessary and right that the provision for capturing any possible residuum should also be perpetual. The provisions of the deed carry out these objects, and in their Lordships' opinion the effect of the instrument is not to give the trust property in substance to the family of the grantors but to give it substantially to the charitable purposes named in it. The deed therefore was within the authorities a good and valid deed of wakf. **FAMANDAR GHEHTIAN v VAVA LEYVAT MARAKAYAR** (1916).

I. L. R. 40 Mad 116

L. R. 44 I A 21

13. ———— *Mutawalli—Jurisdiction of Court to appoint guardian in respect of wakf property—Guardians and Wardes Act (VIII of 1890)* A Mahomedan died leaving two sons and a daughter, all minors, and having also constituted a wakf of a partly public and partly private character, under which, upon the death of the wakf one or other of his sons was to be mutawalli. — *Held*, that it was competent to the District Judge to appoint a person to perform

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the duties of the mutawalli pending either the coming of age of the minors or the institution of a regular suit by some persons interested in the endowment to contest the arrangement made by him. *Ejaz Ahmad v Khatun Begam* (1916) 1 L R 59 All 288

14 ——— Validity of—Determining test—Annuity to destitute illegitimate daughter of founder's husband of charitable gift Where under a wakf a certain portion of the property was to go for objects religious and charitable but the main object was the benefit of the daughter of the settlor and her successors. *Held*, that in the circumstances of the case the dominating purpose and intention of the grantor which is the true test in such cases, was not to provide for charities. That although the deed might not be wholly good, it was competent for the Court to declare the charitable trusts constituted by the document to form a valid charge on the property. That the annuity to an illegitimate daughter of the founder's husband who was destitute and unprovided was a charitable gift. *Karimunnissa Chowdhurani v Emina Banoo* (1917) 22 C W N 568

15 ——— Appointment of mutawalli by *tauliqnamah*—Testamentary character and validity of—Mahomedan Endowments Committee at Chittagong—Statutory body—Regulation XIX of 1910—Religious Endowments Act (XX of 1863), s. 7—Doctrine of *marz-ul-mawl*. Where a mutawalli of a mosque executed a *tauliqnamah*, a few months prior to his death, in favour of B appointing him as his successor—*Held* that the Mahomedan Endowments Committee at Chittagong was a statutory body and its recognition of a person as the true and rightful mutawalli was authoritative. *Seemle* that according to Mahomedan Law, a *tauliqnamah* was capable of being construed as a document of a testamentary character speaking as from the moment of death also, that when a person had a right or power under the law to appoint a successor and if he freely executed a *tauliqnamah* as a testamentary document while he was of sound mind its validity could not be questioned. *Sayad Muhammad v Fatteh Muhammad*, 1 L R 22 Cal. 324 L R 22 I A 4, *Sayad Abdula Edrus v Sayad Zain Sayad Hasan Edrus* 1 L R 13 Bom. 655 referred to *SULTAN AHMAD v ABDUL GANI* (1918) 1 L R. 46 Cal. 13

16 ——— Illusory dedication—*Mussalman Wakf Validating Act* (VI of 1913) preamble and ss. 3 and 4—Act not retrospective. The Mussalman Wakf Validating Act, 1913, is not retrospective in its operation. If, therefore, a wakf purporting to be created before coming into operation of that Act is to be held valid it must conform to the law as established by the decisions of the Privy Council prior to the said Act, that is to say, the owner of the property, the subject of the wakf, must divest himself of it and appropriate it to religious or charitable purposes, there must be a substantial dedication to religious or charitable purposes at some time or another, there must be a substantial and not merely a colourable dedication of the property, the religious or charitable purpose must not be so unsubstantial or illusory as to give to the settlement merely a colour of piety, the real object being the aggrandisement of the settlor's family. *Rahimunnissa Bibi v Shazia Mamik Jax*, 19 C W N 76 *Mahomed Bakti*

MAHOMEDAN LAW—WAKF—contd.

Majumdar v Dwan Ajman Begs, 1 L R 43 Cal. 158 and *Amur Bibi v Aziz Bibi*, 1 L R 39 Bom. 563, referred to *NAIM UL-HAQ v MUDAM-MAD SURHAN ULLAH* (1918) 1 L R 41 All. 1

17 ——— Office of mutawalli devolving upon an entire family—Division of the wakf property amongst the family—Right of some members of the family to sue for the setting aside of the transactions of other members relating to the wakf property. By the terms of a wakf constituted in 1845, the original mutawallis were two nephews of the wakif, the sons of his brother. Thereafter the office of mutawalli was to descend to the family of the brother generation after generation without a break and without any separation for ever. In course of time it happened that the office of mutawalli devolved on three brothers who, for their own purposes, divided the wakf property amongst themselves. One of these brothers entered into various transactions relating to portions of the wakf property which were inconsistent with his position as mutawalli, and thereafter attempted to resign office in favour of his sons. The sons then endeavoured to get the transaction entered into by their father set aside, but failed. Subsequently three of the sons of the third brother their father having died mean while brought the present suit to set aside the transactions referred to above. *Held*, that, as on their father's death the office of mutawalli devolved upon the plaintiffs jointly with their uncle, they were entitled to bring the suit. *Ali Muqtada Khan v Abdul Hamid Khan* (1919)

[1 L R 41 All. 412]

18 ——— Shia sect—Wakf created by trust deed—Ownership in property not divested from date of execution of deed. *Held*, that a trust deed executed by a Mahomedan of the Shia sect and his wife which purported to create a wakf, but did not divest the executants in present of the ownership or power of alienation in respect of the property therein dealt with, could not operate to create a valid wakf. *ALI RAZA v SANWAL DAS* (1918) 1 L R 41 All. 34

19 ——— Illusory dedication—Where it was conceded that the annual value of property dedicated by way of wakf was about a thousand rupees but it appeared that the expenditure needed to carry out the stated charitable and religious purposes would amount to only a small fraction of the annual income and were in fact so unimportant or so remote as to be illusory. *Held* applying the test laid down in *Musunnissa v Abder Rahim* 1 L R 23 All 233; s. c. 5 C. W. N. 177, that the document was not a valid wakf. *MARHAM ALI KHAN v NIZAMAT ALI* (1919) 23 C W N 903

20 ——— Lease by mutawalli—Sanction of Judge (Kari) how obtainable—Civil Procedure Code (Act V of 1908) s. 92. S. 92 of the Code of Civil Procedure evidently relates to suits claiming any of the reliefs specified in sub s. (1) thereof. An application by a mutawalli for sanction to grant a lease is not a suit under sub s. (1) of s. 92. The application for sanction should be made to the District Judge if the property is situated in the mofussil or to the Judge on the Original Side of the High Court if it is within a Presidency Town. It is not necessary to bring a suit for obtaining such sanction; it will be granted upon

MAHOMEDAN LAW—WAKF—*contd*

a proper application being made by the *mutwalli*. Any application made by the *mutwalli* will of course be enquired into by the District Judge before sanctioning a lease as *Kazi FARUKUNNESSA BEGUM v. DISTRICT JUDGE OF 24 PARAGANAS* (1920) I L R 47 Cal 592

21 ———— *Illusory*—*Chief object of wakf to make pious on in perpetuity for the family*—*Wakf how far valid—Court whether precluded from taking notice of illegality of wakf when illegality not disclosed in pleadings* In a suit for recovery of the office of *mutwalli* and for possession of the properties covered by a *wakf* the Plaintiffs prayed that the first Plaintiff might be declared to be the *mutwalli* appointed in accordance with the long established custom and usage of the family and in conformity with the provisions of the deed of *wakf* or if in the opinion of the Court the first Plaintiff had not been validly appointed *mutwalli* the Court might issue orders for the nomination and election of the *mutwalli* by the members of the family and thereafter appoint the person so nominated. The Defendant denied the claim and alleged that he had been duly nominated and appointed *mutwalli* by his father. The Subordinate Judge dismissed the suit holding that the Defendant had been validly appointed *mutwalli* and that the alleged election of the first Plaintiff had no legal effect. On appeal it was pointed out that the gift to charity was illusory and the chief object of the *wakf* was to create a settlement in perpetuity for the aggrandisement of the family. It was urged on behalf of the Appellant that as in the Court below the parties had proceeded on the assumed basis that the *wakf* was good and valid, this Court was not competent to determine whether this assumption was or was not well founded. *Held*—That the Court was in no way bound by the assumption made by the parties as to the legality of the *wakf* in question and could not be invited by either of them to adjudicate upon their claim in relation thereto. *Wakf* of this character had been pronounced invalid by the highest judicial tribunal as contrary to public policy. If the illegality of a transaction is brought to the notice of the Court the Court will not assent to the person who invokes it and even though the Defendant has not pleaded the illegality and does not wish to raise the objection on *Connolly v. Consumers Cordage Co 2 Beauchamp P C 49 89 L T 347* (1903) *Scott v. Brown* [1892] 2 Q B 721, *Yedge v. Royal Exchange Corporation* [1900] 2 Q B 211, *Poyal Exchange Assurance Corporation v. Sjöforsvårings*, [1902] 2 A B 331 *Thomas v. Day* [1903] 24 T L R 272 and *Luckett v. Wood* [1908] 24 T L P 617 referred to. *NAWAZADA KHANJAH ATYULLA v. NAWAB KHANJAH HABIBULLA* 24 C W N 508

22 ———— *Sunnis*—*Wakf*—*Del very of possession essential* According to the Mahomedan Law of the Hanafi school it is essential to the validity of a *wakf* that the *wakf* should actually direct himself of the property to be made *wakf* *Muhammad Ad-din v. Admad v. The Legal Representatives*, I L R 15 All 321 followed *MUHAMMAD YUSUF v. MUHAMMAD ISHAQ KHAN* I L R 43 All 437

23 ———— *Whether a wakf can cancel the dedication subsequently—And whether a house can be dedicated for purposes of prayer—*

MAHOMEDAN LAW—WAKF—*contd*

Cottingent deed cat on—wakf made exclusively for use of a particular sect—whether valid One Chittu a member of a peculiar sect of Mahomedans called *Ahl-i-Quran* or *Chakralai* purchased a house and on 23rd May 1903 executed a *wakfnama* by way of a will and declared the property *wakf* for the use of his sect and appointed himself as its *mutwalli*. The *wakf* was to be acted upon after his life time and after his death his *mutwallis* were to be elected to manage the *wakf*. On 15th March 1905 he executed another document in which he made the *wakf* more complete and having given up his *mutwalli*ship placed the property in possession of certain persons who were appointed *mutwallis*. In the first *wakfnama* there was a direction that a mosque should be erected to carry out the objects of the *wakf* but he consecrated the house itself for the purpose of prayers and the recitation of the *Quran*. The newly appointed *mutwallis* failed to obtain a site for the building of a mosque and so they appointed Chittu again as *mutwalli* of the *wakf* in the hope that by his influence a site might be secured. When Chittu came into the possession of the *wakf* property he apparently changed his mind and began to deal with the property as his own. He made transfers and leases and gifted part of the house to his wife. Thereon the other *mutwallis* removed him from the *mutwalli*ship, and he accepted his dismissal on 3rd June 1909. In November 1911 he died and his legal heirs took possession of a portion of the *wakf* property. The *mutwallis* then instituted the present suit against the heirs for a declaration that the property being *wakf* the defendants had no right to any portion of it. *Held* that the second *wakfnama* followed by possession being given to the *mutwallis* created a valid and binding *wakf* in the life time of Chittu which could not be invalidated by Chittu's subsequent acts. *Held also* that on a proper construction of both the *wakfnamas* it was not a condition of the dedication that a mosque should be built, the house itself having been constituted as a *wakf* property in the *wakf*'s lifetime and having been used as a house of prayer by the followers of the sect ever since. It could not therefore be said that the *wakf* never came into existence or that it was a contingent one dependent on the fulfilment of the condition of building a mosque. *Left further* that according to Mahomedan Law any place which is dedicated for the purposes of prayer may validly be treated as a mosque and it is not necessary that the building should have a minaret. *Held lastly* that the fact that Chittu in both *wakfnamas* expressed a wish that only the *Ahl-i-Quran* should perform their prayers in the house could not invalidate the *wakf* which was made according to the rules of Mahomedan Law, and the house must be treated as having been the property of God. Where a *wakf* has been validly made exclusively for the use of a particular sect the *wakf* is good and the condition attached to it is valid. *Ali I. Khan v. Ali I. Khan* (I L R 12 All 424 (501)) *F P Far Edge C J*, referred to. *Alida Sultan v. Akrab Ali*, (I L R 35 Cal 294) *Fazlul Karim v. The Adalat-e-Circular of Calcutta* (I L R 16 Cal 42) *Kulshrestha v. Ram Ali Khan v. Shalimar*, *Mushtaq Hussain v. (30 Ind an Cal 715)* and *Kutayyaz v. Mahomed Farukhan* (15 Ind an Cases 195) distinguished. *MATTA BAIKUN v. AMIR KHAN* I L R 1 Lah. 317

MAHOMEDAN LAW—WAKF—cont'd

24 ——— Sanction to sell—*Jurisdiction*
—*Direct* On an application made by the *Mutawallis* to a *wakf* for sanction to sell *wakf* property *Held*, that there being no statute authorising such an application such sanction could only be obtained by means of a suit *In re* *HALIMA KHATUN*

I. L. R. 37 Cal. 870

25 ——— *Muslims' Wakf Validating Act (VI of 1913)*—Provision for support and maintenance of family how far validates *wakf*
—If *wakf* property be mortgaged at the time of dedication whether the *wakf* valid—Whether delivery of possession essential—Sells in death illness—*Wakf* off etc what share of the property—Death illness, conditions of—Question when one of fact only and when of law and fact In a *wakf* although provision is made for the maintenance and support of the family children and descendants of the settlor, if the ultimate benefit is reserved for the poor and for other purposes recognized by the Mahomedan law as religious pious or charitable purposes of a permanent character then tested in the light of the provisions of the Muslim *wakf* Validating Act, no valid objection can be taken to the legality of such a *wakf* The circumstance that the property dedicated was under a mortgage at the time of creation of the endowment and that provision was made in the *wakf* for the discharge thereof does not render the endowment invalid under the Mahomedan Law According to the Calcutta High Court, a valid *wakf* is created by declaration of endowment by the owner, and delivery of possession is not essential Where the settlor had appointed himself as the first *mutawalli* no formal delivery of possession from himself was a prerequisite to the validity of the *wakf* and even if transmutation of possession was necessary no formal delivery was essential A Muslim who is in *Mars ul maut* or death illness cannot make a valid disposition of more than one third of his property after payment of funeral expenses and debts and if he purports to make a *wakf* in such illness, unless his heirs assent the *wakf* will affect only one third of his estate and will be invalid in respect of the excess notwithstanding that possession of the entire property dedicated has been delivered to the person nominated *mutawalli* In order to establish the existence of death illness there must be at least three conditions with regard to the illness which has caused death (a) proximate danger of death so that there is a preponderance of apprehension of death (b) there must be some degree of subjective apprehension of death in the mind of the sick person and (c) there must be some external and/or such as inability to attend to ordinary vocations Whether or not a particular illness constitutes *Mars ul maut* is primarily a question of fact, but may sometimes be a mixed question of law and fact, for instance where the question arises whether the facts found as to the physical condition of the deceased at the date of the execution of the deed constitute the essential elements of *Mars ul maut* as formulated by Mahomedan jurists *Bibi JEWTRA KHATUN v MOHAMMED FAKIRULLA*

26 C W N 749

MAHOMEDAN LAW—WIDOW

See MAHOMEDAN LAW—DOWER

—Bhag property—widows power of alienation—

See WASTE. I. L. R. 44 Bom. 727

MAHOMEDAN LAW—WIDOW—cont'd

Claim to dower—Rights of widow in possession in lieu of dower—Proof of consent of husband or heirs not necessary A Mahomedan widow to whom dower is due who enters into possession of her husband's property on his death is entitled to hold the estate against the other heirs until her claim to dower is satisfied, subject to her liability to account for the profits which she may receive while so in possession It is not necessary for her to show that the deceased husband or his heirs consented to her getting into possession *Amamat un nissa v Bashir un nissa* I. L. R. 17 All 77 dissented from *Musammal Bibee Bachun v Sheikh Hamid Hossein* 14 Moo. I. A. 377, *Ameer un nissa v Moorad-un nissa* 6 Moo. I. A. 211 and *Amam Perjum v Muhammad Karim-ullah*, I. L. R. 16 All 273, referred to *RAMEAN ALI KHAN ASGHARI BILGAM* (1910)

I. L. R. 32 All 563

Dower—Right of widow to remain in possession of property of her husband—Such right heritable The right of a Mahomedan widow who has entered into possession of her husband's property peacefully and without fraud in lieu of her dower debt, is a heritable right and her heirs are entitled to remain in possession until the debt is satisfied. *Aziz ul lah Khan v Ahmad Ali Khan*, I. L. R. 7 All 353, followed. *Amamat un nissa v Bashir un nissa* I. L. R. 17 All 77, doubted *Musammal Bibee Bachun v Sheikh Hamid Hossein*, 14 Moo. I. A. 377, *Mahomed Usaid ood lah Khan v Musammal Ghoshan Beeber*, 1 Agr 150 *Musammal Kummur-ool nissa Begum v Mahomed Hussain*, 1 Agr 257, *Musammal Bahad un nissa v Musammal Shubratun* 6 B. L. R. 34 *Ahmad Hossein v Musammal Akhderja*, 10 W. R. C. R. 363 *Sayed Bazyet Hossein v Dooli Chand*, L. R. 5 I. A. 211, *Ali Muhammad Khan v Aziz ul lah Khan*, I. L. R. 6 All 50, *Ajuba Begum v Na'ir Ahmad*, All Weekly Notes (1890) 115, *Hadi Ali v Akbar Ali*, I. L. R. 20 All 262, and *Mu'ajjar Ali Khan v Farbuti*, I. L. R. 29 All 610, referred to *ALI BAKSH v ALLAHAD KHAN* (1910)

I. L. R. 32 All 551.

In possession of husband's property in lieu of dower—Rights of widow—Transfer by widow—What acquired by transferee—Limitation—Act No. 1A of 1908 (Indian Limitation Act), s. 1, art 151 Where a Mahomedan widow is in possession of property belonging to her deceased husband in lieu of dower, it is competent to her to sell it without necessarily selling her right to receive her dower Such a transfer conveys to the transferee the right to remain in possession during the widow's life time or until the widow's dower, or the proportionate part thereof corresponding to the property transferred, is satisfied *Mohammad Hussain v Bashir un nissa* 15 A. L. J., 1161, distinguished. *Musammal Kummur-ool nissa Begum v Mahomed Hussain* N. W. P., II C. Rep., 1366, 257, and *Ali Baksh v Allahdad Khan*, I. L. R. 32 All. 551, referred to. *ABDULLA v SHAMS UL HAQ*

I. L. R. 43 All 127

share taken by as sole heir—Where a Mahomedan dies leaving a widow as his sole heir the widow will take one fourth as her share and the remaining 3/4th by Return The surplus 1/4th does not sequester to the Government

I. L. R. 44 Bom 949

MAHOMEDAN LAW—WILL.

See PROBATE 15 C W N 185

See WILL I L R 43 Bom 641

Request to an heir—Effect of—

See PROVINCIAL INSOLVENCY ACT 1907
s 16 I L R 42 All 593

1. — Probate—Will, admissibility of, in evidence, without probate—Probate and Administration Act (V of 1881) s 4—Succession Act (X of 1865), s 187—Hindu Wills Act (XXI of 1870) s 2, here is no provision of law rendering it obligatory, in the case of a Mahomedan will to take out probate. After due proof, a Mahomedan will is admissible in evidence, notwithstanding that grant of probate has not been obtained. *Fatma v Shaik Essa* I L R 7 Bom. 266, not followed. *Shaik Moosa v Shaik Essa*, I L R 8 Bom 241, followed. *Kacrodmonny Dasse v Durgamony Dasse*, I L P 4 Cal 455. *Administrators General of Bengal v Premial Mullick*, I L R 22 Cal 783, *Sarat Chandra Banerjee v Bhupendra Nath Dasu*, I L R 25 Cal 103. *Bhagwanang Bhargava v Richardas Harychandras*, I L R 6 Bom 73, and *Surbomungola Dabee v Mohendranath Nath* I L R 4 Cal 503 referred to. *SAIKHAT ABDUL MAHOMED (ISHAK 1910)* I L R 37 Cal 839

2. — Legacy—Limitation Act (XI of 1887) Act 123—Suit to recover legacy—Legacy not assented to by executor—Probate and Administration Act (V of 1881) s 112—Shahs—Wakf—Request for Gadi ul khum feast—Fatiha dinners—Valid bequest—Cypres Article 123 of the Second Schedule of the Limitation Act, 1877, applies to a suit where the substantial claim is to recover a legacy, even though not assented to by the executor and whether or not the suit involves the administration of the whole estate. A Shah Mahomedan directed his executors by his will to spend a portion of the income of his property upon the following charitable or religious objects: (i) The Gadi ul khum feast at Mecca, (ii) The Cadi feast at Rehmanpura in Surat and (iii) A Fatiha dinner on the testator's and his wife's account. The Cadi feasts were to celebrate the appointment of Ali as successor of the Prophet. Held that the first two bequests were valid, but the validity of the third bequest was doubtful. *Kaleelool Sahib v Askereddin Sahib* I L P 18 Mad 201. *Fozala Bibi v Zynul Ahdin* 6 Bom L R 1038 and *Dina Jan v Asib Hussain* I L P 31 All 156 followed. Where the testator has indicated a general charitable intention in the bequest made by him and if these bequests fail, the Court can devote the property to religious or charitable purposes according to the cypres doctrine. *SAIKHAT ABDUL HADEN v BAKHARU* (1911) I L R 26 Bom. 111

3. — Bhagdari property—Will in favour of widow and daughter—Suit by a residuary heir of the testator for a division on that the will was invalid—Bhagdari custom—Testamentary capacity of the owner—Rule of Mahomedan Law to be applied—Validity of the will. A Mahomedan testator made a will by which he purported to dispose of his entire property including Bhagdari property in favour of his widow and daughter. The plaintiff who was the residuary heir of the testator never converted to the form of the will. He therefore, sued for a declaration that the will was invalid under Mahomedan Law so far as the Bhay property was concerned and that he was entitled to succeed to it after the death of

MAHOMEDAN LAW—WILL—contd

the widow under the Bhagdari custom. The question being raised as to what was the rule which regulated the testator's power to make the will. Held, that the rule of Mahomedan Law was the only law which could be applied and according to it the will was invalid. The plaintiff was, therefore, the presumptive reversioner under the Bhagdari custom. *AMRAT AHMAL v BAI BIBI* (1916) I L R 41 Bom 377

3(a) — Mother as de facto Guardian.—If competent to alterate property of infant children.—In case of infant whose property is administered.—Suit for recovery of possession within twelve years from date of sale or three years from attainment of majority.—Limitation—Limitation Act (IX of 1907) s 4, Art 44. A Mahomedan died leaving his widow and infant children. He had debts and to satisfy the decrees obtained by one of the creditors against some of the heirs the widow acting in her own behalf and on behalf of her minor children sold a certain property and made over delivery of possession. The other creditors took no steps to enforce their dues by suits. The children on attaining majority sued jointly with the widow to recover possession of the property on declaration of title. Held, that as laid down by the Judicial Committee of the Privy Council in *Inam Bhandi v Mutsuddi* L P 45 Cal 73 s c I L R 45 Cal 378 23 C W N 50 (1916) a mother has not power under the Mahomedan law to alienate or charge immovable property as de facto guardian of her infant children. If such an alienation is made it is not necessary for the infants to have it set aside within three years after attainment of majority under Art 41 of the schedule to the Limitation Act, because the alienation must be deemed to have been effected not by a guardian but by a wholly unauthorised person. The infant whose property has thus been alienated is consequently entitled to institute a suit for recovery of possession within twelve years from the date of sale or within three years from the attainment of majority whichever may be the later date. That the decree for possession in favour of the plaintiffs should be conditional on repayment of a proportionate share of the ancestral debts which were payable out of the assets left by the original debtor and each heir, with the exception of the widow who was competent to sell her own share and could not subsequently ignore her act, was liable to satisfy the debt to the extent of the assets in his share. That the suit must fail so far as the Plaintiff who attained majority more than three years before suit the sale having taken place fourteen years before. *LALOO HARIKAR v JAGAT CHANDRA BABA*

25 C. W. N. 258

4. — Requests to heirs and to strangers—Civil Procedure Code (1908) O XXII r 4—Legal representatives—Statement of suit. In giving effect to the will of a Mahomedan which contains bequests to heirs and also to strangers the principle to be followed is that the bequests to the heirs will be invalid unless in each case they are assented to by the other heirs. But the bequests to the strangers will be valid to the extent of one third of the testator's property. Held also that an application to bring upon the record as representative of a deceased defendant a person who is not in fact such representative will be of

MAINTENANCE—contd

charge of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 16 (d)

I. L. R. 40 Bom. 337

decree for, against a soldier—

See ARMY ACT (44 & 45 Vic c 58), ss 145, 190 I. L. R. 43 Bom. 368

future, including allowances, right

to—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 60 (7) I. L. R. 40 Mad. 302

Marumakkathayam, law of—

See MALABAR LAW

I. L. R. 36 Mad. 593

of child—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 488

I. L. R. 39 Mad. 957

of daughters—

See WILL I. L. R. 38 Calc. 327

of junior members—

See HINDU LAW—MAINTENANCE, I. L. R. 39 Mad. 396

of members other than the senior male in a tarwad—

See MALABAR LAW

I. L. R. 39 Mad. 317

on gift by widow to daughter—

See HINDU LAW—REVERSIONER,

I. L. R. 44 Bom. 255

right to—

See MALABAR LAW I. L. R. 38 Mad. 79

right to get, from husband's estate—

See HINDU LAW—MAINTENANCE

I. L. R. 38 Mad. 153

separate—

See ALIYASANTANA LAW

I. L. R. 38 Mad. 203

separate living member, when entitled to—

See MALABAR LAW.

I. L. R. 36 Mad. 591

unit for—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 16 (3), I. L. R. 40 Bom. 337

See PROVINCIAL SMALL CAUSE COURTS (ACT IX OF 1887), SCH II, ART 38

I. L. R. 40 All. 52

1. ——— Hindu widow—Hindu Law—Maintenance allowed by will of husband to wife—Unchastity of wife after husband's death—Maintenance not affected—Unchastity—Starving maintenance A Hindu widow was entitled to maintenance at the rate of Rs. 24 a year under her husband's will. After the husband's death, the widow led for some time an unchaste life and gave birth to a child; but since then she remained chaste. She sued to recover maintenance allowed to her under her husband's will. It was contended in reply that the plaintiff, on account of the unchaste life which she had led for some time after her hus-

MAINTENANCE—contd

band's death, had forfeited her right even to bare or starving maintenance. Held, negating the contentions, that though the annuity was granted by the will as "maintenance" that word could not be understood as imposing any condition or restriction so as to cut down or extinguish the right to Rs. 24 a year given by the will. The rule that the will of a Hindu must be construed with due regard to Hindu habits and notions applies only where there is ambiguity. Caution must be used in applying that rule and it must be adopted only where a suggested construction of doubtful language leads to manifest absurdity or hardship. The general rule to be gathered from the texts is that a Hindu wife cannot be absolutely abandoned by her husband. If she is living an unchaste life, he is bound to keep her in the house under restraint and provide her with food and raiment just sufficient to support life, she is not entitled to any other right. If, however, she repents, returns to purity and performs expiatory rights, she becomes entitled to all conjugal and social rights, unless her adultery was with a man of a lower caste, in which case, after expiation, she can claim no more than bare maintenance and residence. *Honamma v. Timannabhat*, I. L. R. 1 Bom. 559, *Valu v. Ganga*, I. L. R. 7 Bom. 84, and *Yashu Shambhog v. Manamma*, I. L. R. 9 Bom. 193, discussed. *PANXIE v. MARADEVI* (1909) I. L. R. 34 Bom. 278

2. ——— Illegitimate son—Right of off spring of illegitimate son of a married woman to maintenance from the joint family property of the survivors of the putative father—Criminal intercourse effect of, on right to maintenance. The offspring of the intercourse of a man with his concubine who was a married woman is entitled to maintenance against the surviving members of the joint Hindu family to which the father belonged and who have taken his share by survivorship. *Cheruturaya Ruu Mardun Syn v. Sohul Parhulad Syn*, 7 Moo. I A. 18, followed, and *Muthuswamy Jagaveera Yettappa Naicker v. Venkataswara Yellaya*, 12 Moo. I A. 203, followed. There is no distinction between the right of the illegitimate son of an unmarried woman to maintenance out of the estate of the putative father and that of the offspring of an adulterous intercourse. *Venkateshella Chetty v. Parutham*, 8 Mad. H. C. 134, 143, followed. *Virarammuthudayan v. Singaravelu*, I. L. R. 1 Mad. 306, followed. *Kuppa v. Singaravelu*, I. L. R. 8 Mad. 325, followed. *Rahi v. Govinda Valad Teja*, I. L. R. 1 Bom. 97, followed. The offspring of a criminal intercourse should not be deprived of maintenance on the ground of the criminal origin of its being. *Velarayana Mudaliar v. Vedammal*, I. L. R. 27 Mad. 951, distinguished. *SUBRAMANIAM MCDALI v. VELU* (1910) I. L. R. 34 Mad. 86

3. ——— Future maintenance—Widow's right to transferable property—Right not one falling within s. 6, Transfer of Property Act—Validity of transaction not governed conclusively by Act, Civil Procedure Code, s. 226—Contract Act (IX of 1872), s. 16—Undue Influence A right to future maintenance is not an interest in property restricted in its enjoyment to the owner personally within the meaning of paragraph (d) of s. 6 of the Transfer of Property Act neither is it property within the enabling words of s. 6 of that Act. The fact that the transfer of such an interest is not recognised by

MAINTENANCE—contd

the Transfer of Property Act is not conclusive on the question of its validity. Where the amount payable is subsequently fixed by agreement or by decree a transfer of such an interest may be valid. Urgent need of money on the part of a borrower does not of itself place the lender in a position to dominate his will within s. 16 of the Contract Act. Nor on the other hand will the fact that the borrower acted under a vice preclude her asking for relief on the ground of an undue influence. Where the executant of a document was a poor widow who entered into a contract with a money lender to enable her to establish her right to maintenance. *Held* that under sub s. 3 of s. 10 of the Contract Act the burden is on the plaintiff to prove that the contract was not induced by undue influence. **RAME ANANTHURI NACHIAH v SWAMYKATHA CHETILAR** (1910)

I L R 34 Mad 7

4.—Attachment of maintenance allowance—Maintenance to a person for life time and to her descendant—Assignment of decree for maintenance—Recurring charge—Validity of assignment in respect of arrears or future maintenance—Transfer of Property Act (I of 1882) s. 6—Civil Procedure Code (Act I of 1908), s. 232, 266—Civil Procedure Code (Act I of 1908), O XLI, r. 16. Where a person is entitled to a monthly maintenance allowance under a deed the allowance can be attached by an execution creditor only after it has become due that is to say it cannot be attached prospectively before it has become due. *Kashobkure Debai v Grees Chunder Lahure, 6 W R Mys 61 Hari Das Acharya v Birela Kishore Acharya* I L R 27 Cal 35 *Harris v Brown, I L R 28 Cal 621* referred to. Where a claim has been merged in an actual judgment the right under the judgment is assignable and the nature of the chose in action is generally immaterial. *Conty v Faerie* I Peter 193 *Dugan v Mathers* 9 Georgia 519 *Charles v Hopkins, Iowa 329 77 Am Dec 148 Moore v Howell, 94 N C 265, Stewart v Lee 70 N H 131 46 At 31*, referred to. Future maintenance awarded by decree when falling due can be recovered by execution of that decree without further suit, and hence the decree holder in this case was entitled to recover in execution without further suit the allowance as it accrued due. *Ashutosh Bannerjee v Lakhmoyi Debty, I L R 19 Cal 131*, referred to. **ASAD ALI MOLLAH v HAIDAR ALI** (1910)

I L R 38 Cal 13

5.—Liability of estate of deceased person for arrears of maintenance accrued prior to death—Abatement of order for maintenance after death—Criminal Procedure Code (Act I of 1898), s. 489 (1) (3), (6). A claim for arrears of maintenance abates on the death of the person against whom an order under sub s. (1) of s. 488 of the Criminal Procedure Code has been made, and cannot be enforced thereafter against his estate. *Sembli*. Before a warrant is issued under sub s. (3), wilful neglect to comply with the order must be found, and for that purpose evidence has to be taken under sub s. (6) in the presence of the accused. **FAU ALI LAL BIRI** (1913)

I L R 41 Cal 88

6.—Provincial Small Cause Courts Act (IX of 1887), Art 41—Decree for maintenance against three persons, two of whom were made liable only in case of default by the third—Suit

MAINTENANCE—contd

to recover proportionate amount of payments made—*Suit cognizable by a Court of Small Causes*. A decree was passed against three brothers for payment of a maintenance allowance to the widow of a fourth brother deceased. It was, however, provided by the decree that one of the three, Ant Ram, should alone be primarily liable for payment of the allowance and the others only in case of default being made by Ant Ram. Ant Ram, having made certain payments sued to recover a proportionate part thereof from the other brothers. *Held*, that the suit was not one for contribution, but was a suit cognizable by a Court of Small Causes. **Maruti Anant v Maruti Maracore, I L R 39 Mad 219** and **Pimaseewami Pantulu v Narayana moorthy Pantulu, 14 Mad L J 430** followed. **Fatima Bibi v Hamida Bibi 13 A L J 452**, referred to. **ANT RAM v MITHAN LAL** (1917)

I L R 40 All 135

7.—Arrears of maintenance—Suit by a Hindu widow. The Courts dealing with claims for arrears of maintenance have a very large discretion to grant or withhold those arrears with special reference to the urgent need and necessities of the widow. As soon as the widow satisfies the Court that she was in want at the time at which she was entitled to maintenance provided that time is within the period of limitation the Court might in any given case award her arrears to that extent and that would be quite independent of any demand on her part. In other words while a demand is allowed to be *prima facie* evidence of need on the widow's part, it is not in a demand that the right to obtain arrears of maintenance is rooted. Nor indeed is any demand necessary. **KARNASAPPA v KALLAYA** (1918)

I L R 43 Bom. 88

8.—Maintenance secured by deed—Hindu Law—Uncertainty. Where in a suit by a Hindu against her deceased husband's brother for maintenance at the rate fixed by agreement it was found that the plaintiff had since lived an immoral life but reformed her ways at the time of the suit. *Held*, that she lost her right to the rate fixed by the deed but was entitled to a 'starving' allowance. **SATTYABRONA v KESAVA-CHARTA**

I L R 39 Mad 668

MAINTENANCE GRANT

See EXECUTION OF DECREE

I L R 40 Cal 623

See GRANT

I L R 37 Cal 674

See REVT

I L R 38 Cal 278

Villages granted revenue free in lieu of maintenance—Undertaking by grantor to pay revenue of grant villages if a charge on the Taluk or a covenant running with the land—Suit to declare revenue payable for grant villages a charge on the Taluk—Cause of action—Specific Relief Act (I of 1877) s. 42. In 1884 B, the Talukdar of certain villages granted to L, a junior member of the family, certain specific villages in lieu of maintenance and it was agreed between the grantor and the grantee that the Talukdar should pay the whole revenue, the grantee enjoying the villages given to him revenue free. In 1910 by an arbitration award the then Talukdar B was directed to give to his two uncles S and R certain villages for exclusive enjoyment subject to the

MAINTENANCE GRANT—contd

liability of each paying a certain specified share towards the payment of the Government revenue by K. The descendants of L, thereupon, apprehending that these and other alienations by the Talukdar may affect the latter's ability to pay the revenue due on account of the villages granted to L, sued K, S and R praying that the revenue payable on account of the villages granted to L be declared a charge upon the rest of the Taluka. *Held*—That under the arrangement of 1804, B undertook a personal liability to pay the revenue of the villages granted to L and it was not intended to charge the remainder of the taluk with such obligation. That in the absence of any allegation in the plaint that K had not ample property to carry out his undertaking there was no cause of action for the suit. That any transfers from the Talukdar took subject to the rights created by him. *SUNDERLAL v RAMJILAL*

24 C W. N 929

MAJORITY.

See MORTGAGE (MINOR)

I L R 38 Mad. 1071

— age of—

See MAJORITY ACT (IX OF 1875), s 3

I L R 35 All 150

— age of, for making a will—

See HINDU LAW—MINOR.

I L R 38 Mad. 166

— age of—for adopting—

See HINDU LAW—ADOPTION

I L R 43 Bom. 461

MAJORITY ACT (IX OF 1875)

See GUARDIANS AND WARD'S ACT (VIII OF 1900) ss 2, ETC

I L R 39 Mad. 608

See HINDU LAW—WILL

I L R. 44 Mad 446

— s 2—

See MAHOMEDAN LAW—DOWER

I L R. 41 Mad. 1026

— ss 2, 3—*Hindu Law—Majority—Testamentary capacity of Hindus* *Held*, that a Hindu domiciled in the United Provinces cannot execute a valid will until he has reached the age of majority as prescribed by the Indian Majority Act, 1875. *HARDWARE LAL v GOERI* (1911)

I L R 33 All. 525

— s 3—

See HINDU LAW—MINOR

I L R 36 Bom 622

I L R 33 Mad. 166

See PRYAL CODE (ACT XIV OF 1860), s 363.

I L R 37 Mad 567

— *Guardian and minor*—*Effect of appointment of Hindu widow as guardian of her minor sons*—*Sale of minor's property* A Hindu died leaving a widow and two minor sons. The widow was appointed in 1900 guardian of the two sons and in 1901 obtained sanction from the District Judge for the sale of half of the property of the minors. In 1906, the widow and the elder son who had then attained majority sold part of the property of the sons amounting to a somewhat less than half. Within three years of his coming

MAJORITY ACT (IX OF 1875)—contd

— s 3—contd.

of age the younger son sued for a declaration that the sale of 1900 and a mortgage executed in 1902 were not binding on his interest in the property purporting to be dealt with thereby. *Held* (i) that the appointment of the mother as guardian had the effect of prolonging the minority of both sons until they reached the age of twenty-one years, and (ii) that the sanction of the Judge given in 1891 could not validate a sale which was not made until 1900. *Gharibullah v Khalid Singh*, I L R 25 All 407, distinguished. *SHAMJI NATH SAHJI v LALJI CHAUDH* (1913)

I L R 35 All 150

— *Appointment of guardian to minor under 18*—*Release of guardian before minor attains 21* *Effect of* *Held* that when once a guardian of a minor has been properly constituted by the Court the minor cannot be deemed to have attained the age of majority until he has completed the age of 21 years even though the guardian is discharged before he attains that age. *Per Das, J* When an issue is raised as to minority an order appointing a guardian is no evidence of minority. *HARINAR PRASAD SINGH v BABU EDUL SINGH*

5 Pat L J 460

— *Hard*—*When attains majority in cases where guardian discharged* When a guardian of a minor has once been appointed the minor does not attain majority until he is 21, even though the certificate of guardianship is cancelled before then. *SHAIKH ABDUL RAHIM v MUSAMMAT BARISA*

6 Pat L J 273

"MAJUR

See INSURANCE I L R 36 Bom 484

MAKAN

See RES JUDICATA

I L R 37 Bom 224

MAKBUZA

See PRE EMPTION I L R 38 All 261

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MAD I CF 1900)

See CUSTOMARY LAW OF SOUTH KANARA I L R 47 And. 118

See MARUMAKATTAYAM LAW

I L R 37 Mad 648

— ss 3 and 5—*Tenant introduced by mortgagor after mortgage*—*Purchaser in execution of decree on mortgage*—*Right to improve etc against*—*Right of tenant to improvements not confined against lessor* The word "tenant" in s 3 of the Malabar Tenants Improvements Act (Madras Act I of 1900) includes also a lessee from a mortgagor after the creation of a mortgage in favour of a stranger. Hence, such a tenant is entitled under s 5 of the Act to the value of improvements effected by him even as against a purchaser in execution of the decree under a mortgage. s 5 of the Act does not confine the tenant's rights to improvements only as against his lessor. *KANARAM v SIBUTHIA* (1914)

I L R 38 Mad. 954

— ss 5, 6—

See EJECTMENT I L R 41 Mad. 441

See LESSOR AND LESSEE

I L R 42 Mad. 100

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900)—

—contd

—s. 5, 6—contd

Decree for ejectment—Value for improvements, ascertained and specified in the decree—Improvements effected subsequent to decree, not ascertained—Application for execution by ejectment, whether maintainable Where a landlord in Malabar obtained a decree for ejectment of his tenant on payment by him of an ascertained amount for compensation for value of improvements, applied for execution of the decree by ejectment of the tenant after depositing into Court the amount specified in the decree for value of improvements, *held* that the landlord was entitled to an order in execution for ejectment of the tenant from all the lands specified in the decree, even though the value of improvements, effected by the tenant on some of the lands, subsequent to the decree had not been ascertained under s. 6 (3) of the Malabar Compensation for Tenants' Improvements Act. **SANKARAN NAMBUDIPAD v SANKARAN NAIR (1921)** 1 L. R. 44 Mad. 989

—ss. 5, 6, 9 to 19—Contract to claim compensation according to custom, no special contract within the meaning of s. 19—Tenant can claim higher rates under Act in spite of contract before Act prescribing a lesser rate Where, under a contract entered into in 1872, the tenant has agreed to accept compensation for improvements according to local custom, such undertaking by the tenant is not a special contract within the meaning of s. 19 of Madras Act I of 1900 which will debar the tenant from claiming under s. 5 compensation as provided in s. 6 13. **Kerala Varma Valia Raja v Ramuni, 3 Mad. L. J. 51**, referred to **S. 19 of Act I of 1900** deals only with contracts limiting the right to make improvements and claim compensation. A mere contract regulating the rates of compensation whether before or after the 1st day of January 1886 is not touched by s. 19. Where there is such a contract, the tenant, if the contract rates are lower than the rates provided in the Act, can claim the latter rates under s. 5, and if the contract rates are higher, he can claim such rates notwithstanding s. 6 of the Act. **Kozhikot Sreemana Vikraman v Chundayil Ananta Patter (1910)** 1 L. R. 34 Mad. 61

—ss. 5 and 19—Compensation, rate of, for tenants' improvement—Compensation, amount of, methods of fixing—Contract made before 1st Jan. 1886—No express reference to tenants' right to make improvements—Contract less favourable to tenant than ss. 5 and 6 of the Act—Contract not binding—as ss. 5 and 6 applicable Where a contract, entered into between a landlord and a tenant in Malabar, before the 1st January 1886, regulated the rates of compensation claimable by the tenant for improvements, or provided for the methods of fixing the amount of compensation due to him but did not expressly refer to the tenants' right to make improvements. *Held* (by the Full Bench), that the contract is not binding on the tenant if it is less favourable to him than ss. 5 and 6 of the Malabar Compensation for Tenants' Improvements Act (I of 1900), and that the tenant is entitled to claim compensation according to the provisions of the Act. *Held*, also, that there is no inconsistency between the judgment in **Randupurayil Kunhi v Nerali Kunhi Kanna, 1 L. R. 33 Mad. 1**, and the judgments in **Kozhikot Sreemana**

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900)

—contd

—s. 5 and 19—contd

Vilramma v Madathil Ananta Patter, 1 L. R. 34 Mad. 61, and **Paru Amma v Mookorant, 22 Mad. L. J. 221** and that the two last mentioned cases were rightly decided. **Kochu Radia v Abdurrahman (1913)** 1 L. R. 35 Mad. 589

—ss. 5, 6, 9 to 18 and 19—Right to compensation—Contract to the contrary, made before 1886, effect of—Distinction between restriction of right to make improvements and of right to the value of improvements—Validity of each restriction Under the provisions of the Malabar Tenants' Improvements Act (Madras Act I of 1900), a tenant is entitled to the full value of his improvements according to the rates provided in ss. 9 to 13; s. 19 does not cut down his right under ss. 5 and 6 to the value of his improvements according to the rates prescribed in the Act even where a contract was entered into before 1st January 1886, limiting his right with respect to the amount of compensation claimable by him. Accordingly a restrictive provision in a document limiting the amount of compensation cannot be enforced. But contracts made prior to January 1886 limiting the right to make improvements are not affected by s. 19, and are valid. **Kozhikot Pudiya Kottai Sreemana Vilramma v Chundayil Madathil Ananta Patter 1 L. R. 34 Mad. 61**, followed. *Held*, on a construction of the following provision in a *kanom* deed of 1884, "If I make chaimayams (or buildings) thereon exceeding Rs. 25 in value I shall only remove and take them at the time of surrender and shall not demand the value of improvements therefor" that the meaning of the clause was not to restrict the *kanomdar* from building but to restrict his right to the amount of compensation if he built, to Rs. 25 if he is content to take it, regard being had to the absence of any right on the landlord to require the tenant to remove any building worth more than Rs. 25. **PER CURIAM** The provision for removing is merely a recognition of the right which a *kanomdar* has always possessed to remove any improvements made by him. **Angimall v Islami Sahib, 21 Mad. L. J. 891**, referred to **Paru Amma v Kumbikandam (1913)** 1 L. R. 36 Mad. 410

—s. 7—Stipulation in lease to receive compensation at ordinary rate does not exclude operation of the Act—Rate of compensation claimable is that prevailing when compensation is paid The terms of a lease executed before the passing of Madras Act I of 1887 provided that the tenant at the time of surrender should receive compensation for fruit trees at the customary rate. Before the surrender, Madras Act I of 1887 was passed and provided a rate of compensation for fruit trees. In a suit by the tenant to recover compensation under the lease. *Held*, that the stipulation aforesaid did not exclude the operation of the Act, there being no such special contract as is contemplated by s. 7 of the Act and that compensation must be paid at the rate provided by the Act. **Kerala Varma Valia v Ondan Ramuni (1892)** 1 L. R. 33 Mad. 218

—s. 19—

See REGISTRATION ACT, 1908, s. 90

1 L. R. 43 Mad. 65

Claim, subsequent to

Act—Contract before the Act, fixing rate of compensation

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MAD I OF 1900)—*contd*

s 19—*contd*

enforceability of Contracts entered into between a Malabar tenant and his landlord before the 1st January 1885, according to which compensation is payable at certain rates therein specified are valid and binding whether the rates are more or less favourable to either party than the rates prescribed by the Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1900), and when the question of the rate of compensation comes up for determination at a date after the introduction of the Act, it is not open to either party to the contract to elect to have the rates fixed according to the Act in preference to the rates mentioned in the contract *Kozhikot Sreemana Vikraman v Medathil Ananta Patter, I L R 34 Mad 61, Paru Amma v Kunkikandan, I L R 36 Mad 416, and Kochu Rabia v Abdurrahman, I L R 38 Mad 589, overruled RAYARAJA ATHOTI v KELAPPA KURUP (1916)*

I L R 40 Mad. 584

*Lease—Stipulation for payment of fee in respect of trees cut down. A stipulation in a Malabar lease for the payment of *kutikayam* (customary fee) to the landlord in respect of trees cut down is not necessarily contrary to the provisions of s 19 of the Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1900). It is a question of fact to be determined in each case whether the cutting down of trees is an improvement or not and whether the fee stipulated is reasonable or so unreasonable as to be prohibitive of the cutting down of trees at all. *Sembla*. A customary fee of eight annas per tree is not unreasonable. *Vasudevan Nambudripad v Vatta Chathu Achian, I L R 21 Mad 47*, considered. *RAJA OF COCHIN v KATTUVATTI NAIR (1916)* I L R 40 Mad. 603*

*Compensation for tenants' improvements—Contracts made after Act more favourable to tenant than the Act—*Contt ct, or Act enforceable—Value whether at the time of eviction or at date of contract payable* S 19 of the Malabar Compensation for Tenants' Improvements Act does not prevent the tenant from claiming compensation under a contract made after passing of the Act if it is more favourable to him than the Act. The value of improvements payable to a tenant is their value at the time of eviction. *Kerala Formah Lado Razi v Panunni (1913) 3 M I J, 51 (F R)* followed. *ANNAIAH AMMA v RAMAN NAIR (1919)**

I L R 43 Mad. 772

MALABAR LAW

See MAPPELLAS IN NORTH MALABAR

I L R 38 Mad 1952

See MARUMAKKATHAYAM LAW

I L R 34 Mad 387

I L R 35 Mad 648

See MORTGAGE I L R 37 Mad. 429

*Acquisition by manager of branch tarwad of the whole tarwad—Property acquired by *anandavan* to be deemed property of the tarwad in the absence of evidence to show self-acquisition. The rule of Hindu Law that if nothing appears in the case except that a member of a joint*

MALABAR LAW—*contd*

*family is in possession of property, the burden of proving self-acquisition lies on such person, applies to property in the possession of an *anand ravan* of a Malabar tarwad. Where such *anand ravan* is also the manager of a branch tarwad and was in possession of funds belonging to such branch, the presumption will be that such property belongs to the branch. *MARI VEETIL CHATHU NAIR v MARI VEETIL MULANPAREL SEKARA NAIR (1909)* I L R 33 Mad 250*

*Karamkari tenure in South Malabar—Alienation by tenure holder, effect of, even in the absence of clause for re-entry. A holder of land on Karamkari or Karammakari tenure in South Malabar has only a heritable or permanent right of cultivation but not a right of alienation, which event puts an end to the tenure; and the land not entitled to the reversion is entitled to possession thereupon even in the absence of an express provision for re-entry. Moore's Malabar Law and Custom, page 308, referred to. *Parameswari v Kuttappa Shandayi, I L R 26 Mad 157* and *Nairappa Singh v Kalyan Das, I L R 25 All 400*, distinguished. *Obiter*. A karamkari holder in North Malabar has no heritable right at all. *ACHUTHA MENON v SANKARA NAIR (1913)* I L R 36 Mad. 380*

*Want of harmony among some members—Separate living of one—When entitled to separate maintenance. A junior member of a Malabar tarwad leaving the tarwad house on the ground that he or she does not feel quite comfortable there, or is not able to live there in complete harmony with others so as to ensure happiness, is not entitled to separate maintenance if he or she was responsible for the discomfort complained of. When a junior member will be entitled to separate maintenance, considered. *KUTCHAI AMMA (1913)**

I L R 36 Mad. 591

*Maintenance—Wife living in her husband's house leaving tarwad house—Right of maintenance from her tarwad. According to Marumakkathayam law a wife living with her husband in her husband's house is entitled to maintenance from her tarwad in the absence of any waiver to claim the same as leaving the tarwad house to live with her husband, is a justifiable or proper purpose. *Mari wadi v Parakkal 23 Mad L J 399* followed. *Parathil v Karaman, I L R 6 Mad 341*, referred to. *Obiter*. The Marumakkathayam law of maintenance is the same as the *Alyanchar* law prevailing in South Canara. *VEETIL AMMA v GOPALAN (1913)**

I L R 36 Mad. 593

*Fee for self-acquisition descent of, to her own heirs and not to tarwad—Tarwad, meaning of. The self-acquisitions of a female member of a Marumakkathayam tarwad do not lapse on her death to her tarwad, but descend to her *tavarhi* which will be her issue if she has any and in the absence of the issue will be her mother and her descendants. *Tavarhi* defined. *Govindan Nair v Sankaran Nair I L R 32 Mad 351* distinguished. *Emmavayal v Appudurai Pillai I L R 31 Mad 337*, overruled. *KRISHNA v DAMODARAN (1917)**

I L R 38 Mad 48

Suit against managing member of tarwad—Tarwad property, trustee real for the maintenance

MALABAR LAW—contd

orce—Gift by husband to wife—Mention of children—Interest taken by wife, whether absolute—Right of inheritance—Construction of deed of gift. A member of a taravai has a right to sue the managing member of the taravai for his maintenance if maintenance is refused by such managing member, where the karnavan of the taravai is unable to maintain the member out of taravai property. It is immaterial whether the member of the taravai seeking maintenance, has private means sufficient to provide for him an adequate maintenance without necessity of recourse to the taravai property. *Putrasakuma property is held by the members of the taravai to which it belongs with the ordinary incidents of taravai property.* *Per ANDRA RAO, 1.*—Even apart from the fact whether there is sufficient property of the taravai to which a member of a taravai can look for maintenance, he has a right to demand an allowance in the nature of maintenance from the taravai property itself. Maintenance is not a mere subsistence allowance. It should be based on the value of the taravai property, the position of the members and not confined to what is just sufficient to satisfy the needs of the members. A member of a taravai is entitled to an allowance for maintenance both from the taravai and taravai properties. Where a deed of gift in favour of a woman is clearly expressed to be to her and her children, there is no warrant for construing it as conferring on the donee an absolute title to the property given where the donee is the wife of the donor and a member of a Marumakkattayam taravai. It makes no difference that the karnavan of the taravai joined in the gift. In estimating the amount of the income of the taravai property out of which maintenance is payable the interest payable upon debts binding on the taravai should be deducted but not interest on debts contracted after the period for which maintenance is claimed. *NAKU AMMA v. PACHAYA MANOY (1912).*

I L R 38 Mad 79

Male member, leaving taravai house to live with his wife—Rights of such member to separate maintenance—Menchidaru, claim for, whether on a higher footing than one for maintenance. A male member of a Malabar taravai, leaving the taravai house for the purpose of living with his wife, is entitled to separate maintenance from the taravai. A claim to menchidaru is on the same footing as a claim to maintenance. *GOVINDAN NAIK v. KUNJU NAIR (1919).*

I L R 42 Mad 656

Right of a member of a taravai to separate maintenance—Female member marrying under Malabar Marriage Act (IV of 1896)—Act whether bar to her claim for maintenance from taravai. The right of every member of a Malabar taravai to be maintained out of the taravai property is based on his or her right as a co-proprietor in the same and a female member of the taravai is not deprived of such right by reason of her marriage under the provisions of the Malabar Marriage Act (IV of 1896). *AMMANI AMMA v. IADMANABHA MENON (1914).*

I L R 41 Mad 1075

Claim by an estraydraven for expenses of maintenance—for himself and his wife, maintainability of. An estraydraven of a Malabar taravai is not entitled to claim maintenance from his taravai for his wife, who belongs to another taravai, and much less is he entitled to claim for her any membership (pocket money for

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meeting expenses other than maintenance). *Torvath v. Karavan, 1 I L R 6 Mad 311* referred to and explained. An estraydraven is entitled to a decree from his taravai for arrears of his own children, which in law stands on the same footing as arrears of maintenance. *Kusumam v. Avasli Katti 41, 1 I L R 7 Mad 213, 10 Mys Kowli Fdm Kulu v. Jalsahai Nairgar Ammal, 1 M W N 379, and Govindan Nair v. Kunju Nair, 35 M L J 665, followed.* *RAYAN v. ACTIAN v. THAKKUNNI (1919).*

I L R 42 Mad 789

Namti d. Hion—No liability of sons to pay their father's debts. A Namtudu Hion differs in many respects from an ordinary joint Hindu family on account of the impartibility of its property and its close resemblance to a heir taravai. The rule of Hindu Law which imposes the duty on a son to pay his father's personal debts neither illegal nor immoral, is not applicable to Namtuds and the mere fact that there are no other members in the Hion besides the sons and grandsons of the Namtudu debtor, cannot affect the principle. *Adakandan v. Madhavan, 1 L P 10 Mad 9, and Govinda v. Arunhan, 1 L R 15 Mad 333, followed.* *Kushichan v. Lydia Arundhan (1912), Mad W N 346, considered.* *Munayya v. Zemindar of Sripur, 1 L R 6 Mad 1 distinguished.* *KUNJU KUTTI AMMAN v. MALAIRATU (1915).*

I L R 38 Mad 827

Partners—Taravai—Division by taravai—Right of minor members to upset partition—Division per stirpes and not per capita, whether sufficient ground—Authority in favour of division per stirpes or per capita, preference of Members of a Malabar taravai, who were minors when a partition was made with the consent of all the adult members at the time, cannot upset the partition on the ground that the division was per stirpes, &c., by taravai and not per capita. *Sulaiman v. Dnyanamma, 32 M L J 137 and 10 Mys Kowli Chiruderi v. Veluchakal Taravai Karavams, 31 M L J 79, referred to.* *KARAIKUTTI v. ACHUTHAKUTTI NAIR (1918).*

I L R 42 Mad 292

Trade carried on by karnavan of a Mappilla taravai—Debts incurred by the karnavan in the trade, whether binding on other members. Trade is not one of the ordinary pursuits of a Malabar taravai and carrying on trade is not within the ordinary scope of authority of a Malabar karnavan, hence in the absence of evidence that a trade carried on by a karnavan has been the trade of the taravai as a whole or that the members of the taravai or at least the adult members thereof consented to the trade being carried on by the karnavan, the other members of the taravai are not bound by the liabilities incurred by the karnavan in connection with the trade. This rule applies even in the case of a Mappilla taravai where all the male members habitually follow trade as the ordinary avocation. *ABDUREHMAN KUTTI HAJI v. HUSSAIN KUNBI HAJI (1914).*

I L R 42 Mad 761

On—Presumption—Incidents of taravai property—Right of management in the senior male—Maintenance of other members—Right to partition—Alienation of member's share—Its attachment and sale—Execution. When properties are given by a person to his wife and children

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or children alone following the Marumakkattayam law the presumption is that the donees take the property with the incidents of tarwad property and the right of management of the property as forming the subject of the gift is vested in the senior male member amongst the donees. Persons subsequently born into the tavazhi are entitled to be maintained but not to claim partition. Any one member of a tarward or a tavazhi cannot alienate his share nor can it be attached and sold in execution of a personal decree against any of the members. *Per Srinivasa Ayyangar, J.*—It is not the giving of the properties by a person to his wife and children that constitutes the tarward, but if properties are given to a wife and children following the Marumakkattayam law, they as tavazhi hold those properties with the incidents of tarward property and the right of management of the properties is vested in the senior male member of the tavazhi. *Kunhacha Ummi v Anni Mammu Hayer, I L R 16 Mad. 201, followed CHAKRA KANNAN v KUTHI POKKAR (1917) I L R 39 Mad 317*

Gift by a husband to his wife and her children by him—Donees, whether exclusively entitled as a branch tavazhi—Rights of her children by another husband—Rights of tarwad to such properties—Adverse possession by branch tavazhi against tarwad Under the Malabar Law, a separate branch of a tavazhi can be established consisting of a woman and her children by one husband to the exclusion of her children by another husband. *Datum of Sadasiva Ayyar, J., in Chakka Kannan v Kuthi Pokkar, I L R 39 Mad. 317, followed* Where a husband gives property to his wife and his children, there is no presumption that he intended to benefit her children by a former or subsequent husband, in the absence of any expression of such intention. Where the suit properties were acquired in the name of a woman and her son by a second husband out of the income of properties given by the latter to her and her children by him, and it appeared that they had dealt with the properties for forty years exclusively although there were members of the tarwad senior to them, and a suit was instituted by the karnavan of the whole tarwad to redeem the properties as belonging to the entire tarwad. *Held*, that the properties belonged in law to the branch of the tavazhi of the woman and her children by her second husband; and that the branch tavazhi had also acquired title to the suit properties by adverse possession against the tarwad, of which the plaintiffs was the present karnavan. *IMMACHI DEVI UMMI v RAMAN NAM (1919) I L R 42 Mad 309*

Karnavan—Junior members—Karnom—P. Sanyal, suit for—Suit by junior members, whether maintainable—Transfer of Property Act (21 of 1882) s. 51—Interest to redress Only under very special circumstances can junior members of a Malabar tarwad, following the Marumakkattayam law, maintain a suit for the redemption of a karnom created by their karnavan. *DOORI v MAKINOMA (1920) I L R 43 Mad 293*

Karnom—Lease Four years before expiry of a prior lease—No necessity of notice for such lease—Expiry of prior lease a new grant was karnom, effect of, on subsequent lease—Lease, whether valid or binding on

MALABAR LAW—contd

succeeding karnom. Where a karnom granted a lease to take effect on the expiry of a prior lease whose term was to expire four years later, and it was found that there was no necessity or justification for granting the subsequent lease four years prior to the expiry of the term of the prior lease. *Held*, that the subsequent lease was not valid or binding on the succeeding karnom, even though the prior lease expired when the grantor continued to be the karnom. *KUTHAM MAD v KUNHACHU (1910) I L R 43 Mad. 715*

Karnavan, removal of, from office—Senior anandavran—Exclusion from succession to office of karnavan—Power of Court to declare senior anandavran unfit to succeed to office—Grounds of exclusion A Court can for good cause remove a karnavan and declare the senior anandavran to be unfit to succeed to the vacant office. *Annan v Sankara (1891) I L R, 14 Mad, 78, followed Chidan Nambiar v. Kunhi Paman Nambiar (1918) I L R, 41 Mad 577 (P. B.), referred to datum of SADASIVA AYYAR J., in Chera Pangi Achaa v Unnalachan (1917) 30 M L J, 321, dissented from NEMANNA KUDRE v ACHU HENGU (1910) I L R 43 Mad 319*

Karnavan of tarwad making a gift—Gift not questioned even by the last surviving member of the tavazhi—No right of attaladakkam heirs to question gift An attaladakkam heir succeeds only to such of the properties of a tavazhi as have not been disposed of by its last members. He cannot therefore question an alienation made by the karnavan of the tavazhi, when the other members had not by any unequal vocal act called it into question during their lifetime. *THAYIAL MAMMAD v PURATHI MAMMAD (1921) I L R 44 Mad. 140*

Right of other members to remove such karnavan by suit, for misconduct *Held* by the Full Bench, that a person appointed as karnom of a tarwad by an agreement (karni) of the members of the tarwad is liable to be removed for gross misconduct by a suit at the instance of the other members. *Chera Pangi Achaa v Unnalachan, (1917) Mad W N 135, explained. CHIDAN NAMBIAH v KUTHI RAMAN NAMBIAH (1919) I L R 41 Mad. 577*

Karnom—Lease or mortgage—Deed of karnom, construction of—Attenuation of deed, necessity for—Transfer of Property Act, ss 63 and 68—Anomalous mortgage—Civil Procedure Code (V of 1908), O L, r 2—Non transfer of parties—Decree against parties in appeal A Karnom is an anomalous mortgage falling under s. 59 of the Transfer of Property Act, with certain well-known incidents attached to it under the customary law of Malabar, and a karnom deed, to be valid, must be attested as a mortgage-deed under s. 59 of the Act. The fact that the document is denoted as a taraga or royal grant or that the karnom amount is exceedingly insignificant does not alter the nature of the transaction. *KANNA KUTUR v RAVKARA VARMA RAJAH (1921) I L R. 44 Mad. 814*

Conversion of a member of Marumakkattayam tarwad to Muhammedanism—Right of convert to partition of tarwad property—Removal of Caste Disabilities Act (V of 1850), effect of A member of a Marumakkattayam tarwad does not, by reason of his conversion to

MALABAR LAW—*contd.*

Mohammedanism, acquire right to a partition of the tarwad property. *Observation of Wilson, J., in Matungani Gupta v Ram Pution Roy (1892), 1 I L R 19 Calc 289 (F B.) at 291, followed. Ke hickikan v Lydia Aruanden, (1912) M W A, 286, and Abraham v Abraham, (1863) 9 M I A, 195, explained. PATUNNMA v IYANAN NAMBIAR (1921) I L R 44 Mad (F B) 591*

Tarwad—Karnavan, becoming a *stani*—Succeeding karnavan incapable of business management—Karnavan ceasing management in *stani*—*Prevalence of an old deed by karnavan volition of Per SESHAGIRI AYYAR J. (NAPIER J. dubitante)*—An arrangement among the members of a Malabar tarwad by which a previous karnavan who had become a *stani* was given certain specific powers of management in respect of the tarwad, without any express power to obtain renewals of mortgages in favour of the tarwad, does not deprive the actual karnavan, however incapable he may be, of the power of renewing usufructuary mortgages in favour of the tarwad. The renewal being binding on the members of the tarwad, they cannot set up adverse possession but must submit to a redemption on by the mortgagor. The relation to the tarwad of a member who had become a *stani* discussed. *Chappan Nayyar v Asen Aulfi, 1 L R 12 Mad 219, doubted. KRISHNAM KIDAYU v RAMAN (1916) I L R 39 Mad 918*

Taraga Lease for reclamation and improvement by a stanomdar for twelve years with a clause for renewal for another twelve years, validity of A taraga lease in Malabar given for reclaiming and improving lands contained the following clause by the lessee—"I shall well improve this peramba and plant, etc. when the improvements have survived the period of decay and the coconut trees begin to bear their first fruits, I shall take a taraga after fixing the rent in accordance with the local custom on an inspection of Kulkapanoma." *Held* that the clause entitled the lessee to a renewal of the lease for twelve years from the expiry of the first term of twelve years at an enhanced rent to be determined in accordance with it. *Gopalan Nay v Kunhan Menon, (1907) I L R, 39 Mad, 309, distinguished. A stanomdar is entitled to grant a lease so as to last beyond his life time and to bind his successors provided the lease is beneficial to the estate. KUTTIYAL v UMMANNA (1921)*

I L R 44 Mad 509

MALABAR MARRIAGE ACT (IV OF 1896)

See MALABAR LAW I L R 41 Mad. 1075

MALABAR TENANTS IMPROVEMENTS ACT MAD I OF 1900

See MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT

MALE HEIRS

failure of—

See JAYAM I L R 46 Calc 683

MALE MEMBERS

rights of—

See CHATWALI TEXTURE I L R 46 Calc. 392

MALICE.

See LIBEL I L R 37 Calc 700

I L R 48 Calc 304

MALICE—*contd.*

See MARRIAGE, CONTRACT OF

I L R 39 Bom 682

absence of—

See SECRETARY OF STATE FOR INDIA

I L R 39 Mad 781

charge of—

See TRESPASS—SEARCH FOR ARMS

I L R 39 Calc 953

MALICIOUS ARREST

See LIMITATION I L P 40 Calc 898

MALICIOUS PROSECUTION

See BENGAL TENANCY ACT 1885, s. 53

1 Pat L J 149

See CRIMINAL PROCEDURE CODE, s. 107

I L R 41 All 503

I L R 43 All 402

See DAMAGES, SUIT FOR

14 C W N 86

See INJUNCTION I L R 42 Calc 550

statement of appeal regarding—

See CIVIL PROCEDURE CODE, O XLI, s. 22

I L R. 44 Mad. 828

1 *Cause of action—Complaint laid, but no Process issued* Where in a suit for malicious prosecution, it was averred that a complaint had been laid by the defendant before a Magistrate who thereupon sent the case to the police for enquiry and report, but there was no averment that the Magistrate had ever issued process—*Held*, that the plaintiff disclosed no cause of action. *Yates v The Queen, I L R 14 Q B D 648, followed, Clarke v Postan, 6 Q & W 423 and Ahmedbhai v Framji, Edulji, I L R 28 Bom 226, not followed, Thorpe v Priestnall, (1897) 1 Q B 159, referred to. DE ROZARIO v GULAB CHAND ANUNDJEE (1910) I L R 37 Calc 358*

2 *Complaint laid, but no process issued—Action on the case—Cause of action—Criminal Procedure Code (Act V of 1898) s. 202, 203—Defamation—Privilege* Where a complaint had been laid before a Magistrate by the defendant against the plaintiff for criminal breach of trust, and the Magistrate had referred the matter to the Police under s. 202 of the Criminal Procedure Code for enquiry and report and finally dismissed the complaint under s. 203 of the Criminal Procedure Code, without issuing process—*Held*, that the prosecution had not commenced and no suit for malicious prosecution was maintainable. *Fates v The Queen, I L R 14 Q B D 648 and Clarke v Postan, 6 Q & W 423, referred to. Nor would there be any action on the case analogous to malicious prosecution. Held*, further, that the complaint, even if defamatory, was absolutely privileged. *GOLAR JAN v BHOLANATH KUNTHAY (1911) I L R 38 Calc 889*

3 *What has to be proved—Onus on plaintiff—What amounts to malice—Recklessness in what amounts to malice. In a suit for damages for malicious prosecution it is not on the defendant to show that there was reasonable and probable cause but on the plaintiff to prove its absence. All that the defendant has to be satisfied about is that there is reasonable*

MALICIOUS PROSECUTION—contd

and probable cause for the charge, i.e. reasonable grounds for believing that the plaintiff is guilty of the offence and not reasonable grounds for coming to the conclusion that the Court would convict him of it. Carelessness on the part of the defendant in deciding whether there was reasonable and probable cause would not amount to malice, and both malice and absence of reasonable and probable cause have to be proved. If a man is reckless, whether the charge be true or false, that might amount to malice but not recklessness in coming to the conclusion that there was reasonable and probable cause. What would amount to reasonable and probable cause is a question of fact. *VIDYASABER V KRISHNA SWAMI IYER* (1913). I. L. R. 36 Mad. 375

3 (a) ————— Where complaint was made in the Police Court against the plaintiff for criminal breach of trust and the Magistrate referred the matter to the Police for enquiry under s. 202 of the Criminal Procedure Code and after such enquiry refused to issue process. *Held*, that a suit for malicious prosecution would not lie as unless process is issued the person complained against cannot be regarded as an accused person. *GOLAP JAN V BHOLA NATH KHETRY*

15 C. W. N. 917

4 ————— *Suit for damages for—Onus—Plaintiff, if must prove innocence—Judgment of discharge by Criminal Court, if conclusive—The plaintiff in a suit for damages for malicious prosecution has amongst other matters to prove his innocence if only to establish that the prosecution was commenced maliciously and without reasonable and probable cause. The finding in the criminal case acquitting or discharging him is not conclusive on the matter. Per Bowen, L. J., in *Albark v North Eastern Railway Co*, 11 Q. B. D. 410, 455 approved. *Gunesb Dutt Singh v Muggeram Chaudry*, 17 W. R. 283 Cora v Jervis [1909] App. Cas. 549, referred to. *MUTHU OSTA V HIRSMUL MARWARI* (1912). I. L. R. 37 C. W. N. 434*

5 ————— *Suit for, when lies—Criminal Procedure Code prevent on of offences, provision for—Malicious proceedings under such provisions, if sufficient basis for suit—Prosecution, meaning of—It is not that an action for damages for malicious prosecution lies only when the original proceeding was a "prosecution" in the sense in which the term is used in the Code of Criminal Procedure, it is not essential that the original proceeding should have been of such a nature as to render the person against whom it was taken liable to be arrested, fined or imprisoned. Where there has been a deliberate abuse of the process of the Criminal Court and salutary provisions framed by the Legislature to secure the prevention of offences have been utilised maliciously and without reasonable and probable cause for the harassment of the plaintiff who has thereby suffered damage in reputation and property, an action for malicious prosecution or malicious abuse of judicial process is maintainable. Per *WORMFIRE J.*—An action for maliciously putting the law in motion lies in all cases where there is concurrence of the following elements: (i) the commencement of continuance of a criminal proceeding, (ii) its legal causation by the present defendant against the plaintiff who was defend-*

MALICIOUS PROSECUTION—contd

ant in the original proceeding, (iii) its bona fide termination in favour of the present plaintiff, (iv) the absence of probable cause for such proceeding, (v) the presence of malice therein, (vi) damage conforming to legal standards resulting to the plaintiff. *Albark v N. E. Ry. Co*, 11 App. Cas. 247, *Cox v. English Scottish and Australian Bank* [1905] App. Cas. 168 referred to. Any enforcement of the criminal law through Courts of Justice concerning a matter which will subject the accused to prosecution without regard to the technical form in which the charge has been preferred and irrespective of the grade of the criminal offence, is a sufficient proceeding upon which an action for malicious prosecution may be based. *Else v. Smith*, 2 Chitty 304. 24 R. R. 39. *Isiah v. Webb* 3 Esp. 164, referred to. Per *BEACH CROFT J.*—If a person sets the criminal law in motion it is no defence for him to say that the law took a direction which he did not anticipate and did not desire. The responsibility of the person begins with the presenting of the complaint but it does not end there and is not limited to the prayer contained in it. *CROWDY v. L. O. PHELLY* (1912). 17 C. W. N. 554

6 ————— 'Prosecution' what amounts to—Magistrate sending only notice but not summons or warrant and dismissing complaint no prosecution—*Criminal Procedure Code (Act 1 of 1898), s. 209*. Where on receiving a complaint of an offence of defamation a Magistrate issued only a notice but not a summons or a warrant to the accused which notice simply informed him that a preliminary enquiry would be held at a certain time in the matter of the complaint preferred by the complainant and the complaint was dismissed under s. 202 Criminal Procedure Code after hearing counsel for both parties. *Held* that there was no prosecution of any offence by the complainant so as to give room for any suit for malicious prosecution. *Leharan v. Lalob Chand Anand* s. 1 I. L. R. 37 Cal. 353. *Golap Jan v. Pichanath Ahetry*, I. L. R. 38 Cal. 880 followed. Sending such notice and the hearing thereon are not authorized by the Criminal Procedure Code. Prosecution commences with the issue of process (summons or warrant) after the complaint has been entertained by the Magistrate and that the prior proceedings constitute at most an attempt by the complainant to prosecute the accused. *SUREK MURBAN SARKAR v. KATHAVELU MUDALI* (1915).

I. L. R. 37 Mad. 181

7 ————— *Suit for damages—Prosecution, what it means and when commences—Accused attending at judicial enquiry upon notice if may sue on failure of prosecution—The action for damages for malicious prosecution is not a creature of any statute. To determine whether such an action is the term "prosecution" should not be interpreted in the restricted sense in which it is used in the Code of Criminal Procedure. A proceeding maliciously taken against a person to compel him to furnish surety to keep the peace may be made the foundation of a suit for damages for malicious prosecution. A prosecution exists when a criminal charge is made before a judicial officer or tribunal, and any person who makes or is actively instrumental in the making or prosecuting of such a charge is deemed to prosecute it. If a person maliciously and without reasonable and probable cause sets the*

MALICIOUS PROSECUTION—contd

machinery of the criminal law in motion he is responsible for the consequences and cannot escape liability on the ground that the action taken by the Court was such as he did not intend or was erroneous in law. The prosecution commences as soon as the complaint is made to the Magistrate irrespective of the result of the prosecution or of the stage at which it may fall through. When no action at all has been taken against the plaintiff upon such a complaint the action would fail not because there was no prosecution commenced but because there was no damage done to the plaintiff. Where on a complaint being filed by the plaintiff against the defendant the Magistrate ordered an enquiry by a Subordinate Magistrate and the latter gave the plaintiff notice so that he might appear at the enquiry and be heard and the plaintiff did so and the complaint was in the end dismissed. *Held* that upon these facts the plaintiff had a cause of action for damages for malicious prosecution and would be entitled to get damages for loss which he may prove to have suffered in consequence. That it was not open to the defendant in such a suit to urge that the plaintiff need not have appeared. *Kandasa v Subramania* 13 Mad 11 J 370 and *Verma v Rana* 14, 15 I L R 37 Mad 181. *Insisted from Omerji v Omerji* 17 C W J 551 s c 17 C L J 105 followed. *Clarke v Post* 16 C L J 423 *Yates v Queen* 14 Q B D 615 *De Ryorio v Golapchand* 1 I L R 37 Cal 155 and *Golap Jai v Bhalanath* 13 C W J 917 s c 1 I L R 38 Cal 387 considered. *Ahmed Bhai v Framjee*, 1 I L R 28 Bom. 279 approved. *Bhikshu Pershad Narain Singh v Pothman Singh* (1914) 119 C W N 933

8 ————— *Prosecution by the police—Report made by a person to a village munsif of theft by another—Instituted on by police—Prosecution for theft instituted and conducted by police—Action for damages for malicious prosecution is maintainable—Whether maintainable—Suit for damages for malicious prosecution is maintainable by a person who was prosecuted by the police and acquitted against another who had made the report containing maliciously false information against the former to a village munsif as the result of which the police after investigation launched and conducted the prosecution even though the informant was not the prosecutor in the criminal case. *Vara s v R. S. v. M. Thapa P. H. v. I. R. 26 Mad 35*, disapproved from *Ganga Prasad v. Dhanraj* 1 I L R 19 All 525, referred to. *Periya Gounder v. Kuppas Gounder* (1919) 1 I L R 42 Mad 330*

9 ————— *Case of act on—Criminal proceedings against the plaintiff dismissed upon technical grounds—To support a suit for damages for malicious prosecution it is not necessary that the criminal proceedings instituted against the plaintiff should have been heard out to the end; it is sufficient if criminal proceedings have been initiated though they may have fallen through for technical reasons unconnected with the merits. *Malappa Gounder v. Kallappa Gounder* 1 I L R, 21 Mad 39 not followed. *Bhaskar Prasad v. R. S. v. P. H. v. Singh* 19 C W J 935 and *Ahmed Bhai v. Framjee* 1 I L R, 28 Bom. 279 referred to. A complaint as filed against the plaintiff in a Criminal Court*

MALICIOUS PROSECUTION—contd

and he was summoned to answer the charge, but the complaint was dismissed as the complainant did not deposit due money within the time fixed by the Court. The plaintiff filed this suit for damages for malicious prosecution. *Held* that the accused having been summoned to answer the charge there was a prosecution and the prosecution having failed the suit was maintainable. *Azmat Ali v. Qurban Ahmad*

I L R 42 All 305

10 ————— *Inst. act on of criminal proceedings—Reasonable and probable cause—Malice—Inference of Malice—Damages—One V had obtained on lease a piece of land from Government. Under an arrangement made with V plaintiff No 3 raised crop on the land. The crop was sold by plaintiff No 3 to plaintiff No 1. The defendant claimed to be a purchaser of the crop from V and began to reap it. On being obstructed by the plaintiffs the defendant filed a complaint against them for theft. They were convicted by the Magistrate but on appeal the conviction was set aside on the ground that the probabilities were strongly in favour of plaintiff No 3's assertion that under the arrangement he made with V he had a right to the crop. The plaintiffs thereupon sued the defendant for damages for malicious prosecution. *Held* that the plaintiffs were entitled to damages as on the facts of the case there was no reasonable and probable cause for instituting the prosecution, and malice could safely be inferred from the circumstances. *Jayvadan Shivram v. Churnilal Hambirmal* (1920)*

I L R 45 Bom 227

11 ————— *Right to sue for, and damages for, whether survives the person entitled to a—Probate and Administration Act (V of 1891), s 89—Evidence Act (I of 1872) s 23—Admission, made to Panchayat whether admissible—Where a person who had a right to sue for damages for malicious prosecution dies the right to sue does not survive to his legal representatives. The words 'or other personal injuries not causing the death of the party' in s 39 of the Probate and Administration Act, 1891, are *quodam generis* not only with 'assault' but also with 'defamation,' and include malicious prosecution. An admission made to a panchayat is admissible in evidence and is not excluded by s 23 of the Evidence Act 1872 but it is for the Court to decide what weight should be attached to such an admission. *Ponjab Singh v. Ramautar Singh*, 4 Pat L J 676*

MALIKANA

See BENGAL LAND REVENUE SETTLEMENT REGULATION 1822

2 Pat. L J 286

See CIVIL PROCEDURE CODE (1908) s 91, O XXVIII, R 5; O XXIX, R 1

I L R 37 All 423

See LIMITATION ACT (IX of 1908), Sch I, Art 132] I L R 35 All 185

I L R 41 All 259

See PRE-EMPTION, I L R 42 All 262

See SETTLEMENT, CONSTRUCTION OF

I L R 39 Cal 1

————— *Malikana or dastur payable to proprietors out of whose estate jayr carved—Mode of assessment—Amount of fixed or variable*

MALIKANA—contd.

—*Resumption of jagir by Government—Permanent settlement of specific mouzās—Malikana allowance if liable to alteration—Jagir Meherullah Khan was granted by Emperor Alamgir out of an estate belonging to the appellant's predecessors who thereupon became entitled to an allowance by way of compensation known as *dastur* or *malikana*. The East India Company on acquiring the D. wani made enquiries regarding the amount of the *malikana* due on account of this and other jagirs and by *parwanas* fixed the *malikana* due on this jagir at Rs 790 on 1st calculating it at 10 per cent. of the proceeds for the year 1781. Held, on a construction of the *parwanas* that what was fixed was the amount and not a percentage varying from year to year with the proceeds. That the Government on resuming the jagir became liable to pay this *malikana* but when subsequently it caused Mouzah Sahu one of the mouzās comprised in the jagir to be permanently settled it incurred no liability to pay an additional sum as *malikana* due in respect of the mouzah. That the fact that a specified sum of Rs 492 was entered as *malikana* in an account attached to the settlement did not show that the *malikana* as fixed previously was thereby altered but that it was merely one of the items to be taken into account in fixing the annual *jummas* to be paid by the person with whom the settlement was made. **PAKSHWAN SINGH v THE SECRETARY OF STATE FOR INDIA (1911)***

15 C W N 1029

—*Interest in immovable property—Money charge on immovable property—Limitation Act (XIV of 1859) s 12 (IX of 1871) Art 132, Sch. II—Right not exercised for more than 12 years before Act IX of 1871 came into operation—Right of barred Under Act XIV of 1859 *malikana* was an interest in immovable property and governed by Act XIV of 1859 s 12 and would be barred if there had been no enjoyment of the *malikana* for a period of 12 years. *Bhoolal Singh v Veemoo Dehoo 12 W R 495 Gobind Chander Roy Chowdhary v Ram Chander Chowdhary 10 W R 91 and Hereraund Shoo v Ozerun 9 W R 192*, followed. Where therefore the right to *malikana* was established by decree of Court in 1853 but the right was not enjoyed for more than 12 years before Act IX of 1871 came into force the right was extinguished under Act XIV of 1859 and could not be revived by any subsequent statute of limitation. *Chhagan Lal v Bapthai 1 L R 5 Bom 63 distinguished. MAHESWARI PRASAD SINGH v BAI NATH HAZARI (1913)**

19 C W N 410

—*When the *malikana* date of 10th old share of a certain villa used the proprietors and remaining *malikana* holders for recovery of arrears of their share it was held following the analogy of s. 149 A of the Bengal Tenancy Act 1885 that the plaintiffs were entitled to a decree giving them a charge on the land and that the suit was governed by the 12 years rule of limitation. **MARAJA SINGH KUMAR SINGH MAHARAJA CHANDRABHAI DEWAS NARAIN JHA***

8 Pat L J 33

MAMLATDAR

See CIVIL PROCEDURE CODE (ACT V OF 1908)—

ss 3 115 L R 37 Bom. 114

s 115 L R 44 Bom 595

O XXI s 89 1 L R 44 Bom 50

See CRIMINAL PROCEDURE CODE (ACT V OF 1908) s 130 (1) (c)

1 L R 39 Bom 310

See REVENUE JURISDICTION ACT (BOM ACT X OF 1863) ss 4(c) 5 AND 6

L L R 37 Bom 542

MAMLATDARS COURTS ACT (BOM ACT II OF 1908)

See BOMBAY MAMLATDARS' COURTS ACT

See LIMITATION ACT (IX OF 1908) ART 47

1 L R 45 Bom 1135

— ss 19 23 (1) (2)—*Code of Procedure (Act V of 1908) s 115—Provisionary decree of the Mamlatdar setting aside the suit—Application to the Collector—Provision—Non interference with legal and regular findings of fact Entry in Revenue Record. A Collector acting under s 23 of the Mamlatdars Courts Act (Bom Act II of 1908) is not authorized to interfere with the findings of fact of the mamlatdar in a provisional suit the findings being on their face legal and regular and arrived after a consideration of the evidence on record. The provisions of cl (2) of s 23 of the Act which empower the Collector to interfere by way of revision when he considers any proceeding final or order in a suit to be improper must be harmonized with the provision in cl (1) that there shall be no appeal from any order passed by a Mamlatdar. *Settle*. The word improper in cl (2) of s 23 of the Mamlatdars Courts Act (Bom Act II of 1908) has no different meaning from the word irregular occurring in the expression irregularity in s 115 of the Civil Procedure Code (Act V of 1908). The entry of a person's name as owner or occupier in the books of Revenue Authorities is not in itself conclusive evidence either of title or possession. *Fatma Khatun v. Sait v. Dargan Sahib 10 L R 11 187 187 and Bhagwan v. Bipin 1 L R 131 m 75* referred to. **KAMU RAM MANNING v. PAKSHWAN (1911)***

L L R 35 Bom 487

s 23

—*Provisionary suit—Collector's powers to revise—The powers can be exercised by Assistant Collector in charge of the district—Land Revenue Code (I. m. Act V of 1879) s 10. An Assistant Collector who is placed in charge of portions of a district under sect 10 of the Bombay Land Revenue Code (I. m. Act V of 1879) has the power to exercise all the powers conferred upon the Collector by section 23 of the Bombay Mamlatdars Courts Act (I. m. Act II of 1908). **KHYAVAT JAYRAM (1911)***

1 L R 26 Bom 123

—*Suit or application—Mamlatdar's order—Appeal—District Collector's order—Section 23 of the Mamlatdars Courts Act (I. m. Act II of 1908) (1) Collector or the District Collector's order in a suit in which the mamlatdar's order is set aside, has no jurisdiction to exercise the powers of an appeal.*

MALIK-O-JABIZ.

See HINDU LAW—WILL.

L L R 25 All 419

MAMLATDARS' COURTS ACT (BOM ACT II OF 1906)—contd

— s 28—contd

Court against any order passed by a Mamlatdar under the Mamlatdars Courts Act (Bom Act II of 1906) *HASAN v RASUL* (1913)

I L R 37 Bom. 595

— Possessory Suit—District Deputy Collector a authority to recover—Bombay General Clauses Act (Bom. Act I of 1904) s 3—The term Collector does not include District Deputy Collector—Land Revenue Code (Bom. Act V of 1879) s 19 The term Collector in s 23 of the Mamlatdars Courts Act (Bom Act II of 1906) does not include District Deputy Collector in view of the express definition of the term in s 3 of the Bombay General Clauses Act (Bom Act I of 1904) A District Deputy Collector has, therefore no authority to pass any order under the Mamlatdars Courts Act (Bom Act II of 1906) *Keshav v Jaram*, I L R 36 Bom 193 dissenting from *SOMU JANARDAN v ARJUN WALAD BARRU* (1915)

I L R 39 Bom 552

MANAGEMENT

See CHURCH I L R 19 Mad 1056

right of—

See CHURCH I L R 38 Mad 418

See MAHOMEDAN LAW ENDOWMENT

I L R 43 Cal 1085

scheme of—

See TRUST I L R 41 Cal 19

transfer of—

See TRUSTEES OF A TEMPLE

I L R 39 Mad 456

MANAGER Y

See HINDU LAW—JOINT FAMILY

See HINDU LAW—MANAGER

See HINDU LAW—MINOR,

I L R 34 Bom 72

See IDOL I L R 36 Bom 135

See MAHOMEDAN LAW—ENDOWMENT

I L R 36 Bom 303

alienation by—

See HINDU LAW—ALIENATION

I L R 35 Mad 177

in a joint Hindu family—

See LIMITATION ACT 1908 s 7 SCH I ART 44 I L R 38 Bom 94

Employment of workmen at a textile factory after prescribed hours—

See FACTORIES ACT (XII of 1911) s 79 AND 41 I L R 45 Bom 220

liability of—

See COSTS I L R 43 Cal 190

Liability of for mesne profits—

See HINDU LAW—JOINT FAMILY I L R 44 Bom 179

of a temple—

See HINDU LAW I L R 44 Bom 466

MANAGER—contd

payment by of on behalf of minor member of Hindu joint family—

See LIMITATION ACT (XV of 1877) s 20 I L R 37 Cal 461

suit for account against—

See LIMITATION ACT (XV of 1908) s 1 ART 6 AND 8 I L R 41 Bom 313

MANAGER AND DIRECTOR OF NEWSPAPER COMPANY

liability of

See (INTEREST OF COLIT

I L R 45 Cal 169

MANAGER UNDER COURT OF WARDS

See MAHOMEDAN LAW—PRE EMBITION

I L R 39 Cal 915

MANAGING AGENT

See MORTGAGE I L R 38 Cal 810

MANAGING MEMBER

See HINDU LAW—ADOPTION

I L R 44 Mad 656

See HINDU LAW—JOINT FAMILY

I L R 45 Cal 723

contract by—

See SPECIFIC RELIEF ACT (I of 1877) s 15 I L R 37 Mad 337

MANDADARI TEVURE

Nature of such tenure—Land held under it not transferable—Occupancy holding If land that land held under what is known in Gorakhpur chiefly as a mandadars tenure is nothing more than an occupancy holding and is not therefore transferable Such land cannot therefore be sold in execution of a decree upon a mortgage thereof *KEDAR NATH KARNADHAN v NARAYAN* (1911) I L R. 34 All 155

MANDAMUS

See MUNICIPAL ELECTRICITY

I L R 39 Cal 593

See PLADEFERSHIP EXAMINATION

I L R 40 Cal 568

See MADRAS CITY MUNICIPAL ACT (III of 1901) I L R 33 Mad 41

See UNIVERSITY LICENTURESHIP

I L R 41 Cal 518

Action on to—

See MUNICIPAL CORPORATION

I L R 40 Cal 836

Specie Re Relief Act (I of 1837) ss 45 46—Mandamus writ of of the Board of Revenue—Want of necessary party—Other legal remedy being a suitable whether the Court will interfere A mandamus will never be granted to enforce the general law of the land which may be enforced by action A having obtained a decree for recovery of possession of an estate against an infant under the Court of Wards and the Collector of the District representing that Court applied during the pendency of an appeal by the defendants to the High Court to the Members of the Board of Revenue

MANDAMUS—contd.

forming the Court of Wards that the estate might be released in his favour. This application having been rejected, A obtained a Rule from the Original Side of the High Court under s. 45 of the Specific Relief Act, calling upon the Members of the Board only to show cause why they should not forthwith release the estate. The Rule was not served upon the infant, whose interest would be affected if the Rule were made absolute. *Held*, that inasmuch as the petitioner had failed to comply with rule 483 of the Rules of the High Court, Original Side, by not serving the Rule upon the infant, and that inasmuch as he had an adequate legal remedy by way of execution of the decree obtained by him, the Rule was liable to be discharged, and the petitioner could not get any relief under s. 46 of the Act. *Held*, further, that unless the Court was satisfied that the doing of or forbearing from an act was consonant to right and justice, and such doing and forbearing was under any law for the time being in force clearly incumbent on the person against whom the order was sought, no *mandamus* ought to be granted, and that title to property would not be tried in *mandamus* proceedings and the writ would not issue when it was necessary to try or decide complicated or extended questions of fact. **KESHO PRASAD SINGH & THE BOARD OF REVENUE (1911)** I L R 38 Cal 553

MANDATORY INJUNCTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXXIX, r. 2

I L R 38 Bom 381

See FOOTINGS I L R 38 Cal 687

See INJUNCTION I L R 46 Cal 103

MANPAN

— dispute as to—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SCH II, s. 20

I L R 37 Bom 442

MANUFACTURE, SALE OR POSSESSION

See EXCISEABLE ARTICLES

I L R 39 Cal 1053

MANU KYAX.

— Book X, rr 5, 14—

See BURNES'S LAW

I L R 44 Cal 379

MAPPILLAS OF NORTH MALABAR

— Law applicable—*Question of fact—Custom, requisites of a valid—Judicial notice—Reasonableness or legality—Question of law—Custom derogating from the Mahomedan law—Madras Civil Courts Act (III of 1873) s. 16* The law applicable to the parties to a suit is the law which the parties as a matter of fact by their customs and usages have adopted, not the law which the Courts by a consideration of the historical circumstances relating to the parties or of their religious books or otherwise consider to be the law that they ought to have adopted. If that law being sufficiently certain and not opposed to public policy is of such a nature that the Courts can give effect to it, then the principles underlying s. 16 of the Madras Civil Courts Act require that they should give effect to it

MAPPILLAS OF NORTH MALABAR—contd

Jammya v Duran, I L R 23 All 10, *Muhammad Ismail Khan v Lala Sheomukh Rai*, 17 C W N. 97, and *Hirbac v Sonabas*, Per O C, 110, referred to. The question whether the particular parties are governed by the Marumakkattayam or the Mahomedan law, is one of fact. *George v. Davies*, [1911] 2 K B 445, *Assor v Pothamma*, I L R 22 Mad 494, and *Kunhimba Umma v. Kandy Moithin*, I L R 27 Mad 77 referred to. A custom to hold good in law must be not unreasonable and must apply to matters which the written law has left undetermined, and the majority at least of any given class of persons must look upon it as binding and it must be established by a series of well known, concordant, and on the whole, continuous instances. The question whether an alleged rule of conduct can be enforced at all or whether it is uncertain or opposed to public policy or unreasonable is one of law and may be considered irrespective of the question whether the custom actually exists. *Movli v Halliday* [1893] 1 Q B 125 followed. S. 16 of the Madras Civil Courts Act, discussed. **KUNHABEY KALANTHAR (1914)** I L R 38 Mad. 1052

MARFADARI RECEIPT

See ITNAB I L R 47 Cal 979

MARINE INSURANCE

See INSURANCE 16 C W N 891

I L R 33 Com 484

MARITIME NECESSARIES

See ARREST OF SHIP

I L R 42 Cal 85

MARK BY ILLITERATE EXECUTANT

See MARKS & C

MARKET

See I P LAND REVENUE ACT (III OF 1901), ss 66, 86

I L R 32 All 193

MARKET FRANCHISE

— Contract—Procuring breach of contract—Justification—Pickelling with intimidation and force, if actionable—Appellate Court, discretion of, in considering evidence. In Bengal, there appears to be no such thing as a market franchise or a right to hold a market, conferred by grant from the Crown, nor can such right be acquired by prescription. The right to hold a market is treated as incident to the ownership of land and a proprietor may set up a market in proximity to his neighbour's market without infringing the maxim *sic utere ut alienum non laedas*. The proprietor of the old market has no monopoly or privilege which is entitled to protection and no immunity from competition. He has no remedy at law merely because his profits are diminished. *Lakhot Das Addy v Durga Sundari Das*, I L R 17 Cal 458, *Nanda Kumar Sircar v. Emperor*, 11 C W N 1128, *Rex v. Marsden*, 3 Burrow 1312, and *Hammerton v. Earl of Lyons*, (1916) 1 A C 57, referred to. Where illegal means in the nature of intimidation and physical compulsion are employed by the agents of the owner of the new market to dissuade traders from attending the old market, the owner of the old market is entitled to a civil re-

MARRIAGE—contd

marriage contract entered into by
Mahomedans whether binding—

See MAHOMEDAN LAW

I L R. 1 Lah 597

Breach of Contract of—Procuring breach of—Parent or guardian procuring breach maliciously or by false representations made. An action is maintainable against a person for inducing a party to break a contract of marriage entered into by such party. A parent or guardian inducing a child or ward, to break such a contract is liable when such parent or guardian does so maliciously or by false representation. Although malice is not the gist of the action in such cases, it may, if alleged and proved, displace the protection or privilege which arises from the relation between the party procuring the breaking of the contract and the party breaking it. *IRVINE FANNY COLQUHOUN v FANNY SMITHER* (1900)

I L R 23 Mad 417

Restitution of conjugal Rights—Under the Mahomedan Law a wife's conversion from Islam to Christianity effects a complete dissolution of marriage with her Mahomedan husband. The fact of such conversion is therefore a bar to a suit by the husband for restitution. *AMIN BEG v SARHAN*

I L R 33 All 90

Contract to pay money to a mother for giving her daughter in marriage—Public policy—Hindu Law—Contract Act (IX of 1872) s 23. A contract whereby a guardian whether natural or appointed agrees to dispose of his ward in marriage for his own personal pecuniary gain is not enforceable in a Court of law. *Dhaddas Ishwar v Faj Chand Chagan* I L R 22 Pw 658. *Venkata Krishnaswami v Lakshmi Narayana* I L R 32 Mad 185. *Ram Chand Sen v Ananda Sen*, I L R 19 Cal 1048 (the opinion expressed by Garth C J) followed. *Jugguram Chakraborty v Panchcoore Chuckerbarty* 14 B L 151. *Panne Laloo Mowee Doss v Robin Mohon Singh*, 25 B R 32. *Belakshi Das v Sada Das*, I C L J 261, 265, distinguished. *Venkatath v Samina Shaw*, I L R 3 Mad 84, distinguished. The rule rests on the broad and general principle that where any one is in a fiduciary position with respect to a person and is bound to exercise skill, care and judgment for the benefit of that person, he must not take a reward from some other person for the exercise of his powers in some particular way, whether the course taken is in fact beneficial or the reverse to the person whose interest he is bound to protect. Where a Hindu mother sought to recover a sum of money which the defendant had agreed to pay to her in consideration of her consenting to give her daughter in marriage to his son—*It is* that the suit was not maintainable. The agreement being opposed to public policy. *HALLOO DAS A ARWALLA v MOHAMMAD FERRAD* (1911)

I L R 38 Cal 417

Legitimacy—Child taken into—Legitimacy of a child in favour of a putative mother, how may be established—Child of free bond on a ground of presumption, if may be attached to a second step-mother. When it is proved that two persons have lived together for many years as husband and wife, and their child has always been treated as legitimate—the presumption of law is that they were lawfully married. The presumption can be rebutted only by evidence to the contrary and is not

MARRIAGE—contd

displaced merely because the direct evidence of marriage which took place many years ago is not satisfactory. *Luce v Luce*—II L R 331, *Morris v Davies* 5 Cl & Fin 163, and *Morris v Lal v Chandrabati Kumari* I L R 38 Cal 700, referred to. Where the lower Appellate Court reversed the finding of the trial Judge in favour of legitimacy without reference to the above principle and upon a mere balance of probabilities, its finding was set aside on second appeal as being contrary to law. *PEPIN BENARY DAS BAIKAOI v ATUL KRISHNA DAS BAIKAOI* (1911)

17 C W N 494

Procuring breach of contract of—Conspiracy—Cause of action—Malice an essential ingredient—Tort. The first plaintiff betrothed his son, the second plaintiff to one J. Subsequently J's father married her to the first defendant. Thereupon the plaintiffs brought this action against the first defendant and his sisters the second and third defendants to recover damages, alleging that they (the defendants) had plotted and conspired together wrongfully to procure the breach of the first contract of marriage. The conspiracy alleged was not proved at the trial nor was it proved that the first defendant knew at the time of his marriage with J of her previous betrothal to the second plaintiff. *Hill* (i) that the suit was not maintainable (ii) that no legal right inhering in the plaintiff had been violated, since, according to Hindu law by which the parties were governed a father was entitled to break off his daughter's engagement should a more suitable bridegroom be available. In an action of conspiracy to procure a breach of contract malice is an essential ingredient of the cause of action. Rule in *Lumley v Gye* 22 L J Q B 463 considered and its universal applicability doubted. *KUMARI VASDEVJI v NAKEI DHANJEE* (1914)

I L R 59 Bom 682

in Part form among Vaishnavs. The Petitioner applied for letters of administration to the estate of the deceased who was after the death of her husband married to him in Part form. *Hill*—That marriage by *Kantilal* (exchange of earlier in) among Vaishnavs is valid and the petitioner was entitled to letters of administration. *PRINCE LEMARY ADH KARY v SHANTI LINGAN RAO*

24 C W N 938

MARRIAGE-PROMISE AGREEMENT

See CONTRACT ACT (IX of 1872) s 23.
63 I L R 41 Mad 197

MARRIAGE CUSTOM

See CUSTOM 20 C W N 400
See JEWELL LAW I L R 43 Cal 276

MARRIAGE EXPENSES

of male members
See HINDU LAW—JURY PAPER
I L R 27 Mad 27.

MARRIAGE SETTLEMENT

See JEWELL LAW I L R 25 Cal 709

MARRIAGE WITH WIFE'S ELTER

See HINDU LAW—MARRIAGE
I L R 23 Cal 492

MARRIED WOMAN

See ADULTERY I L R 45 Cal 641

See PENAL CODE (ACT XLV OF 1860),
s. 478 I L R 36 All. 1MARRIED WOMEN'S PROPERTY ACT III
OF 1874See CIVIL PROCEDURE CODE (ACT V OF
1906), s. 60 I L R 37 Bom 471

See LIFE INSURANCE

I L R 25 Mad 162

— ss 2, 4 & 6—*Hindu effecting a policy of life insurance for benefit of wife and children—Policy money if available for his debts on death—Statute, application of leading to anomaly—Interpretation.* A policy of life insurance effected by a Hindu for the benefit of his wife and children is not governed by the provisions of s. 6 of the Married Women's Property Act of 1874. *Per* RICHARDSON, J. Although s. 2 of the Act expressly provides that nothing in the Act applies to any married woman who at the time of her marriage professed the Hindu amongst other religions, or whose husband at the time of such marriage professed that religion and does not expressly exempt their children from the operation of the Act, the intention of the Legislature making the Act as a whole, is to exclude the children also from the benefits of s. 6 of the Act. If the words of an Act are so plain that no other construction is reasonably possible the anomaly must be accepted and effect must be given to the language which the Legislature has chosen to employ. But if the language is of doubtful import the most reasonable construction of which it is fairly capable ought to be adopted. *Held per* CHANAM that the money due under the policy in question formed part of the estate of the assured and was available for payment of his debts after his death. *ESHAJI DASI v. GOPAL CHANDRA DEY* (1914)

18 C W N 1335

— s. 6—*Applicability to Hindus—Insurance—Policy for the benefit of wife and children, if creates a trust—Policy amount payable to the executors, administrators and assigns of the assured—Right of beneficiary to enforce—Presumption of advancement.* Where a Hindu male effected a policy of insurance on his own life expressed on the face of it to be for the benefit of his wife, or his wife and children or any of them, but payable to his executors, administrators and assigns, and died leaving a daughter *Held*, by the Full Bench, that s. 6 of the Married Women's Property Act (III of 1874) applied to the case, and by virtue thereof a trust was created in favour of the daughter, in regard to the policy amount, against which the creditors of the assured have no right to proceed. *Oranul Government Security Life Assurance, Limited v. Vandia Ammayya*, I L R 35 Mad. 167, overruled. *Per* WATTS, C. J. (SAYAKAN NAIK J., concurring). Ss 4, 5, 6, 7, 8 and 9 of Act III of 1874 do not apply where either of the spouses, at the time of the marriage, professed the Hindu religion. The primary object of s. 6 is to enable a man (though a Hindu male) to make provision for his wife and children by insuring his life for their benefit without executing a separate deed of trust, though the result may be that a Hindu woman derives a benefit thereby. *Per* WATTS C. J. S. 6 does not affect the law of contract or the law of trust as regards the persons entitled to enforce the

MARRIED WOMEN'S PROPERTY ACT (III OF
1874)—contd

— s. 6—contd

contract on the life policy. The person entitled to enforce the rights of the beneficiary is the trustee, if a trustee has been appointed, and if no special trustee has been appointed, the official Trustee, to whom the money is payable and not the daughter, the beneficiary. *Held* also that the daughter was not entitled to enforce her claim against the insurance company or as against a creditor as (i) the company was under a contractual obligation to pay the amount to the executor or administrator of the assured and (ii) the presumption of advancement of a daughter was rebutted by the words

“for the benefit of his wife and children,” the policy not being one for the benefit of such of the children as are daughters. *Per* TRAYN, J. The daughter's right under the insurance policies is affected by s. 6 of Act III of 1874, and the operation of s. 6 is not prevented by s. 2. For the daughter is not a married woman within the meaning of ss 2 and 6, though she may be married, as the expression married woman cannot refer to any woman other than one who is married to the assured. *BALAMBAI v. KRISHNAIA* (1913)

I L R 37 Mad. 483

MARSHALLING

See MORTGAGE I L R 35 Bom 395

See TRANSFER OF PROPERTY ACT 1882
s. 50 I L R 42 All 338

MARTIAL LAW

Trial of Offences by Commissions—

See GOVERNOR GENERAL IN COUNCIL.

I L R 1 Lah 326

MARTIAL LAW ORDINANCES (I AND IV OF
1919)

See GOVERNOR GENERAL IN COUNCIL.

I L R 1 Lah 326

See CRIMINAL LAW I L R 2 Lah 34

Government of India Act of 1915, s. 65, cl. (2) and (3), ss 72 and 84—Ordinance issued by Governor General, if void as affecting the warlike law and constitution of the United Kingdom, etc.—Ordinance contravening s. 65(3) as to British-born subjects, if void altogether—Government of India Act of 1916 s. 2 Sub s. (2) to s. 65 of the Government of India Act, 1915, does not prevent the Indian Government from passing a law which may modify or affect a rule of the constitution or of the common law upon the observation of which some person may conceive or allege that his allegiance depends. It refers only to laws, which directly affect the allegiance of the subject to the Crown, as by a transfer or qualification of the allegiance or a modification of the obligations thereby imposed. *In re Ameri Ahan*, 6 B L R 292, 439 (1870). *The Queen v. Bural*, L R 3 A C 349 367 s. c. L R 5 I A 178 I L R 4 Cal 172 (1878) and *Bevan v. The Advocate General of Madras*, L R 46 I A 176, 191 s. c. 23 C W N 896 (1917), referred to Ordinance IV of 1919, if it was repugnant to s. 65 (3) of the Government of India Act, so far as British-born subjects were concerned, was, under s. 2 of the Government of India Act of 1915, void to the extent of that repugnancy but not otherwise. *REGDAI v. KING EMPEROR* (P. C.) 24 C W N 650

MARUMAKKATTAYAM LAW

See MALABAR LAW

Tarwad is the heir to the property of a deceased member, subject to the liability to discharge debts of deceased—Devolution of property acquired by or for benefit of Tarwads—Survivorship—Property acquired by a divided member, devolution of Co parcenary exists among the members of an undivided Malabar Tarwad. Where therefore one of the members dies, the Tarwad is the heir to the property of deceased subject to the liability to discharge the debts of the deceased member. *Ryrappan Nambiar v Kelukurup, 1 L R 4 Mad 150*, referred to. Where property is acquired for the benefit of the Tarwads, the incidents of such property will depend on the constitution of the Tarwads. If the Tarwads form a distinct branch from the main Tarwad with separate properties and has its own karnavan, it will, in law, form a Tarwad and the incident of Tarwad property will attach to it. None of the members will have an alienable interest in such property and it cannot be attached in execution of a decree against any of the members. *Kanath Padhen Ithul Tarwads v Arayannan, 1 L R 23 Mad 132, 139*, referred to. If, however, the members of the Tarwads have not separated from the main branch by taking their share of Tarwad property or renouncing their interest therein, the mere acquisition of such property will not make them a separate Tarwad and the karnavan of the main Tarwad will retain all his right and obligations towards them. The property will be the separate property of the Tarwads and not Tarwad property and the incident of impartibility, which attaches to Tarwad property, will not attach to it. The interest of each member will be the same as in an ordinary Hindu family and will be liable to be attached and sold. If, however, any member dies without his interest being alienated, in his life-time, his interest lapses to the other members and it cannot be sold. *Kunachamma v Kuttimammi Hayee, 1 L R 6 Mad 201*, referred to. If property is acquired solely for the benefit of two members of a Tarwad they must be treated as tenants in common. They cannot be treated as a separate branch and on the death of one, the share will pass to the heir of the deceased which according to the preponderance of authority will be the Tarwad. The principle of joint tenancy is unknown to Hindu Law except in the case of the members of an undivided Hindu family. *Joydevvar Narain Doo v Pamchendra Dutt, 1 L R 23 Calc 670*, referred to. *UNMANGA v AITADORA PATTER (1910)*

1 L R 31 Mad 337

Gift to a woman and her children ensures for their benefit with the incidents of landed property—Members subsequently born acquire an interest by birth—Karnavan, power of, to alienate—Right of one member of tarwad to erect buildings in tarwad property—Compensation, claim to, for demolition of building—Malabar Tenants Improvement Act, s. 6. A gift to a woman governed by the Marumakkattayam law and her children ensures in favour of the donee and her children with the incidents of tarwad property. As members of a tarwad acquire an interest in the tarwad property by birth, children born subsequent to the gift will acquire an interest in such property. A karnavan cannot make an alienation for such a long period as twenty years in the absence of special necessity or special benefit. Such an

MARUMAKKATTAYAM LAW—contd

alienation cannot be held good for a portion of the term, i.e., the usual period of twelve years, as it will have the effect of creating a new contract between the parties. Although in the case of ordinary co parcenaries, the Courts will not order the demolition of buildings erected by one co parcenary in joint property, unless some substantial injury is shown, the case will be different in the case of tarwad property. The members of the tarwad have not, like the members of an ordinary co parcenary, the right of compulsory partition and it would not be fair or equitable to compel the karnavan to purchase the building erected by a junior member or to deprive the karnavan of possession of part of the property for ever. The junior members cannot, therefore on general principles, resist recovery or demolition of the building. A lessee, whose lease is disputed and who is put on inquiry as to the real title of the lessor, before constructing buildings on the land leased cannot, after constructing buildings on a wrong view of the lessor's title, claim on eviction compensation for the buildings as a bona fide tenant under s. 6 of the Malabar Tenants' Improvements Act. *KALJANI AMMA v GOVINDA MENON (1912)*
1 L R 35 Mad. 648

MARZ-UL-MAUT

See MAROMEDAN LAW—GIFT

1 L R 36 All 289

1 L R 40 All 238

See MAROMEDAN LAW—WAKF

1 L R 36 All 431

1 L R 46 Calc. 13

MASTER

See MASTER AND SERVANT

— authority of—

See REVIVOR 1 L R 43 Calc 803

MASTER AND SERVANT

See ADULTERATION

1 L R 39 Calc. 682

See BENGAL MOTOR CAR AND CYCLE ACT,

s. 3 1 L R 33 Calc 415

See COMPANY 1 L R 38 Mad. 991

See OPIUM ACT (I of 1879), ss. 5, 9

1 L R 34 All 319

See PENAL CODE, s. 379

15 C W N 414

See SCHOOL MASTER.

1 L R 44 Calc 917

See TORT 1 L R 43 Bom 103

See DISMISSAL FOR MISCONDUCT

1 L R 33 Mad 126

See TRUST 1 L R 41 Calc 19

See WORKMEN'S DRAUGHT OF CONTRACT

ACT (XIII of 1859), ss. 2 and 3.

1 L R 41 All 390

— ground for dismissing an Editor—

See COMPANY 1 L R 38 Mad 991

Ganga—Illegal possession of panya by servant acting on his own behalf and beyond the scope of his employment—Liability of the master for the act of the servant—Bengal—

MASTER AND SERVANT—*contd.*

Excise Act (Beng 1 of 1909) ss 46 (a) and 57
To support a conviction under s 56 of the Bengal
Excise Act it is necessary to show not only that
a servant was in the employ of the master, but
also that he was acting within the scope of his
employment and for the benefit of the latter.
Where a servant whose duty was to remain at
his master's shop and to conduct the business
there, was found travelling to another place with
goods in his possession, in contravention of s 46
(a) of the Act. *Held* that the master could not
be convicted under s 56 as his servant acted
beyond the scope of his employment and for his
own private purpose. *Suffer 41s Akbar v Colam
Hydr Khan 5 B R Cr 60 referred to Emperor
v Haji Shari Mahomed Shumari 1 I R 3 Bom
10, distinguished UTTAM CHAND v EMPEROR
(1911) 1 I L R 39 Calc 244*

----- *Clerk engaged on a
monthly salary—Felnishment of employment
without consent of master—Clerk not entitled to
salary for broken portion of month in which he
left his service. Held* that an office clerk engaged
on a monthly salary is not entitled to any salary
for the broken portion of a month in the course
of which he leaves his service without the consent
of his employer. *Adjuway v Hungerford Market
Company 3 A & L 171 Dhawan Behara v Seve
moke, 1 I R 13 Calc 8 and Purnu Major v
Lulle, 10 Bom H C R 67 referred to RALLI
BROTHERS v ANWOLA PRASAD (1912)
1 I L R 35 All 132*

MATADARS ACT (BOM VI OF 1887)

----- ss 9 and 10—*Heir next in succes-
sion—Succession to Matadar property—Success-
sion not confined to the limits of Matadar family
—Heir to be ascertained by reference to the personal
law governing the parties. One R the representa-
tive Matadar who inherited his Mata from his
mother's side having died disputes arose as to
the succession to the Matadar property between
B, who was the daughter of a maternal cousin of
R, and D who was the grand nephew of R. Held,
that D was the preferential heir to B as in order
to ascertain the heir of a deceased Matadar the
Court was not confined to the limits of the Matadar
family and should have in the first instance re-
ference to the personal law which governed the
parties. DAYA KUNJAL v BAI BRIKHI (1910)
1 I L R 39 Bom 478*

MATERIAL IRREGULARITY

See REVIEW 14 C W N 244

MATERIAL PREJUDICE

See REVISION 1 I L R 47 Calc 438

MATERNAL UNCLE

*See HINDU LAW—SUCCESSION
1 I L R 43 Calc 1*

MATE'S RECEIPTS

See CONTRACT 1 I L R 41 Calc 670

MATH

*See HINDU LAW—ENDOWMENT
1 I L R 48 L A 201*

See LEGITIMATION 1 I L R 37 Calc 835

See MUTE

MATHIRI KAJUVU AND SADALWAR

*See MAHARASHTRA ESTATES LAND ACT (I OF
1908), s 13, CL (3)*

1 I L R 39 Mid 84

**MATRIMONIAL CAUSES ACT, 1857 (20 & 21
VICT C 85)**

— s 28—

See DIVORCE 1 I L R 43 Calc 525

MATWALI

*See MAHOMEDAN LAW—WARY
1 I L R 47 Calc 592*

MAXIMS

*See ACTIO PERSONALIS MORITUR CUM
PERSONA 1 I L R 35 Lom 12*

----- *'a man cannot take advantage of
his own fraud'*

*See HINDU LAW—WIDOW
1 I L R 41 Bom 93*

----- *'generalia specialibus non derogant'*

*See SPECIFIC MOVEABLE PROPERTY
1 I L R 39 Mid 1*

----- *'Ut res magis valeat quam pereat'*

*See LANDLORD AND TENANT
1 I L R 46 Calc 456*

MAYUKHA

*See DAUGHTERS, INHERITANCE OF
1 I L R 34 Bom 510*

*See HINDU LAW—INHERITANCE
1 I L R 34 Bom. 553*

*See HINDU LAW—PARTITION
1 I L R 36 Bom. 379*

*See HINDU LAW—STRIDHAN
1 I L R 36 Bom 424*

*See HINDU LAW—SUCCESSION
1 I L R 34 Bom 285
1 I L R 39 Bom 57*

MEASURE OF DAMAGES.

See DAMAGES

MEASUREMENT OF LAND

*See BENGAL TENANCY ACT, s. 91
14 C W N 231*

----- *Excess area—Bengal
Tenancy Act (VIII of 1885), s 52 (c) as amended
by Beng Act I of 1907, s 13. The words 'at
the time the measurement, on which the claim
is based, was made in s 52 (c) of the Bengal
Tenancy Act do not refer to the measurement
upon which the excess area is found out before
the institution of the suit. The section merely
provides that if the landlord proves that at the
time the measurement on which the claim is based
was made there existed a practice of settlement
being made after measurement of the land assessed
with rent it may be presumed that the area
specified in the putta kashlyat or counterfoil
rent receipt was entered in it after measurement
though the landlord is not able to prove that as
a matter of fact the lands in the particular case
were settled after measurement. Lmas Singh v
Raj Tarai Prasad Bahadur, 19 C L J 452
referred to KHAKH HANBULLAH v UMED ALI,
(1919) 1 I L R 47 Calc. 266*

MEASUREMENT OF LAND—*contd*

Bengal Tenancy Act (VIII of 1885), s 52 (6) The expression "at the time the measurement on which the claim is based was made" in s 52 (6) of the Bengal Tenancy Act refers to the measurement upon which the area in excess or defect, as the case may be, is found out before the institution of the suit, it does not refer to the measurement made at the time of the original settlement or the last preceding adjustment of rent. *Khajeh Habibullah v Umed Ali*, 1 L R 47 Calc. 266, dissented from in *NILMANT KAR v SATI PRASAD GAROA* (1920)

I L R 48 Calc 556

MEASURE OF RIGHT

See EASEMENT . I L R 39 Calc 59
I L R 42 Calc 46

MEDICAL WORKS

reference to—

See LIMITATION I L R 40 Calc 898

MEDICINAL PREPARATION

See EXCHANGABLE ARTICLE

I L R 45 Calc 83

MEHR

See CONSTRUCTION OF DOCUMENT

I L R 41 Bom 5

MELVARAM

grant of—

See MADRAS ESTATES LAND ACT (I of 1908) s 8 I L R 38 Mad. 891

MELVARAMDAR

receiver of—

See LIMITATION ACT (IX of 1908) s 22
I L R 38 Mad. 837

right of, to trees—

See LANDLORD AND TENANT
I L R 38 Mad. 155

MEMBER

See STOCK EXCHANGE

I L R 47 Calc 623

MEMONS

See SUCCESSION . L R 43 I A 35

See WILL I L R 43 Bom 641

Halai Memons and Bombay Memons—Hindu law governs Halai Memons of Kathiawar in matters of succession and inheritance—Custom—Domicile—Change of domicile of origin—Value of judgments of a foreign Court for proving a custom peculiar to a community—Indian Evidence Act (I of 1872) s. 13—Value of evidence of tradition given by leading men of the community A Halai Memon a native of Porebunder in Kathiawar died intestate at Bombay leaving him surviving a widow, the second defendant one son, the first defendant and two married daughters one of whom had since died, the survivor being the plaintiff The estate of the deceased consisted of five immovable properties in Bombay a share in a business in Bombay and a house and land at Porebunder The plaintiff claimed to be entitled as a daughter to 7-32 of the estate as her share, on the footing that the deceased as a Bombay Memon, was

MEMONS—*contd*

governed by the Mahomedan law of succession and she was supported in her contention by the representatives of the deceased daughter The first defendant contended that Hindu law applied and that under that law he was entitled to the whole estate subject to the maintenance of the deceased a widow The second defendant supported the first defendant though as widow of the deceased she would have been entitled under Mahomedan law to 4-32 of the estate The Court of first instance decreed the plaintiff's suit, holding that though the deceased belonged to a family of Halai Memons who had settled in Porebunder, the Halai Memons settling in Porebunder did not as regards succession and inheritance retain Hindu law at the time of their conversion, nor had they adopted Hindu law by immemorial custom The first defendant appealed —*Held*, reversing the decree of the lower Court, (i) that the plaintiff was not entitled to any share in the estate of her deceased father as he was governed by Hindu law and not by Mahomedan law in matters of succession and inheritance, (ii) that the evidence established that the Memons of Kathiawar of whatever group or sect followed the Hindu rule of succession and this conclusion was supported as to Porebunder Memons particularly by a large number of instances in which widow and daughters had been excluded from succession, sons had divided the property with their father in his life-time or equally with each other after his death and the right of predeceased brother's sons to share with their uncles had been repeatedly recognised, all these results being incidental to the Hindu and not to the Mahomedan system Per SCOTT, C J —There is no principle recognised by the law administered in this country upon which a Hindu's or Mahomedan's possessions may be distributed partly by one law and partly by another according to the locality of the possessions They must all fall under either the law of the religion or the customary law of the community There is no *lex loci* for the purpose of distribution Permanent residence in Bombay does not necessarily import the Mahomedan law of succession for one whose ancestors were converted from Hinduism Severance from the domicile of origin and permanent residence in Bombay would, in the case of persons falling within the purview of the Indian Succession Act effect change of domicile and with it a change of law, e.g., from French to Anglo-Indian or Portuguese to Anglo-Indian but it would not change the law of succession for Hindus or Mahomedans *Kojnals and Memons case* (1847) *Perry's O C* 110, *Das Bays v Das Eastok* 1 L R 20 Bom 63, *Abdurahim Hajji Feraid Mawhu v Heli mabai* L R 43 I A 35 and *Abdul Hussain Khan v Bubi Sona Dero*, L R 45 I A 10, referred to. *Mahomed Haji Abu v KHATIBAI* (1918)

I L R 43 Bom 647

MEMORANDUM OF AGREEMENT

See STAMP ACT (II of 1899), s. 37

I L R 38 Mad. 349

MEMORANDUM OF APPEAL

See APPEAL

See CIVIL PROCEDURE CODE (ACT V of 1908), ss. 107, 149, O VII, r. 11

CL. (c) . . . I L R 38 Bom 41

MEMORANDUM OF APPEAL—*cond*

ss 115, 131, O XII, s 23.

I L R 42 Bom 303

See COURT FEE I L R 39 Calc. 503

See REFUND OF COURT-FEE.

I L R 40 Calc. 383

— order returning—

See CIVIL PROCEDURE CODE (1908), O

XLIII, s 1 I L R 40 All. 659

MEMORANDUM OF ASSOCIATION

See COMPANIES ACT, 1882, ss 6, 40, 41

I L R 40 Calc 1

MENACE TO PERSON AND PROPERTY

See SECURITY FOR GOOD BEHAVIOUR

I L R. 46 Calc 215

MERCHANDISE MARKS ACT (IV OF 1899).

ss 6, 7—

See TRADE MARK I L R 40 Calc 231

MERCHANT SEAMEN ACT (I OF 1859)

ss 58 & 83—*Merchant Shipping Act (57 and 58 Vic C 69) s 111 cl 3 and 275, cl (b) and (c)—Wilful disobedience of lawful commands—Order given to transfer from one ship to another—Seaman disobeying the order—Clow about transfer in articles of agreement not ultra vires* The accused signed articles of agreement in London with the Master of the SS *Arcadia* (a steamer belonging to the Peninsular and Oriental Steam Navigation Company) under which he agreed *inter alia* to obey the lawful commands of the Master or the superior Officers and to transfer to any other vessel of the Company, when required during the period of service. These articles were initialed by an Officer of the Board of Trade. When the SS *Arcadia* arrived in the Bombay Harbour it was sold by the Company to an Indian Merchant. The accused was then ordered by the Marine Superintendent of the Company in the presence of the Chief Officer of the SS *Arcadia* to transfer himself to the SS *Salsette*, another boat belonging to the Company. For a wilful disobedience of this order, the accused was convicted under s 83, cl 4 of the Merchant Seamen Act (I of 1859). The accused applied to the High Court against the conviction contending, first that the article respecting transfer was *ultra vires* and secondly, that the order as to transfer given by the Marine Superintendent of the Company was not a lawful command:—*Held*, that having regard to s 114, cl 3 of the Merchant Shipping Act (57 and 58 Vic. C. 60) and to the fact that the articles of agreement had been initialed by an Officer of the Board of Trade, the article as to transfer was not *ultra vires*. *Held*, further, the order to transfer having been given by the Marine Superintendent of the Company in the presence of the Chief Officer of the SS *Arcadia* was a lawful command of the latter failure to obey which was punishable under s 83 cl 4 of the Merchant Seamen Act (I of 1859). *Ex parte A. G. Good NEW* (1915) I L R 39 Bom 558

MERCHANT SHIPPING ACT (57 & 58 VICT. C 69)

See HIGH SEAS I L R 42 Bom 234

MERCHANT SHIPPING ACT (57 & 58 VICT. C. 69)—*cond*

ss 114, cl (3), and 225, cl (B) and (C)—

See MERCHANT SEAMEN ACT (I OF 1859), s 83, cl. (d) I L R 39 Bom 558

ss 631, 636—

See HIGH COURT, JURISDICTION OF I L R 33 Calc. 487

MERGER

See CIVIL PROCEDURE CODE (1908) s 2 I L R 39 All 393

See CIVIL PROCEDURE CODE, 1908, O IX, s 13 I L R. 39 All. 13

See DECREE FOR POSSESSION I L R 33 All 509

See LANDLORD AND TENANT I L R 43 Calc. 164

See LIMITATION ACT (IX OF 1908), SCH. I ARTS 120, 132 I L R 39 All. 74

Mokurari tenure specially registered under Act VI of 1859 granted by the zemindar—Subsequent grant of putni by the zemindar—Purchase of putni and mokurari by the same person—Merger—Transfer of Property Act, s 2 (c), 111 (d) 117 Where a mokurari tenure has all along been treated as a distinct subtenure, there was no merger by the acquisition of a putni tenure and the mokurari tenure by the same person, apart from the provisions of the Transfer of Property Act. *Woomesh Chander Goopta v. Ray Narain Roy, 10 W R 15 Thomas Saru v. Panchanan Roy, 25 W R 593, Prasanna Nath Roy v. Jagat Chander Pandit, 3 C L R 159, referred to Jibanta Nath Khan v. Gokul Chander Chowdhury, 1 I R 19 Calc. 769, followed Surpa Narain Mandal v. Nanda Lal Sinha, 1 I L R 33 Calc 1212, Ujjat Hosana v. Gayani Das, 1 I L R 36 Calc. 502, distinguished* Where a person acquires the superior and the subordinate interests piecemeal at different times, but ultimately the entire interests of the lessor and the lessee are vested in the same person at any point of time, there is a merger of the two interests in any case to which the provisions of s 111 (d) of the Transfer of Property Act are applicable. A mokurari was created before the passing of the Transfer of Property Act and a putni was granted of the zemindary within which the mokurari was created. Afterwards in 1884 the entire putni and the entire mokurari were acquired by the same person. *Held* that the provisions of s 111 (d) of the Transfer of Property Act do not apply and there was no merger of the mokurari interest in the putni interest. *Prasanna Nath Roy v. Kala Prasanna Chowdhury, 1 I L R 28 Cal 477 followed Gopal Anand v. Gayani Das, 1 I L R 36 Calc 802, explained. HIRSHDAS NATH DUTT v. HARI MOHAN GHOSH* (1914)

18 C W N 860

Union of superior and subordinate rights, in land in mokurari, taking place before the Transfer of Property Act (IV of 1852) and Bengal Tenancy Act (VIII of 1855) In cases unaffected by the provisions of the Transfer of Property Act and the Bengal Tenancy Act the union of a superior and a subordinate interest did not, by operation of law, necessarily merge the subordinate in the superior interest. *Bal*

MERGER—contd.

although in such cases, the union of the superior and subordinate interests may not automatically cause a merger of the latter in the former the conduct of the party concerned may show that he did not intend to keep the two interests alive as mutually distinct rights *RAM BISSEY DUTT v HARIPADA MUKHERJI* (1919) 23 C 17 N 830

Merger, doctrine of if applied in mofussil before Transfer of Property Act—*Merger, a question of intention—Acquisition of superior and inferior interests by joint Hindu family in the names of different individuals to indicate intention to prevent merger* *Qureshi*—Whether prior to the Transfer of Property Act there was a law of merger applicable in the mofussil *Harendra Nath Dutt v Hari Mohan Ghosh* 18 C W N 859 referred to—*Merger* is not a thing which occurs ipso jure upon the acquisition of what for the sake of a just generalisation, may be called the superior with the inferior right. The question to be settled in the application of the doctrine is was such a coalescence of right meant to be accomplished as to extinguish that separation of title which the records contain? The fact that acquisitions of the superior and inferior interests on behalf of a joint Hindu family have been made in the names of different members thereof may point to an intention to keep the two interests from merging *DULHAT LACHMANPATI KUMAR v BODHNATH TIWARI (P.C.)* 26 C W N 565

MESNE PROFITS

See CIVIL PROCEDURE CODE (1832), s 553
I L R 33 All 163

See CIVIL PROCEDURE CODE (1832)—
s 553 I L R 32 All 79
s 11, EXPL. V, O XX, n 12
I L R 40 All 292

s 110 3 Pat L J 377
O II, RR 2 AND 4
I L R 33 Mad 829

O XX, n 12 20 C W N 369

See COURT FEES 3 Pat L J 101

See DEKKHAN AGRICULTURISTS' RELIEF
ACT (XVII OF 1879), s 13
I L R 39 Bom 597

See EXECUTION OF DECREE
I L R 41 All 517

See HINDU LAW—ALIENATION
I L R 39 All 81

See HINDU LAW—JOINT FAMILY
I L R 39 Mad 285

See HINDU LAW—PARTITION
I L R 44 Bom 179, 621

See HINDU LAW—WIDOW
15 C W N 383, 839

See JURISDICTION I L R 43 Calc 650

See MADRAS ESTATES LAND ACT
I L R 42 Mad 315

See MORTGAGE—REDEMPTION
14 C W N 1001

See RESTITUTION 3 Pat L J 367

See REVENUE SALE
I L R 37 Calc 539

MESNE PROFITS—contd.

See SMALL CAUSE COURT
14 C W N 1001

See TRANSFER OF PROPERTY ACT, 1832,
s 6

— application to ascertain whether
is an application in execution—

See LIMITATION ACT, 1908, SCH I, ART
182 I L R 45 Bom 819

— claim for, by plaintiff from date of
d post—

See TRANSFER OF PROPERTY ACT (IV OF
1832), s 83 I L R 39 Mad 579

— decree for—

See EXECUTION OF DECREE
I L R 40 All 211

— Estimation of on proprietor's private
land—

See CIVIL PROCEDURE CODE 1908, s 2
6 Pat L J 166

— Pendente Lite—

See CIVIL PROCEDURE CODE, 1908, O XX,
n 12 6 Pat L J 54

— right to past, transfer of—

See TRANSFER OF PROPERTY ACT (IV OF
1832) s 6, CL (e)
I L R 39 Mad 208

— suit for of a grove—

See PROVINCIAL SMALL CAUSE COURTS
ACT (IX OF 1837) SCH II ART 31
I L R 40 All 142

— whether a decree for mesne profits
and costs in a redemption is a money de-
cree—

See CIVIL PROCEDURE CODE, 1908 O
XXI n 63 4 Pat L J 336

1 — Civil Courts Act (XII
of 1837) as 18 19, 21—Civil Procedure Code (Act
XIV of 1837), as 211, 212 211—Jurisdiction—
Mesne profits antecedent to the suit, decree for, if
can be executed to an amount which taken with the
value of the land would exceed jurisdiction of Court
passing decree—Mesne profits pendente lite, ex-
ceeding the pecuniary jurisdiction of the Court
making the decree—Forms of application for re-
covery Where a plaintiff instituted his suit for
possession of property and mesne profits in the
Court of a Munsif and valued it so as to bring it
within the jurisdiction of the Munsif and the suit
was decreed—*Held*, that he could not recover
mesne profits accruing before the institution of
the suit to the extent of more than the difference
between the maximum pecuniary jurisdiction of
the Munsif and the value of the land as stated in
the plaint. *Gopal Singh v Indra Kumar, 3 C L
J 367 & 3 C W N 493*, followed. *Sudarsham
v Ramprasad, 7 Ind Cas 785* not followed
In this respect mesne profits antecedent to the
institution of the suit and mesne profits pendente
lite in respect of which the cause of action had
not arisen at the date of the suit and which could
not at that date be approximately valued stand
on a different footing. *Held*, further, that the
value of the mesne profits pendente lite claimed in
the application for execution of the decree being
in excess of the pecuniary jurisdiction of a Munsif,

MESNE PROFITS—contd

the Munsif had no jurisdiction to entertain the application *Rameswar v Dulu*, 1 L P 21 Cal 530, distinguished and doubted *Gulab v Abdul*, 8 C R 4 233 s c 1 L R 31 Cal 365 *Iyaulla v Chandra Mohan*, 1 L R 31 Cal 554 *11 C R 2 1133 s c 6 C L J 255 Golip Singh v Indra Kumar*, 9 C I J 367 s c 13 C W N 493, *Munnaul v Samad* 49 P R 1906 94 P L R 1906, referred to. In so far as the application for mesne profits *pendente lite* was concerned, the Court therefore directed its return for presentation to the proper Court. No objection as to the jurisdiction of the Court to try the original suit having been raised before the decree and the decree as to recovery of land having become final, the Court refused to give effect to the contention that in view of the amount of mesne profits now claimed the Court had no jurisdiction to make the decree *BRUTENDRA KUMAR CHAKRABARTI v PURNA CHANDRA BOSE* (1910)

I L R 43 Cal 650
15 C W N 506

2

Execution of decree
—Immovable property suit for—Purchaser pendente lite, whether legal representative of the original owner—Civil Procedure Code (Act V of 1908), OO XX, r 12(2), XVI, r 102 and XXII r 10 and s 2(11) Proceedings for the assessment of mesne profits, after a decree had been obtained in a suit for recovery of possession of immovable property are proceedings in continuation of the original suit. A suit for recovery of possession of immovable property was brought against A. During the pendency of the suit B and C purchased the property from A, but they did not apply to have their names added as defendants in the pending suit. The suit having been decreed the decree-holder applied for execution of the decree against A B and C and asked for possession of land and for the assessment of mesne profits. On an objection taken by B and C that they were not the legal representatives of A and that they could not be made liable in execution proceedings for the mesne profits decreed against A. Held that although B and C were not the legal representatives of A, the execution proceedings being proceedings in continuation of the original suit, and they being purchasers pendente lite, they were liable for the mesne profits decreed against A. *MIDNAPUR TANNERY COMPANY, LD v NARESH NARAYN ROY* (1911)

I L R 39 Cal 220

3

Although a plaintiff may perhaps recover mesne profits though out of possession still in order to recover damages in a case where he was out of possession, the plaintiff must show that he has a right to immediate possession *ELANT BERN MANDAL v RAM NARAYAN GHOSH* (1911)

18 C W N 288

3(a) Where a father as manager alienates joint Hindu family property with ul legal necessity and the sons repudiate the sale a purchaser who has no notice that the father was incompetent to sell is in equity only liable to pay mesne profits for the date of repudiation *BRIGID BATH CHALBE v NARSINGH TIWARI*

I L R 29 All 61

4

Jurisdiction—Suit for recovery of possession in a mesne profits—Mesne profits assessed in the execution proceedings—Amount assessed more than the pecuniary jurisdiction of the Court. A suit for recovery of possession of certain

MESNE PROFITS—contd

lands with mesne profits from the date of dis-possession up to the date of restoration of possession, was brought in the Munsifs Court. It was decreed together with the mesne profits claimed, and the Court decreed that the amount of mesne profits would be determined in the execution proceedings. The decree having been affirmed on appeal, the decree holder applied to the executing Court for ascertainment of mesne profits. The total amount of mesne profits ascertained by the Munsif was Rs 1630 8 0, including interest. On an objection taken by the judgment debtor that the executing Court being a Munsif, was not entitled to award mesne profits of a higher amount than Rs 1000. Held, that the executing Court had jurisdiction to award the mesne profits ascertained in the present case. *PANDEYARAJAN v Dulu Malton*, 1 L R 21 Cal 550, followed in principle *Bhupendra Kumar Chakrabarti v Purna Chandra Bose*, 15 C L J 132 distinguished. *PANCHURAM TENADAR v KINGO HALDAR* (1912)

I L R 40 Cal 50

5

Suit for recovery of mesne profits or damages with out a declaratory suit, whether maintainable—Symbolical possession—Bengal Tenancy Act (VIII of 1855), s 157, principle laid down in If a person who has been dispossessed from an immovable property brings a suit for recovery of mesne profits the suit is not maintainable. The proper remedy is to institute a suit for declaration of title and recovery of possession with mesne profits. *Isp Singh v Awar* 1 L R 21 Cal 244 referred to. When the title of the plaintiff is denied by the defendant, he (plaintiff) ought not to obtain a decree for mesne profits till his title has been established in a Court of competent jurisdiction. Where the title of the plaintiff is established in a Court of competent jurisdiction that decision is conclusive between the parties for all time to come. The symbolical possession by the plaintiff is effective as against the judgment-debtor, though it may not be operative as against strangers to the suit. Where the title of the plaintiff to immovable property has been restored, and he has obtained symbolical possession and allowed the defendant to continue in actual occupation of the land, and successfully asserted his right to be paid a fair and reasonable amount of damages for use and occupation of the land, it is not open to the defendant to question the title of the plaintiff, and there is no intelligible reason why the latter should not be allowed to maintain an action for recovery of damages for use and occupation of the land. This principle is recognised by the Legislature in s. 157 of the Bengal Tenancy Act. *GIRI NARAYN CHATTERJI v MODHU SUDAN MUKERJI* (1911)

17 C W N 324

6

Application to assets
Limitation—Decree for mesne profits application for execution of by assignee—Right of assignee to apply for substitution in pending suit, nature of—application for ascertainment of mesne profits in pending suit, limitation applicable to—Lesamidar if may apply—Assignee from assignee of party to suit, application for substitution by—Claim for mesne profits if can be transferred—Stranger if may question assignment—Civil Procedure Code O XX, r 12, O XXII, r 10—Limitation Act (I of 1908), Art 131 A darpans held by three brothers, D, P and R, was sold for rent and pur-

MESNE PROFITS—contd

chased by the *palandar*. One of the three brothers *D*, brought a suit and obtained a decree for the recovery of possession of the *darpatna* and mesne profits. After *D*'s death his widow got herself substituted in his place and in execution of the decree took possession of the property and subsequently a deed was executed between herself and the two other brothers *P* and *R* in terms that the property belonged to the three brothers and she as the widow of the eldest was entitled to two annas and the remaining 14 annas were divided between her and the two brothers in equal shares as also the mesne profits. The *darpatna* was thereafter sold in execution of a money decree and ultimately passed into the hands of one *A*. On 21st May 1907 the two brothers *P* and *R* by a conveyance assigned their share of the costs and mesne profits under the decree obtained by *D* to *M*, a *benamidar* of *A* and on the 10th June 1907 *D*'s widow by another conveyance assigned her share of the mesne profits and costs to *A*. On 22nd February 1909 *A* applied for execution of the decree and the application was admitted by the Subordinate Judge, but under orders of the District Judge in appeal the application was returned for amendment on 4th March 1911 and amended on the same day. On appeal the High Court directed that this application presented by *A* should be treated as an application under O XX r 12 and remanded the case whereupon the amended application was placed on the record to be dealt with under O XX r 12 and *A* was substituted on the record in place of the original plaintiff. Held that the application should be treated as having been made on the date on which it was originally presented and that date being within 3 years of the dates of the conveyances assigning mesne profits and costs to *A*, the application was not barred even if Art 181 of the Limitation Act was applicable. That even if the application was considered as having been made on the date on which it was amended, the right of the assignee to apply for substitution in a pending suit is a right which accrues from day to day and is therefore not barred by limitation. That an application in a pending suit for ascertainment of mesne profits is not barred by the three years rule of limitation contained in Art 181 corresponding to Art. 178 of the old Limitation Act. The law has not been changed by the new Limitation Act or the new Code of Civil Procedure. *Purna Chand v Puri Radha Kishan, I L R 19 Cal. 132*, followed. Held (as to the contention that *A* could not be substituted when his two assignees *P* and *R* were not parties to the suit), that the property being the joint property of the three brothers and the suit having been brought by *D* as the eldest member of the family, he might be taken to have represented the other two brothers also. That even if *P* and *R* were considered as assignees from *D*'s widow, the position was that *A* was an assignee from *D*'s widow who was a party to the suit with respect to one-third of the property, and an assignee from *P* and *R* who in their turn were assignees from *D*'s widow with respect to two-thirds, and O XX, r 10, was applicable to an application made by a person who has not obtained an assignment directly from a party to the suit but who has obtained an assignment derivatively from a party to the suit. That a right to sue for damages cannot be transferred, but in the present case the claim

MESNE PROFITS—contd

for mesne profits had already merged in a judgment before the assignment and the right under the judgment was assignable although the original cause of action was not. There is nothing in law to prevent a *benamidar* from applying to the Court for ascertainment of mesne profit. A stranger cannot take exception to an assignment on the ground of inadequacy of consideration, that being a matter between the assignor and assignee. *Bhagwat Dayal v Debi Dayal, I L R 35 Cal. 420 s c 12 C W N 393*, relied on. *PRASANTO KUMAR PANJA v ASHUTOSH RAY (1913)* 18 C W N 450

7 ————— Application for ascertainment of—estimated claim higher than court's pecuniary jurisdiction—order refusing application, appeal from. Where the question of a court's jurisdiction is concerned it is the plaintiff alone which should be considered. Where the holder of a decree for possession of certain property with costs and mesne-profits (which had not been claimed in the plaint) applied for ascertainment of the mesne profits and estimated the amount due therefore at Rs 1149-12, held, that the court had jurisdiction to entertain the application although its pecuniary jurisdiction was limited to Rs. 1000. An application for the ascertainment of mesne profits is an application for an order in the suit and is not an application for the execution of a decree and, therefore, no appeal lies from an order returning such an application for presentation to the proper Court. O VII, r 10 of the Code of Civil Procedure, 1908, applies only to the paper on which a suit is instituted and not to an application made in the course of a suit. Therefore an application for ascertainment of mesne profits does not fall within the provisions of that rule. *SURESH MOHAMMAD ABDUL GHAFOR v MAHTAB CHOUDHURY* 2 Pat. L. J 894

8 ————— Date of decree—Appeal—Court fees, application for refund of—Code of Civil Procedure (Act V of 1908) O XX, r 12 and O XXI, r 23—Court fees Act VII of 1870 s 13. Where the Privy Council on the 7th March, 1913, dismissed an appeal from a decree of the High Court affirming a decree of the court of first instance, dated the 28th November, 1905, under which the plaintiffs were awarded mesne profits 'from the date of the decree to the date of recovery of possession' and some of the plaintiffs obtained delivery of possession on the 29th May, 1914 and others on the 15th January, 1916 held that the decree to be executed was the decree of the Privy Council which affirmed the decree of the first court and that, in effect, the Privy Council decree awarded the plaintiffs mesne profits from the 28th November, 1915, up to the date of delivery of possession and that effect would be given to the decree without contravening the provisions of O XX, r 12 O XXI, r 23 of the Code of Civil Procedure, 1918, applies only where the original court has disposed of a suit on a preliminary point. A certificate for refund of court fees paid on an appeal against a preliminary decree cannot be granted under s. 13 of the Court-fees Act, 1870. *NEEDHAM SINGH v BHAN RAM MEHWARI* 3 Pat. L. J 116

9 ————— Costs as against and between parties—costs of suit, set-off and counterclaim. Where

MESNE PROFITS—*contd.*

mesne profits are claimed from a trespasser the costs of cultivation and reaping should be allowed.
BALDEO RAI v. RAM EKHAL SINGH

4 Pat. L. J. 391

10. ————— Partition suit—*Relief for future mesne profits claimed in suits—Decree not referring to future profits—Relief must be deemed to have been refused—Separate suit for future profits—Civil Procedure Code (Act V of 1908), s. 11, Expt. V* In a suit for partition, a claim was made for possession, past mesne profits and future profits. The decree which granted partition made no reference to future profits although past profits were awarded. The plaintiff having filed a separate suit to recover future profits for three years. *Held*, that the plaintiff having claimed future mesne profits and the Court having in its decree said nothing with regard to the future profits, the claim in respect of the same must be taken to have been refused and a separate suit for that relief was not maintainable under Expt. V to s. 11, Civil Procedure Code, 1908. *Doraiswami Ayyar v. Subramania Ayyar (1917) 41 Mad. 188 and Muhammad Isaq Khan v. Muhammad Rustom Ali Khan (1918), 40 All. 272, not followed.* ATMAHAR BHASKAR v. PARAFURHAM BAILLAL (1920)

I L. R. 44 Bom. 954

MHARKI VATAN.

See HEREDITARY OFFICES ACT (BOM. ACT III of 1874 AS AMENDED BY BOM. ACT III of 1910), ss. 25, 36, 63 AND 64.

I L. R. 41 Bom. 23

MIADI SARBARAKARI TENURE.

See OMRGA TENANCY ACT, 1913, s. 3.

4 Pat. L. J. 387

MIGRATION.

See HINDU LAW—JOINT FAMILY

I L. R. 40 Calc. 407

See SUCCESSION

L. R. 43 I A 35

MILITARY OFFICER

In the Indian Staff Corps—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s. 60, CL. 2 (b).

I L. R. 38 Bom. 667

MINES AND MINERALS.

See LANDLORD AND TENANT—MINERAL RIGHTS.

I L. R. 37 Calc. 721

I L. R. 39 Calc. 696

See LEASE

1 Pat. L. J. 441

I L. R. 43 Calc. 67

See MINING LEASE.

Income from rent and Royalties of

See INCOME TAX ACT, 1918, s. 5.

6 Pat. L. J. 62

rights of grantee to—

See GRANT

I L. R. 41 Calc. 565

1. ————— Coal mine, working of, by lessee—*Suit for perpetual injunction to restrain lessee from connecting leased mine with*

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other mines, from instroke working and from cutting or changing the thickness of supporting pillars—*Suit, if to fail of premature in respect of one of several reliefs—Injunction, circumstances justifying the grant of—Breach of contract between lessor and lessee—Lessee if bound to leave barrier of coal to prevent communication with adjoining mine—Instroke, right of—Lessee, if can be deprived of right of instroke working without express provision in lease—Presumption of right in favour of lessee—Subordinate, owner's right of support against—Circumstances under which Court should protect such right by injunction* After the death of the lessee of a coal mine his sons transferred their interest in the mine to a person who had mines in the immediate vicinity. The plaintiff lessor sued for a perpetual injunction to restrain the purchaser, (i) from connecting the disputed mine with the adjacent mines, (ii) from raising the coal from the disputed mine through the pits of his mines, (iii) from ever cutting off or changing or diminishing the thickness of the pillars of coal in the disputed mine. The Subordinate Judge granted an injunction on the first two grounds and refused an injunction on the third ground. It appeared that under the lease the lessee was entitled to remove all the coal of the demised mine, but he undertook to manage the work according to the prevailing practice with special care and expertness. It was not suggested that the defendant had acted in breach of this covenant. The plaintiff alleged that the transfer had been made with a view to enable the purchaser to injure the plaintiff by an improper working of the mine, he further asserted that there was a conspiracy amongst the defendants who had threatened to cause him loss. The defendant denied the truth of these allegations. *Held*, that it is well settled that a man who seeks the aid of the Court by an injunction must show that the act complained of is in fact a violation of his right or is at least an act which if carried into effect will necessarily result in a violation of the right. The mere prospect or apprehension of injury or the mere belief that the act complained of may or will be done is not sufficient. That as the defendant claimed a right to take away the entire coal, the Court was competent to grant an injunction if it was established that what the defendant asserted he had a right to do would constitute a breach of contract between the lessor and lessee. That as regards the mode of removal of the coal, the plaintiff failed to prove that he had any ground for an injunction in this respect, but the suit could not consequently be deemed premature in respect of all the reliefs claimed, though the objection might hold good with regard to one of them. That the principle that a lessee who removes a barrier between the demised and an adjoining mine is guilty of waste had no application to the circumstances of the present case. That it was not obligatory upon the lessee to have a barrier of coal merely to prevent communication with adjoining mines and the injunction granted by the Court below restraining the defendant from breaking through the existing barrier of coal could not be supported. That the right of instroke is the right of conveying minerals leased to the surface through a pit or shaft in the adjoining mine; it is the converse right to that of outstroke which is the right of conveying minerals from an adjoining mine to the sur-

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face through a pit or shaft in the mine leased and a lessee is *prima facie* entitled to work by instroke but not by outstroke, and if the lessor desires to deprive the lessee of his right of instroke working he must do so by clear and unambiguous provision. That in the present case the original lessee had no other land in the neighbourhood and could work the mine only through pits sunk therein and the original parties to the lease did not contemplate the contingency which happened and did not provide for it in the contract. There would consequently be a presumption of right in the lessee to work in the most advantageous way subject to his not committing a fraud on the lessor and no fraud on the part of the lessee having been proved, the injunction to restrain the defendant from working the mine by instroke could not be sustained. That *prima facie* the owner of the surface has a right of support and the lessee is not entitled to work the mine so as to cause a subsidence. This right to support will be protected by an injunction if the Court is satisfied that injury is imminent and certain to result from the defendant's acts. The Court will also interfere by injunction when the defendant claims the right to do acts which must inevitably cause a subsidence. But in the present case there were no materials to show that the plaintiff had the right to the surface and till such right was established, he could have no right to claim protection against subsidence of the surface. Even assuming that the plaintiff had right in the surface, there was no evidence to show that the pillars need be maintained in the present size and number to prevent subsidence and in view of the statutory rules for the working of mines it was extremely improbable that the defendant could alter the pillars in such a way as to endanger the surface, and the injunction in this respect was rightly refused. *RAMJAS AGARWALLA v. BRAJAMOHAN SINGH* (1914). 19 C W N 887

Leases for years or for life—Leases in perpetuity—Intention of parties—Landlord's rights. It is well settled in England that a tenant for life or for years has no right to work unopened mines. *Clegg v. Rowland*, 2 Eq 160, and *Campbell v. Wardlaw* 8 Ap Cas 611, referred to. *Gordon Stuart & Co v. Tikannee Debbarh Awarree* (1864) 15 P 370, not followed. *Prince Mahomed Bakhtyar Shah v. Raja Dhyamrai*, 2 C L J 20 and *Titaram Mukerji v. Cohen*, 1 L R 33 Cal 203 referred to. There is no difference in principle between a lease for years and a lease in perpetuity, when nothing is known or can be inferred about the intentions of the parties at the time of the inception of the lease. The landlord continues to have a reversion in mines discovered after the inception of the lease. *Kally Dass Ahir v. Manmohan Dass*, 1 L R 24 Cal 460 referred to. *Abduram Goveami v. Shyama Charan Nandi*, 1 L P 30 Cal 1003, followed. *Soni Koor v. Himmat Bahadur*, 1 L R 1 Cal 331, 1 L P 31 A 92, referred to. *Jahoor Shyam Chand Jiv v. Pore Laxmi Ghose*, 1 L R 33 Cal 528 not followed. *Shama Charan Nandi v. Abduram Goveami*, 1 L R 33 Cal 511, and *Mogh Lal Pandey v. Poykumar Thacker* 1 L R 31 Cal 358 distinguished. *Brignath Bose v. Durga Prasad Bhopal*, 1 L R 31 Cal 743 not followed and held to be practically overruled by *Hari Narayan Singh Deo v.*

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Sriram Chakravarti, 1 L R 37 Cal 723, 1 R 37 I A 136. *Jyoti Prasad Singh v. Lachipur Coal Company* (1911) 1 L R 38 Cal 845

Moghal Brah mottar—Grant. Moghal Brah mottar grant of a mauza does not pass the minerals under it to the grantee. *Hari Narayan Singh Deo v. Sriram Chakravarti*, 1 L R 37 Cal 723, and *Jyoti Prasad Singh v. Lachipur Coal Co* 1 L R 38 Cal 845, followed. *Soni Koor v. Himmat Bahadur*, 1 L R 1 Cal 331, distinguished. *KUNJA BEHARI SEAL v. DURGA PRASAD SINGH* (1914) 1 L R 42 Cal 346

Mining Rights—Brahmottar grant of mauza of entire mauza before Permanent Settlement, effect of, in relation to mining rights. The effect of a grant of a rent free brahmottar of the whole of a mauza made before or after the Permanent Settlement is not to transfer any mining rights. *Jyoti Prasad Singh v. Lachipur Coal Co* 18 C W N 211 s.c. 1 L R 38 Cal 845, and *Kunja Behari Seal v. Raja Durga Prasad Singh*, 19 C W N 203 relied on. *Hari Narayan Singh Deo v. Sriram Chakravarti* 1 L R 37 I A 136 s.c. 1 L R 37 Cal 723, 14 C W N 746, followed. *NOWAHUR COAL CO. LD. v. SASHI BHUSAN RAY* (1914) 19 C W N 375

Zamindar, grant of rent free debottar by—Grantee if entitled to under ground rights. Where a zamindar grants a tenure in lands within his zamindari and it does not clearly appear by the terms of the grant that a right to the minerals is included, the minerals do not pass to the grantee. The principle applies to a rent-free tenure. *RAGHUNATH POY MAHWANT v. RAJA DURGA PRASAD SINGH* (1919) 23 C W N 914

Grant by zamindar of part of zamindari land—Lease in perpetuity. In absence of evidence that zamindar expressly granted right to dig coal no such right passes by grant. Where a zamindar grants a tenure of lands within his zamindari and it does not clearly appear by the terms of the grant that a right to the minerals beneath the soil is included, the minerals do not pass to the grantee. *Hari Narayan Singh v. Sriram Chakravarti*, 1 L R 37 Cal 723, 1 L R 37 I A 136, *Durga Prasad Singh v. Brajanath Bose*, 1 L R 39 Cal 696, 1 L R 33 I A 133, and *Sashi Bhushan Ray v. Jyoti Prasad Singh Deo*, 1 L R 44 Cal 585, 1 L R 41 I A 46, followed. This principle applies as well as to rent free grants as to grants of tenure at fixed rents. A grant by the Rajah of Jharna of rent free brahmottar land part of the Paj property of which the terms were "You should enjoy it comfortably by cultivating and getting the same cultivated by others. Hence this jaldi is granted to you" was held not to pass the underground minerals to the grantee. *RAGHUNATH POY MAHWANT v. DURGA PRASAD SINGH* (1919) 1 L R 47 Cal 83

Minerals right to—Surface rights and subsoil mineral rights—Distinction between copholders and tenants of freehold land in England—Construction of the terms "Restrictions and covenants as to the exercise of the power" in mining lease—Limitation—Adverse possession. Where the mineral rights were never in contemplation of the parties when the lease was

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granted in 1830 and the lessees never exercised any mineral rights whatsoever barring taking small quantities of coal from the outcrop for domestic purposes and burning lime and the zemindar by the lease granted a village containing 380 bighas at the abnormally low rent of Rs. 17 per annum the presumption made in the absence of the original document was that only the surface rights were conveyed to the grantees. In such a case the mines and minerals and the property in the subsoil remained the property and in the possession of the zemindar. The surface rights with their incidents became vested in the grantees as tenure holders. *Hari Narain Singh Deo Bahadur v. Siram Chakraborty* L. R. 37 I. A. 136, s. c. I. L. R. 37 Cal. 723 24 C. W. N. 748 and *Durga Prasad Singh v. Broja Nath Bose* I. L. R. 39 Cal. 696 s. c. 16 C. W. N. 452, relied on *Kunja Behari Sen v. Durga Prasad Singh* I. L. R. 42 Cal. 316, s. c. 19 C. W. N. 293 referred to. If the mines are presumed to be vested in, and to be the property of the zemindar, his rights must be just the same as those of a free simple free holder owner of land according to English Law who makes a grant with an express reservation of the mines to himself together with the incidents that follow therefrom. By reason of that presumption and by reason of the severance of the tenement and the reservation that must be deemed to rise in favour of the Raja, the latter has an incident to his right of property and ownership in the mines the right by implication of law to enter upon the surface of the tenure holder's mouzah for all reasonable and necessary purposes to enable him to work the mines and exercise his mineral rights. The case of *Prince Mohamed Bakhtyar Shah v. Ram Dajamoni*, 2 C. L. J. 29 in so far as it decided that the owner of a limited estate in possession, can prevent the grantor or his lessee to work and appropriate the mineral during the existence of such limited estate unless the grantor had expressly reserved the mineral right in his own favour, was wrongly decided by the misapplication of the English Law of copyholds to the case of owners and tenants of freehold land. The distinction between freehold and copyhold law is that under the latter there is no division into strata and the tenant obtains possession of the entire surface and subsoil to the centre of the earth, so that the lord of the manor cannot work the mines unless he proves a right or custom to that effect. It is under only the copyhold law and where there is no reservation of custom proved that a deadlock occurs and neither landlord or tenant can work the mines. Under the law applicable to freehold land there can be no deadlock, or if the mines be excepted, the grantor has an implied right to work them incidentally to such exception, if there be no exception then that right is with the grantee as owner of the surface and subsoil. Where a reservation is reserved the person in whose favour the reservation is made is the absolute owner of the subsoil and the rights of such a person are that he has by implication of law the power to go upon the surface and do all things reasonably necessary in order to exercise the enjoyment of his property. *Batten Pool v. Kennedy*, (1907) 1 CA 256, and *Ramsay v. Blair*, J. R. I. A. C. 701, referred to. *Held*, on the construction of a mining lease, that under cl. (3) of Part II of the lease, the lessees had merely power and liberty to enter upon lands in direct posses-

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sion of the Raja himself in order to exercise the mineral rights vested in them. The implied liberty to enter and work the mines subject to reasonable restrictions is not to be curtailed by the express conditions of the lease unless the intention is apparent. Part III of the lease headed "Restrictions and conditions as to the exercise of the above liberties, powers and privileges" must be construed as only restricting the liberties and privileges expressly conferred by Part II and not as any restriction upon the general right of access which is implied by law. *Lari of Cardigan v. Armistage*, 2 B. & C. 137, 107 Eng. Rep. 351, referred to. *Held*, also, that the defendant acquired no title by adverse possession to the mines and minerals of the land in question. **NAWABAHU COAL CO., Ltd. v. BEHARILAL TRIGUNAT** (1916) 20 C. W. N. 1135

Land Law in Bengal—Mokarari Lease—"With all rights" A mokarari lease of lands "with all rights" ("matlak hakuk") does not carry a right to the subjacent minerals. *Sanki Bhawan Misra v. Jyoti Singh*, L. R. 41 I. A. 46, followed and applied. **GIRDHARI SINGH v. NIRON LAL PANDEY** (1917) L. R. 44 I. A. 245

Coal mines—Royalty received by proprietor of estate from lessees of coal mines—Liability to Cess under Bengal Cess Act (Bengal Act IX of 1880), ss. 6 and 72—Return of "annual net profits" of coal mines—Income-tax. *Held* (upholding the decision of the High Court), that a royalty received by the appellant from person to whom he had leased a portion of his estate in Bengal for the purpose of working the coal mines situated therein was, within ss. 6 and 72 of the Bengal Cess Act (Beng. Act IX of 1880), part of the "annual net profits" of the mines, and that he had been properly assessed with cess on such royalty. The return required by s. 27 was not with regard to the mine-owner's profit, but had reference to the general net profits of the property. The fact that the obligation to make the return was laid on the person most cognizant of the circumstances under which the mine was worked and of the profits derived from it, did not alter the character of the royalty received by the proprietor for his share of the property of the mine. **MANENDRA CHANDRA NANDY v. SECRETARY OF STATE FOR INDIA** (1910)

I. L. R. 38 Cal. 372

Minerals under the soil, right to grant of surface to permanent tenure holder—reservation as to minerals presumption from—grantor's right to enter the surface-holder's land to work minerals, transferee of grantor's rights, rights of. The plaintiffs obtained from the Rajah of Katras a lease of the underground mines and minerals rights in Mouza Kumarguri, dated the 2nd October, 1839. They were prevented from working the mines by the defendants, who claimed both the surface and sub-soil rights in the Mouza under a deed from the Rajah of Katras' ancestor, dated the 21st March 1830. The deed was not produced, but it was said to have conferred upon the defendants a *Moghul Brahmin* tenure in respect of 830 bighas of land at a rent of Rs. 17 per annum. In appeal the defendants asked the Court to presume a grant in their favour on the basis of a lost grant. The Court presumed a grant

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to the defendants, as permanent tenure holders of the surface rights of the Mouzah and held, that at the time of the grant there must be presumed to have been a severance of the surface rights from the property in the sub soil. The surface rights, with their incidents, became vested in the defendants as tenure holders, and the mines and minerals in the Rajah, as the owner of the property, as if there had been a reservation in his favour. *Held*, further, that by reason of this presumption and by reason of the severance of the tenement and the reservation deemed to have arisen in favour of the Rajah the latter had, as incidental to his right of property and ownership in the mines, the right by implication of law to enter upon the tenure-holder's land for all reasonable and necessary purposes to enable him to work the mines and exercise his mineral rights. A transferee of the Rajah's right to the mines and minerals would have the same right to enter the tenure holder's land as the Rajah himself had. *NAWAAR COAL CO., LTD v BEHARI LALL TRIGUNAIT*

1 Pat. L J 275

Minerals—Patni Lease, whether convey underground rights—"Adha Urdha Hak Hakuk," meaning of, in a lease—low rent—ignorance of parties to conveyance as to value of sub-soil rights, effect of. In the absence of express words conveying the underground rights, a patni lease does not entitle the *patnidar* to work the minerals. The words "adha urdha" followed by the words "hak hakuk" in a lease convey the underground rights. When sub soil rights are expressly transferred by the terms of a deed the fact that the rent is low, or that the parties were not aware, at the time of the execution of the deed, that there were valuable minerals under the soil, does not render the lease invalid. *RAM LAL KAVIRAJ v RAJA MAHARAJA KUMAR SATYA NIBRANJAN CHAKRAVARTY*

5 Pat. L J. 563

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quently, no matter how long mines remain unworked by the owner his right is not barred so long as they are not worked by some one else. There are cases in which a title by adverse possession can be made out in respect to minerals but it does not follow that by working a part of the minerals or opening up particular quarries possession over a continuous field of minerals or quarries of which the portion worked forms a part can be acquired. A fresh course of action for a declaration that the mineral rights in certain land are vested in the plaintiff arises whenever any particular portion of the minerals is removed. The mere fact that no rent is reserved in a *patni* does not necessarily imply that by it a revenue free estate was granted. Direct payment of cess on account of rent free lands is not conclusive that those rent free lands constitute a separate estate. *KUMAR PRAMATHA NATH MALIA v A J MITT*

5 Pat. L J. 273

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See LANDLORD AND TENANT.

I. L. R. 41 Calc. 493

I. L. R. 46 Calc. 552

L. R. 45 I. A. 275

See MINES AND MINERALS

See TENANTS IN COMMON

I. L. R. 39 Mad 1049

Parcels—Area stated within specified boundaries—Alleged Deficiency—Abatement of Rent The appellant was lessor, and the respondents lessees under a mining lease, the terms of which were contained in a *kabulyat* granting the rights of cutting, raising and selling coal beneath '400 bighas of land, described in the schedule below, in Mauza Dobari," the schedule specified boundaries and added "right in the coal underneath the 400 bighas of land within these boundaries." In a suit to recover arrears of rent the respondents alleged that they were in possession of less than 400 bighas and claimed to be entitled to an abatement of rent. *Held*, (i) that the construction of the *kabulyat* as to the land included in the lease could not be varied by evidence of the negotiations which led to the contract or by evidence that there were not 400 bighas within the specified boundaries; (ii) further, that the respondents had failed to prove what was the area in fact contained within the boundaries or that of which they had been given possession. *DURGIA PRASAD SINGH v RAJENDRA NARAYAN BAGCHI* (1913)

I. L. R. 41 Calc. 493

L. R. 40 I. A. 223

Construction—Rule of construction—Issue raised in the pleadings but neither at the hearing nor in appeal, not allowed to be raised before the Privy Council In construing the terms of a deed, the question is not what the parties may have intended but what is the meaning of the words which they used. Where a grantee of underground and coal mining rights in a village which at the date of the grant had railway communication only by the East India Company, stipulated to pay royalty at a certain rate on all coals despatched by the said railway line, but in view of the contemplated construction of another line by the Bengal Nagpur Railway Company, agreed that if by reason of such construction the freight of coal were reduced by two annas or more

grant of surface, effect of—Adverse possession, acquisition of title to minerals by—constructive possession—Limitation Act (IX of 1908) Art 120—Bengal Regulation I of 1793, Art 8 (3)—Bengal Regulation XIX of 1793, cl 2 (1) A grant, by a zamindar, of a tenure in lands within his zamindari does not pass the minerals unless it appears clearly from the terms of the grant that the minerals were included in the grant. The mere fact that such a grantee has given leases which purport to give a right to the soil and the sub soil of his tenure, and that minerals have been worked by the lessees, will not convey a title by adverse possession on the grantee as against the zamindar from whom he acquired his grant. Although possession of a part of a certain property is constructive possession of the whole if the whole is otherwise vacant this constructive possession is an incident of ownership and results from title. The doctrine of constructive possession is not applicable to a case where the occupant defends himself on the ground of his possession only without proving any title. A wrong doer's rights by adverse possession must be confined to land of which he is in actual possession and this principle applies equally to mines. Where an owner of land sells it reserving to himself the mineral he retains possession of the minerals in the same way as if he had not sold the surface. Mere non user is not an abandonment of possession, and, conse-

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per ton then on all coals despatched in the aforesaid manner royalties at a certain higher rate were to be paid. *Held* that the words referred to all coals despatched by rail at the reduced rates either by the East India Company or the Bengal Nagpur Railway Company. An injunction in the proceedings but not at the hearing in the original Court or on appeal in the High Court was not allowed to be raised in the Privy Council. **MANINDRA CHANDRA NANDI v. DUTTA PRASAD SINGH** (1917) 21 C W N 707

Construction.— I over to lessee to surrender on six months notice and payment of all dues to date—Notice given—Lessor's request that formal surrender be executed and delivered and payment made thereunto—Surrender executed and delivered subsequent to expiry of notice—Lessor if may demand royalty and rent subsequent to expiry of notice—Principle and agent—Agent's authority Where a lease by its terms permitted surrender by the lessee on giving six months notice provided that all rents and royalties due up to the date of the expiry of the notice were paid on that date and that unless this was done the notice would become ineffectual and the surrender ineffective. *Held* that a letter written by the agent of the lessor upon receipt of such notice requesting that the surrender should take place by execution of a deed in terms approved by the lessor had the effect of transferring the payment of the amount to the date when the surrender would be executed and delivered even though this date should be subsequent to the date of the expiration of the notice the surrender taking effect from the date when the notice expired when ever it was executed. *Held* also that the lessor's agent although he had no power finally to fix or vary the terms upon which the lessor's land was to be dealt with had authority when once the notice was handed over to him to give the lessee express direction to make the payment at the time of the delivery of the executed deed of surrender. **SHYAM PRASAD SINGH v. THE TATA IRON AND STEEL CO. LD** (1918) 23 C W N 466

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2 Pat L J 627

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2 Pat L J 308 513

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2 Pat L J 212, 190

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Sue by members of joint family in-

cluding minor—

See LIMITATION ACT (IX OF 1908) s 7

I L R 45 Bom 446

MINOR—contd.

1 ———— **Mortgage executed by—Money borrowed to discharge debts of father—Contract executed by minor effect of** In this appeal, which was one from the decision of the High Court in *Maharaj Singh v Baharant Singh* 1 L R 28 All 208, their Lordships of the Judicial Committee, on the evidence, upheld that decision on the question whether the defendant Maharaj was a minor at the time he signed the mortgage, and said "Having found as a fact that Maharaj Singh was a minor, at that time, it is not necessary for their Lordships to consider any other issues. This suit has been brought on the mortgage-deed of the 28th of October 1892 by the assignee of that mortgage, and as their Lordships have held that the mortgage was not made by Sheoraj Singh as the manager of the family or in any respect as representing Maharaj Singh, and as Maharaj Singh was then a minor, the mortgage-deed as against him and his interest in the estate was not merely voidable it was void and of no effect and must be regarded as a mortgage deed to which he was not even an assenting party, and as a mortgage deed which did not affect him or his interest in the estate. *BAL WANT SINGH v R CLANCY* (1912)

I L R 34 All 299

2 ———— **Sale—Sale in favour of minor void** A sale in favour of a minor is void. *Mohor Bibee v Dharmadas Ghose* 1 L R 30 Cal 539 followed. *NAVAKOTHI NARAYANA CHETTI v LOGALINGA CHETTI* (1909) 1 L R 33 Mad 312

3 ———— **Custody of—Determination of custody of minor—Contract of apprenticeship by minor, how far enforceable—Injunction against minor for breach of such contract—When Court will take minors from custody of parents or persons selected by them** A minor may bind himself by a contract of apprenticeship if it be for his benefit but such a contract cannot be specifically enforced against him either directly or by restraining him from taking service under others or by restraining others from employing him. *De Francesco v Barnum*, 43 Ch D 165, referred to. If the contract is for the benefit of the minor apprentice an action will lie for enticing away such apprentice and to recover his earnings. Parents and guardians cannot divest themselves of their right of guardianship by any contract. A delegation of such right is revocable at any time and the parent or guardian is bound to revoke it if it is used to the detriment of the children, and it is open to the Court within whose jurisdiction the children are found to exercise the same power, if cause is shown for such interference. The jurisdiction of the Courts to take away children from parents or from persons selected by them is a parental one and the Courts must do what a wise parent under the circumstances would or ought to do. *The Queen v Symonds*, (1893) 2 Q B 232, 248, referred to. The main consideration to be acted upon is the benefit or welfare of the child, the welfare of the child means not only its physical but also its moral and religious welfare. A male child above the age of 14 and a female child above the age of 16 years will not ordinarily be compelled to remain in custody to which he or she objects; and in the case of younger children who are still old enough to form an intelligent preference their wishes will form one of the elements for consideration. The Court will remove children

MINOR—contd.

from the custody of one from whom cruelty or corruption is apprehended. *POLLARD v POUSS* (1910) 1 L R 33 Mad 288

4. ———— **Fraud—Misrepresentation—Minor—Estoppel—Evidence Act (I of 1872) s 115—Co sharer landlord, notice to quit by, if valid** When a person between 18 and 21 years of age executes a conveyance with the knowledge that his minority has been extended by reason of an order under s 7 of the Guardians and Wards Act in favour of vendees who are not aware of that fact, there is misrepresentation and legal fraud on his part, and he is estopped from taking advantage of his minority to show that the conveyance by him is inoperative. *Mohun Bibi v Sarat Chand* 2 C W N 18. *Dhannul v Ram Chander* 1 L R 24 Cal 265, relied on. *Mohor Bibee v Dharmadas Ghose* 1 L R 30 Cal 539 s c 7 C W N 411, referred to. *SREENDRA NATH ROY v KRISHNA SAKSHI DAS* (1910)

15 C W N 239

5 ———— **Representation of minor—Appointment of guardian ad litem—Absence of affidavit as required by s 456 of the Code of Civil Procedure 1882—Suit by minors to set aside proceedings—Civil Procedure Code, 1882, s 413** Where an order was made by Court appointing a person guardian ad litem on behalf of certain minors in a suit in which a decree was duly made against them. Held in a suit by the minors on attaining majority to set aside the decree and also in execution thereunder that the absence of an affidavit such as is required by the provisions of s 456 of the Civil Procedure Code (Act XIV of 1882) at the time the application for the appointment of a guardian was made was not sufficient to render the proceedings illegal and void as against the minors on the ground that they were not properly represented therein. *Wahan v Danke Behari Pershad Singh* 1 L P 30 Cal 1021 1 L R 30 I A 182, followed. The order being on the record, the presumption was, in the absence of evidence to the contrary, that every thing was regularly and properly done. *MAYN LAL v GHULAM ABBAS* (1910)

I L R 32 All 287

6 ———— **Suit to set aside compromise of and decrees in suits to which minors were parties—Civil Procedure Code 1882, ss 413 456, and 462—Minors unrepresented owing to fraud and misrepresentation of de facto guardian whose interest conflicted with theirs—Form of decree—Civil Procedure Code, 1908 s 98—Specific Relief Act (I of 1877) s 42—Question of law** In this case the appellants sued for a declaration that a compromise of certain pre-emption suits and decrees based thereon, made on their behalf in 1899 when they were minors, were not binding on them, having been obtained by the fraud and misrepresentation of the respondent (who was then their de facto guardian and manager of their property) and in proceedings in which they were practically unrepresented; and they prayed that they might be restored to the position held by them prior to the date on which the compromise and decrees were made. It appeared that although the appellants were described in the proceedings as "under the guardianship" of one H P, he had never been properly appointed their guardian ad litem by the Court as required by s 413 of the Civil Pro-

MINOR—contd

cedure Code, 1882 that no *bona fide* application had ever been made under s 450 to have a guardian *ad litem* appointed by the Court and that the leave of the Court had not been obtained to enter into the compromise on the appellants' behalf as was necessary under s 402. *Held* that the appellants were entitled to the declaration they sought. *H P* had their Lordships found, being introduced into the suits of 1899 by the respondent as the guardian or next friend of the appellants to advance the interests of the respondent and to defeat the interests of the appellants, which conflicted with those of the respondent he had throughout acted under the directions and on behalf of the respondent and in his interest and contrary to the interests of the appellants and the respondent had taken advantage of his position to the detriment of the appellants. There was therefore no one to protect them, and they were unrepresented in the proceedings, which were therefore not binding on them. *Manohar Lal v Jadunath Singh*, 1 L R 23 All 585 I P 33 I A 128, followed S 42 of the Specific Relief Act (I of 1877) which had been applied to the case by the majority of the Court of the Judicial Commissioner, was held not to be applicable. *Semle*. The question whether on certain stated facts the relief which the appellants prayed for should be granted or refused, was a question of law within the meaning of s 93 of the Civil Procedure Code (Act V of 1908), and where, on a difference of opinion on that question between two Judges of the Court the case was referred under that section to a third Judge, that was the only question he had jurisdiction to consider and decide. *PARTAB SINGH v BHADUTI SINGH* (1913)

I L R 35 All 487

7 ———— *Guardian ad litem refusing to act—Mitakshara father of proper guardian in suit on mortgage of family property by him—Hindu law, Mitakshara family—Debts son's liability for—Mortgage decree of minor infant son who is not represented—Equity of redemption if barred by such decree—Decree form of—Practice—Redemption decree for passed in a suit on a mortgage executed by a Mitakshara father the father was proposed as guardian *ad litem* of his infant son by the plaintiffs but he refused to accept service of notice on him as such and entered appearance only on his own behalf and not as guardian of his son. No further step was taken by the plaintiffs to have a guardian *ad litem* appointed for the infant and the suit was decreed. *Held* that the infant was not represented in the suit and the decree was therefore not binding on him. *Wahan v Bank Behari*, L R 30 I A 182 I L P 30 Calc 1021 distinguished *Kharajmal v Diam*, I L R 32 Calc 236 9 C W N 201, referred to. In a suit by the infant for a declaration that the decree was fraudulent and not binding on him, it was found that the mortgage was executed for legal necessity and that the infant son was not born at the time of the mortgage. *Held*, that it would be unfair to drive the mortgagor to a fresh suit to enforce the mortgage against the infant when the case had been decided on the merits and the mortgage found binding on the infant. But although the mortgage was binding on the plaintiff if he had, since his birth, a share in the equity of redemption and his right to redeem could not*

MINOR—contd

be shut out by a mortgage decree in a suit to which he was not a party. Although, therefore, there was no prayer to be allowed to redeem in this suit, decree for redemption was passed. *BAL KISHOR LAL v CHOWDHURY TAFSEER SIKH* (1911)

17 C W N 219

8 ———— *Decree against—Effect of, if void—Minor sued as major and unrepresented by guardian ad litem if party to a suit. A decree against a person who is neither a party nor is properly represented on the record is a nullity and might be disregarded without any proceeding to set it aside. Kharajmal v Diam*, 9 C W N 201 I L R 32 Calc 236, referred to. Where a suit for rent was brought and an *ex parte* decree passed against a person who, though sued as a major, was found to have been a minor at that time and remained unrepresented by a guardian *ad litem*. *Held*, that the minor was not a party to the suit and the decree passed against him was nullity. *Roshidunnessa v Ismail Khan*, 13 C W N 1182 *Narsing v Jal*, 15 C L J 3, followed. *Wahan v Bank Behari* 7 C W N 774 I L R 30 Calc 1021, distinguished. *Held* also that the ignorance of the plaintiff as to the minority of the defendant did not affect the rights of the minor. *PURNA CHANDRA KUNWAR v BEJOY CHAND MAHATAR* (1913)

17 C W N 549

9 ———— *Guardian—Custody—Plaint in District Court—Transfer to High Court—Jurisdiction—Letters Patent, 1865, cl. 13 and 20—Guardians and Wards Act (VIII of 1890) ss 9 10 and 52. The first respondent instituted a suit against the appellant in a District Court by a plaintiff claiming a declaration that he was entitled to the guardianship and custody of his two minor sons (the added respondents) and for an order that they should be handed over to him. The suit having been transferred to the High Court under the Letters Patent, 1865 s 13 that Court declared that the minors should be wards of the Court that the first respondent was guardian of their persons and ordered the appellant to hand them over to him. The minors were in England both when the suit was instituted and when the order was made. They were not made parties to the proceedings nor were they represented before the Court. *Held* (i) that the District Court had no jurisdiction since the minors were not ordinarily resident in the district as required by s 9 of the Guardians and Wards Act 1890 and since the suit was not instituted by petition as required by s 10 of that Act, (ii) that, even if the High Court had any jurisdiction with regard to minors beyond that which might have been exercised by the District Court (which was not determined), the mandatory order ought not to have been made, since an attempt to enforce it would expose the appellant to *habeas corpus* proceedings in England, and since the minors were not represented before the Court, nor adequate steps taken to ascertain their wishes and interests. *BESANT v KARATIANIA* (1914)*

L R 41 I A 314

10 ———— *Guardian ad litem—appointment of, procured by suppression of the existence of near relation—Whether decree liable to be set aside—Fraud. In a suit for the recovery of money against a father and his minor son, the father refused to act as guardian *ad litem* of his minor*

MINOR—*contd.*

1 ———— **Mortgage executed by—Money borrowed to discharge debts of father—Contract executed by minor effect of** In this appeal, which was one from the decision of the High Court in *Maharaj Singh v. Balwant Singh* 1 I L R 28 All 373, their Lordships of the Judicial Committee, on the evidence, upheld that decision on the question whether the defendant Maharaj was a minor at the time he signed the mortgage and said: Having found as a fact that Maharaj Singh was a minor, at that time it is not necessary for their Lordships to consider any other issues. This suit has been brought on the mortgage deed of the 28th of October 1890 by the assignees of that mortgage and as their Lordships have held that the mortgage was not made by Sheoraj Singh as the manager of the family or in any respect as representing Maharaj Singh, and as Maharaj Singh was then a minor the mortgage-deed as against him and his interest in the estate was not merely voidable, it was void and of no effect and must be regarded as a mortgage-deed to which he was not even an assenting party, and as a mortgage-deed which did not affect him or his interest in the estate. *BALWANT SINGH v. R. CLAWLY* (1912) I L R 24 All 293

2 ———— **Sale—Sale in favour of minor void** A sale in favour of a minor is void. *Mohor Bibee v. Dharmodas Ghose* 1 L R 30 Cal 539 followed. *NAKAKOTI NARAYANA CHETTI v. LOGALINGA CHETTI* (1909) I L R 33 Mad 312

3 ———— **Custody of—Determination of custody of minor—Contract of apprenticeship by minor, how far enforceable—Injunction against minor for breach of such contract—When Court will take minors from custody of parents or persons selected by them.** A minor may bind himself by a contract of apprenticeship if it be for his benefit; but such a contract cannot be specifically enforced against him either directly or by restraining him from taking service under others or by restraining others from employing him. *De Francesco v. Barnum*, 43 Ch D 165 referred to. If the contract is for the benefit of the minor apprentice, an action will lie for entire recovery of such apprentice and to recover his earnings. Parents and guardians cannot divest themselves of their right of guardianship by any contract. A delegation of such right is revocable at any time and the parent or guardian is bound to revoke it if it is used to the detriment of the children; and it is open to the Court with whose jurisdiction the children are found to exercise the same power. If cause is shown for such interference. The jurisdiction of the Courts to take away children from parents or from persons selected by them is a parental one and the Courts must do what a wise parent under the circumstances would or ought to do. *The Queen v. Gough*, (1895) 2 F & R 232 243 referred to. The main consideration to be acted upon is the benefit or welfare of the child, the welfare of the child means not only its physical but also its moral and religious welfare. A male child above the age of 14 and a female child above the age of 16 years will not ordinarily be compelled to remain in custody to which he or she is objecting and in the case of younger children who are still old enough to form an intelligent preference their wishes will form one of the elements for consideration. The Court will remove children

MINOR—*contd.*

from the custody of one from whom cruelty or corruption is apprehended. *LOLLARD v. PORCE* (1910) I L R 33 Mad 288

4. ———— **Fraud—Misrepresentation—Minor—Fetoppel—Evidence Act (I of 1872) s 115—Co-sharer landlord notice to quit by, if valid.** When a person between 18 and 21 years of age executes a conveyance with the knowledge that his minority has been extended by reason of an order under s 7 of the Guardians and Wards Act in favour of vendees who are not aware of that fact, there is misrepresentation and legal fraud on his part and he is estopped from taking advantage of his minority to show that the conveyance by him is inoperative. *Mohun Bhai v. Narai Chand* 2 C W N 18 *Dhanmull v. Poon Chander* 1 L R 24 Cal 265 relied on. *Mohori Bilee v. Dharmodas Ghose* 1 L R 30 Cal 539 s c. C W N 441 referred to. *SURENDRA NATH ROY v. KRISHNA SAKSHI DAS* (1910) 15 C W N 239

5 ———— **Representation of minor—Appointment of guardian ad litem—Absence of affidavit as required by s 456 of the Code of Civil Procedure 1882—Suit by minors to set aside proceedings—Civil Procedure Code 1882 s 413** Where an order was made by Court appointing a person guardian ad litem on behalf of certain minors in a suit in which a decree was duly made against them: Held in a suit by the minors on attaining majority to set aside the decree and sale in execution thereunder that the absence of an affidavit such as is required by the provisions of s. 456 of the Civil Procedure Code (Act XIV of 1882) at the time the application for the appointment of a guardian was made was not sufficient to render the proceedings illegal and void as against the minors on the ground that they were not properly represented therein. *Mahon v. Danke Bickari Lal and Singh*, 1 L R 30 Cal 1021 L R 30 I A 182, followed. The order being on the record the presumption was in the absence of evidence to the contrary, that every thing was regularly and properly done. *MAHON LAL v. GHULAM ABBAS* (1910)

I L R 32 All 292

6 ———— **Suit to set aside compromise of and decrees in suits to which minors were parties—Civil Procedure Code 1882 ss 413 456 and 462—Minors misrepresented owing to fraud and misrepresentation of de facto guardian whose interest conflicted with theirs—Form of decree—Civil Procedure Code 1882 s 54—Specific Relief Act (I of 1872) s 4—Question of law** In this case the appellants sued for a declaration that a compromise of certain pre-emption suits and decrees based thereon made on their behalf in 1899 when they were minors, were not binding on them, having been obtained by the defendant and misrepresentation of the respondent (who was then their de facto guardian and manager of their property) and in proceedings in which they were practically misrepresented, and they prayed that they might be restored to the position held by them prior to the date on which the compromise and decrees were made. It appeared that although the appellants were described in the proceedings as "under the guardianship" of one H P, he had never been properly appointed their guardian ad litem by the Court as required by s. 413 of the Civil Pro-

MINOR—contd

cedure Code, 1882 that no *bona fide* application had ever been made under s 456 to have a guardian *ad litem* appointed by the Court, and that the leave of the Court had not been obtained to enter into the compromise on the appellants' behalf as was necessary under s 402 *Held*, that the appellants were entitled to the declaration they sought *H P* had, their Lordships found, been introduced into the suits of 1899 by the respondent as the guardian or next friend of the appellants to advance the interests of the respondent and to defeat the interests of the appellants, which conflicted with those of the respondent he had throughout acted under the directions and on behalf of the respondent and in his interest and contrary to the interests of the appellants, and the respondent had taken advantage of his position to the detriment of the appellants There was therefore no one to protect them, and they were unrepresented in the proceedings, which were therefore not binding on them *Manohar Lal v Jadunath Singh, 1 L R 23 All. 535 L R 33 I A 123, followed. S 42 of the Specific Relief Act (I of 1877) which had been applied to the case by the majority of the Court of the Judicial Commissioner, was held not to be applicable. Semble* The question whether on certain stated facts the relief which the appellants prayed for should be granted or refused, was a question of law within the meaning of s 93 of the Civil Procedure Code (Act V of 1908), and where, on a difference of opinion on that question between two Judges of the Court, the case was referred under that section to a third Judge, that was the only question he had jurisdiction to consider and decide *PARTAB SINGH v BHARUTI SINGH (1913)*

I L R 35 All 457

7. ———— *Guardian ad litem refusing to act—Mitakshara father of proper guardian in suit on mortgage of family property by him—Hindu law, Mitakshara family—Debt, son's liability for—Mortgage decree of Hindu infant son who is not represented—Equity of redemption if barred by such decree—Decree, form of—Practice—Redemption, decree for passed* In a suit on a mortgage executed by a Mitakshara father, the father was proposed as guardian *ad litem* of his infant son by the plaintiffs, but he refused to accept service of notes on him as such and entered appearance only on his own behalf and not as guardian of his son. No further step was taken by the plaintiffs to have a guardian *ad litem* appointed for the infant and the suit was decreed *Held* that the infant was not represented in the suit and the decree was therefore not binding on him *Wahan v Danie Behary, L R 30 I A 182 I L R 30 Cal 1021 distinguished. Khirajmal v Dham, I L R 32 Cal 296 9 C W N 201, referred to* In a suit by the infant for a declaration that the decree was fraudulent and not binding on him, it was found that the mortgage was executed for legal necessity and that the infant son was not born at the time of the mortgage *Held*, that it would be unfair to drive the mortgagor to a fresh suit to enforce the mortgage against the infant when the case had been decided on the merits and the mortgage found binding on the infant But although the mortgage was binding on the plaintiff he had, since his birth, a share in the equity of redemption and his right to redeem could not

MINOR—contd

be shut out by a mortgage decree in a suit to which he was not a party Although, therefore, there was no prayer to be allowed to redeem in this suit, decree for redemption was passed. *DAL KISSEY LAL v CHOWDHURY TAFSEER SINGH (1911)*

17 C W N 219

8. ———— *Decree against—Effect of, if void—Minor sued as major and unrepresented by guardian ad litem if party to a suit* A decree against a person who is neither a party nor is properly represented on the record, is a nullity, and might be disregarded without any proceeding to set it aside *Khairajmal v Dham, 9 C W N 201 I L R 32 Cal 296, referred to* Where a suit for rent was brought and an *ex parte* decree passed against a person who, though sued as a major, was found to have been a minor at that time and remained unrepresented by a guardian *ad litem* *Held*, that the minor was not a party to the suit and the decree passed against him was nullity *Rashidunnessa v Ismail Khan 13 C W N 1182, Narasing v Jaki 15 C L J 3, followed. Wahan v Banke Behary 7 C W N 774 I L R 30 Cal 1021, distinguished* *Held*, also, that the ignorance of the plaintiff as to the minority of the defendant did not affect the rights of the minor *POORNA CHANDRA KURWAR v BEJOY CHAND MAHATAR (1913)*

17 C W N 549

9. ———— *Guardian—Custody—Plaint in District Court—Transfer to High Court—Jurisdiction—Letters Patent, 1865, cls 13 and 20—Guardians and Wards Act (VIII of 1890) ss 9, 10 and 52* The first respondent instituted a suit against the appellant in a District Court by a plaint claiming a declaration that he was entitled to the guardianship and custody of his two minor sons (the added respondents) and for an order that they should be handed over to him The suit having been transferred to the High Court under the Letters Patent, 1865, s 13, that Court declared that the minors should be wards of the Court, that the first respondent was guardian of their persons, and ordered the appellant to hand them over to him The minors were in England both when the suit was instituted and when the order was made they were not made parties to the proceedings, nor were they represented before the Court *Held*, (i) that the District Court had no jurisdiction, since the minors were not ordinarily resident in the district, as required by s 9 of the Guardians and Wards Act, 1890 and since the suit was not instituted by petition, as required by s 10 of that Act, (ii) that, even if the High Court had any jurisdiction with regard to minors beyond that which might have been exercised by the District Court (which was not determined), the mandatory order ought not to have been made, since an attempt to enforce it would expose the appellant to *habes corpus* proceedings in England, and since the minors were not represented before the Court, nor adequate steps taken to ascertain their wishes and interests *BESANT v NARAYANIAN (1914)*

L R 41 I A 314

10. ———— *Guardian ad litem—appointment of, procured by suppression of the existence of near relation—Whether decree liable to be set aside—Fraud* In a suit for the recovery of money against a father and his minor son, the father refused to act as guardian *ad litem* of his minor

MINOR—contd

whereupon the Court appointed its Head Clerk as guardian on the affidavit of the plaintiff that there was no fit and proper person alive to act as the guardian of the minor, while as a matter of fact the plaintiff knew that the minor was living under the protection of his maternal grandfather. The decree passed in this suit was sought to be set aside by the minor on the ground of fraud. *Held*, that the statement in the affidavit could not be held to be deliberately false so as to constitute fraud, in the absence of any allegation of collusion between the plaintiff and the Head Clerk, and the decree could not be set aside unless there was no appointment of a guardian at all or the appointment was induced by fraud or what the Court would regard as tantamount to fraud. *Hanuman Prasad v. Muhammad Isahq*, I L R 28 All 137, *Ramchandras Das v. Joti Prasad*, I L R 29 All 675, and *Babaji bin Kumbhar v. Maruti*, 11 Bom. H C 152, distinguished. *MARUTHAMALAI v. PALANI* (1912)

I L R 37 Mad. 535

11 ———— Insolvency—Provincial Insolvency Act (III of 1907), *et seq.* (1) (g) 16—Contract Act (IX of 1872) *et seq.* 217, 253 254—Infant, adjudication of as an insolvent—*Pecunia*—Insolvency, powers of—Hindu joint family—Bankruptcy Act, 1883 (16 & 17 Vict. c. 53) *et seq.* 33, 102—Insolvency of partner—Dissolution of partnership In India as in England, an infant partner of a firm cannot as such be adjudicated an insolvent. *Lovell & Christmas v. Gilbert Walter Beauchamp* (1894) A C 607, followed. The creditors of the firm are not entitled to proceed against him personally, being restricted only to his interest in the property of the firm (*vide* s. 247 of the Indian Contract Act). There is no difference in principle between the nature of the liability of an infant admitted by agreement in a partnership business and that of another (*e.g.*, a Hindu) on whose behalf an ancestral trade is carried on by his guardian. *Jaykumar v. Nathuram* I L R 30 Cal. 733, *Pam Parth v. Adhikari* I L R 20 Bom. 767, referred to. It is not open to the Court to direct the receiver in insolvency to deal with assets other than those belonging to the persons who have been adjudicated insolvents. *Lovell & Christmas v. Gilbert Walter Beauchamp*, (1894) A C 607, explained. Whereas in England the bankruptcy of a partner works dissolution of the partnership without an order of the Court it is not so in India. *Vide* ss. 253, 254 of the Indian Contract Act. A receiver appointed under s. 16 of the Provincial Insolvency Act merely replaces the insolvent partner in respect of the business of the firm. The position of a receiver is the same both with regard to a Hindu joint family partnership assets and acquisitions therefrom. *SANYASI CHAMAN MANDAL v. ASHTOSH GUPTA* (1914)

I L R 42 Cal. 225

12 ———— Settlement accepted by—Transfer of property by husband acting as attorney—Insolvency to restore status quo, bar to re-opening settlement—*Ratification*. Where by a division of property by independent arbitrators, a share was allotted to an infant who after coming of age sold a valuable property so allotted at a profit, and it appeared that she was throughout acting with her husband who held a power of attorney from her and of whose acts as attorney she had not known, and who if the infancy had been known planned, and who if the infancy had been known would have been appointed her guardian and as

MINOR—contd

guardian would have acted exactly as he had acted as attorney, and it was only after the greater part of what she had received had been dissipated that she sought to set aside the transaction on the ground of her infancy. *Held*, that though there could be no ratification by an infant after coming of age, of the invalid power of attorney, as it was impossible for her to restore the property she had received and a general redistribution of the property divided could not possibly be ordered, she could not be allowed to reopen the settlement. *Held* also that she was bound by a transaction which was not concealed from her in any way, and formed part of the settlement. *CHAMAN HOOR GUON NEON v. KRAW SIM BEK* (1915)

19 C W N 737

13 ———— Representation of—Suit to set aside a decree against a minor—Minor properly represented in such suit—Fraud or collusion of guardian A decree obtained against an infant properly made a party and properly represented in the case cannot be set aside by means of a separate suit except upon proof of fraud or collusion on the part of the guardian. *Best Prasad v. Lajja Pahi* (1916) I L R 33 All. 452

14 ———— Purchase of Immoveable property by or—Suit by purchaser for possession of property purchased—Transfer of Property Act (IV of 1882), *et seq.* 54 and 55 A minor is capable of purchasing immoveable property and where such a purchase has been completed by execution and registration of a sale deed, he can sue to recover possession of the property purchased upon tender of the balance of the purchase money. Such a suit is not a suit for specific performance of a contract and no question of mutuality arises. *Mir Sarwarjan v. Fakhrudin Mahomed Choudhury*, I L R 39 Cal. 232, and *Mohori Bibee v. Dharmodar Ghose* I L R 30 Oud. 539, distinguished. *Shib Lal v. Bhagwan Das*, I L R 11 All 244, *Bajrath Singh v. Palu*, I L R 30 All 125, *Velayutha Chetty v. Govindaswami Nair*, I L R 30 Mad 524 *Ujjai Rai v. Gauri Shankar*, I L R 33 All 657, *Munni Kunwar v. Madon Gopal*, I L R 33 All 62 *Bakawuddin v. Rafiqat Hussain*, 18 Indian Cases 451, *Raghunath Baksh v. Hays Shrikh Mahomed*, 18 Oudh Cases, 115 and *Munna Koman v. Perumal Koman*, 24 Mad L J 342, referred to. *Namilathi Narayana Chetty v. Logalinga Chetty* I L R 33 Mad 312, distinguished from *NARAIN DAS v. MUHAMMAD DRAVIA* (1915)

I L R 39 All. 154

15 ———— Mortgage in favour of minor who has advanced the whole of the mortgage money—Enforceability of, by him or by any other person on his behalf—Contract Act (IX of 1872) s. 11—Transfer of Property Act (IV of 1882), s. 7 A mortgage executed in favour of a minor who has advanced the whole of the mortgage money is enforceable by him or by any other person on his behalf. *Mohori Bibee v. Dharmodar Ghose*, I L R 30 Cal. 532, 30 I A 114 explained and distinguished. *Emble*. A sale to a minor under similar circumstances is equally good. *Narayan Chetty v. Logalinga Chetty*, I L R 33 Mad 312, overruled. English and Indian Law reviewed. *RAGHAVA CHARIAN v. SHIVAKA RAGHAVA CHARIAN* (1916) I L R 40 Mad. 308

16 ———— Liability of, when ancestral trade carried on on his behalf—Contract Act (IX of 1872) s. 247—*Interest*, not contractual for and

MINOR—contd

not recoverable under the Interest Act (XXXII of 1839), allowed as damages. A minor on whose behalf an ancestral trade is carried on is not personally liable for debts incurred in such business. The liability of such a minor is not greater than that of a minor admitted to a partnership as laid down by s 247 of the Contract Act. The amount due having been ascertained and a *mellogbandi* signed by the defendants. *Held*, that though no contract to pay interest was proved and the case was not covered by the Interest Act, some interest should be allowed by way of damages for the detention of the money. **KHETRA MOHAN TODDAR v NISHU KUMAR SHARMA** (1910) 22 C W N 438

17 ——— Money borrowed by guardian of a Hindu minor for a purpose binding on minor—Form of decree in a suit on loan—Liability of minor and his estate for loan. *Held* by **AYLING and SHRENDHAM AYAR, J J**—(a) that on a contract entered into on behalf of a minor by his guardian under which the guardian borrowed money but no charge was created on the minor's estate, no decree can be passed against the minor on his attaining his majority or his estate, except in cases in which the minor's estate would have been liable for the obligation incurred by the guardian under the personal law to which he is subject, and that (b) a decree can be passed against the estate of a Hindu minor for a debt, contracted by his guardian for the marriage of his sister. **PER WALKER, C J**—A decree cannot be passed against a minor on his attaining his majority or his estate on a covenant entered into on his behalf by a guardian for his benefit. **RASAJOGAYYA v JAGANSHASTHAN** (1918) . I L R 49 Mad 155

18 ——— Advance to guardian to pay off decree obtained against minor—Liability of minor's estate for advance in excess of requirements—Mortgage. Where certain co-sharer landlords obtained a decree for the rent of the holding of two co-sharer tenants, one of whom was a minor, and one of the co-sharer landlords advanced money to the minor's guardian on the security of a mortgage executed by the guardian on behalf of the minor, for the purpose of averting a sale of the holding and for the payment of arrears of rent and the minor's guardian paid off the whole of the decretal amount and the arrears of rent with the money so advanced. *Held*, in a suit by the mortgagee for recovery of the mortgage debt that the minor was liable for only half the sum advanced as he was concerned with paying off only half the amount decreed in the rent suit and half the arrears of rent. *Held*, also, that the money having been borrowed for the purpose of saving the minor's estate from sale the latter was liable to refund half the amount of the loan although it was not expressly stated in the mortgage bond that the minor's estate or the minor personally would be liable to repay the money advanced. **KALI RAI v KAMU SINGH** 3 Pat L J 78

19 ——— Lease in favour of, whether void—*Settlement—Chota Nagpur Tenancy Acts (Ben Act VI of 1908) s 41* A lease to a minor imposing a liability on him to pay rent and perform certain covenant is null and void. A person who claims to have entered into possession of land under a lease which is null and void is a mere trespasser and cannot claim protection for eject-

MINOR—contd

ment under s 41 of the Chota Nagpur Tenancy Act, 1908. **PRAMILA BALA DAS v JOGESHVAR MANDAL** 3 Pat L J 518

20 ——— Agreement by manager that minor would pay maintenance to certain claimants—Whether minor bound. In a suit for maintenance for the three years prior to the suit against an estate which was being managed under the Court of Wards, the plaintiff, an illegitimate son of a former holder of the estate, compromised the suit with the manager of the estate on the following terms—the plaintiff was awarded a certain sum as past maintenance and it was agreed that he should receive Rs 50 per mensem as maintenance during the minority of the ward. The manager also covenanted that the ward should continue to pay to the plaintiff Rs 50 per mensem as maintenance after the wards attained majority. The suit was decreed according to the compromise. On attaining majority, the ward instituted the present suit to set aside the compromise. The first court held that the decree made the ward personally liable for future maintenance and was therefore invalid. The court held, however, that the decree should be considered as a decree against the estate and ordered that the defendant should be paid maintenance at the rate of Rs 50 per mensem from the estate. *Held*, that although the first court had power to set aside the decree based on the compromise in so far as it bound the plaintiff personally it had no power to substitute in lieu thereof an entirely different liability which had not in fact been decreed. **RAJ KUMAR JAGAR NATH PRASAD SINGH v MINZA ERABAI BAHADUR** 5 Pat L J 239

21 ——— Agent appointed by guardian—Liability of agent to account to minor—Settlement of accounts by arbitrator or mediator—Whether liable to be reopened. An agent appointed by the guardian of a minor is not liable to account to the minor for his acts even though he received properties belonging to the minor. A settlement of account by arbitrators or mediators cannot be reopened except on the ground of fraud. **PANANATHAN CHETTIAR v MUTHIAN CHETTIAR** (1920) I L R 43 Mad 429

22 ——— Appointment of guardian—Jurisdiction—"Property"—Guardians and Wards Act (VIII of 1899), s 9 (2) A guardian can be validly appointed of the property of a minor in the hands of the administratrix to his father's estate. **BRUNJANATH DEY SARKAR v ANANDAMAYA DAS**, 5 B L R 208 relied on. **LALIT KUMAR MUKERJEE v DASARATHI SINGHA** (1920) I L R 45 Cal 802

23 ——— Fraudulent representation by minor that he was of age—*Stoppage—Indian Evidence Act, I of 1872, s 115* Plaintiff sued to recover the principal and interest due on a bond executed by defendant on 4th February 1912. Defendant pleaded *inter alia* that he was not liable as he was a minor on that date. Defendant was born on 10th December 1891, and he was therefore about 20 years and 2 months old when the bond was executed. A guardian had been appointed for him, but the guardian resigned and on the 18th May 1910 the District Judge passed an order that though the minor was 18 or 19 years of age and minority would continue till the age of 21, as the appointment of a fresh guardian was discretionary and as the minor

MINOR—*contd.*

did not wish a fresh guardian to be appointed and was old enough by appearance to act for himself, no fresh guardian need be appointed. After that defendant managed his own affairs, and acted as a man who has attained majority would do. The plaintiff alleged that the dealings were entered into on defendant's assurance that he had become an adult. This was disputed by defendant, but the High Court found on the evidence (contrary to the finding of the District Judge) that the defendant did represent himself to be of full age and that the plaintiff was misled by the false representation. *Held*, that s 115 of the Evidence Act is applicable to the case, and that the defendant's plea of minority can not be heard. *Ganesh Lal v Bapu* (1 L R 21 Bom 193), *Nelson v Stocker* (4 de Gex and J 455) dictum of Turner, L J, cited in 1 L R 25 Calc. at page 393 and *Leevay v Brougham* (Times L R, Vol 24, p 507), followed. *Dharmo Das Ghose v Brahma Dutt* (1 L R 25 Calc 616) and *Mohari Bisi v Dharmo Das Ghose* (1 L R 30 Calc. 539, P C), distinguished. *Dhanmull v Ram Chandra Ghose* (1 L R 24 Calc 265, F B), *Brahma Dutt v Dharmo Das Ghose* (1 L R 26 Calc 331, F B), *Sural Chand Mitter v Mohan Bisi* (1 L R 25 Calc. 371, F B) and *Balak Ram v Dadu* (76 P P 1910), not followed. *WASINDA RAM v SITA RAM* 1 L R 1 Lab 339

MINOR CO-PARCENER.

— Purchaser from—

See PARTITION SUIT

1 L R 45 Bom 923

MINOR REVERSIONER.

See HINDU LAW—JOINT FAMILY PROPERTY

1 L R 47 Calc. 274

MINOR WIDOW

See GUARDIAN 1 L R 42 Calc 953

MINORITY

See CIVIL PROCEDURE CODE 1909—

s 48. 1 L R 39 Bom 256

O. XXXIV, no 4, 5 10

1 L R 41 All. 473

See HINDU LAW—ALIENATION

1 L R 40 Calc. 968

See LIMITATION ACT (IX of 1908)—

s. 7 1 L R. 41 All. 435

SCH I, ART 15th (6) s 7

1 L R 40 All 630

See MINOR

See TITLE PROOF OF

1 L P 45 Calc 909

— of Mahomedan when to cease—

See PENAL CODE (Act XLV of 1900)

s 363 1 L R 37 Mad 567

MIRASDAR

See KADIM INAMDAR.

1 L R 42 Bom 112

— general rights of, over house-sites and waste in villages—

See MIRASI VILLAGE.

1 L R 40 Mad. 410

MIRASDAR—*contd.*

— Holding under a Kadim Inamdar who is a grantee of the soil as well as of the royal share of revenue—41

See LAND REVENUE CODE (Bom Act V of 1879) s 217

1 L R 45 Bom. 61

MIRASI LEASE

See SARANJAM 1 L R 34 Bom 329

MIRASI LEASE AND MORTGAGE

See HEREDITARY OFFICES ACT (Bom III of 1874), ss 11, 11A

1 L P 37 Bom 37

MIRASI VILLAGE

— House-sites in—Owner ship of—Legal presumption of ownership in Government and not in mirasidars—Prescription or user by mirasidars effect of—General rights of mirasidars over house-sites and waste in villages. The plaintiffs claiming to be mirasidars of a mirasi village in the Chingleput district sued to eject certain persons from a part on of the grammatiam (house-sites) which the defendants claimed to hold and enjoy under a patta granted to them by the Government. On the plea taken by the Government that the Government and not the mirasidars are the owners of house-sites in mirasi villages, the following question was referred to the Full Bench: "Whether in a mirasi village the mirasidars are entitled to recover possession of a house-site held under a patta from Government?" On a review of the history of mirasi tenure in the Presidency both before and after the establishment of the British Government and on a review of several revenue and judicial records relating to the question *Held*, by the Full Bench:—In the absence of proof to the contrary the presumption is that the Government and not the mirasidars are the owners of house-sites in mirasi villages. *Per WALLIS, C J*—But where there is evidence of user by the mirasidars the presumption of their ownership readily arises. *Per ALLING J*—The mirasidars may show that they are the owners by proving a previous grant by Government or prescription as against the Government. *Per KUMARASWAMI SASTRIGAR, J*—(i) In mirasi villages the rights of Government over waste (including pottam and cten) are subject to the rights of the mirasidars (ii) The nature and extent of such rights are not uniform throughout the Presidency but vary, and the onus is on the mirasidars to prove that any specified incidents attached to mirasi rights in any particular district there being no presumption that grammatiam is the exclusive property of the mirasidars (iii) The rights of mirasidars over waste are not extinguished by the mere fact that the Government Grants pattas to strangers. *Secretary of State for India v Basu Raybar*, 1 L R 39 Bom 625 *Sakkaji Bapu v Lakshmana Gaudwad* 1 L R 2 Mad 149 *Saundh Narayan v Nana Ranga Chari* 1 L R 36 Mad 371, *Secretary of State for India v M Arachayya*, 1 L R 28 Mad 257 *Natesa Gramani v Venkataranna Reddi*, 1 L R 30 Mad 510, and *Bhatnagarappa v The Collector*

MIRASI VILLAGE—*contd*

of North Kanara, I L R 3 Bom 452 472, referred
to SESHACHALA CHETTY v CHINNASWAMI (1916)
I L R 40 Mad. 410

MISAPPROPRIATED GOODS

— suit for—

See LIMITATION ACT (IX OF 1908) SCH I
ARTS 48 AND 49

I L R 40 Mad 678

MIS APPROPRIATED MONEY

See CRIMINAL BREACH OF TRUST

I L R 48 Calc 879

MISAPPROPRIATION

See SHERIFF . I L R 42 Calc 244

— of client's property—

See PROFESSIONAL MISCONDUCT

I L R 40 Mad. 69

— suit for—

See LIMITATION ACT (IX OF 1908), SCH
I, ARTS 48, 49

I L R 38 Mad 783

Penal Code ss 465

471 477A—Removal of evidence of misappropriation
by shewing amount misappropriated in accounts if
offence under Where in order to remove evidence
of misappropriation of a sum of Rs 10 the amount
was shown in the accounts as having been received
on a date on which it could not have been received
Held that the entry, though false did not conceal
liability but rather showed in regard to such
liability the true point on of affairs and so intent
to defraud in its true legal significance was not
made out and there could be no conviction under
ss 465 471 or 477A of the Penal Code *Lalit*
Mohan Dattar v The Queen Empress I L R 22
Calc. 313 and *The Deputy Legal Penembrance v*
Pash Belary Dass 12 C W N 581 distinguished
Jyotish Chandra Mukherjee v Emperor (1909)

I L R 38 Calc 855

14 C W N 82

MISCHIEF

See COURT OF WARDS 15 C W N 224

See CRIMINAL TRESPASS

I L R 38 Calc 180

See NORTHERN INDIA CANAL AND DRAIN
AGE ACT (VIII OF 1873) ss 7 70

I L R 34 All. 210

See PENAL CODE (ACT XLV OF 1860)
s 430

I L R 41 All 599

Intent on—Motive—

Cutting a channel through a way to let out water
from fields Where tenants, finding their fields
flooded cut a channel through a way in order
to let the water run off their fields Held that
the act having been intentionally done amounted
to mischief and it was no defence to say that
the motive in doing it was to free the fields
from water, was an innocent one DEPUTY
SUPERINTENDENT OF LEGAL AFFAIRS v CHULHAN
AMIR (1904) 16 C W N 283

MISCONDUCT

See LEGAL PRACTITIONER.

15 C W N 237

See PLEADER I. L. R. 35 Mad. 543

MISCONDUCT—*contd*.

See PROFESSIONAL MISCONDUCT

See SOLICITOR 16 C W N 386

See UNPROFESSIONAL CONDUCT

— of servant or agent—

See EXCISEABLE ARTICLES
I L R 39 Calc 1033

— of vakil in management of appeal—

See PLEADER I L R 35 Mad 543

MISDELIVERY

See CARRIERS I L R 41 Calc 703

MISDIRECTION

See CHARGE TO JURY

I L R 41 Calc 1023

See COUNTERFEIT COIN

I L R 44 Calc 477

See CRIMINAL PROCEDURE CODE—

ss 297 25 C W N 142

ss 367 418 423 I L R 29 All 348

See DEPOSITION I L R 46 Calc 895

See EVIDENCE ACT s 167

14 C W N 493

See JURY TRIAL BY

I L R 40 Calc 367

I L R 46 Calc 635

See MISDIRECTION TO JURY

See PRACTICE I L R 40 Bom 220

See TRIAL BY JURY

I L R 47 Calc 46

Murder—Circumstan-
tial evidence—Possession of deceased a blood-stained
ornaments and clothes—Presumption of being mur-
derer—Verdict of jury valid of where presumption
of law not explained Where in a case of murder
blood stained ornaments were found in the room
occupied by the accused and the evidence estab-
lished that those articles belonged to the deceased
and in the Sessions Judge a charge to the jury,
there was no direct on pointing out that the
possession in this case if believed was a fact from
which the Court might presume not merely theft
or receipt of stolen property but also a murder with
which the accused was charged Held that this
was a serious omission detracting materially from
the value of the verdict and opinion of the jurors
It is especially important that a Judge should
point out a presumption of this kind because
jurors are often reluctant to act on that which is
commonly known as circumstantial evidence
Emperor v Shafik Kamayulla (1913)

17 C W N 1077

Confession—Instructions
to Jury to consider non-confessional statements
admitted on accused—Direction to consider question of
admissibility of confessions—Duties of Judge and
Jury as to mode of dealing with confessions—Use in
the charge to the Jury of expressions assuming guilt
of the accused and of slang terms—Discovery—
Admissibility of part of information leading to dis-
covery—Verification of confessions—Oral evidence of
unrecorded confessions made in verification on proceed-
ings—Misdirection in placing before Jury informa-
tion not leading to discovery and such unrecorded
confessions—Criminal Procedure Code (Act V of
1895) ss 161 236—Evidence Act (I of 1872),

MISDIRECTION—*contd*

as 24, 27, 30 It is a misdirection, which must have misled the Jury, to instruct them to take into consideration statements not amounting to confessions by an accused as against the co accused. It is a misdirection to put to the Jury and to leave it to them to determine whether a confession to a Magistrate, and how much of a confession to the police, are admissible. It is the duty of the Judge to determine the question of the admissibility of evidence, in accordance with the law on the subject, and of the Jury to estimate the value of such evidence after its admission by the Judge. The Judge should avoid the use in the charge to the Jury of interrogative expressions assuming the guilt of the accused such as 'Is not this' or 'Does not that' and of slang and colloquial phrases. S 27 of the Evidence Act qualifies not only ss 25 and 26 but also s 24. *Queen Empress v Dobu Lal* 1 L R 6 All 509, approved. Though the accused has himself produced the stolen articles, so much of his anterior statements as led to the discovery are admissible under s 27 of the Evidence Act but not statements contemporaneous with the act of production, such as 'I got these ornaments as my share in the dacoity'. *Queen Empress v Nana*, 1 L R 14 Bom. 260 and *Legal Remembrancer v Chama Nanyia*, 1 L R 23 Cal 415, referred to S 27 does not render admissible the whole history of the investigation or an account of the various steps by which the police obtained and worked up clues and finally succeeded in arresting the accused. Under the section the whole of the statement of an accused is not admissible but only so much as led directly to the discovery or related directly to the fact discovered. *Per SHAMSEL HUDA J*. If a single statement contains more information than is contemplated by s 27, the whole statement is not admissible but only the particular information which led to the discovery. Where an accused states to the police that he killed A with a knife and concealed the corpse at a particular place the only part of the information admissible under the section is that relating to the concealment and not the murder. *Queen Empress v Dobu Lal*, 1 L R 6 All 509, followed. *Per TATTON J*. Verification proceedings are not wholly illegal, and may be useful in testing the truth of the confession, e.g., as to the accused's knowledge of the localities he has mentioned or as furnishing clues to a further inquiry. *Per SHAMSEL HUDA J*. Verifications in the company of the accused lead to very great abuses and should be avoided though a verification independent of, and unaided by, the accused is unobjectionable. *Held per CRANF*. In connection with such proceedings the Courts must ensure against the reception of evidence not strictly admissible. Statements to the verifying Magistrate when not recorded in the manner provided by s 164 of the Criminal Procedure Code are inadmissible and cannot be proved on. *Per C. H. J.* 220. *King Empress v Jagan Mohan*, 4 C. H. J. 220. *Queen Empress v Jharob Chander Chackralaty*, 4 C. H. J. 202 and *Queen Empress v Jagan*, 1 L R 9 All 251, followed. *Per SHAMSEL HUDA J*. Even if the statements are recorded after the verification is completed, it would be difficult to hold that they were voluntary. *Amarendra Anand v Emerson* (1917). 1 L R 45 Cal 557

MISDIRECTION—*contd*

Misdirection to Jury—
Prosecution, duty of, to produce material evidence—
Circumstantial evidence—Presumption of innocence—
Criminal Procedure Code (Act 5 of 1898), s 352—
Court's power to draw inferences from answers of accused—Evidence Act s 106 The appellant and two other persons R and A were accused of having committed murder of a man travelling in a boat of which they were the boatmen. A was tried first and at this trial A was given a garden and examined as a witness. The appellant was tried subsequently and the prosecution did not examine A. The jury by a majority returned a verdict of guilty against the appellant who was convicted by the Sessions Judge. In appeal the High Court set aside the conviction on the ground of misdirection to the jury. *Held* (as to the non examination of A) *Per TATTON J*.—That in the case of *Dhannoo Ko*, 1 L R 8 Cal 121 is not an authority for the proposition that the prosecution is required to produce and examine such a witness but as he was examined as an approver at the former trial of R it would have been more satisfactory if the prosecution had at least secured his attendance and failing in this had given detailed evidence of the efforts made in that direction. *Per SHAMSEL HUDA J*.—That the omission to direct the attention of the jury to the question whether the prosecution was bound to call A as a witness and whether there was sufficient explanation why the prosecution did not call him was a defect in the charge which prejudiced the accused. That in the absence of anything to show that an effort was made to ascertain his whereabouts and to produce him in Court his absence from the village disposed to by one of the prosecution witnesses was not a sufficient explanation for his non production. *Held* (as to the direction of the Sessions Judge that the accused had said nothing about what had happened to the deceased and had given no explanation as to how he came by his death and this was a strong point against the accused) *Per TATTON J*.—That where a prima facie case of circumstances making out or tending to support the charge against the accused is established and the accused withholds evidence in disproval or explanation available to him and not accessible to the prosecution an inference unfavourable to the accused may legitimately be drawn. Under s 342, Criminal Procedure Code, it is open in the Court and jury to draw such inferences as they think just from the answers made by the accused to the necessary questions put to him by the Court. *Per SHAMSEL HUDA J*.—That the accused is merely on the defensive and owes no duty except to himself that he is as silent as to the whole or any part of the case against him to rely on the witnesses for the prosecution or to call witnesses or to meet the charge in any other way he chooses and no inference unfavourable to him can properly be drawn because he takes a course rather than the other. Where in a criminal case there is a conflict between presumption of innocence and any other presumption the presumption of innocence prevails. *Per SHAMSEL HUDA J* (TATTON J dissenting). The strength of this presumption varies according to the seriousness of the charge upon which an accused person is put on his trial. The greater the crime the stronger is the proof required for conviction. *Per SHAMSEL HUDA J*.—That whatever force a presumption arising under s 164 of the Indian Evidence Act

MISDIRECTION—*conold*

may have in civil or in less serious criminal cases in a trial for murder it is extremely weak in comparison with the dominant presumption of innocence. *Held* (as to the direction to the jury that they must not acquit the accused simply because in their opinion he may possibly not be guilty but that they should do so if they thought the prosecution evidence was for good reason not satisfactory) *Per SHAMSUL HUDA, J.*—That the case rested on circumstantial evidence and before the jury could find the prisoner guilty, they had to be satisfied not only that the circumstances were consistent with his having committed the act but that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person. That the prosecution evidence may be quite satisfactory and yet may leave ample room for doubt regarding the complexity of the accused in the crime and it was the duty of the Judge to have given the jury clear and unambiguous direction on these points. *ASHRAF ALI v KING EMPEROR* (1917)

21 C W N 1152

MISJOINDER*See* CHARITABLE TRUSTS

I L R 34 Mad 406

See COMMON CARRIER LIABILITIES OF

I L R 38 Calc 28

See JURY, RIGHT OF TRIAL BY

I L R 37 Calc 467

See PRELIMINARY DECREE

I L R 37 Bom 60

MISJOINDER OF CAUSES OF ACTION*See* ADMINISTRATOR 2 Pat L J 642*See* AGRA TENANCY ACT (II OF 1901),
s. 34 I L R 35 All 512*See* CIVIL PROCEDURE CODE, 1882 ss. 13,
44 I L R. 35 Bom 297*See* CIVIL PROCEDURE CODE 1908—

s 47 O XXI RR 100 and 101

I L R 40 Mad. 964

O I, R 3 I L R 40 All 7

O II, R 5 I L R 38 Bom. 120

See PRE EMPTION I L R 32 All 14

1 ——— Persons whose separate rights have been infringed by a single act of another cannot join in one suit—Course to be adopted when there is a misjoinder of causes of action—*Civil Procedure Code Act V of 1908 s. 99* Where the separate right of each of several persons is affected by a single act of another person, each of such persons has a separate cause of action against such other person and they cannot bring a suit jointly against such other person. *Smurthwaite v Haana, (1821)* A O 474 referred to Where there has been a misjoinder of cause of action which has prejudiced the defendant on the merits and no objection to such misjoinder was taken in the written statement or at the settlement of issues, the provisions of s. 99 of the Civil Procedure Code Act V of 1908 will apply and the ends of justice will be sufficiently met by findings in the case of each separately instead of dismissing the suit. *AYYAPU MURTHY v VELLAYU NADAN* (1910)

I L R 34 Mad. 55

ISJOINDER OF CAUSES OF ACTION—*conold*

Decision that a suit as framed not maintainable is a judgment and is appealable under cl. 15 of the Letters Patent *RAMENDRA NATH ROY v BROJENDRA NATH DAS* (1917)

21 C W N 794

MISJOINDER OF CHARGES*See* CHARGE I L R 40 Calc 318 346

I L R 41 Calc 66, 722

I L R 42 Calc 957

I L R 46 Calc 712

I L R 47 Calc 154

See CRIMINAL PROCEDURE CODE ss 922

(2) 233 I L R 38 All 42

ss 235 537 I L R 1 Lah 562

See EXCISE I L R 41 Calc 694*See* PENAL CODE (ACT XLV OF 1860)

s 408 I L R 40 All 565

Joint trial for offences under s 120 B of the Penal Code and ss 19 (f) 20 of the Arms Act committed in pursuance of the object of the conspiracy—Identity of transactor—*Criminal Procedure Code (Act V of 1898) s. 209*—Joint possession of arms—Mere keeping of fire arms not an offence Fire arms whether inclusive of parts of the same—*Arms Act (XI of 1878) ss 4 & 5 14 19(a) (f) 20*—Criminal conspiracy proof of—Punishment when act contemplated not done—*Penal Code (Act XLV of 1860) ss 109 116 120B* A charge of criminal conspiracy to manufacture arms under s 120B of the Penal Code read with s 19(a) of the Arms Act (XI of 1878) may be tried jointly with charges of offences under ss 19 (f) and 20 of the latter Act committed in pursuance of the object of the conspiracy. As long as the conspiracy continues the transaction which began with the forming of the common intention continues and the offences under ss 19 (f) and 20 of the Arms Act are committed in the course of the same transaction. *Legal Remembrancer, Bengal v Mon Mohan Roy* 19 C W N 672 21 C L J 195 followed Where two persons rented a house and lived in it and parts of arms were found in one of the rooms—*Held* that both being in joint occupation of the house were in joint possession of the articles so found The word 'fire-arms' in s 14 read with the meaning of arms in s. 4 of the Arms Act includes parts of fire arms. 'Fire-arms' means only arms fired by gunpowder or other explosives. *Alfred Hassan v Queen Empress* 1 L R 27 Calc 690 *Emperor v Dhan Singh & Or* L J 435 3 A L R 53 followed The offence under ss 5 and 19 (a) of the Arms Act is not a mere keeping of arms but a keeping of the same for sale. In cases of conspiracy, the agreement between the conspirators cannot generally be directly proved but only inferred from the established facts of the case Where two persons took a house in which a considerable number of pieces of fire-arms was found with tools and implements, and work had been a really done to some of the parts of fire arms the Court may and ought to infer a conspiracy to manufacture arms. *Per CHIAM* Where there is only a conspiracy to manufacture arms without an actual manufacture the sentence should be imposed under s. 120B of the Penal Code read with s. 19 (a) of the Arms Act and s. 116 of the Penal Code, and the maximum term of imprisonment

MISJOINDER OF CHARGES—*contd.*

ment awardable under these sections is 9 months rigorous imprisonment. *Per* BEACHROFF *J* The punishment awardable under s 100B of the Penal Code varies according as the offence has or has not been committed in consequence of the conspiracy. If an offence has been committed, the punishment is that provided by s 109 of the Penal Code though, strictly speaking there should not be a conviction in such cases of conspiracy but of abetment. If it has not been committed the punishment is governed by s 110 of the Penal Code. *HANSHA NATH CHATTERJEE v EMPEROR* (1914) 1 L R 42 Cal 1153

MISJOINDER OF PARTIES

See CIVIL PROCEDURE CODE (1908) O 1
R 3 1 L R 36 All 406

s 49 1 L R 1 Lah 295

See PRE EMPTION 1 L R 32 All 14
1 L R 41 All 423

See RELIGIOUS ENDOWMENTS ACT, 1863
s 7 1 Pat L J 393

Joint trial—Commission of criminal breach of trust in the same transaction as abetment of cheating and attempt to cheat and as part of a common design—Joint trial of one accused under ss 408 and 420 with another under

ss 408 and 420 of the Penal Code—Legality of separate sentences—Concurrent sentences—Criminal Procedure Code (Act V of 1894) s 239 Where A a railway ticket collector made over two used tickets which he had collected from passengers, to B and instructed him to apply for a refund of the fares covered by the same as unused tickets, at the place of issue and the latter proceeded there and made such an application but was discovered in the act—*Held* that the joint trial of A on charges under ss 408 and 420 and of B under ss 408 and 420 of the Penal Code was legal under the provisions of s 239 of the Criminal Procedure Code. *Parmeshwar Lal v Emperor* 13 C W N 1089 distinguished. *Subratmisra Ayyer v King Emperor*, 1 L R 21 Mai 61 referred to. *Held* also that A had committed two distinct offences in the same transaction and that separate sentences were not illegal, though concurrent sentences were under the circumstances more appropriate. *Re Noyan* 7 Mai H C R 35 referred to. The two parts of s 239 of the Criminal Procedure are not mutually exclusive so that if A includes B to cheat and B attempts to do so, they may be tried together for abetment of an attempt at cheating respectively, and if in the course of the same transaction A commits the separate offence of criminal breach of trust in furtherance of the conspiracy to cheat, he may be separately charged for such offence at the same trial. *Kali Das Chuckerborty v Emperor* (1911) 1 L R 39 Cal 453

Wrongful confinement on one day—Wrongful confinement and assault of the same persons on a subsequent day—Identity of transaction—Unity of object—Criminal Procedure Code (Act V of 1894) s 237 Where in consequence of certain persons having killed a cow on a zamindar's estate contrary to practice and eaten its flesh, they

MISJOINDER OF PARTIES—*contd.*

were taken to the *cutcherry* on the 14th December, fined therefor and confined till they had furnished security for the payment of the fine within three days and on their failure to do so were again taken to the *cutcherry* and detained there and on information given to the police one of them was beaten and all ejected—*Held* that the illegal confinement on the first day and the similar confinement and assault on the second day were parts of the same transaction, the object of the accused on both days being the same viz to punish the persons for a breach of the rule by extorting the fine and the assault on the second day being the conclusion of the transaction and that the joint trial of the accused for offences under s 347 of the Penal Code committed on the 14th and 18th and for that under s 352 on the latter date by them was legal. *Emperor v Datto Hanmant Shahapurkar* 1 L R 30 Bom 49 and *Emperor v Sheruallah Alikhoy* 1 L R 27 Bom 135 approved. *Budhas Shekh v Emperor* 1 L R 33 Cal 292 and *Gul Mahomed Sircar v Chokoru Mandal*, 10 C W N 53 distinguished. *DEPUTY LEGAL REMEMBRANCER v KAILASH CHANDRA GHOSH* (1914) 1 L R 42 Cal 760

Parties—Appeal—Causes of action—Practice—Judgment—Civil Procedure Code (Act V of 1908) O 1, rr 1 and 3 O 11 r 3—Letters Patent 1865 cl 15 An appeal lies, under the Letters Patent from an order of the High Court on its Original Side refusing to allow plaintiff to proceed in one suit against several defendants on the ground of misjoinder and giving him time to elect how he would proceed with his suit and which of the defendants he would retain on the record. O 1, rr 1 and O 1 r 3 of the Civil Procedure Code apply to questions of joinder of parties as also of causes of action. *Umabai v Bhas Balwant* 1 L R 31 Bom 353 and *Janabai v Shrinivas Ganesh* 1 L R 35 Bom 120, distinguished. The plaintiff brought a suit against four sets of defendants for the recovery of certain documents of title and the goods covered thereby and in the alternative for damages. In his plaint he alleged that the goods in suit were his property, that the defendant No 1 obtained from him the documents of title relating thereto by fraud and made them over to defendant No 2, that defendant No 2 knowing that defendant No 1 had no title either to the documents or to the goods wrongfully dealt with them and sold the goods to defendants Nos 3 and 4 that defendants Nos 3 and 4 wrongfully claimed to retain the goods and the documents of title, and lastly that one of the documents of title, viz a railway receipt was pledged by defendant No 1 to defendant No 5 though the goods covered by it were in the possession of defendant No 3. *Held* that the suit was not bad for misjoinder of parties and causes of action. *PANENDRA NATH Dey v BRAJENDRA NATH DASS* (1917) 1 L R 45 Cal 111

Properly received by receivers separately and at different times—Joint trial of receivers—Legal title of—Criminal breach of trust at one place and dishonest receipt subalternity at another place—Joint trial of thief and receivers, legal title of—Some of the offences charged not committed in the same transaction—Illegality vitiating the whole trial—Criminal Procedure Code (Act V of 1894) s 239 Where property is stolen, and

MISJOINDER OF PARTIES—*contd*

the proceeds of the theft are received by different persons separately and at different times they cannot be tried together *Abdul Majid v Emperor*, 1 L R 31 Calc 1256 followed. The joint trial of two receivers who had received stolen cloths separately and at different times was, therefore held illegal. When goods are stolen and subsequently received by the receiver the legality of the joint trial of the thief and receiver depends upon whether the theft and dishonest receipt form parts of the same transaction or not *Bishnu Banar v Emperor* 1 C W N 35 followed. The joint trial of the petitioners for criminal breach of trust committed at B and of two receivers who received the property subsequently at J, was held bad in law. To justify a joint trial of several persons all the offences charged must have been committed by them in the one and the same transaction. If any of the offences so charged were not committed in the same transaction, the whole trial is illegal under s. 239 of the Criminal Procedure Code for misjoinder. *OBI BHUSAN ADHIKARI v EMPEROR* (1918)

1 L R 46 Calc 741

MISJOINDER OF PERSONS AND OFFENCES

See CHARGES 1 L R 46 Calc. 712

MISREPRESENTATION

See ADVERSE POSSESSION

1 L R 40 Calc 173

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1 L R 42 Calc 28

See COMPANY 1 L R 42 Bom 264

MISTAKE

See CLERICAL MISTAKE

1 L R 39 Calc 265

See CONTRACT ACT (1X OF 1872), s. 20

6, 1 L R 40 Bom 838

See DECREE 1 L R 40 Bom 118

3 Pat. L. J 465

See REGISTRATION

1 L R 41 Calc 972

See REGISTRATION ACT, 18-7 ss. 17, 49

1 L R 34 Bom 202

See RES JUDICATA 2 Pat. L. J 313

See SALE IN EXECUTION OF DECREE

1 L R 41 Calc 590

— amendment of—

See POWER OF ATTORNEY

1 L R 37 Calc. 399

— in description of plaintiff—

See CIVIL PROCEDURE CODE ACT (V OF 1908) O 1, s. 10

1 L R 40 Mad 743

— in drawing up of a decree—

See CIVIL PROCEDURE CODE (1908), s. 152

1 L R 37 All 323

— in sale deed—

See EVIDENCE ACT (I OF 1872), s. 82 cl.

(a) 1 L R 39 Mad. 782

— rectification of—

See DECREE 1 L R 40 Bom. 118

MISTAKE—*contd*

Discovery of when first Court's decree was passed—

See LIMITATION ACT (1908), SCH I
ART 96 1 L R 45 Bom 582

Mistake, evidence of—

Similar mistake in other documents—Admissibility

—Concurrent finding of fact, based on no evidence

The proper description of houses in towns for the purpose of registration is by the street in which they are situated and the number which they bear in that street. Where a stranger to a mortgage decree passed in the Original Side of the High Court, who had previous thereto acquired a title in property actually intended to be conveyed (all of which was outside Calcutta) proved that there was no property in Calcutta bearing the street name and number given to the only item of Calcutta property included in the mortgage, and that the property in Calcutta which in fact answered the description of that property by metes and bounds given in the mortgage deed, did not belong to the mortgagor. Held that the onus of proving (as it was open to him to prove) that there was a clerical or other error in the description of the property and that in fact an existing property situated in Calcutta was intended by both parties to be mortgaged, was on the mortgagee decree holder. That to prove this the mortgagee should have examined himself as also his mortgagor. That as no evidence whatever was given to prove this case, it was not open to the Courts in India to come to the conclusion that the entry of the property was a mistake. Evidence to show that the mortgagor had purported to mortgage with other mortgagees the same property under the same description and had been compelled by them to consent to rectification was irrelevant at the trial to prove that the entry in the document was a mistake. That the principle of concurrent findings of fact did not apply to such a case as it was a case of no evidence, and it was open to the Privy Council to hold from the conduct of the mortgagee in not examining himself or his mortgagor and from other evidence in the case, that the entry was intentionally fictitious. *HARENDRA LAL ROY CHOWDHURI v HARI DASS DEBI* (1914)

1 L R 41 Calc 972

18 C W N 817

Suit to set aside previous decree on ground of mistake—Competence of compromise and decree thereon—Rectification on—

Fraud. A decree can be set aside by suit on the ground of fraud if of the required character. But a suit does not lie to set aside a decree in a previous suit on the ground that the Judge in passing that decree made a mistake. *Jogendra Akha v Ganga Bishnu Chakraborty*, 3 C B N 473 dissented from. *Mahomed Ghab v Mahomed Sullivan* 1 L R 21 Calc 612. *Sadho Mawer v Gdab Singh*, 3 C B N 375, and *Bhandi Singh v Doudat* 17 C W N 82, 15 C L J 675, referred to. While in the case of a compromise, as the contract is capable of being rectified for an appropriate mistake, so, as the necessary consequence, is the decree which is merely a more formal expression given to that contract. *Huddersfield Banking Co. Ltd v Henry Lister and Sons Ltd* (1894) 2 CA 273 followed. *KRISHNAJI BHUTTA v BRAJ MOHAN BHUTTA* (1915)

1 L R 43 Calc 217

MISTAKE OF FACT

See **ERROR** I L R 37 Cal. 211

MISTAKE OF LAW

— by arbitrator —

See **ARBITRATION**

I L R 35 Bom. 153

— by Liquidator —

See **CONTRACT WITH FIDELITY**

I L R 44 Bom. 831

— Courts order passed on — Effect of —

See **BENGAL TENANCY ACT 1885** ss 179
AND 174 6 Pat L J 18

MITAKSHARA

See **HINDU LAW**

See **HINDU LAW—ALIENATION**

I L R 33 All 634

I L R 39 Cal. 862

See **HINDU LAW—GIFT**

I L R 37 Cal. 1

See **HINDU LAW—INHERITANCE**

I L R 37 All 604

I L P 34 Bom. 321 510

I L R 35 All 302

See **HINDU LAW—JOINT FAMILY**

I L R 43 Cal. 698 733

I L R 43 Cal. 1031

I L R 35 All 302

I L R 40 Cal. 407

I L R 32 All 183

I L R 33 All 436

I L R 39 All 437

I L R 40 All 159

I L R 41 All 235 338, 361

See **HINDU LAW—JOINT FAMILY PRO-
PERTY** I L R 43 Bom 472

See **HINDU LAW—LEGAL NECESSITY**

See **HINDU LAW—MITAKSHARA**

See **HINDU LAW—MORTGAGE**

I L R 42 Cal. 1068

See **HINDU LAW—PARTITION**

I L R 34 All 503

I L R 39 Bom 373

I L R 43 Cal. 459

I L R 39 All 83

See **HINDU LAW—STRIDHAW**

I L R 36 Bom 424

See **HINDU LAW—SUCCESSION**

I L R 37 All 845

I L R 33 All 702

I L R 39 Cal. 319

I L R 34 All 663

I L R 35 Mad. 152

I L R 39 Bom 439

I L R 38 All 416

I L R 43 All 2-9

See **HINDU LAW—WIDOW**

I L R 40 All 86

See **SUCCESSION CERTIFICATE**

I L R 38 Cal. 182

— doctrine of as to right by birth —

See **HINDU LAW—PARTITION**

I L R 38 Mad. 556

MITAKSHARA—contd.

— Who her father's sister's sons are
heirs —

See **HINDU LAW—SUCCESSION**

I L R 1 Lah 554

— Ch II, s 5 pl. 4 and 5 —

See **HINDU LAW—SUCCESSION**

I L R 39 Bom 67

— Ch II ss 5 B —

See **HINDU LAW—INHERITANCE**

I L R 42 Cal. 384

— Ch II s. 8, para 2 —

See **HINDU LAW—SUCCESSION**

I L R 39 Bom 163

— Ch II s. XI paras 9 11. 25 —

See **HINDU LAW—STRIDHAW**

I L R 43 Cal. 944

MITAKSHARA FAMILY

See **BENGAL TENANCY ACT 1881** ss 105
AND 149 25 C W N 38

See **HINDU LAW—DEBT**

I L R 43 Cal. 341

MITTADAR OR ZAMINDAR

— assignment of Jodi under permanent
sanad —

See **ISLANDIA** I L R 40 Mad. 93

MIXED FUND

See **HINDU LAW—JOINT FAMILY PRO-
PERTY** I L R 44 L A 201

I L R 40 All 159

MOFUSSIL MAGISTRATE

See **COMPTON OF COURT**

I L R 41 Cal. 173

MOFUSSIL PROPERTY

See **MORTGAGE (Misc)**

I L R 47 Cal. 770

MOGHALI BRAHMOTTAR

See **MINE AND MINERALS**

I L R 42 Cal. 348

MOGULI RENT

— “Moguli rent” mean-
ing of “Moguli” is a word of doubtful meaning
and at the best imports no more than that the
rent assessed represents a proportion of the Gov-
ernment revenue **NAWABAR COAL CO. LD. v.
BENARAS TRIBUNAL (1916)** 20 C. W N 1133

MOHUNT

See **HINDU LAW—SUCCESSION**

14 C W N 191

MOKARARI

See **BENGAL TENANCY ACT** s 83.

14 C W N 141

MOKARABIDARS

See **PARTITION** I L R 37 Cal. 818

MOKARARI LEASE.

See **DOWRY TENURE**

I L R 39 Cal. 696

MOKARARI LEASE—*contd*

See LANDLORD AND TENANT (LEASE)
14 C W N 203

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L R 44 I A 240

MOMBASA MIGRATION TO

See SUCCESSION
L R 43 I A 35

MONEY

— left with purchaser for payment to mortgagee—

See MORTGAGE (SALE OF PROPERTY)
I L R 38 All 209

— suit for—

See PROVINCIAL SMALL CAUSE COURTS
ACT (IX OF 1897) SCH II ART 3
I L R 37 Mad 533

MONEY DECREE.

See EXECUTION OF DECREE.
I L R 45 Calc 530

See OCCUPANCY HOLDING
I L R 48 Calc 184

— execution of—

See LIMITATION (44) I L R 45 Calc 630

MONEY HAD AND RECEIVED

— *Money deposited* "in *num jus habent* a *improperly withdrawn* by a person not entitled to it. Where money is deposited in Court *in num jus habent* and it is withdrawn by a person who is declared not to have any right thereto the money so obtained may properly be held to be received for the use of the person entitled to it. *Lut v Martindale* 13 C B 314 referred to *MARDI HUSAIN v SUKH CHAND* (1911) I L R 33 All 450

MONEY LENDER

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 115 AND 151
I L R 38 Bom 633

MONEY ORDER

— Receipt on—
See STAMP ACT s 65
I L R 34 All 102

MONEY PAID UNDER DECREE

— suit for—
See VOLUNTARY PAYMENT
I L R 40 Calc 598

MOOPU

See HINDU LAW—PARTITION
I L R 44 Mad 740

MOPLA

See MAHOMEDAN LAW—GIFT
I L R 36 Mad 385

MORPHIA.

— Whether included in the term opium—

See OPIUM ACT 1878 s 3
I L R 1 Lah 443

MORTGAGE.**See ADVERSE POSSESSION**

I L R 37 All 463
I L R 38 Mad 97
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23 C W N 815

See AGRA TENANCY ACT (II OF 1901).

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s 20 I L R 33 All 136
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See AGREEMENT AGAINST PUBLIC POLICY
I L R 40 Calc 113**See ATTESTING WITNESSES**

I L R 48 Calc 61

See BENGAL TENANCY ACT 1835 s 85
1 Pat. L J 161**See BHAGDARI AND NARWADARI TENURES ACT (BOM V OF 1867) s 3.**
I L R 39 Bom 358**See BOMBAY CITY LAND REVENUE ACT (BOM II OF 18 6) ss 30 35 39 AND 40**
I L R 39 Bom 664**See BUNDELKHAND ALIENATION OF LAND ACT (II OF 1903)**

s 9 I L R 36 All 376
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See BUNDELKHAND ENCUMBERED ESTATES ACT (I OF 1903) s 13
I L R 33 All 138**See CENTRAL PROVINCES GOVERNMENT WARD ACT s 18**
I L R 40 Calc 784**See CENTRAL PROVINCES TENANCY ACT (XI OF 1898) s 45**
I L R 46 Calc 76**See CHOTA NAOPUR ENCUMBERED ESTATES ACT APPLICATION OF**
I L R 46 Calc 1**See CIVIL AND REVENUE COURTS**
I L R 35 All 464**See CIVIL COURTS ACT (XII OF 1887)**
s 21 I L R 41 All 384**See CIVIL PROCEDURE CODE 1882.**

s 13 I L R 32 All 215
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s 257A I L R 38 Bom 219
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ss 366 371 I L R 40 Bom 248
s 411 I L R 34 All 223

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s 60 I L R 34 All 25
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I L R 40 All 683
- Sale deed when may be construed as mortgage—
See DEKKHAN AGRICULTURIST RELIEF ACT 1879, s. 2.
I L R 44 Bom 217
- suit on a—
See AMENDMENT OF PLAINT
I L R 45 Calc 305
- See CIVIL PROCEDURE CODE (ACT V OF 1908), O V, s. 5
I L R 38 Bom 377
- See GUJARAT TAUKHANS ACT (BOM ACT VI OF 1888 AS AMENDED BY BOM ACT 11 OF 1905) ss. 29 29B (1), (2) (3), AND 20L
I L R 38 Bom 604
- See LIMITATION ACT I L R 41 Calc 654
- Suit on a prior mortgage without impleading existing mortgagee—
See TRANSFER OF PROPERTY ACT, 1882 ss. 80 AND 89
I L R 43 All 204
- surging proceeds—
See TRANSFER OF PROPERTY ACT (IV OF 1882) s. 69
I L R 40 Mad. 767
- with possession by lessee—
See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 108 (5).
I L R 40 Mad 1111

MORTGAGE—contd.

Vatan mortgaged with possession—

See LIMITATION ACT (IX of 1908) s 20
CL (2) ART 116

I L R 45 Bom 1206

Sale to mortgagee in possession—

subsequent sale to stranger—

See NOTICE I L R 45 Bom 910

Mortgagee having the option to
sue for interest or for possession on mort-
gagor's failure to pay interest—

See CIVIL PROCEDURE CODE, 1908 O II
s 2 I L R 1 Lah 457

Acquisition of equity of redemption
by adverse possession—

See EQUITY OF REDEMPTION
I L R 1 Lah 549

ASSIGNMENT**ATTACHMENT****ATTESTATION****CONSENT DECREE****CONSIDERATION****CONSOLIDATION****CONSTRUCTION****CONTRIBUTION****DEPOSIT OF TITLE DEEDS****DISCHARGE****ESTOPPEL****EXECUTION OF MORTGAGE DECREE****EXONERATION****FEMALES—REPRESENTATION OF****FORECLOSURE****FRAUD****GUARDIAN—MORTGAGE BY****INTEREST****LOST BOND****MARSHALLING****MOR****MOVEABLES****PARTIS****PARTITION****PRIORITY****REDEMPTION****REISTRATION****SALE OF MORTGAGED PROPERTY****SEVERANCE OF MORTGAGEES INTEREST****SIMPLE MORTGAGE****SUBROGATION****TRANSFEREE MORTGAGEE****UTRUCTUARY MORTGAGE****MISCELLANEOUS****ASSIGNMENT**

See TRANSFER OF PROPERTY ACT s
130—13

Application of the Rule
of dampasit—Transfer of Property Act (II of 1880),

MORTGAGE—contd**ASSIGNMENT—contd**

s 2 (d) The fact that the person entitled to sue
on a mortgage happens by assignment to be a Parsee
cannot affect the (Hindu) mortgagee's right to
claim the advantage of the rule of dampasit if
it existed when the mortgage was entered into.
It is not proper to infer that because it has been
expressly enacted that nothing in Chapter II of the
Transfer of Property Act (IV of 1880) shall be
deemed to affect any rule of Hindu Law the Legisla-
ture has deprived a Hindu mortgagee of the pro-
tection afforded him by the rule of dampasit.
The right of a mortgagee to sue for his principal
and interest arising from a contract must be taken
to be made subject to the usages and customs of
the contract in parties JEEWANBAI v MANORAS
(1910) I L R 35 Bom 199

Suit by assignee of mort-
gage bond—Set off by the defendant of a decree
debt against the assignee—Equitable set-off whether
allowable—Transfer of Property Act (IV of 1880)
ss 3 and 130—Actionable claim nature of The
doctrine of equitable set off is always confined to
unascertained sums arising out of the same transac-
tion Subramanian Chettiar v Mulluswami Ayyar
17 Mad L J 481 dissented from Where
a mortgage is transferred without the privity of
the mortgagee the transferee takes subject to the
state of account between the mortgagor and mort-
gagee at the date of the transfer but not subject
to any independent debt in no way connected with
the mortgage Turner v Smith [1901] 1 Ch 742
followed Chinnappa Rautthan v Chudambaram
Chetti I L R 2 Mad 210 dissented from SUBRA-
MANIA AYYAR v SUBRAMANIA PATTAR (1916)
I L R 40 Mad 683.

ATTACHMENT

Attachment—Civil Pro-
cedure Code (Act V of 1908) O XXXVIII r 5
The plaintiff in a mortgage suit after the preli-
minary decree and before the date appointed for
payment into Court applied for attachment of
certain other properties of the defendants on the
ground of insufficiency of the mortgaged security.
—Held that as the plaintiff would ultimately
have to apply for a personal decree against the
defendants who had a right to get an attachment
under O XXXVIII r 5 of the Civil Procedure
Code Bishambhar Sahas v Sukhdan I L R
18 All 186 and Jaipal Singh v Singh v
Bansila Kumari Deb 15 Ind Cas 694 referred
to JOGENDRA DAS v BAIJANATH PRANAVICK
1918 I L R 46 Cal 245

ATTESTATION

See EVIDENCE ACT 1872 ss 68 AND 69
S v TRANSFER OF PROPERTY ACT 1880
ss 68 AND 69.

Transfer of Property Act
(II of 1880) s 55—Co-executants of any will at
execution by others—Evidence Act (I of 1872) s 68
69 O A mortgage bond executed by several
persons was sought to be proved by the evidence of
one of the executants who was also the scribe
of the document. Held that a party executing
a document required by law to be attested cannot
be an attesting witness thereof and his evidence
even if he was present at and witnessed the execu-
tion of it by others cannot be accepted as that

MORTGAGE—*contd.*ATTESTATION—*contd.*

of an attesting witness in regard to such executions *Jogendra Nath v. Natas Churn, 7 C W N 335*, distinguished *Bryan v. White, 2 Robertson 315, 317* *Sharpe v. Birch, L R 3 Q B D 111*, *Wright v. Talham, 1 Ad. & Ell. 3, 23* *Freshfield v. Reed, 9 M. & W. 494* and *Szal v. Claridge, L R 7 Q B D 516*, relied on *Quare* Whether admission of execution by a party is not receivable in proof of execution of such document by himself *PEARY MOHAN MAITI v. SREENATH CHANDRA MAITI (1908) 14 C W N 1048*

Transfer of Property Act

(IV of 1882), s. 9—Execution of mortgage by *pardanashin lady*, attestation of—Requirements as to identity of executant and as to witnesses seeing actual execution of deed—Acknowledgment of her signature by executant On a question whether a mortgage sued upon had been properly attested under the provisions of a 59 of the Transfer of Property Act (IV of 1882), the evidence showed that the attesting witnesses had not though present, seen the executant (a *pardanashin lady*) sign the deed, but had subsequently to the execution received from her son, who had been with her on the other side of the *parda* an acknowledgment that the signature on the deed had been made by his mother. *Held* (reversing the judgment of the High Court), that the requirements of s. 59 had not been complied with, and the deed was therefore, invalid as a mortgage *Shams Patter v. Abdul Kadir Barathan, 1 L R 35 Mad 607, L R 39 I A 35*, and *Padarath Helwan v. Ram Asa Upadhyay, 1 I R 37 All 474* *I R 42 I A 163*, distinguished *GANGA PRASAD SINGH v. ISHRI PRASAD SINGH (1918)*

1 L R 45 Cal. 748

Attesting witness—

Scribe—Execution admittedly *adul* executant, whether binding on minor—Evidence Act (I of 1872), ss. 65 and 70 Where it is sought to prove the execution of a mortgage by the evidence of a person who signed the deed as a scribe it must be established that the latter, in signing as a scribe, intended to sign as a witness Where a person who has signed a deed as a scribe subsequently asserts that he signed as a witness the onus of proving this assertion lies very heavily on him *NAKSHATRA PRASAD v. BACRU SINGH*

4 Pat L J 511

CONSENT DECREE

Consent decrees between mortgagee and mortgagee—Joint management—Equal division of rent and produce—Prohibition against partition—Mortgagee competent to grant *musam* lease—Mortgagee to get one-fourth of the *musam* (present)—Rights of the mortgagee conveyed to the mortgagee—Equitable mortgage by mortgagee—Settlement by mortgagee in favour of his relations—Suit by equitable mortgagee—Decree—Execution—Auction purchaser put in possession—Suit by donees under the settlement—Donees entitled to possession—Rights of the parties to be worked out, by amicable settlement or by a suit—Suit by representatives of auction purchaser to recover one-fourth share by partition—Plaintiffs entitled to possession of the share as tenants in common—*Musam* lease by mortgagee's assignee without mortgagee's consent—Lease not to ensure for the benefit of the assignee The

MORTGAGE—*contd.*CONSENT DECREE—*contd.*

owners of certain land mortgaged it to S In the year 1806 consent decrees, Exhibits 57 and 58, were passed between the mortgagors and the mortgagee S The consent decrees provided that both parties should jointly carry on the management of the land, each being entitled to half of the produce and rent, that the land itself should not be partitioned, that S was competent to grant a *musam* lease, provided the *na zamana* (present) accepted was not less than Rs 500 and that the said *musam* should be divided between the mortgagors and S in the proportion of $\frac{1}{2}$ and $\frac{1}{2}$ respectively The said rights of the mortgagors were subsequently conveyed by them to S for consideration, Exhibit 64 Afterwards S, in April 1891, deposited Exhibit 64 by way of equitable mortgage with two persons In October 1891 S settled the property which was subject to the equitable mortgage on his relatives J and M In 1892 the two equitable mortgagees sued S to recover their equitable mortgage debt and got a decree against the property equitably mortgaged and against S personally The property was put up for sale in execution and purchased by H for Rs 5425 which covered the claim of the equitable mortgagees J and M obstructed the auction purchase H in his attempts to obtain possession, and their obstruction having failed, they brought a suit against H The final decree in the suit made a declaration that as against H, J and M were entitled to the properties and their possession subject to H's right conveyed to the mortgagee S under Exhibit 64 and subsequently purchased by H and that "the rights of the parties as thus declared must be worked out by amicable settlement between them or by means of a separate suit" The plaintiffs as executors under the will of H, deceased, who was deprived of possession under the *musam* decree, having brought a suit against the assignees of J and H to recover by partition $\frac{1}{2}$ share of the land, the lower Courts dismissed the suit for the recovery of $\frac{1}{2}$ share by partition on the ground that the clause in the consent decrees Exhibits 57 and 58, affected to prohibit partition On second appeal by the plaintiffs *Held*, reversing the decrees, that though the plaintiffs as tenants in common would be entitled to partition, yet by virtue of the consent decrees they were estopped from exercising such right *Held*, further, that though the consent decrees did empower the mortgagee S to grant a *musam* lease without the mortgagor's consent, yet this power did not ensure for the benefit of his assignees *COWASHI TENDITJI v. KINANDAS TICUMDAS (1911)*

1 L R 35 Bom. 371

CONSIDERATION

Sic TRANSFER OF PROPERTY ACT, s. 38.

Consideration—*Ratification*—*Ratification* in mortgage deed of receipt of consideration—Burden of proof Where a mortgage deed is proved to have been executed and the document contains an acknowledgment of the receipt of the consideration this is strong *prima facie* evidence that the consideration has been actually received and is evidence not only against the mortgagee, but also against persons claiming under them subsequent to the date of the mortgage. The mere fact that a

MORTGAGE—contd

CONSTRUCTION—contd

decree mortgaged—Civil Procedure Code Act XIV of 1882, s 276—Attachment and mortgage of decree on same day—Mortgage valid unless attaching creditor shows it to have been effected during the pendency of attachment Where a decree is mortgaged and the amount due under the decree is subsequently realised in execution, the mortgagee has a charge on the amount so realised The mortgagee is entitled to a charge on property which through no fault of his has taken the place of the mortgaged property *Singaravelu Udayan v Rama Iyer*, 13 Mad. L J 306 dissented from The receipt by one Court of a notice of attachment by another Court is not a judicial act to which the principle that judicial acts must be presumed to have been done at the earliest point of time of the date thereof would apply Where therefore a decree is mortgaged on a certain date and notice of attachment of such decree is received by the Court on the same day, it lies on the attaching creditor seeking to set aside such mortgage as made during the pendency of attachment under s 276 of the Civil Procedure Code to show that the receipt of such notice was prior to the execution of the mortgage when a decree is attached and the attachment is subsequently withdrawn by agreement, the attachment does not continue against the money realised in execution of such decree in the absence of anything to that effect in the agreement *VENKATRAMA IYER v RAJUMA POWTHEN* (1909) I L R 33 Mad 429

2 — Mortgaged for family purposes

—Liability of minor son when authority may be presumed—Alienation—Onus of proof—Evidence Act (I of 1872) s 106 —Transfer of Property Act (IV of 1882) ss 84, 90—Civil Procedure Code (V of 1908) O 111 r 6 Where a mortgage purports to charge the entire interest in a property, and the mortgage money was advanced for legitimate family purposes express or implied authority of minor co-parceners may be implied and the mortgage may be enforced against the entire family interest. *Surya Binnu Koer v Shoa Persad Singh* 1 L R 5 Cal 118 L R 61 4 88 referred to. Authority to mortgage may also according to the peculiar circumstances of a case, be implied even in cases where the mortgage money was not advanced for legitimate family purposes A mortgage is an alienation even though it is for a very particular purpose e.g. as security only for the amounts drawn or paid on account of instalments of rent *Charb Hah v Khabal Singh* 1 L J 25 All 107 L R 30 J 1 165 referred to Where on the one's do it is proved that the whole of the mortgage money, with the exception of a very small portion of it was advanced for legitimate family purpose and there is, therefore a sufficient foundation for a decree for sale on the mortgage, and on the other side it is not shown that the small portion of the debt was not for any immoral purpose, the smaller item may be regarded as a debt of the father binding on the son. *Ilumoonasapersad Junday v Munraj Koonwerre*, 6 Moo J 4 393, 13 B R 81 n *Lachman Das v Giridhar Chowdhury* 1 L R 5 Cal 833 *Mahender Dutt Tewari v Kishan Singh* 1 L R 34 Cal 134 *Kishan Pershad Chowdhury v Tipan Pershad Singh*, 1 L R 34 Cal 735 *Lala Suraj Prasad v Gulab Chand*, 1 L R 28 Cal 817,

vested in the mortgagee on execution and registration of the mortgage bond Failure on the part of the promisor to perform a promise which formed the whole or part of the consideration inducing an executed conveyance does not give the promisee a right of rescission Mere registration does not render a sale of immovable property or a mortgage operative from the time of registration if there is a condition attached to the contract that the operation of sale of mortgage is to be postponed till the actual payment of the full amount of consideration In every case the onus is upon the person setting up such a condition. *MOKHAN LAL MARWARI v HANUMAN BUX*

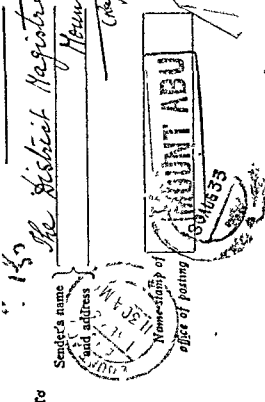
2 Pat L J 168

CONSOLIDATION

—Right of does not arise when equities of redemption are severed—Subsequent mortgage executed by some of the descendants of original mortgagor, whether mortgagee may consolidate The right of consolidation can be exercised against successors in title to the mortgagor only so long as the equities of redemption are not severed There cannot be a consolidation of mortgages where the first mortgage is executed by the sole owner of the land mortgaged and the subsequent mortgage is executed by some one of the successors of the original owner There cannot be two different usufructuary mortgages on the same land at the same time. *LALA RAM NARAY LAL v LALA MURLIDHAR* . . . 5 Pat. L J 644

CONSTRUCTION

1. —Decree, mortgage of—Mortgagee has a charge on amount realised in execution of



MORTGAGE—*contd*CONSTRUCTION—*contd*

Transferred Transfer of Property Act s 59 construction of. The question in this appeal was whether property mortgaged to the respondent on the 13th of October 1881 should when sold under a decree absolute for sale be treated as a full subject to an alleged prior right of the appellant under an earlier mortgage of the same property dated the 25th of February 1880. The appellant, in 1951 acquired the title of the mortgage and also such title as remained in the mortgage under the earlier mortgage. In 1951 the prior mortgage brought a suit on his mortgage and in 1953 obtained a decree absolute for sale under the Transfer of Property Act. The suit was, however, only against the mortgage and the second mortgage, was not made a party to it. Neither the prior mortgage nor his successor took any steps to execute that decree and it became barred and inoperative after the lapse of three years from the date on which it became absolute. It was limited that the later mortgage was duly registered, and that the earlier mortgage must be taken to have had notice of it when he brought his suit and obtained a decree in 1952. Held in a suit brought on the 26th of July 1919, by the first respondent on his mortgage of the 13th of October 1881 against among others the appellant that respondent was entitled to a decree absolute under D XXXIV c 2 of the Code of Civil Procedure 1908, for sale but that the sale was not subject to the prior mortgage of the appellant. The true construction of s 59 of the Transfer of Property Act is that on the making of the order absolute for sale under that section the security as well as the defendant's right to redeem were both extinguished and that for the right of the mortgagee under his security there was substituted the right to a sale conferred by the decree. **HET RAM v. SHADI RAM (1919) I. L. R. 40 ALL 407**

11 ——— **Mortgage Bond—Rice lent—Covenant of repayment Mortgagee to realise money in case of default by sale of mortgaged properties—Suit on mortgage bond whether a suit for recovery of money charged on mortgaged properties.** Where in a suit to enforce a mortgage the plaintiff lent a certain amount of rice and there was in the bond the usual covenant of repayment and interest and the bond also provided that if default was made in the rice the mortgagees would be competent to realise the money which would be due at the rate of 1 s. 6 per cent by sale of the mortgaged properties belonging to the mortgagors. Held that the primary object of the suit was to recover money and what the Court would give the plaintiff would be money and not rice if they succeeded in the suit and that that money was a charge on the mortgaged property. **Held** also each case must turn on the construction that the Court places on the mortgage deed in that particular case. **SHAFAT LALL DEVI v. SARAT CHANDRA MOHDAL (1915) 22 C W N 750**

12 ——— **Two Mortgagees—Separate sums secured—Tenants in Common—Right of each Mortgagee—Adverse Influence—Paradonashin—Compromise—Independent Advice—True Test.** Upon a mortgage to two mortgagees to secure for separate sums the whole mortgaged property being conveyed to the mortgagees as tenants in common all of them being no less venant to repay to each separately, if one mortgagee desires repayment

MORTGAGE—*contd*CONSTRUCTION—*contd*

his co mortgagee is not consenting to proceedings, his proper course is to sue for a mortgage decree in respect of the whole sum secured—Joining his co mortgagee as a defendant the decree should provide for all necessary accounts and payments, but no personal decree against the mortgagee in favour of the mortgagee who sues. To support an agreement by a paradonashin in a compromise of litigation it is sufficient to show that the general result of the compromise as directed from the details and legal technicalities involved, was understood by her and that disinterested and competent persons with a fair understanding of the whole matter advised her to execute it. **SHRUTABALA DEVI v. DHARA SHENDRI DEVI CHOWDHURANI (1919) I. L. R. 46 I A 272**

13 ——— **Mortgage of entire sixteen annas of village—Without reservation of one anna.** Where a zamindar mortgages his entire zamindari rights in a village without any reservation whatever, there is no reason why the mortgage should not be held to include the mortgagee's rights in grove land purchased some time before the execution of the mortgage. **HASAN ALI KHAN v. AZHAR UL-HASAN (1915) I. L. R. 41 ALL 45**

14 ——— **Debtor executing a mortgage of his properties in favour of alleged creditor (a relation)—Soon after suspending payment—Bond file of transaction, how to be determined—Consideration of facts as a whole and in relation to each other, essential C and D were related to each other and had between them numerous business dealings which it was alleged left D indebted to C to the extent of Rs. 50,000. On 26th September 1894 just after D's shop had suspended payment D purported to execute a usufructuary mortgage of all his immovable properties in favour of C in consideration of the said alleged debt owed by D to C. Certain creditors of D who in the meanwhile had instituted suits against D attached before judgment the said properties whereupon C unsuccessfully laid claim to the properties under s 279 of Act XIV of 1882. Held in a suit by C to set aside the attachments, that the question for determination in the case was whether the mortgage was a bond file transaction entered into with the object of securing the debt of C or whether it was a mere contrivance for defeating or delaying the just claims of the other creditors and retaining the property for the benefit of or in trust for D. That taking the facts as a whole the mortgage was a mere device for rescuing the bulk of the available assets of D for the benefit of the family and indirectly for himself. That also C out of first instance fell into an error in taking each fact which militated against the bond file of the mortgage separated from the rest of the facts and proceeding to demonstrate that it was quite consistent with good faith whereas in a case like the present it was essentially necessary that the facts should be considered in relation to each other and weighed as a whole as was done in the Appeal Court, whose decision on the Judicial Committee affirmed. **CHAKRAM DASS v. UNAKRAMAD (1919) 23 C W N 817****

15 ——— **Mortgage of several properties—Sale of some under a particular title—Failure of mortgagee in sale payment out of surplus sale proceeds if amounts to release—Mortgagee if may realise the whole debt from remain**

MORTGAGE—contd**CONSTRUCTION—contd**

any properties—Transfer of Property Act (11 of 1882) s 30 If properties A, B and C are mortgaged they are all equally liable in the hands of the mortgagor for the mortgage, if however during the subsistence of the mortgage they pass into other hands they are still similarly liable but the owners *inter se* when the mortgage is enforced are entitled to have the liability apportioned rateably between the properties according to their value at the date of the mortgage (s 32 of the Transfer of Property Act) This however is a right between the holders of the properties *inter se* and does not affect the mortgagee's right to enforce his mortgage against all or any of the properties If however the mortgagee releases one or more of the properties from liability under the mortgage with knowledge that there has been a change of ownership as to some or all of the properties, then the properties which remain liable are only liable to such part of the mortgage debt as is proportionate to their value at the date of the mortgage Whether a mortgagee's neglect to enforce his charge against the surplus sale-proceeds of mortgaged properties sold under a paramount title amounts to a release of the properties from their liability to the mortgage debt is a question of fact *The Midnapur Zemindary Co., Ltd. v. Anwar Chandra Mitter* (1918) 23 C W N 308

16. ———— "**Muakhiza**"—*Transfer of Property Act (17 of 1882), ss 68, 100* A deed the basis of a suit for sale as on a mortgage opened with a recital that the executant had borrowed a sum of money, followed by a promise to pay the amount with interest at 2 per cent per month within a certain time, and then provided "*muakhiza out o sud to yom ul-wasul upar* (description of the share) *haqiqat min muqar gaur rahga lihaara batark tamassuk muakhiza padad ka lihaara*" Held, that this deed could not be construed as mortgage The word *muakhiza* did not necessarily imply a power of a sale, and there was nothing else in the deed from which an intention to give a power of a sale could be inferred *Dalip Singh v. Bahadur Ram* (1912) . . . I L R 34 All 446

17. ———— When only part of the consideration paid—*Mortgagee in possession cannot prescribe for higher interest by asserting a larger amount as due—Limitation Act Sec 11, Art 144, 148* Where only a part of the consideration for a mortgage has been paid, the mortgage is a good security for the amount that has validly passed The mortgagee by remaining in possession for more than 12 years under such a mortgage, cannot by merely claiming to hold for the full amount, acquire by prescription a right to hold as mortgagee, for such full amount Notwithstanding the assertion by the mortgagee of a larger interest than was validly passed to him by the mortgage article 148 of the Limitation Act will apply to a suit for redemption by the mortgagor Article 144 will not apply as article 148 specially provides for the case *Rajai Trimal Raju v. Pavda Mathial Naidu* (1911)

I L R 35 Mad 114

18. ———— **Collateral agreement**—Where a mortgage is executed but there is a collateral agreement that no obligation should attach under the instrument till payment of money on the

MORTGAGE—contd**CONSTRUCTION—contd**

one hand and delivery to the registering officer on the other, the moment the condition is fulfilled, obligation attaches with effect from the date of execution and attestation of the document There is no analogy between a common law deed in England and a mortgage deed in this country in this respect *Jadavdax Phosar Singh v. Deo Narain Singh* (1911) 16 C W N 612

19. ———— **Liability for deficiency in interest—whether personal merely or a charge on the mortgaged property** A mortgage deed provided that the mortgagee should take possession of the mortgaged property and out of the rents and profits pay the Government revenue and appropriate Rs 132 per annum on account of interest at the rate of 11 annas per cent per mensem It further provided that should the amount of profits calculated on the basis of the *patwaris* accounts, be found insufficient to cover the whole amount payable for interest, the deficiency would be made good by the mortgagor together with interest at the rate of P a 2 per cent per mensem Held that deficiency in the stipulated interest was realizable as well from the mortgaged property as from the mortgagor personally *Muhammad Hussain v. Emdar Khan Ditta & Ali L J 176* referred to *Chitra Man v. Dulari* (1910) I L R 33 All 107

20. ———— **Interest partly in kind and partly in cash—Interest when payable—Suit for arrears of interest—Words amounting to covenant to pay year by year** In this case their Lordships of the Judicial Committee held (reversing the decision of the High Court) that on the true construction of the mortgage there was clearly a personal covenant to pay interest on the mortgage money from year to year, and that the suit, which was for arrears of interest, was therefore maintainable *Madappa Hegde v. Ramkrishna Narayan* (1911)

I L R 35 Bom. 327

21. ———— **Personal decree, suit for—Mortgaged properties, if must be first proceeded against** Held, on the construction of the mortgage bond in this case, that it contained an express promise to pay the amounts secured so that the mortgagee was entitled to sue for a personal decree only Held, further, that a stipulation that "if the debt be not paid off by the hypothecated properties" the mortgagee "will be able to realise the money by sale of the mortgagor's other moveable and immovable properties did not imply that the parties agreed to postpone the remedy against the person and other properties to that against the mortgaged properties *Beno Krishna Deb v. Debendra Kishore Nandy* (1911)

15 C W N 722

22. ———— **Simple or anomalous mortgage—Covenant to pay—Option of mortgagee to take possession on default of payment of interest—Mortgage if usufructuary—Decree for sale if proper** Held, on the terms on the bond in suit that it was a simple mortgage. A simple mortgagee is entitled to a decree for sale as a matter of course, notwithstanding that under the terms of the mortgage bond he has the option on the mortgagor's default in payment of interest, to "take possession of the mortgaged properties and to enjoy the same, as under a usufructuary mortgage." *Krishna Bhupati Devt Garu v. Seltan Bahadur of Vizianagaram* (1911) . . . 15 C W N 441

MORTGAGE—*contd.*CONSTRUCTION—*contd.*

23. — Attornment clause in mortgage deed—*Construction of Deed* The courts in India will not, in the absence of the strongest reasons, give a construction to an alleged attornment clause in a mortgage deed which will have the effect of creating rights of tenancy in derogation of the rights of the mortgagee. By a deed dated the 14th August, 1896, defendants 1st party mortgaged to the plaintiffs their shares in several *mauzas*, inclusive of 200 *bighas* of *serai* land. Out of the 200 *bighas* of *serai* land, 50 *bighas* was left in the possession of the mortgagors at a nominal rent. By a *Kabuliat* dated the 25th September, 1902, a further area of 4 *bighas* 10 *cattahs* of jungle land was let to the defendants at a rental of Rs 14 5 6. The plaintiffs sued for arrears of rent and for *khaz* possession in terms of the mortgage. *Held*, on a construction of the mortgage deed, that with regard to the 50 *bighas* of *serai* land the real relationship between the parties was not that of landlord and tenant but mortgagee and mortgagor, and that the arrears of rent claimed in the present suit were really on account of principal and interest. The plaintiff was entitled to a decree for the amount claimed as rent and for recovery of possession of the 50 *bighas*. *Obiter dictum* As the Bengal Tenancy Act, 1855, does not contemplate a *ryot* who does not come under any of the clauses of s. 4 of that Act the mortgagor must, with regard to the *serai* land, be held to be a non occupancy *ryot*. *Held*, further, on a construction of the *Kabuliat*, that with regard to the 4 *bighas* 10 *cattahs* the relationship of landlord and tenant existed and that the mortgagor was not precluded from obtaining the status of an occupancy *ryot* under the mortgage. The plaintiff was entitled to a decree for arrears of rent but not to recovery of possession as the mortgagor was found to have acquired occupancy rights in the holding. *UDAI CHAND v SAKI BAHADUR SINGH* . . . 2 Pat. L. J. 353

24. — Simple mortgage, essentials of—*recitals in mortgage deed, effect of—mortgagor in possession, acts of, how far binding on mortgagee.* The recitals in a mortgage deed are important in considering the nature and the scope of the implied authority which arises as between the mortgagor and mortgagee when the former is allowed to remain in apparent possession and ownership of the mortgaged property. A deed which is expressly called a mortgage deed and which expressly mortgages and hypothecates the property charged as security for the mortgage debt, is according to the law of India a valid simple mortgage. When a mortgagor remains in possession after the date of a mortgage he can deal with the property in the usual and customary way so as to bind the mortgagee, but he must not do anything prejudicially affecting the mortgaged property as security for the debt. The fact that a mortgage deed declares itself to be executed by a Manager appointed under the Guardian and Wards Act, 1890, rather limits than extends the ordinary rights of a mortgagor in possession. Where a person obtains a contractual benefit from a mortgagor in possession after the date of the mortgage, the *onus* is upon such person to prove that it was a benefit which he might derive and retain in the usual course of the management of the property. The High Court is entitled to examine and enquire into

MORTGAGE—*contd.*CONSTRUCTION—*contd.*

the grounds and basis upon which an entry in the Record of Rights was made. *ANANDA RAM MAHWARI v DHANPAT SINGH* . . . 1 Pat. L. J. 563

25. — What charges may be added to mortgage debt—*whether payments on account of road cess may be added* A mortgagee is not entitled to add the expenses incurred for payment of road cess to the sum due on the mortgage. The payment of a public charge for which the mortgaged property may not be summarily sold cannot be constituted a charge upon the property. S. 72 of the Transfer of Property Act, 1882, does not cover a case in which the right title and interest only of the mortgagor may be put up for sale. The section includes only payments made to save the security itself. *RAJENDRA PRASAD v BANTRIA RATAV JOTI KUMAR* . . . 1 Pat. L. J. 589

CONTRIBUTION.

See TRANSFER OF PROPERTY ACT, 1882, s. 82

Payment by co-mortgagor—*Guardian and Minor—Power of de facto guardian to mortgage minor's property—Mahomedan law* *Held*, that where a joint mortgagor seeks contribution upon the ground that he has paid the whole mortgage debt and thus relieved the property of his co-mortgagor from a burden, it is not necessary for him to plead that he did so under compulsion. *Held*, also that the *de facto* guardian of a minor Mahomedan is competent, in case of necessity and for the benefit of the minor, to make a valid mortgage of the minor's property. *ABID ALI v IMAM ALI* (1915) . . . 1 L. R. 38 All. 92

Property subject to three mortgages sold under decrees on two—Decrees not satisfied—Property sold not liable to contribute to third mortgage Where property the subject of more than one mortgage is sold in execution of a decree on a prior mortgage and that decree still remains unsatisfied, it cannot thereafter be made liable to contribution under a decree on a second or third mortgage. *Hari Raj Singh v Ahmad ul din Khan, I L R 19 All. 515, and Bohra Thakur Das v. The Collector of Alwarh, I L R 28 All. 593, referred to BHAGWATI PRASAD v SHAFAT MUHAMMAD CHAUDHRI* (1920) . . . I L R. 43 All. 42

Limitation of suit for contribution by co-mortgagor—Contribution suit by co-mortgagor paying off mortgage decree in excess of his share, period of limitation for—Limitation Act (IX of 1908), Arts 60, 69, 120 or 132, which of them applies—A co-mortgagor redeeming a mortgage, if to be treated as an assignee of the original security A, B and C mortgaged their properties to H in 1888, the due date of the mortgage being September 1891. In 1903 the mortgagee brought a suit upon his mortgage and a preliminary decree was passed in June 1903. In February 1904 some of the mortgagors paid a portion of the mortgage debt to the mortgagee. In May 1909 order absolute for sale of the mortgaged properties was passed and the mortgagee thereafter put up the properties to sale. To prevent the sale two of the mortgagors satisfied the mortgage decree by depositing the decretal amount in Court on the 27th March 1909, and one of them brought the present suit for contribution on the 7th October 1915 against his co mort

MORTGAGE—contd.**CONTRIBUTION—contd**

gator. *Held*, that the position of the co mortgagee redeeming a mortgage is that of an assignee of the original security, and that the period of limitation is the same as that within which the original mortgagee could have brought his suit on his mortgage, had he not been redeemed. Therefore, the suit, having been brought more than 12 years after the due date of the original mortgage, was barred by limitation under Art 132, Limitation Act. *Pancham v. Ali*, 1 L. R. 4 All 35 (1891), *Nura Bibi v. Jagat*, 1 L. R. 8 All. 295 (1896), *Ashfaq v. Wazir*, 1 L. R. 11 All. 113; also 1 L. R. 11 All. 423 (1889), *Har Prasad v. Raghunandan*, 1 L. R. 31 All. 166 (1909) and *Digambar v. Haren dra*, 14 C. W. N. 617 (1910), followed. *Varadch v. Balaji*, 1 L. R. 26 Bom. 390 (1902), referred to. Besides, the suit, having been brought more than six years after the dates of the payments, was barred, whether Art 60 or 90 or Art 120 of the Limitation Act applied. *SUREKATI RAJKUMARI DEBI v. MUKUNDALAL BANDOPADHYAY*

25 C. W. N. 283

DEPOSIT OF TITLE DEEDS

See MORTGAGE (REGISTRATION)

24 C. W. N. 599

See MORTGAGE (MISCELLANEOUS)

1 L. R. 43 Calc. 1052

See REGISTRATION ACT, 1908 s. 49

1 L. R. 40 Mad. 547

—Equitable mortgage—

*Security, scope of—Title deeds, deposited as security, and endorsement made on promissory note given—Addition subsequently made to memorandum endorsed on note—Scope of security limited to original memorandum. Where title-deeds of property are handed over with nothing said except that they are to be security, the law supposes that the scope of the security is the scope of the title-deeds. Where, however, title-deeds are handed over accompanied by a bargain, that bargain must rule. Lastly, when the bargain is a written bargain, it, and it alone, must determine what is the scope and extent of the security. *Shaw v. Foster*, 1 L. R. 5 E. & I. App. 321, per Lord Cairns, followed. On obtaining a loan the defendants executed a promissory note, and made an endorsement on it. "As security, grant of a house in 14th Street," to which admittedly some months afterwards, words were added which caused the endorsement to read "As security, grant of a house in Strand Road and 14th Street." There was, in their Lordships' opinion, satisfactory evidence for the defendants of identification to show that the security consisted of only one house, and that the references to it in books of account and elsewhere, were always in the singular and on the other hand, the plaintiffs, the persons holding the security, on whom it lay to clearly satisfy the Court of the scope of the security, had failed to do so. *Held*, therefore, (upholding the appellate decision of the Chief Court), that the scope of the security was limited by the original endorsement on the note. *FRANJIVANDAS JAGJIVANDAS MERTA v. CHAK MA PHUK* (1916). . . . 1 L. R. 43 Calc. 895*

DISCHARGE

See UNDER SUB-HEADING SALE OF MORTGAGED PROPERTY 15 C. W. N. 899

MORTGAGE—contd**DISCHARGE—contd**

1. ———— *Co mortgagees—Payment by mortgagee to one of them who gives him full discharge—Other mortgagees if bound by it—Effect on the interest of mortgagees who gave the discharge. Payment to one of several joint creditors does not necessarily operate as a discharge of the debt in so far as the other creditors are concerned. In the absence of any evidence or circumstances which would justify a contrary inference, it will be presumed notwithstanding the form of the obligation that a debt due to a number of joint creditors is due to them in severalty. Where after relations between co-mortgagees had become strained, one of them acknowledged receipt of payment from the mortgagor and gave the latter a discharge in respect of the mortgage-debt. *Held*, that the discharge operated as a valid discharge in respect only of the share of the mortgage money due to the co-mortgagee by whom it was given. *HAKIM v. ADWATTA CHANDRA DAS DALAL* (1918) 22 C. W. N. 1021*

2. ———— *Equity of redemption of mortgaged property—Purchase by mortgagee—Extinction of mortgage. In the absence of fraud, the purchase by the mortgagee in Court auction of the equity of redemption of some items of the mortgaged properties discharges that portion of the mortgage debt which was chargeable on those items, that is, it discharges a portion of the mortgage debt which bears the same ratio to the whole mortgage debt as the value of those items bears to the value of all the mortgaged properties. *Bhushur Dial v. Ram Sarup* (1910) 1 L. R. 22 All. 284 (F. B.), followed. *Sami Raveppa v. Kuppusami Iyengar* (1911) 2 M. B. N. 312, overruled. *PONNAMMALA PILLAI v. ANNAMALAI CHETTIAR* (1920) . . . 1 L. R. 43 Mad. 372*

3. ———— *Payment to one mortgagee whether discharges the whole security—Contract Act (IX of 1872), s. 35 (3). Payment to one of two mortgagees is not a discharge of the mortgagor's liability to the other. Unless the contrary is shown mortgagees must be regarded as having a separate interest in the money advanced by them although they take a joint security and must be treated as in the position of tenants in common and not joint tenants. S. 38 (3) of the Contract Act, 1872, relates to joint promisees and not to co-mortgagees whose interests are several. *SYED ABBAS ALI v. MISRI LALL* 5 Pat. I. J. 376*

4. ———— *Heirs of original mortgagee, whether one of them is entitled to release the entire debt—One of the heirs, or an assignee of one of the heirs of a deceased mortgagee is not competent to grant a release of the interests of the others. *BANAMA SATPATRI v. TALNA RANJARI PATRA* 5 Pat. I. J. 161*

5. ———— *A mortgage lien is not extinguished on the passing only of the decree upon it. It is not extinguished till the sale takes place in execution of the mortgage decree and the sale proceeds are distributed in satisfaction of the mortgage debt. *BHICHUMBI DASI v. BHARA SUNDARI DASI* . . . 24 C. W. N. 861*

ESTOPPEL

See FALLS OR TURNS OF WORSHIP 1 L. R. 42 Calc. 455

1. ———— *Mortgage of entire property by owner of half share—Purchase by defendant*

MORTGAGE—*contd*ESTOPPEL—*contd*

of entire property pending mortgage suit—Sale and purchase by mortgagee in presence of defendant—Defendant is estopped from proving title to the other half—Ignorance of plaintiff of real fact and misleading by defendant's conduct, to be proved. *J*, who owned a half share in a property purported to mortgage the whole. After a preliminary decree had been passed in favour of the mortgagee in a suit against *J* brought on the mortgage, *N* purchased the interest of *J* and his co share and was brought on the record as the successor in interest of *J*. The mortgage decree was thereafter made absolute and the property put up to sale and purchased by the mortgagee. In a suit by the latter against *A* to establish his title to the entire mortgaged property. *Held* that *N* would not be estopped from showing that the mortgage sale passed only *J*'s half share in the property to the plaintiffs, unless it was established that the mortgagee was not aware that *J* had only a half share in the property which he purported to mortgage and that he was misled by some representation by conduct of *N* into believing that *J* had full title. *KAMAL KUMAR NAYDI v KALI MEAN* (1911).

15 C W. N. 572

2. ——— Power of representatives of mortgagor to question validity of mortgage—Adverse possession—Possession adverse to mortgagor not necessarily adverse to mortgagee. *Held* that, although the representatives of a mortgagor cannot as such question the validity of the mortgage, it may be open to them as *mutawallis* to plead that the property was waqf and that the mortgage of it was void. *Gulzar Ali v Fida Ali*, 1 L R 6 All 21 distinguished. *Held* also that a simple mortgage being not merely a security for a debt but a transfer of an interest in the property mortgaged, a trespasser who ousts the mortgagor and holds the property adversely to him may by prescription become the owner of the limited estate which the mortgagor had in the property, but such adverse possession cannot extinguish the right of the mortgagee. *Agency Company v Short* 1 L R 13 A C 733. *Smith v Lloyd* 9 Ex 562. *Secretary of State for India v Krishnaamoni Gupta*, 1 L R 29 Cal. 518, and *Ismar Akka v Ahmad Hussain* 1 L R 30 All 119 referred to. *Ramaswami Chetty v Panna Padayachi* 21 Mad L J 397, and *Pratap Bahadur Singh v Maheshwar Bakshi Singh*, 12 O C 45 not approved. *Amar dar Mandal v Mekhan Lal Day*, 1 L R 33 Cal 1915 and *Parthasarathi Nookan v Lakshmana Ailam*, 21 Mad L J 467, approved and followed. *Karan Singh v Bakar Ali Khan* 1 L R 5 All 1 discussed. *NANDAN SINGH v JEWAN* (1912).

1 L R 34 All 640

3. ——— Purchase of mortgaged property by mortgagee in execution of his decree for sale—Subsequent suit for sale by a prior mortgagee—Plea of incompetency of mortgagor raised by mortgagee—Purchaser. *Held* that a mortgagee who in execution of a decree for sale in his favour, has purchased the mortgaged property himself, could not be permitted, in another suit on a prior mortgage of the same property in which he was arrayed as defendant, to set up the defence that the mortgagor was incompetent to execute the mortgage in suit. *Dishambhar Dayal v Parahadi*, 10 All L J 112, *Bakshi Ram v Luludhar*, 1 L R 35 All 357, and *Prayag Ray v Sidha Prasad*

MORTGAGE—*contd*ESTOPPEL—*contd*

Tiwari, 1 L R 35 Cal 577 referred to. *Radha Bai v Kamod Singh*, 1 L R 30 All 38, distinguished. *TOTA RAM v HAR GOBIND* (1913).

1 L R. 26 All 141

EXECUTION OF MORTGAGE DECREE.

1. ——— Order in which properties to be sold discretion of Court as to—Execution of mortgage decree—Partial execution, application for, if may be entertained—Two properties A and B, were mortgaged by one deed by *N*. Subsequently *S* sold the property A to one *R*. The mortgagor brought a suit on the mortgage and got a decree against *S* and *R*. The decree holder applied for execution against both the properties, but the Court in the exercise of its discretion ordered execution against the property B in the first instance. Thereupon the decree holder had the petition for execution dismissed and made a fresh application for execution against the property A alone. *Held* that the discretion as to the order in which the execution should issue is vested in the Court alone and the decree holder cannot be allowed to fetter the hands of the Court by petition for partial execution. *Held*, also, that execution could not be ordered unless the decree holder included both the properties in his petition. *Amir Chand v Bakshi Sheo Pershad* 1 L R 34 Cal. 13, distinguished. *MAHOMED SADDIK v SAUDA GAR MIAN LAHARI* (1910). 15 C W. N. 80

2. ——— Mortgage by co-partner—Hindu Law—Mitakshara—Decree directing property to be held in specific shares and charging mortgagor's share with the mortgagee's dues if enforceable in execution—Separate suit to enforce lien if necessary. A mortgage by a co-partner in a Mitakshara joint family was declared to be void in so far as it purported to affect the specific share of the mortgagor but the Court directed by its decree that the mortgagor and his co-sharer do hold the properties in specified shares and that the share of the mortgagor be held subject to the lien of the mortgagee for the sum advanced with interest. The mortgagor or his co-sharers not having asked to redeem the share of the mortgagor by paying off the mortgage money with interest, no decree for redemption was made. *Held* that the mortgagee could bring the share to sale in execution of the decree and it was not incumbent on him to institute a separate suit to enforce the lien. *RAM SUNDAR DAS v NATHUNI SINGH* (1911).

15 C W. N. 748

3. ——— Interest—Transfer of Property Act (IV of 1922), ss 33–34—Mortgage interest on, up to what date payable—Prior incumbrances joined in suit by puisne mortgagee if may get interest at contract rate after date fixed in prior mortgage decree for repayment. A puisne mortgagee having joined the prior mortgagee in his suit a decree was passed fixing the period of redemption for the plaintiff but not in regard to the prior incumbrances. The decree did not also determine the amounts payable to the latter. In execution the property was sold and the purchase-money deposited. Subsequently the mortgagor brought a suit to set aside the sale which was ultimately dismissed and the sale was then confirmed. On the question up to what date the prior mortgagees would be entitled to get interest. *Held* that interest would be payable on the principle of s. 34 of the Trans

MORTGAGE—contd.

EXECUTION OF MORTGAGE DECREE—contd.
 fer of Property Act up to the date of confirmation of sale and not up to the date fixed for payment in the decree. Although it may be open to the Court to distribute the sale proceeds amongst the claimants before the sale has been confirmed it is not obligatory on the Court to distribute it then nor is the sum distributable as a matter of course. Order for distribution ought not ordinarily to be made before the confirmation of the sale. *Jogendra Nath Sirkar v Gobinda Chunder Addi*, 1 L R 12 Cal 252. *Hafiz Mahomed Ali Khan v Damodar Paramanick*, 1 L R 18 Cal 242 explained. The order for distribution by the Court was a decree within s 2 read with s 47, sub s (1), of the Civil Procedure Code and appealable as such. *BEVDE LAL BANDOPADHYA v HARISH CHANDRA TEWARI* (1910). 15 C W N. 783

EXONERATION OF CERTAIN ITEMS MORTGAGED

— *Suit for sale of one item exonerating other items mortgaged—Right of mortgagee to exonerate—Contribution, duty of whether lost by exoneration—Transfer of Property Act (IV of 1882), ss 60 and 82.* A mortgagee seeking to realize the amount due to him brought a suit for sale of one only of the items mortgaged impleading therein the mortgagor and the person who purchased the equity of redemption in the one item in execution of a money decree. The mortgagee exonerated from liability the other items mortgaged. Held by the FULL BENCH that, a mortgagee voluntarily releasing from the suit a portion of the mortgaged property is not bound to abate a proportionate part of the debt and is entitled to recover the whole of the mortgage amount from any portion of the mortgaged property. *Ponnusami Mudaliyar v Sriyasa Naicken*, 1 L R 31 Mad 333, and *Sriram Marwari v Barhamdeo Persad*, 1 C L J 337, dissented from. *Semle* A release of certain items by the mortgagee has not the effect of releasing those items from liability for contribution under s. 82 of the Transfer of Property Act. *Jugal Kishore Sahu v Kedar Nath*, 1 L R 31 All 606, referred to. *PERUMAL PILLAI v RAMAN CHETTIAR* (1917). 1 L R 40 Mad 968

FEMALES, REPRESENTATION OF

— *Mortgage bond executed by male members of Mahomedan family—No proof of custom to exclude females as in Hindu family—Female members added as defendants in mortgage suit—Shrout and exonerators of bonds—Form of decrees—Whether females were represented in the mortgage transaction by male members of family—Estoppel by conduct.* The appellants were the female members of a Mahomedan family which had adopted the Hindu religion in matters of worship, and as to which both Courts in India concurrently held that there was no custom proved excluding female members from inheritance, which was the case set up by the respondent. In a suit brought by the latter to enforce a mortgage bond which has been executed only by the male members of the family, in which suit the appellants were also joined as defendants the first Court made a decree against the interests of the male defendants only in the property, but the High Court decreed the suit against both the male and female defendants on the grounds that, because

MORTGAGE—contd.**FEMALES, REPRESENTATION OF—contd.**

the female members had not actively interfered in the management of the property, the male defendants must be taken to have represented them in the mortgage transaction. It appeared that in other transactions the male members of the family had dealt with the family property without the active concurrence of the females. Held, by the Judicial Committee, reversing the decision of the High Court, that the evidence did not prove that the male defendants had represented the appellants. The latter were *purdana-hin* ladies, and naturally left the management of the property to their male relatives. There was nothing to show that the appellants had misled the respondent either by word or conduct to the belief that they had no proprietary interest in the property, and he made no inquiries in the matter from them or their husbands as he might have done if he had any doubt in the matter. The decree of the High Court was therefore erroneous, so far as it made the appellants liable, and should have been limited to making liable only the interests in the property of the male defendants, the executors of the mortgage bond. *AZIMA BIBI v SHAMALAVAND* (1912).

1 L R. 40 Cal 378

FORECLOSURE.

1. — *Order absolute, application for—Mortgage—Foreclosure—Limitation—Execution of decree, application for—Revival of pending execution—Limitation Act (IX of 1908), Sec 11, Art 181.* Previous to the passing of the Limitation Act (IX of 1908), and the Civil Procedure Code (V of 1903) there was no rule of limitation applicable to an application for order absolute of a decree nisi made under s 86 of the Transfer of Property Act (IV of 1882). *Tiluck Singh v Parastein Proshad*, 1 L R 22 Cal 924, *Rahmat Karim v Abdul Karim*, 1 L R 34 Cal 672, referred to. An application for execution of a decree may be treated as one in continuation or revival of a previous application, similar in scope and character, the consideration of which has been interrupted by the intervention of objections and claims subsequently proved to be groundless or has been suspended by reason of an injunction or like obstruction. *Qamaruddin Ahmed v Jousahir Lal*, 1 L R 27 All 334. 1 L R 32 I A 102, *Rudra Narain Guria v Pachu Maity*, 1 L R 23 Cal 437. *Narayan Gobind Manik v Sona Sadaniv*, 1 L R 21 Bom 345, *Rahim Ali Khan v Ikul Chand*, 1 L R 18 All 482. *Mir Aynuddin v Mathura Das* 11 Bom H O 206. *Suppa Reddier v Arunda Ammal* 1 L R 23 Mad 60, *Foras Ram v Gardner*, 1 L R 1 All 355 referred to. The Limitation Act (IX of 1908) does not profess to provide for all kinds of applications whatsoever. *Gownd Chunder Gowram v Kungummondy* 1 L R 6 Cal 60, *Sital Prasad v Abdul Rashid* 11 Oudh Cases 208, referred to. Nor does it apply to an application to a Court to do what the Court has no discretion to refuse. *Aylasa Gowdan v Pamasam Ayyan*, 1 L R 4 Mad 172. *Rolay v Kuchaba*, 1 L R 30 Bom 415, referred to. Nor is it applicable to an application to the Court to terminate a pending proceeding the final order in which has been postponed for the benefit of the defendant or for the convenience of the Court. *Puran Chand v Roy Radha Achen*, 1 L R 19 Cal 132, referred

MORTGAGE—contd**FORECLOSURE—contd**

to Act 181 Sch II of the Limitation Act (IX of 1908) does not govern an application for order absolute under order 34 rule 3 of the Civil Procedure Code (V of 1908). *MADHARMANI DATT v. LAMBERT* (1910) I L R 37 Cal 790

But see CIVIL PROCEDURE CODE 1908 O XXIV, rr 3 and 5 1 Pat L J 354

2 ———— Right to foreclosure and right to redeem is co-extensive—Covenant to pay the mortgage money is a year effect of unless there is an agreement to the contrary the right of foreclosure and the right of redemption must be deemed co-extensive. In each particular instance, therefore it must be determined upon the terms of the contract between the parties whether there is any special provision in the contract which takes the case out of the general rule. Where the covenant in the mortgage-deed was that the mortgagor shall pay the amount of principal and interest within the term of one year. *Held* that this clause was inserted for the benefit of the mortgagor so that he may be at liberty to pay the principal with interest before the expiry of the year. *Rose Ammal v. Rjurantham Ammal*, I L R 23 Mad 33 relied on. *Held* further, that such a case falls within the class of cases in which the mortgage is payable before a certain day and not within the class where a day is fixed for the repayment of the debt. *Raghobur Dajal v. Buddu Lal* I L R 8 All 95 and *Brown v. Col-Id Sim*, 427, distinguished. *PURTA CHANDRA SAHNA v. PRABU MOHAN PAL DAS* (1912)

I L R 39 Cal 828

3 ———— Decree in foreclosure—*Res Judicata*—Suit against legal personal representative of widow—Suit or redemption by the widow's reversionary heir—Effect of decree on appeal on original decree—Decree of Appellate Court what it exactly should be—CIVIL PROCEDURE CODE (XIV of 1882) ss 551 577, 586 Decree in a foreclosure suit which was instituted against the mortgagor, who was a widow and which was wrongly continued in appeal by the legal personal representative of the widow, and in which the redemptioner was no party, is no bar to a suit for redemption by the reversionary heir. Where there is a decree on appeal which confirms the decree against which the appeal is made it is the appellate decree to which regard must be had. The appellate decree supersedes the original decree. *Voor Ali Choudhary v. Anon Meah* I L R 13 Cal 13 followed. *Semble* The expression of law contained in s. 577 of the Code of Civil Procedure of 1882 as regards the proper course to be adopted in appellate decrees, viz., that except when an appeal is incompetent as being out of time, or as coming within the provisions of s. 586, an appeal is not to be dismissed but the judgment is to confirm vary or reverse the decree against which the appeal is made, is still applicable. *KALLAN CHANDRA BOSE v. GINTA SUNDARI DEBI* (1912)

I L R 39 Cal 925

4 ———— Sale by mortgagee after foreclosure—Rights of purchaser—Suit for sale by pawning mortgagees—Limitation Act (IX of 1908) Sch. I Art 134—Limitation. A mortgagee under a mortgage by conditional sale foreclosed and after foreclosure sold the mortgaged property as unincumbered. Subsequently to this

MORTGAGE—contd**FORECLOSURE—contd**

certain pawns mortgagees, who had not been made parties to the foreclosure proceedings, brought a suit for sale on their mortgage. *Held*, (i) that the purchasers could not hold up as a shield the mortgage by conditional sale of their vendor for that had become extinct on foreclosure, and (ii) that article 134 of the first schedule to the Limitation Act 1908, had no application to the suit. *MENNA LAL v. MUNDA LAL* (1914) I L R 36 All 327

5 ———— Failure to join pawns mortgagees—Rights of pawns mortgagees—Prior mortgage as a shield—Civil Procedure Code (1908) O XXXIV, rr 3 and 5 Whereas s 80 of the Transfer of Property Act (IV of 1882) provided that after a decree under that section for the sale of mortgaged property the security was extinguished, O XXIV, rr 3 and 5, under which sale and foreclosure decrees are now made do not so provide. A mortgagee who has obtained a sale or foreclosure decree under O XXXIV without joining a pawns mortgagee, and after wards is sued on the pawns mortgage can use his mortgage as a shield in all cases in which he could have done so before the Act of 1882. *Het Ram v. Shahu Ram* I L R 40 All 407, I L R 45 I A 310 distinguished. A village was mortgaged in 1874 and 1875 to K. R. and in 1883 to G. S. In 1888 K. R. having obtained a sale decree without joining G. S., purchased the property. K. R. died in 1895 having bequeathed the property to his widow, the appellant. In 1902 she gave it to J. R. and N. R., who covenanted to pay her an annuity, and hypothecated the property to her as security. In a suit brought in 1910 G. S. obtained a foreclosure decree under O XXXIV, r 2 against J. R. and N. R. paying under the decree Rs 2854 in discharge of the mortgages of 1874 and 1875. The appellant was not made a party to that suit. In 1914 the appellant sued J. R. and N. R. (neither of whom defended) and G. S. claiming a sale under the hypothecation deed of 1902. G. S. set up his mortgage of 1883 as a shield, and relied on his payment in discharge of the mortgages of 1874 and 1875. *Held* that the appellant was entitled to be placed in the position which she would have occupied if she had been made a defendant to the suit of 1910, that, accordingly, she was entitled (as mortgagee of the rights of mortgagor and mortgagee under the 1874 and 1875 mortgages) to recover from G. S. the Rs 2854 which he had paid to J. R. and N. R. and they had improperly received, and that upon that sum being paid or realized by sale she could have a sale decree, but only if she paid to G. S. the amount due upon his mortgage of 1883, he being entitled to rely upon it as a shield, that G. S. was entitled to recover the Rs 2854 from J. R. and N. R. *SUKH v. GHULAM SARDAR KHAN*

I L R 43 All 469

6. ———— Suit for possession after expiry of year of grace—Compromise decree for possession subject to judgment-debtor being allowed to redeem the mortgage within one year—Whether decree creates a new mortgage—Adverse possession. Where after expiry of the year of grace in foreclosure proceedings the mortgagee sues for possession as owner of the mortgaged property and under a compromise between the parties the Court passes a decree for such possession with the proviso

MORTGAGE—*could*FORECLOSURE—*could*

that the defendant mortgagee can redeem the whole or our half of the mortgage within one year and avoid either wholly or in part the execution of the decree. *Held* that such a decree does not create a fresh mortgage. *Debi Sahas v Ramji Lal* (56 P R 1918) disapproved *Held*, also, that the possession obtained by the mortgagee under the decree on failure of payment by the mortgagor, was that of a full owner, and as such was adverse to the mortgagor, and his successors in title. *HARORI MAL v RAMJI LAL* 1 L R 2 Lah 53

7 ——— Service of notice of demand on minor mortgagor through his brother, the other mortgagor, as guardian, with whom he was living—demand made some time prior to application for foreclosure. The plaintiff mortgagor sued for possession by foreclosure of the mortgaged property. The application for notice of foreclosure was dated 15th May 1911. Demand had been made by registered notice, dated 30th August 1909, which was served upon H L for himself and as guardian of K C, the other mortgagor. A minor. An application for guardianship had been dismissed on the ground that K C and H L formed members of a joint Hindu family and it was found that the minor lived with his relation. *Held* that the service of the notice on K C through H L was under the circumstances sufficient. *Ras Mun Dihal v Pran Aishen Das* (13 Moo 1 A 392, 402) and *Lal Singh v Gopal Das* (94 P R 1892), referred to. *Held* also, that there is no authority for the contention that the demand must immediately precede the application for foreclosure, and that the foreclosure proceedings were consequently not defective because the demand was made sometime previous to the application for foreclosure. *Bhagvath v Nath Mal* (105 P R 1907), *Dalip Singh v Jaisal Singh* (131 P L R 1910) and *Barkat Ali v Ali* (31 P R 1913), referred to. *Hazara Singh v Muhammad Khan* (131 P L R 1901) distinguished and in part disented from. *GORDHAN DAS v MUHAMMAD RUKMAN* 1 L R 1 Lah 292

8 ——— Final decree application for by transferee from defendants, effect of —Code of Civil Procedure (Act V of 1908) O XXXIV, r 3 (2)—decreeal amount not paid in time, whether defendant entitled to pay between expiry of time and passing of final decree. Although an application for a final decree in a foreclosure suit should be made by the plaintiff yet where such an application was made by a transferee from the defendants in the presence of the latter: *Held*, that the defendants were not entitled subsequently to challenge the final decree on the ground that it had not been applied for by the plaintiff. The proviso to O XXXIV, r 3 (2), gives the Court a discretionary power to extend the time for payment of the decreeal amount but a mortgagor has no absolute right to pay the money after the expiry of the specified period even though no final decree has up to the time of such payment been made. *PATYAKAR GOENTIA v CHAMRA SATPASTY* 4 Pat L J. 347

FRAUD

—Suit to recover the amount due—Defendant's plea that the mortgage was effected to defraud his creditor—Attachment of the property by the creditor—Order for sale subject to the mort-

MORTGAGE—*could*FRAUD—*could*

gage—Creditor paid off before sale—Decree for plaintiff on the ground that defendant cannot plead his own fraud—Fraud not carried out—Defendant's intention not punishable. The plaintiff sued to recover from the defendant the amount due under a mortgage. The defendant pleaded that the mortgage deed was effected to protect his property from his creditor and that no consideration really passed under the deed. Previous to the suit the defendant's creditor had attached the mortgaged property, and the mortgagee (present plaintiff) had made a claim on the basis of the mortgage for the release of the property from attachment. The mortgagor (present defendant) admitted the mortgage and the property was ordered to be sold subject to the mortgage. But the property was, however, not sold because the mortgagor paid off his creditor before the order for sale was carried into effect. Both the lower Courts decreed the claim on the ground that the defendant could not be allowed to defeat the plaintiff by pleading his own fraud. On second appeal by the defendant *Held* setting aside the decree, that as the defendant's creditor had not been defrauded, there was no reason why the Court should punish his intention to defraud by passing a decree against him. *Sudingappa v Hurasu*, 1 L R 31 Bom. 403, explained and distinguished. *Ram Surun Singh v Pran Peary*, 13 Moo 1 A 551 referred to. *GIRDHARLAL PRAYAGDATT v MANIKAMMA* (1913)

1 L R. 28 Bom. 10

GUARDIAN, MORTGAGE BY.

—Guardians and Wards Act (VIII of 1890), ss 23, 30—Mortgage by guardian without Judge's authority—Ward benefited—Suit to enforce mortgage—Minor's remedy—Cancellation of benefit—Equitable obligation of defendant. A mortgage of a minor's property executed by a certificated guardian without permission taken from the District Judge is voidable only. But it is not necessary that the person affected should sue to set aside the transaction, it is sufficient if he declares his will to rescind by way of defence in an action to enforce the mortgage against him. Where it was found that the money raised by the mortgage was for the benefit of the minor the latter cannot avoid the mortgage without restoring the benefit which he had received under it. This equitable doctrine being applicable as well to a defendant in an action on the mortgage as to a plaintiff seeking to avoid the mortgage. *The Eastern Mortgage and Agency Co v Relati Samar Pay* 3 C L J 260, followed. *HEM CHANDRA SARKAR v LALIT MOHON KAR* (1912)

16 C W N 715

—By certificated guardian —Sanction to raise loan granted by District Judge but subsequently revoked—Money lent without notice of revocation and applied by guardian for minor's benefit—Effect of the revocation of sanction on the mortgage—Rate of interest. The certificated guardian of a minor obtained the leave of the District Judge to raise a loan for a certain amount from the plaintiff. Subsequently the District Judge called upon the guardian to state whether the mortgage had been executed or not and on the guardian's failure to do so the Judge evoked the order. No notice of revocation was given either to the plaintiff

MORTGAGE—*contd*GUARDIAN, MORTGAGE BY—*contd*

or the guardian and the plaintiff advanced the money on the mortgage which was executed by the guardian and the entire amount was applied to the benefit of the minor's estate. The rate of interest was not placed before the District Judge and was not sanctioned by him but that stipulated in the mortgage bond was Rs 18 with annual rests. *Held* that even assuming that the order of the District Judge revoking the leave was effective as against the plaintiff the transaction stood in the same position as if there was no sanction by the Judge to the certificated guardian. The order was merely a voidable one under s 30 of the Guardians and Wards Act at the instance of the minor on coming of age after restoration of the benefit received by him under the order and the plaintiff was entitled to a decree for the amount advanced by him on the mortgage bond but only to interest at the rate of 12 per cent simple interest. **MANSHARAM DAS v AHMED HOSAIN PRODHAN (1916)**. 21 C W N 63

Mortgage executed by pardanashin lady as guardian of minor son with sanction of District Judge—Lender, if justified in relying on Court's sanction and making no further enquiry—Application of money borrowed, lender is bound to see to it. A pardanashin lady acting as guardian of her minor son applied to the District Judge for raising a loan by mortgage and the District Judge being satisfied as to the necessity of the loan sanctioned it. In a suit on the mortgage it was pleaded, *inter alia*, that there was no necessity for a considerable portion of the loan. *Held*, that the lender was not bound to go behind the order of the District Judge sanctioning the loan and was entitled to rely upon it, and if he acted *bona fide* he was not bound to see to the application of the money. **AKHIL CHANDRA SAHA v GIRISH CHANDRA SAHA (1917)**. 21 C W N 864

INTEREST

1. *Preliminary decree appeal by mortgagee against dismissed Mortgage if may claim contract rate of interest up to date of payment fixed in final decree—Purchaser of equity of redemption, if personally liable.* Where the mortgagee plaintiff prefers an unsuccessful appeal against the preliminary decree made in his suit and the mortgagor does not ask for extension of time to enable him to redeem, it is not open to the mortgagee to demand interest at the contract rate up to the date fixed for payment in the final decree. A purchaser of the equity of redemption is not personally liable to repay the mortgage debt. **TARA CHAND MARWARI v BROJA GOPAL MOOKERJEE (1912)**. 17 C W N 457

2. *Mortgage by conditional sale with no provision for post diem interest—Post diem interest not allowed.* A mortgage executed in 1897 provided for the payment of the sum of Rs 300 with interest at Rs 18 per cent per annum in one lump sum upon a certain specified date four years from the date of the mortgage. It further provided that if the money was not paid upon that date, the property mortgaged should become the absolute property of the mortgagee. There was no stipulation of any kind as to the payment of interest after the date fixed. *Held*, that the mortgagee was not entitled

MORTGAGE—*contd*INTEREST—*contd*

to post diem interest. **Mathura Das v Paja Narindar Bahadur, I L R 19 All 39**, distinguished. **Gudra Aor v Lhalaneswari Coomar Singh, I L R 19 Cal 19**, and **Moti Singh v Ramofari Singh, I L R 24 Cal 699**, followed. **BALWANT SIKHAN v GATAN SIKHAN (1913)**. I L R 35 All. 534

3. *Loss of part of security by acquisition of mortgaged land—Mortgagee applying to Land Acquisition Judge for return of mortgage money (out of the compensation money) within term, whether entitled to interest for the whole term—Land Acquisition Act (I of 1894) s 18, 30.* If the mortgagee makes a demand for payment within the term, and the mortgagee complies, the mortgagee cannot insist upon payment of interest for the whole of the term. **Latta v Hutchins I P 13 Eq 176** *In re Moss, 31 Ch. D 90 **Smith v Smith, [1891] 3 Ch 650** referred to. Where the mortgagee has given notice requiring payment within the term, he cannot withdraw it without the consent of the mortgagor, **Samley v Wilde, [1899] 1 Ch 747, 2 Ch 474**, followed. Where the mortgagor agreed to keep the money for one year from 28th September 1912 on condition that the land should remain as security for the loan during the term, but one of the properties given as security had been acquired (the mortgagee probably having no knowledge thereof) and on the 11th October 1912 the mortgagor applied to the Land Acquisition Deputy Collector that the money due under the mortgage (including one full year's interest) might be paid to him out of the compensation money, and the mortgagor consented. *Held*, that as the contract between the parties could not be performed according to its letter by reason of circumstances beyond their control the mortgagor was not bound to pay interest beyond the period of one month (as admitted by him). **Baksh Gaur Bham v Huseini Khanum, I L R 36 All 195** explained. **PROKASH CHANDRA GHOSH v HASAN BANU BISHI (1914)**. I L R 42 Cal. 1146*

4. *Covenant of possession by the mortgagee in lieu of interest—Mortgagee wrongfully kept out of possession of mortgaged property—Interest—Charge on mortgaged property—Limitation Act (IX of 1908) Sch I Arts 110, 132—Transfer of Property Act (IV of 1882), s 72.* A mortgage deed expressly covenanted that the mortgagee should have possession of the mortgaged property in lieu of interest and that if the mortgagor failed to pay the amount of the debt at the end of the period specified the mortgagee should be at liberty to foreclose according to law. Except for one year, the mortgagee in spite of his efforts was wrongfully kept out of possession by the mortgagor. In a suit brought by the mortgagee on the mortgage deed—*Held* that the mortgagee was clearly entitled to some interest as a charge on the property and the interest claimed was not excessive. **Raja Oodai Purkash Singh v Marindell, 4 Moo I A 445** **Pargan Landy v Mahomed Mahin, 6 C L J 143** **Parab Bahadur Singh v Gajadhar Bakhsh I L R 29 All. 521** **I L R 29 I A 148**, and **Moti Singh v Ramohari Singh I L R 24 Cal 699**, referred to. **Mahalinga v Joti I L R 17 Bom 425** distinguished. **SITA NATH GHOSH v THAKURDAS CHAKRAVARTY (1918)**. I L R 46 Cal. 448

MORTGAGE—contd**INTEREST—contd**

5 ————— *Stipulation as to payment of interest, if unconscionable and binding on pardanashin executant—Successful Appellant deprived of interest for period during which case was hung up through his persistence in urging an un-supportable claim of interest* Where by a mortgage deed it was stipulated that the mortgagee was to remain in possession and enjoy the rents and profits and 'that after the expiry of thirty years at the time of redemption interest shall be paid along with the principal at the rate of 3 percent per mensem' Held—That the mortgage deed did not bind the mortgagor to pay interest from the date of the mortgage and the condition to pay interest only came into force on the expiry of the thirty years That so interpreted, the contract was not one which the executant of the mortgage, a pardanashin lady, could not understand The Judicial Committee disallowed interest to the mortgagor from the date of the decree of the Subordinate Judge (which had been reduced by the Judicial Commissioners but on the mortgagee's appeal the Board restored) to the disposal of the appeal by the Privy Council, the case having in its view been hung up by his persistence in asserting an unwarrantable claim of interest from the date of the mortgage **RAJA SIR MOHAMMAD ALI MOHAMMAD KHAN BAHADUR v. QAZI RAMZAN**

24 C. W. N. 977

LOST BOND

————— *Suit on lost bond—Admission of execution—Plea of payment—How far question of loss material* In a suit brought on a lost mortgage bond the defendant, a son of the executant, admitted execution but pleaded payment and denied the loss Held, that since the defendant admitted execution, it lay on him to prove that the mortgage had been discharged The question of the loss of the bond was only material for the purpose of determining whether the bond had been discharged and returned **JHANDU MAL v. KARAN SINGH (1915)**

I L R 37 All 426

MARSHALLING

————— *Mortgagee failing to pay a part of consideration, as provided in the mortgage-deed—Failure of consideration—Subsequent payment cannot be taken as part of mortgage-debt—Transfer of Property Act (IV of 1882), ss 66, 81, 85—Marshalling of securities* In 1896, G mortgaged some lands (Serial Nos. 1—10) to I for Rs. 400, of which Rs 200 were paid in cash and Rs 200 were to be paid to A, a prior mortgagee V having failed to pay to A, G sold to defendant No 5 some of the lands mortgaged (Serial Nos 6—10) and other property and released A's mortgage by paying Rs 200 to him Subsequently V paid Rs 200 to G Shortly afterwards G mortgaged some more lands (Serial Nos 1, 3, 4 and 5) to defendant No. 4 for Rs 400 The defendant No. 4 sued on his mortgage and obtained a decree against G In execution of the decree the lands, Serial Nos 1, 3, 4, 5, were sold and were purchased by defendant No. 4 I then sued on his mortgage treating it as one for Rs 400 to recover the amount by sale of all the ten numbers The lower Courts recognized I's mortgage only for Rs 200, and granted him a decree authorizing him to proceed

MORTGAGE—contd**MARSHALLING—contd**

against Serial No 2 alone and if the sale proceeds failed to satisfy his claim, to proceed against the other serial numbers which were sold to defendant Nos 4 and 5 On appeal Held, that I was not entitled to treat his mortgage as one for Rs 400 since I having failed to pay Rs 200 to A either at once or within a reasonable time there was partial failure of consideration for the mortgage and the subsequent payment of Rs 200 to G by I could not serve in law to undo the effect of that failure so as to prejudice the rights of defendant No 5 Held further, that the Court had power, under s 88 of the Transfer of Property Act (IV of 1882) to pass in such a suit a decree for sale, ordering that, in default of G paying, the mortgaged property or a sufficient part thereof be sold *per Curiam* The provisions of s 56 of the Transfer of Property Act, 1882, apply only as between a seller and his buyer, not as between a mortgagee of the seller and the buyer **SOBRA LADIV v. VENKATESH v. GANPA (1911)**

I L R 35 Bom 895

MINOR

1 ————— *Mortgage by—Settlement of all property by mortgagor after majority—Fraud of creditors—No fraudulent misrepresentation as to age—Liability to refund—Mortgagee if a creditor—Transfer by mortgagee—Attestation by mortgagor—Endorsement of payments by mortgagor—Suit against mortgagor and his son—Estoppel of mortgagor—Suit not maintainable against the son—Transfer of Property Act (IV of 1882), s 53—Subsequent creditors, if included* The plaintiff sued on a mortgage bond executed by the first defendant during his minority in favour of the third defendant who transferred it to the fourth defendant who again transferred it to the plaintiff After attaining majority the first defendant executed a settlement transferring all his property to his mother and his wife on behalf of his minor son, the second defendant stipulating only for maintenance for himself The first defendant, after attaining majority, had endorsed payments on the mortgage deed and attested the transfer of the same by the third defendant to the fourth defendant It was found by the lower Appellate Court that the settlement was intended to be operative but that it was executed by the first defendant with intent to defeat and delay his creditors It was also found that there was no fraud or misrepresentation by the minor as to his age when he borrowed on the mortgage The plaintiff contended that the first defendant was bound to refund the amount advanced on the mortgage to the third defendant, and that he was consequently a creditor entitled to set aside the settlement The first defendant admitted the plaintiff's claim The second defendant, who contested the suit, preferred the Second appeal Held, where a minor has obtained money by misrepresenting his age that amounts to fraud and he may be made to refund it, but, in the absence of fraud a refund cannot be ordered As there was no fraud or misrepresentation by the minor as to his age when he borrowed money on the mortgage, he could not have been ordered to refund, and the third defendant was not one of his creditors at the date of the settlement; consequently the plaintiff was not competent to sue under s

MORTGAGE—contd.**MINOR—contd.**

53 of the Transfer of Property Act to set it aside. The admission of the first defendant during the suit, his enforcement of payments on the mortgage and his attestation of the transfer deed could not give the plaintiff the right to set aside the settlement as against the second defendant. *Quære*—Whether subsequent creditors are included under s. 53 of the Transfer of Property Act. *Per* SADASIVA AYYAR J. A person does not actually become a subsequent creditor or creditor by reason of the estoppel of the debtor. An estoppel cannot overrule a plain provision of law. The statutory provision that a minor is incompetent to incur a contractual debt cannot be overruled by an estoppel. *VAJESVARANAM PILLAI v. ANTHIMOO LAM CHETTIAR* (1914) 1 L. R. 38 Mad. 1071.

2.—In favour of—*Mortgage, if void because executed in favour of minors*. The plaintiffs executed a mortgage in favour of the defendants who were minors at the time. The defendants sued on the mortgage, had the property sold in execution of their decree and purchased it themselves. They were of full age when the suit was brought. The plaintiff sued to have it declared that the mortgage bond was void and to have the decree and the sale set aside. *Held*, that the defendants were entitled to enforce the mortgage which was not void simply because of their minority at the time of its execution. That the case was not concluded by the decisions of the Judicial Committee in *Mohori Bibi v. Dharmadas Ghosh* 1 L. R. 30 Cal. 539 7 C. W. N. 411, and *Mir Sarwarjan v. Fakhrudin Mohamed* 1 L. R. 35 Cal. 232 16 C. W. N. 74 inasmuch as there was no covenant which it was for the minors to perform. *HARI MOHAN MONDAL v. MOHINI MOHAN BANERJEE* (1910) 22 C. W. N. 130.

MOVEABLES

Mortgage equitable of loose chattels—Indian Contract Act (IX of 1872), s. 172, if prohibits such hypothecation—Equitable mortgage of land—Fixtures if pass to mortgagee—Letter written by mortgagor stating purpose of deposit of title-deed, if must be registered as a document of mortgage—Transfer of Property Act (IV of 1882), s. 59. There is nothing in the Indian Contract Act which contains only a portion of the law of contract applicable in British India, to prevent a person from hypothecating his goods to another person for security. As between mortgagor and mortgagee, the law is settled that fixtures pass with the land to the mortgagee. A letter written by the mortgagor to the mortgagee stating the purpose for which the title deed has been deposited with the latter is not a document requiring registration under the provisions of the Indian Registration Act as being a mortgage. *HARPADA SADRUKHAN v. ASHTE NATH DE* (1916) 22 C. W. N. 758.

Hypothecation of stock in trade left in possession of the debtor—as originally sold to a purchaser with notice of the creditor's lien—whether the creditors can follow the property into the hands of the purchaser. *Held* that in India there is no rule of law by which a person having a mortgage on moveable property is debarred from following that property into the hands of a purchaser with notice of the mortgage. *Drama v. Richardson* (3 N. W. P. H. C. R. 54) *Ko Kyuchnee v. Ko Koung Sane*, (3 W. R. 182) and *Taitlam v. Andree* (1 Moa.

MORTGAGE—contd.**MOVABLES—contd.**

P. C. 356) cited in Ghose's Law of Mortgage, 4th Edition, Volume 1, page 108 followed. *Addison's Law of Contract* 10th Edition, page 766, referred to and discussed. *ORIENT BANK v. MIST GULAM FATIMA* 1 L. R. 1 Lah. 422.

PARTIES

Hindu law—Mortgagee holding an usufructuary and a simple mortgage over the same property—Sue by the mortgagee as karta of joint Hindu family on later mortgage alone—Maintainability—Non-journer of necessary party—Transfer of Property Act (IV of 1882), ss. 85-94—Civil Procedure Code (Act V of 1908), O. XXXIV, r. 1, 14. Where the karta of a joint Hindu family who was the holder of an usufructuary and a simple mortgage brought a suit on the latter without joining as party one of the members of the family, who had a joint interest with him in the usufructuary mortgage. *Held* that under the terms of s. 85 of the Transfer of Property Act and O. XXXIV, r. 1, of the Civil Procedure Code, the plaintiff was bound to make him a party. *Hori Lal v. Munram Kuntor*, 1 L. P. 34 All. 519, and *Mohan Lal v. Kishan Singh*, 1 L. R. 34 All. 572 not followed. *Lala Surya Prasad v. Golab Chand*, 1 L. R. 27 Cal. 724 25 Cal. 517, followed. *DEBI PRASAD SAHAI v. DHANAMJIT NARAYAN SINHA* (1914) 1 L. R. 41 Cal. 727.

PARTITION, EFFECT OF

Mortgages of undivided share—Effect of subsequent partition—Mortgage takes effect on substituted share. A mortgagee of an undivided share in common property or of one of the joint properties before partition from one of the sharers is only entitled to proceed against the substituted property which falls to the share of the mortgagor at the partition unless the partition has been unfair or in fraud of the mortgagee. *MUTHIA RAJA v. APPALA RAJA* (1910) 1 L. R. 34 Mad. 175.

It is one of the incidents of a mortgage of an undivided share that the mortgagee cannot follow his security into the hands of the co-sharer of the mortgagor who has obtained the mortgage share upon a partition. If the partition is tainted with fraud or if in the making of the partition the incumbrance was taken into account and the partition was made subject to the incumbrance the result will be different, but in the absence of such fraud the mortgagee's remedy is against the share or property which the mortgagor has obtained under the partition. Hence where execution of a decree for sale of a share in undivided property the subject of a mortgage was gone on *pro rata* with proceeds for partition, and the mortgaged share was sold two days after the final decree for partition (by which the mortgaged property fell to the share of a member of the family other than the mortgagor) was made it was held that the auction purchasers (in this case the decree holders themselves) took nothing by their purchase. *Byrappa Lal v. Ramoodeen Choudry* 1 L. R. 1 I. A. 103, *Amolak Ram v. Chandan Singh*, 1 L. R. 24 All. 433 *Hem Chander Ghose v. Thakur Moni Deb* 1 L. R. 20 Cal. 533 *Venkatrama Iyer v. Eramma Poulchen*, 1 L. P. 33 Mad. 429, *Muthia Raja v. Appala Raja* 1 L. R. 34 Mad. 175 *Shakebunda*

MORTGAGE—contd

PARTITION EFFECT OF—contd

Mahomed Azim Shah v R S Hills, 1 L R, 35 Cal 333, and Hakim Lal v Ram Lal 60 L J, 16, referred to BHUT SINGH v CHEDDA SINGH
I L R 42 All 596

PRIORITY

1 — Prior mortgagee, right of.— A second mortgagee brought a suit on his mortgage making the transferees of the prior mortgagee parties to the suit and obtained a decree, and in execution thereof the transferees applied to be allowed to deposit in Court the full amount of the second mortgage-debt in order to save the property from sale. The Court of first instance allowed the application, but on appeal, the District Judge set aside the order of the first Court.—*Held*, that the transferees of the prior mortgagee were entitled to pay off the mortgage debt due on the subsequent mortgage to save the mortgaged property from sale. *BHAJA SHARI MAITI v GAJENDRA NARAIN MAITI* (1909)
I L R 37 Cal 282

2 — Civil Procedure Code 1882, s 244 A prior mortgagee in an application under s 244 of the Code of Civil Procedure in execution is entitled to have his right settled without being put to the extra expense and unnecessary trouble of bringing a fresh suit. *GOVIND PRASAD MISSEER v LACHMI CHARAN MARWARI* (1909) . 14 C W N 675 note

3 — Limitation Act (XV of 1877) Sch II, Arts 132, 134, 148.—Suits by prior mortgagee without making purchase mortgagee party.—Sale and purchase by himself.—Subsequent suit by second mortgagee and purchase by himself.—Interest acquired by latter.—Suits by him to redeem prior mortgagee purchaser. Where a prior mortgagee sues on his mortgage without making the second mortgagee a party and in execution of the decree obtained by him purchases the property himself and subsequently the second mortgagee also sues on his mortgage without making the prior mortgagee a party, and purchases the property in execution of his decree he acquires by his purchase only the interest he previously possessed as mortgagee. He can seek to enforce his rights as such by suit as against the prior mortgagee purchaser only within the period of 12 years from the due date of his own mortgage as provided in Art 132 of Sch II of the Limitation Act (XV of 1877) and he cannot claim the benefit of a fresh period of limitation running in his favour from the date of his purchase. A suit brought by him to redeem the prior mortgagee purchaser more than 12 years after the due date of his mortgage would be barred by Art 132 of Sch II of the Limitation Act (XV of 1877). *NRDHIRAM BANDO PADHYA v SARESHCHANDR BISWAS* (1909)
14 C W N 439

4 — Decree obtained on a prior mortgage satisfied by execution of a fresh mortgage in favour of decree holder.—Priority over an intermediate mortgage. A decree for sale upon a mortgage of 1893 was obtained in 1901. In 1903 the decree-holder accepted in satisfaction of the decree a sale deed of a certain portion of the mortgaged property but this adjustment was never certified to the court. Subsequently the decree was put into execution and a sale was

MORTGAGE—contd

PRIORITY—contd

ordered, but before it was carried out the parties came to terms and the judgment debtor executed a fresh mortgage to secure the decretal amount. This was in May 1904. Meanwhile in April, 1901, another mortgage had been executed by the judgment debtor *Held*, that the mortgage of May 1904 being in satisfaction of the earlier mortgage of 1893 had priority over that of April, 1904. *Kankhaya Lal v Chedda Singh 7 All L J 284 and Shyam Lal v Basuruddin 1 L R 28 All 778, followed* RAMMUNDESA v BADEY DAS (1911)
I L R 33 All 368

5 — Sale of mortgage property in execution of prior mortgages a decree.—Subsequent mortgagee no party to suit.—Price to be paid by subsequent mortgagee seeking to redeem. A subsequent mortgagee is not entitled to redeem the prior mortgage by simply paying the price for which the mortgaged property may have been purchased at an auction sale held in execution of a decree obtained by a prior mortgagee without joining the subsequent mortgagee as a party, but such subsequent mortgagee must if he wishes to redeem, pay to the prior mortgagee the full amount due on the prior mortgage. *Dip Narain Singh v Hira Singh 1 L R 19 All 527 applied* PHUL MANT CHAUDHRAI v NAGESHAR PRASAD (1911)
I L R 33 All 370

6 — Mortgage of chattel.—Priority.—Prior Mortgagee inducing subsequent encumbrancer to advance money as first charge. Where a first mortgagee was an assenting party to the mortgage or charge executed in favour of a subsequent encumbrancer and actually obtained a large portion of the mortgage money thus raised and the subsequent mortgage contained an express covenant that the property mortgaged was free from encumbrances *Held* that the prior mortgagee having thus concurred in inducing the subsequent encumbrancer to advance money as a first charge could not turn round and claim priority over that charge in favour of his own mortgage subsisting from an earlier date. *RAMAN CHETTIY v STEEL BROTHERS AND COMPANY* (1911)
15 C W N 813

7 — Third mortgagee paying off first mortgage and claiming priority as against second mortgage.—Presumption as to intention of third mortgagee. Where a mortgagee pays off prior encumbrances on the mortgaged property, it is to be presumed that he does so with the intention of keeping these encumbrances alive and using them as a shield should occasion arise, and he can so use them as much when he is a plaintiff suing for sale as when he is a defendant to an intermediate or subsequent mortgagee's suit. If the payment is made in the form of leaving part of the money with the mortgagee to be paid to the prior mortgagees the subsequent mortgagee does not thereby become the agent of the mortgagor for the purpose of paying off the prior mortgages. *Gokaldas Gopalidas v Iyannal Premukhdas 1 L P 10 Cal 1035, Dinobundhu Shaw Chowdhry v Jogmaya Dan 1 L R 29 Cal 154, and Jagadhar Narain Prasad v A M Brown, 1 L R 33 Cal 1133 followed* Tufail Fatma v Bitola 1 L R 27 All 400 and Baij Nath v Mirulidhar All W N 1907, 85 dissenting from *GUR NARAIN v SHADI LAL* (1911)
I L R 34 All 102

MORTGAGE—contd.**PRIORITY—contd.**

8 ————— *Mortgage, right of person paying of prior—Canal claim rights of prior mortgagee unless prior debt is completely satisfied* Where there are two mortgages on a single property and a person advances money for the payment of the first mortgage, the claim of such person to priority over the second mortgage cannot be sustained unless the first mortgage is entirely discharged. *HAYUMANTHAYAN v MEENATCHI NAIDU* (1911) I. L. R. 35 Mad. 183

9 ————— *Sale of mortgaged property—Prior mortgage, extinguishment of—Intention of parties—Effect of payment of prior mortgage by subsequent mortgagee—Res judicata—Omission to raise issue in former suit when party thereto—Civil Procedure Code (Act XI of 1882), s. 13 expl (2)—Transfer of Property Act (IV of 1882), s. 35—Parties to mortgage suits—Limitation Act, 1877, Sch II, Art 132* In a suit brought on a simple mortgage deed, dated 17th February, 1888, to recover Rs. 12,000 and interest, and to have it declared that the properties covered by the mortgage in suit, and by a *zarfeshgi* deed, dated 20th November, 1874, were liable for the decretal amount, it appeared that by the deed of 1874 the properties in suit were hypothecated as security for Rs. 12,000, the mortgagee to have possession until the amount was repaid in 1887. Subsequently, on dates intermediate between 20th November 1874 and 17th February 1888, three of the properties in suit (the only properties concerned in this appeal) were further charged by simple mortgages, some of them relating only to two of such properties, and one of them relating only to the third of such properties and suits on them were brought on 6th September 1888, 3rd May 1890, and 15th July 1890 and decrees for sale were obtained in them. The mortgages of the mortgage in suit of 17th February 1888 or her representatives being made parties only to those suits and decrees which related to two of the properties mortgaged. The mortgage in suit was repayable in two years, and was by agreement of the parties to it, made for the express purpose of paying off the debt of Rs. 12,000 on the *zarfeshgi* deed of 1874, and charged the same properties as were hypothecated by that deed. The money then borrowed was, on 10th July, 1888, in accordance with the agreement, applied in charging the debt in the *zarfeshgi* deed, and that deed was then given up to the mortgagee of the mortgage in suit, and her representatives, on 16th June, 1891, assigned the mortgage in suit to the plaintiffs who on 22nd September 1900 instituted the present suit making defendants the representatives of the mortgagees, the representatives of the mortgagee, and the persons whose titles as decree-holders and purchasers arose under the intermediate mortgage made between 20th November, 1874 and 17th February, 1888, claiming priority over the last set of defendants: *Held*, that, under the circumstances, the mortgagee of the mortgage in suit intended to keep alive for her benefit the charge created by the *zarfeshgi* deed of 20th November 1874, notwithstanding that no formal assignment in writing of that deed was made; and she thereby obtained priority over the mortgagees of the intermediate further charges. *Dinokundhu Sams Choudhry v Jogmaya Das*, I. L. R. 29 Cal. 154, L. R. 29 I. A. 9, followed. *Held*, also, that in any case, she was, under s. 85 of the Transfer of Property Act (IV of 1882), a

MORTGAGE—contd.**PRIORITY—contd.**

necessary party to all the suits on the intermediate mortgages, and consequently in the suits to which she or her representatives were made parties, her rights under her mortgage were barred by explanation (2) of s. 13 of the Civil Procedure Code (Act XIV of 1882) by her omission in those suits to put those rights in issue, though such rights were not affected by the decree in the suit to which she or her representatives were not made parties. But, *held*, further, that the appellants' rights of priority under the *zarfeshgi* deed of 1874 were barred by Art 132 of the Limitation Act (XV of 1877), the present suit to enforce them not having been instituted within 12 years from the date when the money under that deed became repayable in 1887. *Held*, therefore that they were only entitled in the present suit to a decree for redemption of their interest in the third property, the subject of the suit, to which their assignors had not been made parties. *MAHOMED IBRAHIM HOSSEIN KHAN v AMERICA PERSHAD SINGH* (1912) I. L. R. 39 Cal. 527

10 ————— *Prior and pawns mortgages—Sale to prior mortgagee after creation of a pawns mortgage—Prior mortgagee kept alive to what extent—Prior mortgagee whether entitled to charge interest after date of sale—His claim for necessary repairs and municipal taxes, whether allowable—Practice—Appeal—Transfer of Property Act (IV of 1882), ss. 65, 72 and 101—Madras District Municipalities Act (IV of 1884), s. 102—Doors and windows not moveable property* When, after the creation of pawns mortgage, the mortgagor sells the property to the prior mortgagee with possession, the prior mortgagee is kept alive as against a pawns incumbrancer in the circumstances mentioned in s. 101 of the Transfer of Property Act, but not against the owner, whose equity of redemption has been purchased by the prior incumbrancer. The prior mortgagee is not entitled to claim interest on his mortgage after the date of his sale, against the pawns mortgagee, the effect of the sale is this that what was enjoyed by the prior mortgagee till sale, as compensation for the amount of the usufructuary mortgage, he agreed subsequently to enjoy in consideration of the whole price, and he cannot therefore claim any further compensation from the date of sale, for any portion of the price. Where by the terms of the mortgage deed, the mortgagor personally covenanted to pay the municipal taxes himself the mortgagee who pays the same, cannot add it to the mortgage amount and recover it from the pawns mortgagee either under s. 65, clause (c), or under s. 72, Transfer of Property Act, as money spent for preservation of the property as the doors and windows of a house are not moveable property and could not have been seized under s. 103 of the District Municipalities Act before its amendment in 1899. The cost incurred by the prior mortgagee after the sale, for necessary repairs to the property, or for restoring a room that had fallen are recoverable, as all rights incidental to the mortgage must subsist with the mortgage right itself, and the prior mortgagee is consequently entitled to add all moneys to the principal amount which he would be entitled to do under s. 72 of the Transfer of Property Act, if the sale had not taken place. There is nothing to prevent the appellant from attacking only a portion of the decree by paying court fee only thereon, although the reason for

MORTGAGE—contd**PRIORITY—contd.**

the attack might cover the whole decree. **SYED ISRAHIM SAHIB v ARUMUGHATHAYEE (1912)**
I L R. 38 Mad 18

11. —Two mortgages executed by the same mortgagor—Mortgagor becoming by inheritance owner of decree for sale on prior mortgage—Effect of, on rights of puisne mortgagees. *Held*, that a mortgagor who had become by inheritance the owner of a decree against himself on a prior mortgage was not entitled to hold up such prior mortgage as a shield against the decree of a subsequent mortgagee from himself. **OTTER v VAUR, 6 De G M & G 638, Platt v Mendel, L R, 27 Ch. D 216, and Baya Chowdhury v Churni Lal, 11 C W N. 281, referred to. BADAN v MURARI LAL (1915)** . . . **I L R 37 All. 309**

12. —Prior and subsequent mortgagees—Decree obtained on prior mortgage—Fresh mortgage executed in consideration of the balance due under the decree—Provision in deed that the decree shall be deemed discharged—Effect of decree absolute as regards extinction of the security. A second mortgagee brought a suit upon his mortgage impeaching the first mortgagee, and obtained a decree for sale for the amount of both mortgages. This decree was made absolute, but the mortgaged property was not in fact brought to sale under it. A third mortgagee then sued on his mortgage, obtained a decree, brought the mortgaged property to sale, and purchased it himself. To this suit the second mortgagees were not made parties. Subsequently to this the second mortgagees took another mortgage comprising the property originally mortgaged to them and some more, for the balance remaining unpaid of their former decree and a small further advance. In this deed it was expressly stated that the decree was to be deemed to be discharged thereby—*Held* in suit on this last mortgage, that the plaintiffs were not entitled to go behind their deed and claim priority of the third mortgagees in virtue of their own second mortgage. **ELLIS v ELLIS, 1 Ch. D 619, Dhakencar Prasad Singh v Haridar Prasad Narain Singh, 21 C L J 104, Kanhaiya Lal v Chhida Singh 7 A L J 911, and Het Ram v Shadi Ram, I L R 40 All 407, referred to. CHHADAY LAL v MUHAMMAD HUSAIN KHAN (1919)** . . . **I L R. 41 All. 456**

13. —Mortgage—Suit and decree by prior mortgagee without impeaching puisne mortgagee—Purchase of mortgage property by prior mortgagee in execution—Receipt of rents and profits thereafter—Mode of accounting between the two mortgagees. A mortgage decree obtained by a prior mortgagee without impeaching a puisne mortgagee does not affect the latter and the amount therefore payable by the latter in discharge of the prior mortgage is not the amount of the decree but that which is due on the footing of the prior mortgage as if no suit had been brought, and if the prior mortgagee buys the mortgage property in execution of his decree and gets possession of him the same the rents and profits received by him cannot be set off as equivalent to the interest due for the period of possession, but must be accounted for and deducted from the amount payable by the puisne mortgagee. **UMMA CHANDER SIKAR v ZAFAR FATIMA, I L R 18 Cal. 161, and Gangi Ishad Saha v. The Land Mortgage Bank of India, I L R 21 Cal. 366, applied.**

MORTGAGE—contd**PRIORITY—contd**

Syed Ibrahim Sahib v Armughathayee, I L R 38 Mad 18 considered **MUTHAMMAL v RAZU PILLAI (1917)** . . . **I L R 41 Mad 513**

—Prior and subsequent mortgages, rights of, inter se—Separate and independent decrees obtained by each set of mortgagees—Property sold by prior mortgagee and purchased by a third party leaving a surplus of sale proceeds—Rights of auction purchaser and puisne mortgagees. A mortgaged the same property, first to B and then by two separate mortgage-deeds to C B and C both sued on their mortgages each party without impeaching the other, and obtained decrees. B's decree was executed first. The mortgaged property was sold and was purchased by K. B's mortgage was paid up, and a considerable surplus remained which was deposited in court. C then endeavoured to execute his decree against the surplus sale proceeds, but failed, and the money was ultimately withdrawn by the mortgagor. C next proceeded with the execution of his decree against the property in the hands of K, the auction purchaser and K in order to retain possession paid up the amount of B's decree. K then sued the representatives of A to recover the amount so paid. *Held*, that in the circumstances K was entitled to a decree. **BARHAMDEO PRASAD v TARA CHAND, I L R, 41 Cal. 651, referred to. KARAN SINGH v ISHTIAQ HUSAIN** . . . **I L R 43 All 263**

REDEMPTION

See UNDER SUB HEADINGS CONSTRUCTION, DISCHARGE, CONSOLIDATION AND SALE
 See **BENGAL REGULATION XV OF 1793**
I L R 34 All. 261

See **CIVIL PROCEDURE CODE 1908, O 31, r 1** . . . **I L R. 44 Bom 698**

See **LIMITATION ACT, 1877, ART 134**
I L R. 32 All. 160

See **LIMITATION ACT 1908, ART 126.**
I L R. 41 Mad. 650

ART 140
I L R. 40 Bom. 239

See **MORTGAGOR AND MORTGAGEE**

See **REDEMPTION**

See **REDEMPTION OF MORTGAGE PUNJAB ACT, 1913** . . . **I L R. 2 Lah. 234**

See **TRANSFER OF PROPERTY ACT, 1882, s 83** . . . **I L R. 43 All 424**

See s 41 to 103

—Acknowledgment of mortgagor's right to—Signature by mortgagee in the Register of Sanads—

See **LIMITATION ACT (IX of 1908) s 10**
I L R 45 Bom. 234

—Clog on—

See **TRANSFER OF PROPERTY ACT, 1882, s 60** . . . **I L R. 45 Bom. 117.**

—Suit by some of the heirs of mort-

gagor—

See **CIVIL PROCEDURE CODE (ACT V OF 1908) O 1, r 10 (2), AND O XXXIV, s 1** . . . **I L R 45 Bom. 1009**

—Lekha Mukhi—

Suit for redemption—limitation—

MORTGAGE—couldPREFERENTIAL—*con* 1

N. C. AND AN LIMITATION ACT 1908 (11)

I L R 1 Lah 89

appeal for decree for—

See COURT FEE I L R 1 Lah 254

Provision for mortgagee to remain in possession so long as it bearing interest remains on land—Whether a clog

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 61 I L R 45 Bom 11

MORTGAGE—couldREDEMPTION—*could*

Act (I) of 1882, s. 29—Sale voidable not void—Mortgagee of money redeem without giving consideration—Mortgagee's sale for mortgagee—Had money right of mortgagee to and to credit for amount paid for purchase. It is a well established principle that a purchase by the mortgagee of the equity of redemption constitutes him a trustee for the mortgagee and that he does not (unless there has been a release of the equity of redemption or other circumstance which in law would bar his right to redeem) acquire an independent title. *Abderrahman v. Ibrahim I L R 30 C 10 210* ac 11 C W N 501 referred to. The right to redeem which according to this principle would still subsist in the mortgagee has not been affected by the decision in *Shah I L R 35 Cal 61* ac 11 C W N 1011 where it was held that a sale in contravention of the terms of a 91 of the Transfer of Property Act is not a nullity but an irregular sale liable to be avoided merely on proof that the terms of the section have been contravened. The mortgagee is under no necessity to have the sale set aside first in order to be entitled to redeem the property. He may sue for redemption within the period of limitation allowed by law. But in such a case the mortgagee would have to pay the mortgagee the amount given credit for by the latter in respect of the sale. *Mayan Lal v. Fakir I L R 20 Mad 347*, and the mortgagee would further be entitled to be reimbursed and to add to the mortgage-debt the amount which he has expended for the protection and preservation of the property. *ANCHAM LAL CHOWDHURY v. KISHOR PRASAD MISER (1910)* 14 C W N 579

1 ———— Clog on the equity of redemption—Two mortgages—Covenant to discharge the second mortgage before the first—Conclusion. Under a covenant contained in a mortgage of the year 1907 the mortgagee took possession of the mortgaged property but subsequently the mortgagee took a further advance from the mortgagor and gave them a second mortgage on the same property in which they covenanted that they would pay off the amount due on the second mortgage before redeeming the first. Held on suit by the mortgagors to redeem the mortgage of 1907 that this was an admissible covenant and not a clog on the equity of redemption. *Bharu v. Dabir Ali Baidy Notes (1910) 978* d distinguished. *Muhammad Abdul Hamid v. Jawaj Mal Ali Weekly Notes (1906) 267* referred to. In second appeal the plaintiffs mortgagees were allowed to amend their plaint so as to include a prayer for redemption of both the mortgages. *HALI LAL SIKHAN v. BHAWANI SIKHAN (1910)*

I L R 30 All 651

2 ———— Redemption, suit for—Deposit of money in Court in terms of mortgage profits—Mortgagor's claim for means profit after such deposit and before giving possession—Provincial Small Cause Courts Act (IX of 1887), Sec 11 Art 30. The relation of mortgagor and mortgagee ceases as soon as the mortgagor deposits the money in Court in pursuance of the Court's order in a redemption suit and the possession of the mortgagee thereafter becomes wrongful possession. *Bhajan Lals v. Sahai Bros I L R 31 Cal 263* ac 8 C W N 588 referred to. Where under orders of the Court in a suit for redemption a mortgagor deposited the amount due on the mortgage in Court but the mortgagee did not deliver possession of the mortgaged property till some time later. Held that a suit by the mortgagor for means profit up to the date when possession was delivered was maintainable. The test to be applied is whether the sum claimed in the suit could have been recovered in the previous suit for redemption. *Yagnak v. Dattatraya I L R 26 Bom 661* referred to. *Bulman Lal v. Yankatesh I L R 31 Bom 577* *Satpal Lal v. Mangal I L R 31 Cal 273* ac 5 C L J 197 and *Pom Dey v. Bhup Singh I L R 30 All 223* distinguished. A suit by a mortgagor against the mortgagee for means profit for the period during which he held wrongful possession of the property is maintainable in a Small Cause Court. Art. 31 of Sch. II of the Provincial Small Cause Courts Act is no bar to such a suit being instituted in a Small Cause Court. *SABAHU DUTT v. SHUKH ARKHUR (1910)* 14 C. W. N. 1001

3 ———— Purchase by mortgagee of equity of redemption—Transfer of Property

4 ———— Mortgagee out of possession—Equity of redemption—Gift of money of mortgaged property—Transfer of Property Act s 68 s 69 and 71—English Conveyancing and Law of Property Act s 14. The discharge of a mortgage merely enlarges the security of a subsequent encumbrance or adds to the interest of the owner of the equity of redemption. Where A is the owner of the equity of redemption in a moiety of certain property and a gift though the right to possession was outstanding in the mortgagee at the date of the gift A is entitled to possession of the moiety on the discharge of the mortgage. Transfer of Property Act s 60 74 61 discussed and compared with the English Conveyancing and Law of Property Act s. 15. *PONKALAI v. KALITHIRAI MUDALI (1910)* 14 C L J 34 Mad 115

5 ———— Bengal Regulation No. XV of 1893 s 10—Redemption—Meaning of—Judicial—English Law P and Decree of Courts Act (XII of 1857) s 29—Competence of Court to give a decree for an amount exceeding the principal limits of the jurisdiction. Held that the word "decreed" as used in s 10 of Regulation XV of 1893 was not used in the sense that the mortgage had been redeemed in the full use of that word that is satisfied and justice given to the mortgagee. So long therefore as the property remains in the hands of the mortgagee the mortgagee can bring a suit for redemption even if the mortgage had been satisfied over 12 years before suit. *Hid* also that where a suit is filed within the pecuniary jurisdiction of a court the jurisdiction of the Court is not ousted by the subsequent decree that a sum is in fact due to the plaintiff exceeding

MORTGAGE—*c. ntd*REDEMPTION—*contd*

the pecuniary limits of the jurisdiction *Madho Das v Ramji Palai*, I L R 16 All 286, followed *Colap Singh v Indra Coomar Ha ra*, 13 C W N 493, dissented from *SUDARSHAN DAS SHASTRI v RAM PRASAD* (1910) I L R 33 All 97

6 ——— Right to redeem one of two properties separately mortgaged—Two persons mortgaged certain property in 1879. In 1883 one of the mortgagors executed a mortgage comprising in part property subject to the mortgage of 1879 and in part other property in favour of the same mortgagee. This latter mortgage contained a stipulation that the mortgagor would redeem if before redeeming the mortgage of 1879. Certain property comprised in the first mortgage, but not in the second, was sold, and the purchasers sued for redemption of that mortgage alone. *Held*, that in the circumstances they were not precluded by the covenant in the second mortgage from redeeming the first. *GANGA RAI v KIRANATH RAI* (1911) I L R 33 All 293

7 ——— Sale by the mortgagor of his rights—Third person redeeming the mortgage at mortgagor's desire—Sale-deed unregistered—Sale deed could be looked at for evidence of payment of money—Suit by mortgagor to redeem ignoring sale—Lienor's rights—Adverse possession by lienor—Registration Act (111 of 1877), s 17—Evidence Act (I of 1872), s 91—Limitation Act (XV of 1877) Arts 132, 144. The plaintiff mortgaged certain property with possession with defendant No 1 for Rs 601, on the 4th April 1873. On the 25th November 1878 defendant Nos. 2 to 4, at the request of the plaintiff paid off the mortgage to defendant No 1, and for the sum so paid and for a further payment of Rs 50 the plaintiff sold the property to defendants Nos. 2 to 4. The document as to the sale was not registered, but ever since the purchase, the defendants Nos. 2 to 4 were in possession as owners. In 1907, the plaintiff filed a suit to redeem the mortgage of 1873. The defendants Nos. 2 to 4 set up in reply the sale of 1878 and contended that the suit was barred by limitation. *Held* that the sale-deed being unregistered could not be looked at for proving the sale, but it could be looked at as evidence of payment of money. *Mahadunappa bin Dunappa v Datt bin Bala*, (1876) P J 229 and *Haman Ramchandra v Dhandu Kishnaji* I L R 4 Bom 124, followed. *Held*, further, that the redemption having been made by the defendants for the plaintiff with his knowledge and consent, they became entitled to hold the property as lienors and the plaintiff could not recover it from them without paying the amount of Rs 651. *Mohamed Shumood v Shenukram*, I L R 21 A 17, followed. *Held*, further, that the defendant's lien was alive for twelve years after 1878 that is up to the year 1890 (Art 132 of the Limitation Act of 1877) at that when that period expired, the lien was gone and their possession after that was without any right and that their title by adverse possession was perfected in 1902. *Ramchandra Yashwant Sirgudar v Sadashiv Abaji Sirgudar*, I J P 11 Bom 422, explained. *SAYEED BIN HANFANTA v NAMA BIN NARAYAN* (1911) I L R 35 Bom 433

8 ——— Unfructuary mortgage—Defendants selling up the land under sale of mortgagors interest—Title by adverse possession—Separation

MORTGAGE—*contd*REDEMPTION—*contd*

of member of joint Hindu family and purchase of property with self acquired means—Possession adverse to mortgagors. These were cross appeals from the decision of the High Court in *Mu offer Ali Khan v Parbati*, I L R 29 All 640. The plaintiffs relied on a usufructuary mortgage of 1846 and sued for redemption of the property in suit, two shares in a village called Lohari. The case of the defendants was that they were in possession not under the mortgage but under sales of the 27th of May 1853 and the 20th of March 1854, respectively, by which the equity of redemption in the shares mortgaged in 1846 had passed to those through whom they claimed title, and they pleaded adverse possession. Both the lower Courts had upheld the later sale and dismissed the suit as to that share in Lohari. As to the earlier sale the Courts below had differed, the first Court upholding it and the High Court deciding in favour of the plaintiffs. On appeals by both parties, it was immaterial, in the view taken by their Lordships of the Judicial Committee of that sale (27th May 1853) by what title Ashraf un nissa, one of the widows of the mortgagor, obtained the share she took, and whether or not she had a daughter who survived him. Her share was certainly transferred by the sale to Baldeo Sahai, who though he was the grandson of one of the mortgagors and the son of the other, with both of whom he had lived as a member of a joint Hindu family had according to reliable evidence, separated from them and at the time of the sale was carrying on with a nucleus of property derived from his grand mother, a money lending business from profits of which he was enabled to purchase, with self acquired funds, the share in Lohari from Ashraf un nissa who purported to sell it to him as a person who was not a mortgagee under the mortgage of 1846 and he was therefore not precluded from setting up a title by adverse possession, which it was conclusive in the evidence he had held for more than 60 years. Their Lordships, therefore, while affirming the decision of the Courts below as to the latter sale reversed the decision of the High Court as to the earlier sale, and upheld that transaction also. *PARBATI v MUZAFFAR ALI KHAN* (1912) I L R 34 All 289

9 ——— Clog—Subsequent agreement qualifying right to redeem—Loss of deed—Onus of proving terms of mortgage—Oudh Estates Act (I of 1859), s 6—Limitation—Compromise barring right to redemption. There is nothing in law to prevent the parties to a mortgage from coming to a subsequent arrangement qualifying the right to redeem. In this case the mortgage which it was sought to redeem was dated in 1810 and in 1870 the mortgagors had in consideration of certain additional benefit reserved to them under a compromise agreed to subject their right of redemption to certain conditions. The deed having been lost the onus was on the plaintiffs to prove the terms of the mortgage, so as to show that the suit was not barred by s 6 of the Oudh Estates Act (I of 1859), see *Paya Ahsan Dutt Bam Farid v Narendar Bahadur Singh*, I L R 31 A 83, which onus he was found unable to discharge. *Held* (affirming the decision of the Judicial Commissioner of Oudh) that the plaintiffs were not in any case entitled to redeem as long as there was no breach by the defendants of the covenants contained in

MORTGAGE—contd**REDEMPTION—contd**

compromise *SHANKAR DIXI v. COKAL PRASAD*
(1912) **I L R 34 All 620**
17 C W N 1

10 ———— Mortgagees allowed to redeem before expiry of term of mortgage—Non payment of greater part of mortgage money—Certain property was mortgaged by way of conditional sale for Rs 599 15 0 for ten years. Of the mortgage money Rs 50 15 0 only were paid, and the balance was left with the mortgagees for payment to prior incumbrancers. The mortgagees did not pay off the prior incumbrancers and, the mortgagor having meanwhile sold the mortgaged property, his assignees sued for redemption of the mortgage before the expiry of ten years. *Held*, that, on equitable grounds, the defendants not having performed what was a most essential part of the contract the plaintiffs ought to be allowed to redeem before the expiration of the period of ten years. *CHHOTU RAI v. BALDEO BAKUL* (1912) **A. L. R. 34 All. 639**

11 ———— Transfer by mortgagee—Rights of the transferee—Redemption—Construction of statute—Legislative exposition—Limitation Acts (XV of 1877 and IX of 1908), Art 134. The plaintiffs sued in the year 1900 to redeem a mortgage effected prior to the year 1854. The representatives in title of the mortgagees claiming to be absolutely entitled, mortgaged the land with possession to A in 1834 and he sold his rights to defendant S. The suit having been brought more than 12 years after the alienation to A, defendant S claimed as against the plaintiffs the interest of mortgagee by virtue of his adverse possession under Art 134 of the Limitation Act (XV of 1877). *Held*, that it was obligatory on the plaintiffs to redeem defendant S before they could recover possession of the property. *Yasu Ramji Kulkarni v. Balirukha Lakshman*, **I L R 15 Bom 633** *Mahaji v. Fakirchand* **I L R 22 Bom 225**, and *Rameshchandra v. Shriek Mohidin*, **I L R 23 Bom 614** followed. *Abduram Gonsami v. Shyam Charan Nandi*, **L. P. 38 I A 148**, and *Jahar Shyam Chand Jia v. Ram Kani Ghose*, **I L R 38 Cal 506**, explained. The alteration in the language of Art. 134 of the Limitation Act (IX of 1908) was a legislative recognition of the soundness of the view that the Article was intended to give protection to all transferees for value including mortgagees. *Suiff v. Jewsbury* **L. R 9 Q B 312**, and *Morgan v. London General Omnibus Company*, **12 Q B D 291**, referred to. *Bhadas Umanji v. Nathabhai Uthmanji* (1911) **I L R 38 Bom. 146**

12 ———— Right of assignee of mortgagor to redeem first mortgage after a decree for redemption obtained by a puisne mortgagee had become inoperative. A mortgaged certain properties to B and afterwards mortgaged the same with other properties to C. C obtained a decree for redemption against B, but the decree was allowed to become inoperative by not being executed. D obtained an assignment of the right of A in the mortgaged properties and also the rights of C therein. A sued to redeem the mortgage in favour of B. *Held*, that although the suit by D as the assignee of C was not maintainable still it was competent to him as assignee of A to bring the suit after the decree obtained by C had become inoperative. *KUTUBALI PAMAY NAMBOORI v. ACHUTHA PUNTHORI* (1904) **I L R 31 Mad. 42**

MORTGAGE—contd**REDEMPTION—contd**

13 ———— Clog—Usufructuary mortgage—Lease—Right to retain possession as lessee after satisfaction of mortgage. A provision in a mortgage deed whereby the mortgagee is to remain in possession after payment of the mortgage debt is unenforceable as it acts as a fetter upon the right to redeem. When a mortgage deed is accompanied by a lease the effect of which is to keep the mortgagor out of possession notwithstanding the discharge by him of the mortgage-debt there is a fetter on the equity of redemption on which the Court ought not to enforce. *AKHENDU v. SUBHAN* (1912) **I L R 35 Mad. 744**

14 ———— Usufructuary mortgage—Accountability of mortgagee for illegal realisation of cess from tenants—Transfer of Property Act (I of 1882), s. 76—Stipulation by mortgagee to pay a portion of profits to mortgagor—Subsequent arrangement regarding mode of payment if may be proved by parol evidence—Evidence Act (I of 1872), s. 92. Under a usufructuary mortgage of 1877, the mortgagee undertook to pay to the mortgagor an annual sum of Rs 10 odd and apply the balance of the profits to payment of revenue charges and interest on the mortgage-debt. *Held*, that oral evidence to prove a subsequent arrangement under which the mortgagee allowed the mortgagor to possess and enjoy a portion of the property in lieu of the payment was admissible in evidence inasmuch as it did not supersede or vary the stipulation regarding the payment but merely concerned the mode of payment. *Held*, further, that in a suit for redemption by the mortgagor the mortgagee was bound to account for the amounts they realised from the tenants as cesses subsequently imposed by the Cess Act of 1880, and payable by the tenants to the mortgagor. The mortgagee's accountability is not limited to items within the contemplation of the mortgage contract but may extend to amounts which the mortgagee was enabled to realise out of the mortgaged property by taking advantage of his position as mortgagee. *PANAVATAR SINGH v. TELU PRASAD SINGH* (1911) **16 C W N 137**

15 ———— Practice—Redemption decree under appeal by mortgagee—Deposit of decretal amount—Duty of mortgagee to withdraw under protest—Responsibility of mortgagee for loss of right in deposit by lapse of time although amount of decree increased by Appellate Court. In a suit for redemption the Court of the Judicial Commissioners in India passed a decree entitling the mortgagee to recover a certain sum on account of principal and interest from which decree the mortgagees appealed to the Privy Council who increased the amount. Pending the appeal the mortgageors had deposited the amount of the decree of the Judicial Commissioners, which, however, the mortgagees did not withdraw, as they might have done without prejudice to their pending appeal, either by arrangement or the sanction of the Court in India or the sanction of the Board which would have been given as a matter of course. *Held* that if the amount deposited had lapsed to Government under the rules owing to the same not having been withdrawn in time the mortgagees must give credit for the amount. *CHAMEAY SINGH v. JAGAT SINGH* (1912) **18 C W. N 793**

16 ———— Parties—Mortgage by Mitakshara co-parceners—Suit for foreclosure in

MORTGAGE—*contd.*REDEMPTION—*contd.*

which sons of a mortgagor not joined—Decree extinguishes son's right—Representation of son's interest by father, when debt not charged as immoral. The plaintiff's father, amongst other co-parceners of a joint Mitakshara Hindu family executed a mortgage by conditional sale the term of which expired in 1888, whereupon the mortgagee instituted a suit for foreclosure against the mortgagors and obtained delivery of possession in 1893, in execution of the decree in that suit. The plaintiffs were not made parties in that suit, the mortgagee not having had notice of their interest at the time and they brought the present suit in 1907 for redemption. *Held*, that in the absence of allegation by the plaintiffs that the debt was an immoral debt, the father of the plaintiff sufficiently represented the plaintiffs in the previous suit, and with the extinction of the father's right to redeem, the son's right of redemption was also extinguished. *Bunsee Das v Gena Lal Jha, 14 C L J. 630, Ram Taran Goswami v Parnassas Malia, 11 C. W. N. 1078, referred to BALESH MAHAYATRA v BROJODASI PANDA (1912)*

13 C W. N 1019

17 ——— Mortgage and lease to mortgagor contemporaneously granted—Mortgage executed before Transfer of Property Act (1882) came into force—Mortgagee's security reduced by portion of property being withdrawn—S. 65(a) of Transfer of Property Act—Right of mortgagee to compensation. The plaintiff (respondent) mortgaged to the defendant (appellant) certain property by a deed, dated the 25th of August, 1880, for Rs 70,000 for eight years. On the 29th of August (and so practically contemporaneously with the mortgage) a lease of the mortgaged property was executed by the mortgagee in favour of the mortgagor at an annual rent of Rs 4,200, which represented interest on the mortgage debt at the rate of 6 per cent per annum. The mortgage contained a clause that "it is agreed by mutual consent of the parties that the profits of the property mortgaged shall belong to the mortgagee in lieu of the interest on the mortgage money, and I, the mortgagor shall have no claim for mesne profits. The mortgagee also shall have no right to claim interest on the mortgage money advanced by him." The lease after reciting the mortgage referred to a provision in the latter that the mortgagor should be entitled to all a certain portion of the mortgaged property on condition that he handed over the whole of the proceeds of the sale to the mortgagee in payment of the mortgage debt, and provided that "under the condition whole or some of money the mortgagor should pay to the mortgagee in a lump sum, should be credited and set off against the rent payable under the lease with interest at 8 annas per cent per mensem." Subsequently three further charges were taken on to the mortgage the latest of which was dated the 13th of December, 1892. In June, 1931, the mortgagor was in arrears with his rent and the mortgagee brought a suit against him on which the mortgagor gave up possession of the property to the mortgagee. In a suit for redemption (the right to redeem not being disputed) *Held*, that the mortgagee was entitled under the terms of the mortgage to appropriate the profits of the mortgaged property in lieu of the interest on the mortgage money not paid by

MORTGAGE—*contd.*REDEMPTION—*contd.*

the mortgagor. Evidence of preliminary negotiations and previous conversations were not admissible to contradict or vary the terms of the mortgage (Evidence Act, s. 92) *Held*, also, that the mortgage and the lease were both parts of one and the same transaction. But there was no inconsistency between the two instruments, nor would there have been any inconsistency if the mortgage itself had contained a provision for granting a lease on the terms upon which the lease was actually granted. *Held*, further, that the original mortgage having been executed before the Transfer of Property Act came into operation, that Act was not applicable, notwithstanding that one of the further charges was executed subsequently to that date. Whatever might be the construction of s. 65(a) of that Act (which was cited in support of the mortgagee's claim), he was not, on the evidence and under the circumstances of the present case, entitled to compensation for any loss or damage occasioned by his security being diminished owing to a portion of the mortgaged property being successfully claimed from the mortgagor. *ABDULLAH KHAN v BASHARAT HUSAIN (1912)*

I L R 35 All. 48

18 ——— Redemption by reversioners after foreclosure decree—Subrogation—Transfer of Property Act (1882), s. 91. While a sale in execution under a mortgage decree was in progress plaintiff (a stranger) paid the decree amount into Court on behalf of some of the reversioners to the property. *Held*, that though the mere payment of a mortgage-debt by a stranger will not entitle him to the mortgagee's rights by subrogation yet here under s. 91 Transfer of Property Act (1882) the reversioners became equally entitled to a charge over the property and they could validly assign this charge to the plaintiff by way of sub-mortgage. The English and Indian Law relating to the doctrine of subrogation compared and discussed. *Per SUNDARA AYYAR, J.*—I am on the whole inclined to hold that a reversioner cannot voluntarily claim to redeem a mortgage made by the last male holder or institute a suit for that purpose. But does it necessarily follow that when a suit is instituted by a mortgagee for sale, the reversioner has not got a sufficient interest in the property to entitle him to discharge the mortgage to prevent the loss of the property to which he would be entitled to succeed on the death of the widow? I do not think I am bound to hold that his right stand on the same footing when he claims of his own accord to redeem and when he tries to save the property for the estate upon the mortgagee attempting to sell it. The right of a person interested in the payment of money which another is bound by law to pay and who therefore pays it, to be reimbursed by the other is recognised in s. 69 of the Indian Contract Act. There is no reason for holding, that only those who have an interest in a mortgaged property within the meaning of ss. 81 and 91 of the Transfer of Property Act can be held to be interested in the payment of money due on a mortgage created by the last male owner. *HARAYANA KUTTI GURUDAY v PERIAHMAL (1912)*

I L R 36 Mad. 426

19 ——— Accounts—Mortgagee deducting and postponing payment to keep property in possession—Interest, disbursement of, for period during

MORTGAGE—*contd*REDEMPTION—*contd*

which defendant prosecuted appeals to higher Courts unsuccessfully—*Liability of defendants to account for rents and profits received during the period—Expenses of management, necessarily incurred—Costs of taking accounts and striking balance against redemption money—Costs of special leave application* Where a suit for redemption of a mortgage in respect of property of which the mortgagees took and kept possession from 11th February 1884, was commenced on 30th May 1888, and a preliminary decree for accounts, etc., was passed by the Subordinate Judge on 20th June 1889, and the decree, subject to certain modifications in favour of the plaintiffs, was affirmed by the High Court on 10th September 1890, and the decree of the High Court was affirmed by the Privy Council on 27th July 1895; and the plaintiffs, having applied in the meanwhile for the taking of accounts in pursuance of the decree of the High Court, the same was taken and a final decree for redemption was passed by the Subordinate Judge on the 29th July 1902, declaring that a sum of Rs. 331 162 0 11 was due from the plaintiffs to the defendant at that date and decreeing that on payment into court within six months from that date of the said sum with interest at 12 per cent per annum on the sum of Rs. 2,88 886 from the 29th July 1902 to the date of payment into Court within such six months plaintiffs should have a reconveyance, free of encumbrances, of the property under mortgage, etc., and the plaintiffs appealed to the High Court and the defendants also filed cross objections but both were dismissed by that Court and upon appeal and cross-appeal by both parties to the Privy Council, the decree of the Subordinate Judge of 29th July 1902, was maintained by the Board's judgment, dated the 13th June 1912 but the Privy Council found that in the action the defendants had been obstructive and oppressive and they had unduly and intentionally prolonged the litigation to their own advantage and to the serious detriment of the plaintiffs *Held*, by the Privy Council, that no further sum as interest beyond the interest on the sum of Rs. 2,88 886 decreed by the Subordinate Judge for the period from 29th July 1902 to the 24th January 1903, should be allowed to the defendants in the accounts which the High Court was directed to take of the rents and profits which the defendants had received since 29th July 1902, and it was ordered that the expenses of taking such account and all procedure incident thereto and to the striking of the balance upon payment of which redemption might be made was to be borne by the defendants that allowance should be made in taking the accounts for money, if any necessarily spent by the defendants after the 29th July 1902, in the proper management and preservation of the mortgaged property, but no interest should be allowed on the money so spent, but that simple interest should be allowed to the plaintiffs on the balance or excess of each year's receipts over expenditure at a rate to be fixed by the High Court, and that the sum of money found to be due to the plaintiffs should be deducted by the High Court from the amount which would have been payable by the plaintiffs into Court on the 24th January 1903, if payment had been made under the decree of the Subordinate Judge of 29th July 1902, and that the plaintiffs should be allowed to redeem on payment by them into the High Court within

MORTGAGE—*contd*REDEMPTION—*contd*

a time to be fixed by that Court of the balance to be ascertained in the manner indicated. In the appeal and cross appeal, the respective parties were directed to bear their own costs except those in connection with the application for special leave to cross appeal which in accordance with the order granting such leave was to be paid by the cross-appellants *MANA BAHU DEVI v. ARUN KISHNA Poy* (1912) 17 C. W. N. 25

20 ———— Purchase by mortgagees of part of mortgaged property—Tender of proportionate part of mortgage money by purchasers of the residue—Tender refused on ground of subsequent mortgages affecting the property—Suit for redemption—Form of decree Tender of payment under s. 61 of the Transfer of Property Act was made by the purchasers of part of the property comprised in a mortgage (the rest of the property having been purchased by the mortgagees themselves) who paid into Court what they believed to be the proportionate amount due on the share purchased by them, and within the period limited by the mortgage deed. This tender was, however, refused upon the ground that there were two subsidiary mortgages affecting the property under which further sums were due. The mortgagees thereupon brought a suit for redemption expressing their readiness to pay what might be found by the Court to be the proper proportionate amount due by them in respect of the property which they have purchased. *Held*, on the finding, that the plaintiffs when they made their original tender were unaware of the existence of the two subsidiary bonds, that the Court below was right in giving a decree for redemption on payment of the amount due under the three mortgages in respect of the share purchased by the plaintiffs and for possession at the corresponding period of the following year. *NAN-SINGH SINGH v. ARSCHARAN SINGH* (1913) 1 L. R. 36 All. 56

21 ———— Prior and puisne incumbrancers—Seeing in succession—Suit for sale by prior incumbrancer without impleading puisne incumbrancer—Subsequent suit by puisne incumbrancer for sale—Form of decree Where a prior incumbrancer sues for sale on his mortgage and brings the mortgaged property to sale without making a puisne incumbrancer party to his suit, and thereafter the puisne incumbrancer brings a suit for sale on his mortgage, the proper decree to be made in the second suit is to direct a calculation of what was due on foot of the prior incumbrancer up to the date of the taking over of possession upon sale, or, if it at date cannot be ascertained, the date of the sale and to declare the puisne incumbrancer entitled to redeem upon payment of the amount so ascertained. *Exp. Haris Singh v. Hira Singh*, 1 L. R. 19 All. 527, *Phulman Chaudhrai v. Nagel or Prasad*, 1 L. R. 33 All. 370, and *Manohar Lal v. Ram Bala*, 1 L. R. 34 All. 323, referred to. *RAGHUNATH LALWAR v. SHANKAR SINGH* (1913) 1 L. R. 36 All. 123

22 ———— Clog—Condition intended to defeat the right of redemption—Condition held to be unenforceable A Court of Equity will not permit any device or contrivance designed or calculated to prevent or impede redemption, although it may be impossible to lay down any general rule as to what should not be regarded as an improper restraint or fetter on the right of

MORTGAGE—contd

REDEMPTION—contd

redemption Where a mortgage was made for forty years and a provision was inserted in the deed fixing a particular day on which it was to be redeemed, failing which the mortgage was to be renewed for another term of forty years, and it was further provided that the mortgage should not be redeemed with borrowed money, it was held that these provisions were designed to make redemption very difficult, if not impossible, and should not be enforced *Bansa v Girdhar Lal, All Weekly Notes (1894), 143, and Rambaran Singh v Ramkr Singh, 10 Indian Cases, 243, referred to SAREEDAWAN SINGH v BIJAI SINGH (1914)*

I L R. 36 All 551

23 ——— Subsequent mortgages obtaining decree on his mortgage in absence of first mortgage—Sale of property subject to first mortgage—Subsequent mortgagee purchasing property with permission of Court—Execution of decree by first mortgagee—Subsequent mortgagee can ask the mortgage amount of first mortgage to be determined again—By purchase subsequent mortgagee does not lose his rights under his mortgage—Extinction of mortgage—Transfer of Property Act (I) of 1882, s. 191 In 1880 certain property was mortgaged to V It was again mortgaged by the same mortgagor to H in 1887 In 1892 V obtained a decree on his mortgage. H was not made a party to the suit V having sold his rights, his assignee K obtained another decree in 1896 against the mortgagors on the mortgage and other debts To this suit also H was not a party In 1895 H sued on his own mortgage without making the first mortgagee a party A decree was passed in terms of an award The property was sold in execution of the decree subject to the first mortgage and was purchased by H with the permission of the Court In 1908 the decree holder applied to execute the decree of 1896 H was made a party to the execution proceedings It was contended by H that he was not bound by the decree under execution and was entitled to have the mortgage amount determined again in the execution proceedings The decree holder urged that H's mortgage had been extinguished by his purchase at the Court sale, and as such purchaser he was bound by the decree by which the original mortgagees were bound at the date of the auction sale, and that H did nothing to show that he intended to keep alive his mortgage Held, that as a second mortgagee H was entitled to redeem the first mortgage, and to have the amount of the first mortgage determined again as between himself and the first mortgagee Held, further, that as auction purchaser H became entitled to all the rights which the mortgagees and the mortgagee had at the date of the sale, i.e., to all the rights of the mortgagees as they existed at the date of the mortgage upon which the decree was based Held, also, that H must be presumed to have intended to keep his mortgage alive, as it was clearly for his benefit to do so *SHANKAR VENKATESH v SADASHIV MAHAJANI (1913)*

I L R 39 Lcm. 24

24 ——— Valuation—Jurisdiction—Malabar law—Mortgage by karnaman, whether a junior member is bound to sue to set aside The proper valuation of a suit to redeem a mortgage is the amount of the mortgage admitted by the plaintiff to be binding on him, and not that of the mortgages set up by the defendant In such a

MORTGAGE—contd

REDEMPTION—contd.

suit the question of jurisdiction has to be decided in the averments on the plaint, and not with reference to the pleas of the defendant *Chandu v Kombi, 1 L R 9 Mad 209, followed Unni v Kunchi Anma, 1 L R 14 Mad 26, 28, referred to* When a karnaman of a Malabar tarwad makes an alienation which is not binding on the other members, the latter need not sue to set it aside, but can recover possession on the strength of their title, in the absence of proof of the validity of the alienation *Secus* where the plaintiff has himself executed the instrument under which the defendant claims The trustee of a Malabar devanam first executed an *ottu* for Rs 70 and subsequently renewed the same in a consolidated *ottu* for Rs 1,650 and further created a *purakkadam* for Rs 1,600, on the same property His successor sued to redeem the *ottu* for Rs 70, treating the other mortgages as invalid Held, that the suit as framed was maintainable, and the plaintiff was not bound to sue to set aside the later mortgages credited by his predecessor *CHAPPAN v KARI (1912)*

I L R 27 Mad. 420

25 ——— Extinction of equity of Redemption—Mortgagee paying a *rajnana* to mortgagee for the land—No *ignora* excepting *labulbat* to pay Government assessment In 1870, the plaintiff mortgaged the land in dispute to the defendant, and in 1879 passed a *rajnana* relinquishing all his occupancy rights in the said land in favour of the defendants The latter at the same time gave a complementary *labulbat* agreeing to pay Government assessment on the land The plaintiff having sued to redeem the mortgage, Held, dismissing the suit that the *rajnana* and *labulbat* effectually extinguished the plaintiff's equity of redemption *VENKAJI NARAYAN v GOPAL RANCHANDRA (1914)*

I L R 39 Bom 55

26 ——— Previous decree in mortgages favour for possession, if bars redemption suit—Civil Procedure Code (Act 21) of 1882, s. 244—Order in execution of decree in suit for possession directing mortgagee to furnish accounts and permitting redemption, effect of Where in a suit by a mortgagee for recovery of possession "by right of *ijara*" of the immovable properties mortgaged the Court passed a decree directing *inter alia* that "the plaintiff do get possession of the same by right of *ijara* and be in possession thereof so long as the money for which the said *malahs* were mortgaged were not repaid out of the income arising therefrom" Held, that the decree was clearly a decree for ejectment and a suit by a person interested in the equity of redemption or redemption of the mortgage was not barred by s. 244 of the Civil Procedure Code of 1882 That the fact that since the decree in the ejectment suit, a predecessor in interest of the plaintiff had applied in the executing Court asking "that the decree holder should file accounts showing what moneys have been realised by him since he took possession under the decree, and if the decretal money was not fully paid to let the Court know how much still remains due by rendering a proper account thereof" and the Court overruling the objection of the mortgagee that the matter could not be dealt with under s. 244, held, that the petitioner could redeem the mortgaged property, but the latter took no steps to do so *Held*, that

MORTGAGE—contd

REDEMPTION—contd

this order if binding at all in the suit for redemption was to be regarded merely as interpreting the mortgage and the fact that the plaintiff in his plaint made a prayer that in the taking of accounts the directions contained therein might be followed did not mean that he based his right of redemption on that judgment. The passing of the final decree in a mortgage suit pending an appeal from the preliminary decree is no bar to the hearing of the appeal. *PEARY MOHUN MUKERJEE v CHANDRA SEKHAR SARKAR* (1915)

[19 C W N 1182]

27. — Adverse possession—Usufructuary mortgage—*Mortgagee in possession—Equity of redemption—Adverse of possession while period of redemption is running—Suit to redeem by a person whose name is recorded in revenue papers Held*, that a person could not acquire a title, by adverse possession, to land which was the subject of a usufructuary mortgage, and therefore in the possession of the mortgagee, merely because he had managed to get his name recorded in the village papers for a series of years in respect of the mortgaged property. *Lala Kanhoo Lal v Manji Bhai, 6 C W N 691*, not followed. *Casborne v Scarfe, 144 685*, distinguished. *KUSWAR SEN v DARBARI LAL* (1916)

I L R 33 All 411

28. — Tender of mortgage money as condition precedent to the institution of a suit for redemption—A usufructuary mortgage of agricultural land provided that the right to redeem should be exercised only in the month of *Jeth* of any year. *Held*, that before the mortgagee could sue for redemption it was necessary for him to prove that he had tendered to the mortgagee the mortgage-debt or such amount as he considered due on the mortgage in the month of *Jeth* of some year after the mortgage money had become payable. *Baner v Gurdhar Lal, All W. N. (1924) 143*, followed. *MUHAMMAD ALI v BALDEO PANDI* (1915)

I L R 33 All 143

29. — Limitation—Application for execution—Time, if runs from date of decree or date of ascertainment of exact amount. Where in a suit for redemption a certain decree was passed on 27th July 1909 and it was directed therein "that it will be necessary to have fresh accounts taken to determine the amount due to the appellants" and the amount was not definitely ascertained till the 23rd February 1910 and the application for execution was filed on 29th January 1913. *Held*, that the judgment of the District Judge, dated 27th July 1909, sets forth clearly the exact method of ascertaining the sum to be paid in redemption and the calculation of that sum was a matter parol of office routine and that the application for execution was barred by limitation. *Golan Gaffer Mandal v Golan Bibi, 1 L R 25 Cal 109*, followed. *SERAJEO NARAYAN SINGH v MURHANOO RAUT* (1916)

20 C W N 850

30. — One mortgagor redeeming the entire mortgage—Acknowledgment—*Dakhalnama—Limitation Act (IX of 1908), s 19, Sec 1, Art 143* In a suit by the representatives of some of the co mortgagors for the redemption of their shares in certain property against the representatives of co mortgagor, who had redeemed the mortgage, the plaintiffs alleged that the mort-

MORTGAGE—contd.

REDEMPTION—contd

gage had been made by one Sukhjit in favour of one Muhammad Hussain in the year of 1913 Samvat. The plaintiffs also relied on certain acknowledgments made by the defendant's predecessors in title. One of these was a *dakhalnama* executed by Ram Lal in 1890 which contained a description of the property and was signed by Ram Lal. The defendant contended that there was no mortgage, that he was absolute owner, that the acknowledgments had not been proved and that the suit was time-barred. It was held by the lower Appellate Court that the date of the mortgage had not been proved, but the acknowledgments were in respect of some mortgage and that the plaintiffs were entitled to redeem. *Held*, that the rule of limitation governing a suit of this kind was that laid down in *Ashfaq Ahmad v Nazir Ali, 1 L R 11 All. 423, 11*, that Art 148 of Sch I to the Limitation Act applied that is, the limitation extended for a period of 60 years from the date of execution of the mortgage or from the date when the mortgage money became due, and the burden was upon the plaintiffs of proving the mortgage that they had set up, and that it was for them to prove that the acknowledgment relied upon by them as contained in the *dakhalnama* had been made at a date within the period of limitation. *Held*, further, that the acknowledgment contained in the *dakhalnama* amounted to nothing more than a description of the property purchased and was not acknowledgment of liability within the meaning of s. 19 of the Limitation Act. *Dharma Vishal v Govind Sadavaller, 1 L R 8 Bom. 99*, referred to. *KHILAI RAM v TATE RAM* (1916)

I L R 33 All 540

31. — Adverse possession—*Mortgagee in proprietary possession under an agreement unregistered but acted upon for a very long period* The parties to a mortgage by conditional sale, executed in 1869, entered into an agreement in 1876 whereby the mortgagor gave up all his equity of redemption in the property mortgaged. The agreement was not registered, but both the parties consented to the complete transfer of the equity of redemption and both parties acted on the agreement for very nearly forty years. *Held*, on a suit being brought in 1912 for redemption of the mortgage of 1869, that the mortgagee or their predecessors in title had been in adverse possession since the year 1876 and the suit was barred by limitation. *Mahomed Ali v Ashore Kumar Gungul, 1 L R 24 Cal 801*, and *Uman Khan v N Daxarna 1 L R 37 Mad 545*, referred to. *KHEDU PAT, v SHEO PARSON RAI* (1917)

I L R 39 All 42

32. — Major portion of mortgaged property purchased by mortgagee—*Suit by one only of the heirs of the mortgagor to redeem the whole of the remaining share in the mortgaged property* Out of the original 16 annas of a village which was the subject of a usufructuary mortgage, the mortgagee acquired by purchase 13 annas and 4 pice. After the death of the mortgagor, one of his heirs sued to redeem the whole of the remaining 2 annas and 8 pice. The other heirs were made parties, the suit as *pro forma* defendants and consented to the plaintiff redeeming to the whole of the remaining share. *Held*, that notwithstanding this, the plaintiff was only entitled to redeem her own personal share. *Kuray Hail v Purnax*

MORTGAGE—contd**REDEMPTION—contd.**

Mal, I L R 2 All 565, and Munshi v Davlat, I L R 29 All 262, followed Sukhram Narayan v Govind Lakshman, I L R 10 Bom 656 (Note), not followed ZAIR UN NISSA BIRI v MAHARAJA PARBHU NARAIN SINGH (1917)

I L R 39 All 618

33 ——— Annuity provided for by terms of deed—Equity of redemption acquired by mortgagee—Suit by heirs of annuitant to recover arrears of annuity By the terms of a mortgage deed an annuity or *malikana* charge was made payable to one Musammam Turab un nissa and her heirs by the mortgagee By a series of transactions the mortgagee ultimately became the owner of the equity of redemption in the whole of the mortgaged property *Held*, that the mortgagee nevertheless still continued liable for the payment of the annuity secured by the mortgage *LACHMI NARAIN v SAJJADI BEGUM (1917)*

I L R 39 All 700

33 (a) ——— A Zarpeshgi deed executed in 1874 in favour of one G provided *inter alia* for payment by G to the executants of a Zarpeshgi rent of Rs 500 odd every year The principal amount was made payable in September 1887 In February 1888 Rs 12,000 was borrowed by the mortgagor from A and in accordance with the agreement between them was applied in paying the Zarpeshgi debt and the Zarpeshgi deed upon such payment was taken back and handed over to A in whose favour a simple mortgage was executed to secure the loan of Rs 12,000 given by her *Held*, that so far as it operated as a lease, the Zarpeshgi deed came to an end but the charge created by the Zarpeshgi was kept alive for the benefit of A *Mohesh Lal v Mohant Bawan Das, L R 10 I A 62 (1893) Goludass v Pambur Sechand L R 11 I A 126 (1891), Dinolondhu Shas Chowdhry v Jogmaya Dass, L P 29 I A 9, s c 6, C W N 209 (1901)* referred to That in suits for sale instituted after the date of A's mortgage of 1888 by persons who had obtained mortgages between the dates of the Zarpeshgi of G and the simple mortgage of A A as a puisne mortgagee was a necessary party under s 85 of the Transfer of Property Act Where in such suits was made a party but did not set up prior title under the Zarpeshgi of 1874 and some of the properties covered by the Zarpeshgi were sold *Held*, that A a right to proceed against the said properties by a suit for sale on the basis of the Zarpeshgi deed was barred by Expt II of s 13 of the Civil Procedure Code of 1882 In one such suit instituted by M within 12 years of the due date of payment under the Zarpeshgi of 1874, A not having been joined as a party, the sales held did not affect or take away A's right as puisne mortgagee under the mortgage of 1888 or her claim of priority under the Zarpeshgi of 1874 Put A a claim to priority under the Zarpeshgi of 1874 became barred in 1900 when a suit was first instituted by A assignee to enforce A's mortgage and the only decree plaintiff in this suit would get as against the purchasers in M's suit was to be allowed to redeem the mortgage of M on payment to the purchaser of the amount at principal and interest in respect of which the property purchased by him was sold in M's suit In a mortgage suit a puisne mortgagee of whose interest in the mortgaged property the plaintiffs have notice is a necessary party under s 55 of the Transfer

MORTGAGE—contd**PEDEMPTION—contd**

of Property Act, and a sale of the property had in such a suit does not take away the puisne mortgagee's right to redeem *SYED MAHOMEDD IBRAHIM HOSSEIN KHAN AND ANOTHER v AMBIA PRASAD SINGH AND OTHERS (1911 12)*

18 C W N 505

34 ——— Mortgage by conditional Sale—Mortgagor in possession as tenant of mortgagee—Suit for rent in arrears—Decree for rent barred by limitation—Suit for redemption—Mortgagee, whether entitled to claim arrears of rent and interest decree as part of price of redemption—Abandonment of charge—Election of remedies In a suit for redemption, the mortgagee is not entitled to claim any arrears of rent with interest in respect of the mortgaged lands which were left in the possession of the mortgagor as tenant of the mortgagee under the terms of the mortgage deed, when the mortgagee has already sued and obtained a decree for such rent with interest and has allowed the decree to become barred by limitation even though the arrears of rent is a charge under the deed English and Indian cases reviewed *Hewanchal Singh v Jawahar Singh I L R 16 Cal 307, distinguished Imdad Hasan Khan v Bachu Prasad I L R 20 All 401 referred to NARAYNA RAO v SHIVU RAO (1918) I L P 41 Mad 1049*

35 ——— Partial owner of equity of redemption, if can redeem whole mortgage A partial owner of the equity of redemption is entitled to redeem the whole mortgage *BAIKRANTHA NATH DAS v MOHESH CHANDRA DIXY (1916)*

22 C W N 128

See also *PROTAP CHANDRA DHAP v PEARY MOHAN DHAP (1918)*

22 C W N 600

36 ——— Mortgage suit—Purchaser of mortgaged property, applying to be made a party, not allowed on plaintiff's objection—Subsequent suit by purchaser at mortgagee's sale to recover possession—Right of previous purchaser to redeem Where an application by a purchaser A, of mortgaged property to be made a party in the mortgage suit was on the mortgagee's objection refused and he was thus prevented from exercising the right of redemption amongst other reliefs which he desired to claim *Held*, that in a suit by the purchaser at the sale in execution of the mortgage decree B to recover the property from A who was in possession, A was entitled to redeem B *PEBATI MOHAN DAS v NABINABASHI DE (1918)*

22 C W N 543

37 ——— Decree passed under Dekkhan Agriculturists Relief Act (XVII of 1879) not governed by Transfer of Property Act—Decree not executed—Second suit to redeem the mortgage, not maintainable—Civil Procedure Code (Act V of 1908), s 47 The plaintiff obtained in 1888 a redemption decree under the provisions of the Dekkhan Agriculturists Relief Act, 1879, which provided that on plaintiff's default to pay the decretal amount by the end of March 1893 his right to redeem should be for ever barred The decree was not executed In 1913 the plaintiff filed a second suit for redemption of the same mortgage—*Held*, that no fresh suit could be under the provisions of s 47 of the Civil Procedure Code, 1908 inasmuch as the decree of 1888, to which the provisions of the Transfer of Property Act 1882, did not apply, was capable of execution and

MORTGAGE—contd

REDEMPTION—contd

its execution was time barred long before the date of the second suit *Ramji v. Pankarainath, I L R 43 Bom. 334*, distinguished *Lala Chhajaj v. Babji Khatwaj, I L R 7 Bom. 432*, followed *Dinu Bai Yashu v. Shripad (1919)*

I L R 43 Bom. 703

35 ———— Decree void—Failure to apply to make absolute—Execution time-barred—Second suit for redemption, maintainability of—Civil Procedure Code (Art V of 1908) ss 11 47 and O XXIV, rr 7 and 8—Transfer of Property Act (11 of 1922) s 60 A question having been referred whether a mortgagor, who has brought a suit for redemption and obtained a decree nisi which neither the mortgagor nor the mortgagee has applied to be made absolute, can after the execution of that decree is time barred bring a fresh suit for redemption *Hell (Shah, J dissenting)*, that the mortgagor could bring a second suit for redemption and the same would not be barred by s 11 or s 47 of the Civil Procedure Code, 1908 *Ramji v. Pankarainath (1918)*

I L R 43 Bom. 234

39 ———— Decree for sale of mortgaged property—Purchase by mortgagor—Puisne mortgagee's right to redeem—A prior mortgagee obtained a decree on his bond on the 31st May 1897 brought the mortgaged property to sale and purchased himself on the 4th July 1900 and obtained a decree of possession. A puisne mortgagee obtained a mortgage loan against the same property on the 8th April 1912 purchased the property in execution of his decree and obtained registration of his name in the Collectorate register. In a suit by the prior mortgagee for a declaration of title and confirmation of possession or in the alternative for recovery of possession the Munsif decreed the suit but gave the puisne mortgagee permission to redeem. The lower appellate Court held that the defendant was not entitled to redeem as he had not done so before the making of the order absolute for sale in the plaintiff's suit. *Held*, that the right of redemption continued until the confirmation of sale. It appeared that the puisne mortgagee's name had been omitted from the execution proceedings. *Held*, that this was merely an irregularity and the sale could not be considered a nullity even though the prior mortgagee was himself the purchaser. *SYED MUHAMMAD RAFI v. SYED MUHAMMAD ASKARI*

I L R 1 J 261

40 ———— Effect of sale in execution of decree and purchase by mortgagee—*Minor* joined as defendants in mortgage suit but not represented by a guardian—Subsequent suit by them or redemption on ground that they were not properly parties to former suit—No claim to set aside decree or sale. The head of a joint Hindu family governed by Mitakshara law mortgaged in 1896 immovable property belonging to the family for purposes for which he was admittedly able to bind the other members. The mortgage money was not repaid and in 1901 the mortgagee brought a suit on the mortgage against the mortgagor and his two brothers, and joining also as defendants the two sons of the mortgagor now represented by the first respondent. In that suit a decree was made on 20th January 1902 in execution of which the mortgaged property was sold and purchased by the mortgagee. In a suit in 1909 by the sons of

MORTGAGE—contd

REDEMPTION—contd

the mortgagor in which they impeached neither the debt nor the mortgage but admitted that they were binding on them, and did not in their plaint seek to set aside the decree or the sale under it, but only claimed to be entitled to redeem the mortgaged property on the ground that they had been minors at the time of the suit on the mortgage, and not having been represented by a guardian had not been properly parties to that suit. It was found as a fact by the two Courts in India and upheld by the Judicial Committee that they had not been effectively parties in the mortgage suit. *Held* that the right of redemption had been extinguished by the decree and sale in execution of it, and that until the sale had been set aside, it could not be exercised. *GANGAI LAL v. BHUBHAGI PRASAD NARAYAN SINGH (1920)*

I L R 47 Cal. 924

41 ———— Transferee of part of equity of redemption—Mortgagee in possession—Suit for foreclosure without making transferee from mortgagor a party—Right to redeem whole of the mortgaged property—Accounts. In 1893 the owner of sixteen fields in Berar mortgaged them to the appellant. In 1896 the mortgagor conveyed one of the fields to the respondents. In 1899 the mortgagee brought a suit to enforce the mortgage against the mortgagor alone without making the respondents parties and obtained a decree by consent which was afterwards made absolute. The decree declared that in default of payment within a definite time limit of the mortgaged fields (including that conveyed to the respondents) were to be foreclosed and possession of them made over to the appellant, and no payment having been made that was done under the decree. In a suit for redemption by the respondents (who not being parties to it were not affected by the decree) the only question was whether they were entitled to redeem the whole of the nine fields, or only the field conveyed to them subject to the mortgage over the whole. *Held*, that subject to the safeguarding of the equal title to redeem of any other person who had a right of redemption, the respondents were entitled to redeem the entire mortgage unless something had happened to extinguish the mortgage in whole or in part, or the conduct of the respondents had estopped them from asserting what would normally have been their rights. It was not the law in India, any more than in England, that one of several mortgagors cannot redeem more than his own share unless the owners of the other shares consent or make no objection, subject to the safeguarding of the rights which those owners might possess. The respondents as owners of an interest in the equity of redemption as it originally stood were entitled to redeem the mortgage on the footing of paying the balance left of the mortgage debt after debiting the mortgagee with a fair occupation rent during the period of his possession and crediting him with simple interest on the debt due to him under the mortgage deed. *YADALI BEH v. TEJARAM (1920)*

I L R 48 Cal. 22

42 ———— Clog—subsequent lease of mortgaged property by mortgagor to mortgagee, effect of—A, who was a permanent tenure holder of 7 plots, executed an usufructuary mortgage of all the plots in favour of B from whom he subsequently took a lease of 4 of the plots. In 1908 A granted a permanent *malikari* of one of the

MORTGAGE—contd.

REDEMPTION—contd.

plots to B at a fixed rent of Rs. 2. In 1913 C purchased several of the plots belonging to A including the plot leased to B. Subsequently C sought to redeem the mortgage to B and having paid off the mortgage debt he claimed possession of the plots. B resisted the claim relying upon the *mukarrari* of 1908. It was held that the *mukarrari* of 1908 was a lease *in futuro* and did not operate as a valid lease of the B's equity of redemption. In an appeal under the Letters Patent from that decision, *held*, that the appeal should be dismissed. *Per* DAWSON MILLER, C J.—If the *mukarrari* of 1908 was a lease *in futuro* it did not operate as a valid transfer of the lessor's equity of redemption. If the *mukarrari* of 1908 was a lease *in presentis* it was invalid as being a clog on the equity of redemption. Once a mortgage transaction has been entered into it is not within the competency of the parties to clog the equity of redemption whereby, even after redemption the mortgagee would retain an interest in the property as lessee upon payment of a comparatively trifling rent. Such a transaction is invalid both as against the mortgagor and against a purchaser from the mortgagor of his interest. *Per* DIX, J.—*Query* Whether a lease intended to operate *in futuro* is an invalid lease. *Query* Whether a lease by a mortgagor to the mortgagee subsequent to the mortgage transaction may correctly be called a clog on the equity of redemption. *RAM NARAIN PATTACK v. SUBATHINATH PANDAPADHYA* 5 Pat L J 423

43 ——— Tender of mortgage money.—*Offer to pay not accompanied by the production of any actual money.* The mortgagors of a usufructuary mortgage sent a notice to the mortgagees offering to pay a certain sum named therein and asking for redemption of the mortgage, but no actual money was produced. *Held* that this did not amount to a legal tender of the sum due under the mortgage. *Chetan Das v. Gobind Saran*, I L R 36 All 139, referred to. *ILMHAMMAD MISHKAT ALI KHAN v. BANK OF CAL* I L R 42 All 420

44 ——— Limitation.—*Acknowledgment of mortgagor's title recorded in settlement papers.—Inferences derivable from such acknowledgment.—Burden of proof.* The plaintiffs sued for redemption of an old mortgage which they alleged to have been executed by their predecessors in title some time between the years 1833 and 1839. That there had been at one time a mortgage corresponding to that set up by the plaintiffs was sufficiently proved by the records of the settlements of 1833 and 1863, both of which contained fairly definite statements as to the parties, the land affected and the terms of the mortgage. There was, however, no evidence from which the date of the mortgage could be inferred with any certainty, and the plaintiffs relied to bring their suit within limitation, mainly upon the acknowledgments made by the mortgagees in the records of the settlement of 1863 as indicating that the mortgage must have been a subsisting mortgage in 1863. *Held* by PROCTOR and WALSH, JJ., that no substantial inference could be drawn from the acknowledgment in question that the mortgage was in 1863 a subsisting mortgage not barred by limitation, and it was on the plaintiff relying on the acknowledgment to show that it was made before

MORTGAGE—contd.

REDEMPTION—contd.

the period of limitation had expired. *Per* BAKER, J., *contra*. The acknowledgment of 1863 might be taken until rebutted as *prima facie* evidence that the mortgage was a subsisting mortgage at its date. It was improbable that the mortgagees would have agreed to its insertion in the settlement records had the title of the mortgagor been then in fact barred by limitation. *Per* *Parmanand Mier v. Sahib Ali* I L R 11 All 428, *Dara Chand v. Sarfaraz*, I L R, 1 All, 117, *Kamola Devi v. Gur Doyal* 17 A L J 330 referred to. *ANUP SINHA v. FATH CHAND* I L R 42 All 575

45. ——— *After sale of mortgaged property.—Transfer of Property Act (IV of 1882), ss. 92, 93.* Where a mortgagee has in contravention of s. 99 of the Transfer of Property Act, attached the mortgaged property and brought it to sale and purchased it himself, the mortgagor or his transferee cannot successfully maintain a suit for redemption of the property without first getting the sale set aside. *Ashutosh Sirdar v. Behari Lal Kirtana*, I L R 35 Cal 61, referred to. *UTTAM CHANDRA DAW v. RAJAKRISHNA DALAL* (1919) I L R 47 Cal 377

46 ——— Consolidation of several mortgages on different properties.—*agreement not to redeem one mortgage without the others must be clearly proved.—Transfer of Property Act, IV of 1882, s. 61.* The question arising in this appeal was whether plaintiff could redeem his mortgage of 18th August 1882 without redeeming also his two subsequent mortgages of 9th September 1882 and of 8th February 1889. The mortgages related to different properties. In the mortgage of September 1882, it was stipulated that the mortgage would be redeemed along with the prior mortgage, dated 8th August 1882, while in the 1889 mortgage it was agreed that 'should the mortgagor redeem the land mortgaged by the deeds of the 18th August 1882 and 9th September 1882, they will redeem the present charge at the same time'. *Held*, that although the parties contemplated that the money due on all the mortgages should be paid at the same time that was not enough to establish the defendant's plea of consolidation, but that it was incumbent upon the latter to show that plaintiffs expressly and unequivocally contracted themselves out of their right to redeem the first mortgage without redeeming at the same time the two later mortgages. *Ganga Pasi v. Kirtanath Pasi* (I L R 33 All 393) and *Gara Din v. Har Kuran* (22 Indian Cases 132) referred to also.—*Transfer of Property Act, s. 61.* *Farash Dal v. Kharu* (2 F.R. 139), distinguished. *Allu Khan v. Poshan Khan* (I L R 4 All 25) referred to, as having been dissentient from in *Shro Shankar v. Parma Mahon* (I L R 26 All 559). *JIWAN DAS v. THAKUR* I L R 1 Lab 105

47 ——— Mortgage made to two mortgagees as tenants-in-common.—Where a mortgage is made by one mortgagor to two mortgagees as tenants-in-common, the right of either mortgagee who desires to realise the mortgaged property and obtain payment of the debt, if the consent of the co-mortgagee cannot be obtained, is to add the co-mortgagee as a defendant to the suit and to ask for the proper mortgage decree which would provide for all the necessary accounts and payments, excepting that there could be no

MORTGAGE—*contd*REDEMPTION—*contd*

decree for money entered as between the mortgagee defendant and the mortgagor—*Held*, that in this case the mortgage clearly effected the conveyance of the real estate to the mortgagees as tenants in common and no redemption could be effected of part of the property by paying to one of the mortgagees her separate debt. It was not a mortgage to each of a divided half but a conveyance to them of the whole property. In this case the mortgage completing a compromise was executed by a Hindu *pardanashin* lady—*Held*, that it was not necessary nor desirable in such a case to insist upon a clear understanding of each detail of a matter which may be much involved in legal technicalities. It is sufficient that the general result of the compromise should be understood and that the lady should have had people disinterested and competent to give advice with a fair understanding of the whole matter who advised her that she should execute the deed. *SUNITRALA DEBI v. DHARA SUNDAR DEBI CHOWDHURANI* (1919) **I. L. R. 47 C.J. 175**

43 — By one of several co-mortgagors—When one of two co-mortgagors redeems the mortgage and obtains possession of the property a suit by the other mortgagor to recover possession of his share of the mortgaged property is not a suit for redemption but for possession as governed by Art. 144 and not Art. 145 of the Limitation Act and in such a suit a plaintiff is entitled to succeed unless the redeeming mortgagor establishes that he has been in possession for 12 years on an assertion of a hostile title to the knowledge of the Plaintiff. *RAM NARAYAN RAI v. RAM DEVI RAI* **6 Pat. L. J. 680**

49 — Deed excluding right—*Anomalous mortgage—Statutory right—Act No. IV of 1882 (Transfer of Property Act) ss. 60, 98* Immovable property was mortgaged by deed for five years to secure a debt. The deed provided that the years and that if he did not do so the mortgagee was to have the option of taking possession for a period of twelve years. If the mortgagee took possession was provided that during the period of twelve years the mortgagor was not to be entitled to redeem, but that at its conclusion he was to do so. The mortgage debt not being repaid at the end of five years the mortgagee took possession. In the same year the mortgagor sued to redeem. *Held*, that the mortgagor had by s. 60 of the Transfer of Property Act 1882, a statutory right to redeem whether or not the mortgage was one in which by s. 98 the rights and liabilities of the parties were to be determined by their contract. *MUHAMMAD SHARIF KHAN v. RAJA SETH SWAMI DATAL* **I. L. R. 44 All. 185**

50 — Previous redemption decree—*Right to redeem reserved—Second suit for redemption* In 1915 the plaintiff sued to redeem a mortgage of 1874. The defendant contended that the suit was barred in consequence of a previous redemption decree of 1881 the terms of which were as follows. The plaintiff should pay to the defendant Rs. 400 with interest at the rate of eight annas per cent. per mensem by annual instalments of Rs. 60 each from 31st March 1884. If the plaintiff were to pay more than Rs. 60 the defendant should not refuse to accept the same.

MORTGAGE—*contd*REDEMPTION—*contd*

In case the plaintiff fails to pay any instalment the defendant should take the land in his possession and receive the produce of the land in lieu of interest on the remaining amount and Government assessment and on the plaintiff paying the principal amount at the end of any fiscal year the land belonging to the plaintiff should be returned to him. *Held*, that on the construction of the decree the right to redeem was reserved and therefore the plaintiff was entitled to sue for redemption. *ABDUL PAJACK v. VAMAN GANESH* **I. L. R. 45 Bom. 1335**

REGISTRATION

1 — Registration—Endorsements on mortgage bond—*Registration—Registration Act (III of 1877), s. 17 cl. (n)—Endorsement on a mortgage bond of payment made in satisfaction of a prior mortgage debt—Civil Procedure Code (Act XI of 1882) s. 43—Payment by a subsequent mortgagee under s. 74 of the Transfer of Property Act (II of 1880) effect of* The endorsements on a mortgage bond of payments made in satisfaction of a mortgage, which payments did not purport to extinguish the mortgage are covered by cl. (n) of s. 17 of the Registration Act and as such do not require registration. *Ji van Ali Beg v. Lasa Mal* **I. L. R. 9 All. 108**, and *Uppalakund Kunhi Awti Ali Hoji v. Kunnam Mihal Kottapath Abdul Rahman* **I. L. R. 19 Mad. 287** followed. A subsequent mortgagee who makes a payment of a prior mortgage debt under the provisions of s. 74 of the Transfer of Property Act in a suit to enforce his original mortgage against the security which by his payment of the former mortgage, he has protected and made more valuable for the realisation of his debt, is bound, under s. 43 of the Code of Civil Procedure to join in that suit any further claim which he has against that property by reason of such payment made by him. *Sunder Singh v. Bhadu* **I. L. R. 20 All. 392** distinguished. *HARI NARAYAN BAWERJEE v. KUNBI KUMARI DAS* (1910) **I. L. P. 37 Cal. 589**

2 — Endorsement re leasing mortgaged property for consideration in cash—*Registration* An endorsement made by a mortgagee (on the back of the mortgage deed) releasing the mortgaged property in consideration of a cash payment of Rs. 300 is a document which requires registration and not being registered was not admissible in evidence either of the redemption of the property or of the real nature of the original transaction between the parties. *PARASHARAMPANT v. RAMA* (1909) **I. L. R. 34 Bom. 202**

3 — Registration of mortgage out of time by altering date—*Leases from executant if may question validity of mortgage registered out of time—Estoppel* Where a mortgagee died had been presented for registration more than four months after the date of its execution and its registration had been secured by the executant altering the date of the instrument. *Held*, that even assuming that the deed had been wrongly registered, there being no fraud the mortgagor would be estopped from taking the objection. *Held* further that lessees from the mortgagor who took their leases after the registration of the mortgage are in the absence of fraud equally estopped with the mortgagor from taking the objection.

MORTGAGE—*contd*REGISTRATION—*contd*

GOPAL CHANDRA CHUCKRABORTY : SURENDRA KUMAR ROY CHOWDHURY (1912)

16 C W N 535

4. ——— Constructive notice—*Subsequent mortgage—Registration Act (III of 1877) ss 17, 49—Transfer of Property Act (IV of 1882) ss 3 (14) and 53* The mere registration of a mortgage under the Registration Act is not per se constructive notice of the mortgage. So held by their Lordships of the Judicial Committee approving of the view, on this question of the High Courts of Calcutta and Madras which differed in opinion from those of Bombay and Allahabad. In *Mamindra Chandra Nandy v Troschke Nath Bural* 2 C W N 750, the Court said: "Having regard to the statutes applicable in this country the proposition involved is not one of law but of fact, and as each case arises it should be determined whether in that individual case the omission to search the register, taken together with the other facts, amounts to such gross negligence as to attract the consequence which results from notice." In *Biswanath Jha v Ramprasad Tiwar* 7 C W N 11 in which the Court observed: "Whether registration is or is not notice in itself depends upon the facts and circumstances of each case upon the degree of care and caution which an ordinarily prudent man would necessarily take for the protection of his own interest by search into the register" and other cases in the High Court at Calcutta. In *Shan Nayan Mull v Madras Building Co*, 1 L P 15 Mad 263 in which the Madras High Court adopted the same view and pointed out that if the Legislature had wanted to make registration notice, it might have made it the subject of conflict of opinion on the question have made it in express terms. *Lakshmandas Sarupchand v Dastur* 1 L R 6 Bom 168, and other cases of the Bombay and Allahabad High Courts to the contrary disapproved. *Mahomed Ibrahim Hossein Khan v Ambica Prasad Singh* 1 L R 39 Cal 711 L R 39 I A 68 and *Het Pam v Shad Lal* 1 L R 40 All 407 L R 45 I A 130 decisions of the Board with reference to a S. of the Transfer of Property Act distinguished on the ground that under that section a duty was imposed on the mortgagee suing for foreclosure sale or redemption, in discharge of which he was bound to search the register, and his omission to do so would have been "a wilful abstention from the search of gross negligence within the definition of notice in s 3 (14) of the Transfer of Property Act. The object of registration is to protect against prior transactions but the argument for the appellants would extend the doctrine of notice to notice of subsequent transactions and it would not be reasonable to hold that registration was notice to the world of every deed which the register contained. In the present case no circumstances are found excepting those drawn from the fact that the mortgagor was executing several mortgages on the property. *TILAKDHARI LAL v KUNDEAN LAL* (1920) 1 L R 48 Cal. 1

5. ——— Fictitious inclusion of property—*Absence of title—Transfer of Property Act (IV of 1882) s 51—Registration Act (III of 1877) ss 17, 23, 49* S. 28 of the Indian Registration Act, 1877, provides that every document which by s 17 is required to be registered shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some por-

MORTGAGE—*contd*REGISTRATION—*contd*

tion of the property to which the document relates is situated. A mortgage bond for Rs 8000 which purported to mortgage a 7anna share in a village in the Darbhanga district and a one kauri share in the Mozaferpur district was registered only in the Mozaferpur district. The mortgagor had purchased the one kauri share shortly before the execution of the mortgage and in order that he might register in Mozaferpur he paid Rs 50 for the one kauri share but there was no registered instrument or delivery of possession as required by s 54 of the Transfer of Property Act 1882. Their Lordships found that none of the parties intended that the one kauri share should vest in the mortgagor or pass under the mortgage and consequently held that the mortgage was invalid under s 54 of the Transfer of Property Act 1882, under which a mortgage for over Rs 100 can be made only by a registered instrument. *Harendra Lal Roy Chowdhury v Hari Dam Deb* 1 L R 41 Cal 572 L P 41 I A 110, followed. Judgment of the High Court affirmed. *BISWANATH PRASAD v CHANDRA NARAYAN CHOWDHURY* (1921) 1 L R 48 Cal 509

6. ——— By deposit of title deeds—*Memorandum in relation thereto when must be registered* Defendant (who had already mortgaged a house to the Plaintiff to secure two previous loans and had delivered to him the title deeds thereof for the purpose of those mortgages) on 25th February 1914 executed a promissory note for Rs 1,500 in respect of a fresh advance in Plaintiff's favour and on the same date gave Plaintiff a letter in these terms: "For payment of the sum of Rs 1,500 with interest I have borrowed from you on a promissory note of date I hereby put on record that the title deeds re my premises already deposited with you shall be held as a collateral security. The amount (Rs 1,500) was paid to Defendant after the execution of the promissory note and the passing of the letter. Held—That there was no completed contract of mortgage before the letter passed, which in the circumstances of the case constituted the mortgage contract and was inadmissible for want of registration. *Kedar Nath Dutt v Shom Lal Khetry* 20 W R 130 11 E L R 495 (1873), and *Dwarkanath v Sarat Kumar* 7 B L P O C J 55 (1871) considered. *BRABHAR CHANDRA BOSE v ANANT NATH DE* 24 C W N 599

SALE OF MORTGAGED PROPERTY

See CIVIL PROCEDURE CODE 1908 s 11
1 L R 34 All 599

O XXII s 10 1 L R 37 All 226

See MORTGAGE (MARSHALLING)
1 L R 35 Bom 365

See MORTGAGE (REDEMPTION)
1 Fat L J 261

See MORTGAGE (MISCELLANEOUS)
14 C W N 1053

Conditonal decree (Limitation for final decree)—

See CIVIL PROCEDURE CODE 1908 O
XXIV, s 3 1 Fat L J 364

Effect on redemption—

See MORTGAGE (REDEMPTION 4)
1 L R 47 Cal. 377

MORTGAGE—could**SALE OF MORTGAGED PROPERTY—could**

Several mortgages as part of the same transaction over the same property—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O II, R 2

I L R 45 EOM 55

1 ———— Practice—First mortgagee's suit for sale—Surplus of sale proceeds—Second mortgagee's claim for sale in first mortgagee's suit of other property on which he has a mortgage—CIVIL PROCEDURE CODE (ACT V OF 1908), O XXXI
A and afterwards mortgaged the same property and a further property in the mofussil to C. A brought an ordinary mortgage suit against B for sale, making C a party-defendant. A obtained a decree. C thereupon claimed to be entitled to a decree for sale of the property mortgaged to A including the mofussil property not included in A's mortgage. Held that in a suit C could only obtain the surplus of the sale proceeds of the property in that suit and could not get any relief against the other property in the mofussil. *Maharaj Mohan Roy v Kally Charan Ghose I I R 29 Calc 100, Maharaj Mohan Roy v Kally Charan Ghose I L R 24 Cal 190 In re Rastory Mohan Roy v Kaly Charan Ghose I C W A 106 and 107 v Mendel, 27 CA D 216 distinguished. Maclean v Watkins I C I J 31 followed. The effect of the incorporation of the sections in the Transfer of Property Act into O XXXIV of the new Code of Civil Procedure is to put an end to any independent practice on the Original Side of the High Court based on the old procedure, and the Original Side should now follow the provisions of O XXXIV of the Code. Costs will be on Scale No 2 not Scale No 1 against the mortgagor who does not appear. SARAT CHANDRA ROY CHOWDHURY v NAHARIET (1910) I L R 37 Cal 907*

2 ———— Execution of mortgage-decree—

Stay of sale in execution of mortgage-decree—Jurisdiction of Court to stay sale—Waiver on behalf of minor of fresh-sale proclamation—Guardian ad litem right of—Benefit to minors—Minors entitled to impugn sale afterwards for want of fresh proclamation—Transfer of Property Act (II of 1882) s 89—CIVIL PROCEDURE CODE (ACT VI of 1882) s 291. The Court has jurisdiction to order stay of a sale in execution of a mortgage-decree under a 291 of the Civil Procedure Code 1882. *Shyamkisen v Sunder Hor I L R 31 Calc 373 explained. Bibiyen Bibi v Racha Bishah, I L R 31 Calc 963 referred to. There is no conflict between a 89 of the Transfer of Property Act and a 291 of the Code of Civil Procedure 1882. The former section on is concerned with the Court's order absolute for sale (the latter with the adjournment of the sale. The two sections relate to different matters. Even if an order of the Court is erroneous, it is not thereby not open to a party, who has obtained and enjoyed the benefit of an erroneous order, to turn round afterwards and ask that the order should be treated as a nullity and discharged. The guardian ad litem appointed by the Court and acting in good faith is entitled to make applications, on behalf of the minors and has the power to waive the right of the minors to a fresh sale-proclamation after postponement of the sale if the postponement ensured to the benefit of the minors. The minors are not entitled in such a case to impugn the sale on the ground that a fresh sale-*

MORTGAGE—could**SALE OF MORTGAGED PROPERTY—could**

proclamation was not made. *BIPTI BENARI MITRA v JATINDRA NATH GHOSH (1910)*

I L R 37 Calc 897

3 ———— Attachment of sale proceeds—Mortgage decree—Sale for arrears of revenue pending suit. Where the surplus sale proceeds in the hands of the Collector of a mortgaged property sold for arrears of revenue after the preliminary decree passed in the mortgage suit was attached in execution of that decree and subsequently the decree was made absolute. Held, that so soon as the decree was made absolute the sum attached became available to the decree holder and to that extent the decree was satisfied at that date. *Mograj Marwari v Narasing Mohan Thakur, I I R 33 Calc 846 Debedra Nath v Abdul Samad I C L J 150 distinguished. GORI KRISHNA MANDOL v PAM LAL MANDOL (1910)*

14 C W N 434

4 ———— Preliminary mortgage decree

Application for sale of mortgaged property—Limitation Act (IX of 1908) Sch I, Arts 181, 182 and 183—Transfer of Property Act (IV of 1882) ss 88 and 89—CIVIL PROCEDURE CODE (ACT V OF 1908) O XXXII, r 4 and 5 O VII r 20. Part 4 addition of a preliminary mortgage decree under s 88 of the Transfer of Property Act, 1882 does not require and is not followed by any supplemental decree but only if necessary, by an application for an order absolute for sale under s 89 of the Transfer of Property Act. Such an application is a petition for realization by the mortgagee of his decree and is an application to enforce a judgment or decree, etc. within the provisions of Art 183 of the Limitation Act 1908. *Harendra Lal Paj Choudhary v Maharazi Das, I L R 28 Calc. 557 I L R 98 I 4 89, referred to. Madhab Mani Das v Lambert, I I P 37 Calc 795 I C W A 317 discussed. It is a question for the Court in its discretion to determine in each case whether or not it will make an order for the addition of a party as contemplated by O XII, r 20, of the Code of Civil Procedure, 1908. AMLOOK CHAND PARRACK v SARAT CHUNDER MIKRIJEE (1911) I L R 33 Calc 913*

5 ———— Private sale of mortgaged property—

Consideration left with purchaser for discharge of two mortgages—First mortgage alone discharged—Suit for sale by second mortgagee—Purchaser not entitled to hold up first mortgage as a shield. Where a purchaser of mortgaged property undertook to discharge out of the purchase money two subsisting mortgages and in fact discharged only the earlier one. Held that it was not competent to him to hold up this mortgage as a shield against the sale of the same mortgage for sale. *Copai Das v Purnan Mal, I L R 19 Calc. 1035 1016 referred to. MEHANNAD BADIQ v CHAUS MEHANNAD (1910) I L R 33 AU 101*

6 ———— Purchase of mortgaged property

by mortgagee, application of sale-proceeds to reduce the debt due if pro tanto extinguished—Mortgage if any proceed used against other properties—Cancellation of security if may be released by mortgagee—Purchaser of equity of redemption possession of. Where a mortgagee purchased portions of the mortgaged property for a fair price without fraud or undue influence and applied the purchase-money to the reduction of the debt under an agreement to that effect, and it appeared that the property was

MORTGAGE—contd**SALE OF MORTGAGED PROPERTY—contd**

intended to be conveyed free of the mortgage — *Held*, that as between the mortgagor and the mortgagee the mortgage was not *pro tanto* diminished and that the debt remaining due after deducting the purchase money was chargeable on the rest of the property. The effect of the transaction must be judged by its nature, i.e. whether the sale was of the equity of redemption only or of the property freed of the mortgage. *Held*, also, that subsequent purchasers of the equity of redemption in the remaining portion of the mortgaged property stood in the shoes of the mortgagor and could not object to having the whole mortgage debt realised by sale of the property in their hands. Where there are no other persons having a lien on the same property it is settled that as between the parties to the mortgage the mortgagee is entitled to release a portion of the hypothecated property and impose the whole lien upon the residue. A subsequent purchaser of the equity of redemption of the residue therefore cannot object to the release and require the property so released to contribute ratably to the satisfaction of the debt. **FISHERY ALI HAJI v. PANCHANATH CHATTERJEE** (1910)

15 C W N. 800

7. ———— **Purchase by mortgagee—Subsequent purchase by landlord—Mortgage encumbrance—Mortgage purchaser, rights of, to fall back on mortgage—Sale under Bengal Tenancy Act—Ordinary Court-sale, its effect—Decree for tenant, effect of—Bengal Tenancy Act (111 of 1885), ss 161, 165 and 167** Where the mortgagee of a tenure purchased the mortgaged property in execution of a decree of his own mortgage, and the landlord subsequently purchased the same property in execution of a rent decree but did not annul the mortgage encumbrance. *Held*, that the mortgagee purchaser was entitled to fall back on his mortgage as a shield against the purchase by the landlord. **Akhoy Kumar Soot v. Bejoy Chandra Mahalap, 1 L R 29 Calc 813**, followed and the *obiter dictum* in the case discussed. **Bhawanee Koor v. Nathura Prasad, 7 C L J 1**, referred to. *Held*, further, that the landlord could not oust the mortgagee from the tenure without annulling the encumbrance under s 167 of the Bengal Tenancy Act, and this would be so even if the mortgagee had not proceeded to sell before the purchase of the landlord. Where the bidding for a tenure put up to auction under s 164 of the Bengal Tenancy Act did not reach the level of the decretal amount and a sale of the tenure subsequently followed, but without a second proclamation as contemplated by s 165 of the same Act, the sale must be held to have been an ordinary court-sale and the purchaser to have acquired only right, title and interest of the judgment debtor. **Nawab Mahomed Sirkar v. Gurish Chunder Chowdhury, 2 C. W. N. 251**, and **Akhoy Kumar Soot v. Bejoy Chandra Mahalap, 1 L R 29 Calc. 813**, distinguished. The special provisions for the sale of tenures under the Bengal Tenancy Act are a part of the public policy intended for the benefit of all parties concerned and the results of such sales are generally destructive of various derivative rights belonging to third parties not before the Court. The provisions of the Act are therefore very stringent, and if the landlord wants the special result provided for by the Act, he must

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proceed strictly in accordance with its provisions. Where a suit for rent has been rightly brought against the real tenant and a decree has been obtained, the decree is a good decree for rent, whether the tenant was recognised as such or not. **Lalun Monee v. Sona Monee Deber, 22 B R 334**, and **Surnomoyee v. Denomath Gur Surnomoyee, 1 L R 2 Calc 908**, referred to. **BANBHATI KAPUR v. KHETRA PAL SINGH ROY** (1911)

1 L R. 38 Calc 923

8. ———— **Limitation—An application made on the 3rd July 1900, for an order absolute for sale by a mortgagee who had obtained the preliminary decree on his mortgage in the High Court on the 14th December 1896 was barred by Art 183 of sch I of the Limitation Act (IX of 1908) or the corresponding article of Act XI of 1877. The application was one to enforce a judgment within that article. The meaning of the word "enforce" is not limited to realization by execution but may have a wider meaning.** **Horendra Lal Rai Chowdhary v. Maharani Das, L R 25 I A 89**, referred to. **Madhub Mohi Das v. Pamela Lambert 15 C W N 337**, distinguished. **ASHOOK CHAND PAKAR v. SARAT CHANDRA MUKHERJEE** (1911) 1 L R. 28 Calc. 913

16 C. W. N 49

9. ———— **Mortgaged property sold subject to mortgage—Transfer of Property Act (IV of 1882) s 65, sub s (5) cl (b)—Vendor and purchaser—Implied contract of indemnity—Seller damaged by reason of buyer not discharging mortgage debt—Suit for damages if yes—Limitation—Limitation Act (XV of 1877), Sch II, Art 83—Measure of damages** Where one buys from another an equity of redemption on subject to a mortgage and merely pays for the value of that equity of redemption, he contracts to protect his vendor from the obligation of the mortgage, the buyer's contract with the mortgagor being that the debt should not fall upon the latter. It is a contract of indemnity and the buyer would be bound without any specific contract to indemnify the seller. **Twydale v. Twydale, 2 Brown's Rep of Ch Cas 153, 23 Beas 311**, relied on. Where a portion of the mortgaged property was sold subject to the mortgage, but the buyer having failed to pay off the mortgage, the latter sued on his mortgage and the whole of the mortgaged property was sold and the seller was dispossessed of the lands which had been retained by him. *Held*, that a suit by the seller for damages against the buyer was governed by Art 83 of Sch II of the Limitation Act, time running from the date when the seller was actually dispossessed, i.e. the date of dispossession. The word "contract" in Art 83 does not mean an express contract. *Quare* Whether the deed of sale being registered, the period of limitation was that provided by Art 110. *Quare* What under the circumstances would be the proper measure of damages? **RAM BARAI SINGH v. SHROFET SINGH** (1912) 16 C W N. 1050

10. ———— **Estoppel—Decree on mortgage—Decree set aside as against one mortgagor—Second suit to recover proportionate share of the debt maintainable** A mortgagor died leaving him surviving a brother, two daughters and an illegitimate son. The four sons of the brother took an assignment of the mortgage from the mortgagor, and subsequently brought a suit for sale

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of the mortgaged property against the children of the mortgagor and, inasmuch as they were themselves owners of part of the mortgaged property framed their suit as one for the recovery of the shares of the mortgage money from the portions of the property in the possession of each of the defendants. They obtained in this suit an *ex parte* decree which however was set aside as a suit one of the daughters upon the ground that she was a minor and not properly represented therein. *Held* that the plaintiffs were not precluded from maintaining a fresh suit against this defendant for the recovery of a share in the mortgage debt proportionate to her share in the property. **RASHTON V. VISSA v. MUHAMMAD KHALIL KHAN** (1912) I L R. 34 All 474

11. ————— **Chota Nagpur Tenancy Act (Beng. 41 of 1908) s. 47—Decree for sale of property situate in Manbhum—Estoppel** After the preliminary decree on a mortgage was passed, and before the final decree for sale was made the Chota Nagpur Tenancy Act, 1908 was extended to Manbhum where the mortgaged property was situate. The judgment debtor having objected to the application of the decree holder for sale of the said property both Courts set aside the objection, and the sale to the decree-holder was thereafter confirmed. Upon appeal to the High Court *Held*, that the sale was in direct contravention of the provisions of s. 47 of the Chota Nagpur Tenancy Act. *Held*, further, that the judgment debtor cannot be estopped from bringing to the notice of the Court what the Court must be taken to know of itself that there was a distinct provision of law which prevented the sale of the property. **LAKSHMI BINI KUMARI v. AYAL BHARAT HALDAR** (1913) I L R. 40 Cal 534

12. ————— **Parties—Suit for entire mortgage money and sale of entire mortgaged property—Omission to implead certain persons interested—Decree to which plaintiffs entitled** Where a plaintiff mortgages land for the recovery of the whole of the mortgage money by the sale of the whole of the mortgaged property, but by an oversight omitted to implead certain persons who had acquired a share in the property subsequent to the mortgage in suit, it was *held*, that so much of the claim should be decreed as was proportionate to the interests of the persons who were before the Court. **GANGULI LAL v. CHAMAN SINGH** (1913) I L R. 23 All 247

13. ————— **Suit for sale against auction purchaser of mortgaged property—Evidence admissible of—Receipt of receipt of consideration—Estoppel** *Held* that an admission made by a mortgagor in a mortgage-deed and also before the registering officer as to the receipt of consideration is admissible in evidence against the purchaser of the mortgaged property at an auction sale in execution of a simple money decree. **PILLAI LAL v. MOHAMMAD RASUL** I L R. 33 All 194
Followed **Musadar Singh v. Sumaria Puar**, I L R. 17 All 323 not followed **Mahomed Mawlat Hassan v. Kishore Mohan Joo** I L R. 22 Cal 201 referred to. *Held*, also that a purchaser at auction of the right title and interest of the father alone in joint family property which had been mortgaged by the father was not entitled to raise the plea that the mortgage was made

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without legal necessity so long as there was time yet for the sons to challenge the purchase. **Mahomed Musamilladh Khan v. Nethu Lal**, I L R. 33 All 783 dist. approved. **BAKRISHI RAM v. LILADHAR** (1913) I L R. 35 All 333

14. ————— **Sale of mortgaged property for any claim of mortgagee unconnected with mortgage—Civil Procedure Code (Act I of 1908) O. XXII—s. 14—Transfer of Property Act (IV of 1932) s. 92** A mortgagee is competent, under the Civil Procedure Code of 1908 to have his mortgaged property sold in satisfaction of any claim which he may have against the mortgagor, though the claim may be unconnected with the mortgage. **TATAR NATH ADHIKARI v. PRABHAKSHWAR MITRA** (1914) I L R. 42 Cal 780

15. ————— **Suit by second mortgagee—Surplus sale proceeds taken out by fourth mortgagee in execution of his decree—Third mortgagee may sue to recover amount realised by fourth mortgagee—Civil Procedure Code (Act I of 1908), s. 73 (1) proviso (c)** A second mortgagee obtained a decree on his mortgage, in execution of which the property was sold and purchased by the third mortgagee. There was a surplus of sale proceeds left after satisfying the decree. The fourth mortgagee thereafter sued on his mortgage without making the third mortgagee a party and in execution of the decree obtained by him withdrew a portion of the surplus sale proceeds. The third mortgagee thereafter without seeking to put his mortgage in suit sued the fourth mortgagee to recover the amount of the surplus sale proceeds withdrawn by the latter. *Held* that the plaintiff could not succeed on this footing. **Ber Ahmed Pershad v. Tara Chand**, I L R. 33 Cal 92 referred to. CL (c) of proviso to sub s. (1) of s. 73 of the Civil Procedure Code does not apply to this case as the Plaintiff was not the holder of any decree. **NATHAN SAO v. ANNIE BESANT** (1913) 19 C W. N 535

16. ————— **Purchase money "left with the purchaser for payment to the mortgagee"—Nature of the transaction—Trust** Where a mortgagor sells the mortgaged property and, as it is commonly expressed, leaves part of the price with the purchaser for payment to the mortgagee, the transaction is merely one of sale subject to the mortgage. No trust is created in the purchaser for payment of the portion of the price 'left with him' to the mortgagee. **JAWA DAS v. RAM ACTAR PANDY** (1916) I L R. 38 All 209

17. ————— **Mortgage by two persons of two properties for a single debt—Payment by one his portion—Suit against other for the balance—Transfer of Property Act (IV of 1932) s. 67** There is nothing in the provisions of the Transfer of Property Act to support the view that as between a mortgagee and the holders of equity of redemption on the mortgagee is bound to distribute his debt rateable on the mortgage properties. **Krishna Ayyar v. Mathalamanna Siva Iyer** I L R. 29 Mad 217 followed. Where therefore the plaintiff sued the defendant one of the mortgagors for the recovery of the balance of mortgage money due under a deed of mortgage without joining the other mortgagor *Held* that the plaintiff was entitled to a decree for a sale of the plaintiff's

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tioned properties for the whole of the balance due on the mortgage *VENKATA SUBBA REDDI v BALAJINMAL (1914)* I L R 39 Mad. 419

18 ——— Mortgage by two out of three brothers, members of joint Hindu family—*Death of one executant—Suit against other executant and the non executing brother only as representing the deceased executant—Ex parte decree and sale in execution and purchase by mortgagee—Non executing brother's original share, if passed by the sale—Decree for joint possession, if can be made—Transfer of Property Act (IV of 1882), s 41* Delivered of symbolical possession is operative against the judgment-debtor who from that date becomes a trespasser, and the remedy of the decree holder, who has failed to get actual possession, is by suit. Where A and B, two out of three brothers, A, B and C, members of a joint mutakshara family, executed a mortgage of their whole property, and the mortgagee on the death of A sued to enforce the mortgage against B as mortgagor and also as the legal representative of A and against C, describing him only as A's legal representative. Held, that the decree and the sale could not affect C's original one-third share in the mortgaged property, since the question of the validity of the mortgage as against C who was not a party thereto could not be raised and decided in the mortgage suit. That in a suit by the purchaser to recover the property, C was not barred from raising the question by the doctrine of constructive *res judicata*. That the plaintiff as purchaser of an undivided two-thirds share in huts used as residence by a joint Hindu family could not be given a decree for joint possession, regard being had to s 44 of the Transfer of Property Act. That the proper course to follow is either to direct delivery of possession by partition in execution proceedings or to leave the purchaser to his remedy by a separate suit for partition. *GIRIJA KANTA CHAKRABARTY v MOHINI CHANDRA ACHARYA (1915)* 20 C W N 670

19 ——— Death of judgment-debtor after decree nisi but before order absolute—*Order absolute made without bringing all the legal representatives on the record—Sale in execution of decree—Title of purchaser at such sale* A Hindu widow was in possession of a one-sixth share of her husband's estate upon a partition made among her sons. One of the sons lived jointly with her. She made a mortgage of her share to him upon raising money to pay off debt legally bound upon the estate. The mortgagee bought a suit against her and obtained the decree nisi against her. She then died and the son who was living jointly with her, was alone brought on the record as her legal representative. An order absolute was obtained and the shares of the widow and the son who was joint with her were sold and purchased by plaintiffs. When they applied for mutation of names, they were opposed by the other sons. They thereupon commenced the present action for recovery of possession. Held, that the order absolute having been obtained against one only out of several heirs, there was not in existence any decree under which the interest of the other heirs could be sold and consequently the plaintiffs could not obtain possession. *Mallaraju v Narhari, I L R 25 Bom 337, distinguished KUNDAN SINGH v SRIJA KUNWAR (1916)* I L R 39 All. 67

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20 ——— *Agra Tenancy Act—Mortgage comprising both fixed rate and occupancy holdings executed before the passing of the Agra Tenancy Act, 1901—Suit for sale of the fixed-rate holdings only* A mortgage made prior to the passing of the Agra Tenancy Act, 1901, comprised both occupancy and fixed rate holdings. The mortgagee brought a suit for sale of the fixed rate holdings only. Held, that the mortgage, so far as it related to the fixed rate holdings, was not bad and these being distinct from the occupancy holdings, the suit was maintainable. *Kanias v Tilak 16 Indian Cases 42, and Badri Mallick v Sudama Mal, 10 All. L J 176 distinguished RAJENDRA PRASAD v RAM JATAN RAI (1917)* I L R 39 All. 539

21 ——— Second mortgage debt secured by sureties—*Assignment of equity of redemption to sureties—Sub mortgage by sureties in favour of assignor—Sale of mortgaged property by prior mortgagee—Subsequent sale by sub-mortgagee—Remainder of mortgaged property in existence and available for sale insufficient to satisfy sub mortgagee's debt—Application for personal decree against sub-mortgagee—Civil Procedure Code (Act V of 1908), O XXXII, r 6* The plaintiffs, who were the mortgagees of the equity of redemption in respect of certain property further secured their mortgage debt by a promissory note executed in their favour by two sureties on behalf of the mortgagor. They subsequently assigned their equity of redemption to the sureties who executed a sub mortgage thereof in favour of the plaintiffs. Some time after, the plaintiffs obtained a preliminary mortgage decree, which was later followed by a final decree directing that the premises charged under the mortgage, or a sufficient part thereof should be sold subject to the prior mortgage. In the meantime between the dates of the preliminary and final decrees, the mortgagor having been adjudicated an insolvent, the prior mortgagee obtained an order of the Court exercising insolvency jurisdiction, that the remainder properties included in the prior mortgage should be sold free from all incumbrances, and that the balance of the sale proceeds after payment of the costs of the sale and the claim of the prior mortgagee, should be retained by the Official Assignee and be paid by him in discharge of other incumbrances in accordance with their respective priorities. The sale was duly carried out by the Official Assignee in pursuance of this order. The amount thus realised was not sufficient to meet the debt of the prior mortgagee. Subsequently, in pursuance of the mortgage decree, the Registrar put up for sale the equity of redemption in certain properties specified in the plaintiffs' mortgage and the amount realised at the sale by the Official Assignee was not sufficient to meet the plaintiffs' debt. The plaintiffs applied for and obtained a debt the plaintiffs against the sub-mortgagee for personal decree against the sub-mortgagee for the amount of their claim. Held, (1) that the plaintiffs' claim for a personal decree was not debarred by the fact *Per SANDERSON, C J* Having regard to the fact that all the properties covered by the mortgage, which were in existence and which were available for sale at the date of the sale, were sold (2) that the plaintiffs were not responsible for the fact that some of the properties included in the mortgage were not in reality

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available for sale though the sale purported to include them. It is held that it should be taken that the provisions contained in the rules and the directions contained in the mortgage decrees as to the sale have been complied with and that the plaintiffs are entitled to the personal decree which the learned Judge has directed. *Ram Ranjan Chakravarti v Indra Naraya Dasa*, 1 L R 33 Cal 890, and *Badr Das v Inayat Khan*, 1 L R 22 All 401 distinguished. *Per Woodhouse, J.* We must look at this matter rationally and with reference to the reason of the rule, namely, that the personal liability will only be enforced where there is a deficiency after the sale of all the mortgaged property available for sale at the date of sale. In other words, the personal liability must not be improperly increased. *SATISH RANJAN DAS v MERCANTILE BANK OF INDIA, LD* (1917).

1 L R 45 Cal 702

22 ——— Decree not in accordance with s 88, Transfer of Property Act—(IV of 1882)

Sale in execution of decree—Confirmation of sale—Purchase by mortgagee at auction sale with leave of the Court—Right of redemption by mortgagor—Suit to redeem against auction purchaser—Parties—Civil Procedure Code (Act XIV of 1882), s 241—Question in execution of decree. In a suit to enforce a mortgage and for sale of the mortgaged property the decree made was not in accordance with the provisions of s 88 of the Transfer of Property Act (IV of 1882) no day being fixed by the Court on which payment might be made within six months from the date of declaring in Court the amount due. In execution of the decree the mortgaged property was attached sold and purchased with the leave of the Court by the mortgagee decree holder and the sale was duly confirmed. In a suit by the mortgagor for redemption of the mortgage which was one of ancestral property made by the plaintiff's father before the birth of his sons. *Held*, that whether or not the decree was in accordance with the provisions of the Act, the property, and all the right, title and interest of the defendant were in fact sold in execution of the decree of a Court which had jurisdiction to entertain the suit in which the decree was made, and that decree was not appealed from, and that consequently the mortgagor had no right of redemption. *Held*, further, that the question now raised could have been raised before the sale was confirmed, and if so raised, would have been determined by the Court executing the decree, and that the suit was therefore barred by s 241 of the Code of Civil Procedure (Act XIV of 1882). *Prasanna Kumar Sargol v Kala Das Bangul*, 1 L R 19 Cal 653, 1 L R 19 A 166, followed. *GANA PATEY MUDALIAR v KRISHNAMACHARIAR* (1917).

1 L R 41 Mad. 403

23 ——— Estoppel—Mortgaged property partly sold and partly mortgaged to persons induced by some of the mortgagees themselves to believe property to be free from encumbrance—Interests of co mortgagees, if several—Document creating transfer of simple mortgage if compulsorily registrable—Transfer of Property Act (IV of 1882), s 51—Registration Act (XVI of 1908), s 17 (b). In a mortgage suit some of the defendants were purchasers of a portion of the mortgaged property and one had taken a puisne mortgage of the remainder. It appeared that some of the plaintiff mort-

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gagors led these defendants to believe that the whole property was unencumbered. The lower Court dismissed the suit so far as these plaintiffs were concerned. *Held* that as regards the defendants who were purchasers of a portion of the mortgaged property the claim of these plaintiffs was rightly dismissed under the rule of estoppel but as regards the other defendant who was a puisne mortgagee of the remainder of the mortgaged property the effect of the estoppel under s 78 of the Transfer of Property Act was to postpone these plaintiffs in respect of their share of the original debt to this defendant and the decree should declare that the property mortgaged to this defendant hypothecated to these plaintiffs for their share of the original mortgage debt and their rights as mortgagees were postponed to those of this defendant. That co mortgagees are presumably tenants in common of the mortgage debt and their interests are severable or partible among themselves and it was open to the Court to sever the interests of those plaintiffs who had taken no part in the deceit practised upon the purchaser from those who did and to make a decree in their favour in proportion to their interest in the debt. That a mortgage debt is immovable property both for the purposes of s 54 of the Transfer of Property Act as also for the purposes of s 17 (b) of the Registration Act, and where a mortgage including a simple mortgage is transferred by an instrument in writing and the value of the right, title or interest transferred is one hundred rupees or more the writing requires registration and the absence of registration makes the document inadmissible. *SANJEEV DITTA SAMA v SONAILLAL-SARKAR* (1918).

22 C W N 641

24 ——— Decree directing sale of other properties of judgment-debtor, if sale-proceeds of mortgaged property insufficient—Limitation as to latter part of decree—Civil Procedure Code (Act I of 1908), s XX O 20, r 6—O XXXII, r 6. Where a mortgage decree after directing that the available proceeds of the sale to be held under the decree was to be paid in satisfaction of the decretal debt but that if the amount due to the plaintiff was not satisfied by the sale of the mortgaged property the balance would be realised from other properties and the persons of the defendants. *Held* that limitation for execution of the latter part of the decree did not run from the date of the sale of the mortgaged property but from the date of the decree as fixed by O XX r 6 of the Civil Procedure Code. *KUTUBA LOAN COMPANY v JYANENDRO NATH BOSE* (1917).

22 C W N 125

25 ——— Rights of Puisne mortgagee—Decree for sale at the instance of prior mortgagee—Right of puisne mortgagee to apply for sale in execution for amount ascertained to be due to him—Subsequent suit by puisne mortgagee for sale—s 47, Civil Procedure Code whether a bar to suit. In a suit for sale by a prior mortgagee against the mortgagor and a puisne mortgagee, the decree not only directed the sale of the mortgaged properties for the amount found due to the prior mortgagee but also ascertained the amount due to the puisne mortgagee and ordered the payment to him of this amount out of the surplus sale proceeds. *Held* (i) that the puisne mortgagee was not entitled to execute the decree for the amount due to him,

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when no sale was held for the realization of the amount due to the prior mortgagee, (ii) that the remedy of the prior mortgagee was a suit for sale, (iii) that s. 47, Civil Procedure Code, was no bar to the suit and (iv) that the decree in the previous suit did not operate as *res judicata*. **VIDAVYASA AYYAR v THE MADURA HINDU LABHA NIDHI CO., LTD (1016)** I L R 42 Mad 99

26. — Preliminary decree containing direction as to personal liability of defendant in case mortgaged property to insufficient to satisfy decree—No mention of personal liability in final decree—Preliminary decree, whether composite—Application under O XXXIV, r 6 of the Civil Procedure Code (Act I of 1908), whether maintainable. In a mortgage suit the decree for sale of the mortgaged property contained a direction that if the whole amount was not realized by the sale of the mortgaged properties, for the rest of the claim if legally realizable the defendant No 1 would be liable. In the final decree there was no provision for any personal decree. Before the mortgaged properties could be sold a third party succeeded in having it declared that the mortgaged property could not be sold in execution of the decree. Thereupon the plaintiff applied under O XXXIV, r 6. It was contended that the preliminary decree was a composite decree and that therefore a fresh decree was not necessary. *Held*, that the preliminary decree was not a composite decree allowing the decree holder to proceed against the other properties of the judgment debtor. It said that he might proceed if he were legally entitled to do so thus leaving it for future decision whether the decree holder was legally entitled to obtain such a decree. **SITAVATH SHAN BAXI v MADAN MOHAN DAS (1919)** 23 C W N 924

27. — Sale for arrears of revenue—suit on the mortgage—purchase by mortgagee—Rights of mortgagee. In execution of a mortgage decree plaintiff the mortgagee himself purchased the mortgaged property and obtained formal possession. Before that suit was brought the defendants had purchased the property at a sale for arrears of revenue. That purchase was subject to the plaintiff's mortgage. Plaintiffs sued for possession, and the Lower Courts gave him a decree for possession, in case the defendants failed to pay the amount due on the mortgage within 6 months. *Held*, that the plaintiff was not entitled to a decree for possession but was entitled to have the mortgaged property put up for sale, if the defendants failed to redeem. **BALLI SIMON v BINKSWARI TEWARI** I Pat. L. J. 133

28. — Subsequent sale of part of the mortgaged property—purchaser's liability to contribute to mortgage debt. Certain properties including a house were mortgaged. Subsequently the defendant purchased half of the house from the mortgagor who then conveyed the equity of redemption in respect of all the mortgaged properties to the mortgagee. In a suit by the latter to enforce his mortgage by sale of the mortgaged properties, *held*, that, having regard to the terms of s. 82 of the Transfer of Property Act, 1882, it was improper to order the property to be sold without fixing the proportion of the mortgage debt chargeable on the house purchased by the defendant. **MAHARAJAH RAMANARAYAN SUDHARMA RAMACHANDRAN LAL BHAGAT** I Pat. L. J. 228

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29. — Different persons becoming interested in fragments of equity of redemption—Mortgagee not entitled to throw the burden of entire mortgage debt on a portion of the mortgaged property. The property in suit was mortgaged to plaintiff. Subsequent to the date of the mortgage, M and K purchased the equity of redemption in half shares. Plaintiff sued to recover the entire mortgage debt by sale of half of the mortgaged property in the hands of M without adding K as a party to the suit. *Held* that it was contrary to the principles of equity that the plaintiff who by his own negligence had lost his remedy against the owner of half of the equity of redemption, should seek to throw the whole burden of the mortgage on the owner of the other half. **Imam Ali v Day Nath Ram Sahu (1906) 33 Cal 613 at p 621, followed. BUDHIMAL KEVALCHAND v RAMAVALAB DESU (1919)** I L R 44 Bom 223

30. — Double sale—Where plaintiff purchased a mortgaged property from the mortgagor in execution of a money decree and subsequently the mortgagee brought a suit against the original mortgagor without making the purchaser a party and in execution of the decree purchased the mortgaged property and sold it to another from whom plaintiff sought to recover. *Held* that plaintiff by virtue of his purchase acquired only a right to redeem and was not entitled to recover possession after the mortgage sale. The fact that he was left out of the suit did not vitiate the decree. **SHANKH RALA SHARIF v ABBAY CHARAN KIPMAKAR** 25 C W N 253

31. — Suit for sale by second mortgagees making prior mortgagee a party, but not attaching his title—Decree for sale—Subsequent suit by assignee of prior mortgagee to enforce his mortgage against second mortgagees—Civil Procedure Code (Act I of 1908) s. 11, Explanation 11—Transfer of Property Act (Act I of 1882) s. 86—*Res judicata*. The respondents were second mortgagees of certain villages under a mortgage of April 1894, and the appellant was the assignee of the original mortgagee of the same property under a mortgage of May, 1892. The respondent's brought a suit (100 of 1900) to enforce the mortgage to which they made the assignor of the appellant a party but did not attack or impugn the validity or priority of his mortgage, and he did not appear to defend it. In a suit by the appellant in 1907 to enforce his mortgage against the second mortgagees, they contended that the mortgage deed of 1892 might and ought to have been made a ground of defence in the former suit and by the omission to do so the present suit was barred as *res judicata*. In this suit the appellant's mortgage was admittedly valid. *Held*, that under these circumstances the case came within the terms of s. 96 of the Transfer of Property Act, and that the property could only be sold as therein provided with the consent of the prior mortgagee who had a paramount claim outside the controversy of the suit unless his mortgage was impugned, and, therefore, to sustain the plea of *res judicata* it was incumbent on the respondents to show that they sought in the former suit to displace the title of the prior mortgagee, and postpone it to their own, and that had not been done. The respondents, therefore, had failed to establish the condi-

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tions essential to their plea. *PADMA KISHAN v KARNABUD MOSSAIN* (1919)

I L R. 47 Cal 602

32 ————— Sales certificates—Conclusiveness of—on subsequent suit—Code of Civil Procedure (I of 1908), s 47. Certificates of sale are documents of title which ought not to be lightly regarded or loosely construed. Where upon a sale under a mortgage decree the purchaser has been given a sale certificate which plainly includes certain property and has been put into possession of that property it is not open to a Court in a subsequent suit by the mortgagor's representative to hold by reference back to the mortgage deed that the property in question was not sold under the decree. The title of the purchaser can be questioned only by a petition in the execution proceedings under s 47 of the Code of Civil Procedure and not at all where that remedy is barred by limitation. *Jaligment of the High Court reversed. RAMABHADRA NAIDU v KADIRIYASAMI NAICKER* (1921)

I L R. 44 Mad. (PC) 483

33 ————— Decree for sale and decree for balance can be made at the same time—Portion of decree payable later when proceeds of sale found insufficient—Transfer of Property Act (IV of 1932) s 90. It is not necessary to put such a construction on s. 90 of the Transfer of Property Act (IV of 1932) as would establish as a condition precedent to the power of decreeing personal payment of the balance that the mortgaged property must first be sold and found insufficient to satisfy the debt. The words of the section are satisfied in cases where the Court passes a decree that on the happening of the event when the net proceeds of the sale are found to be insufficient the balance should be paid. *JEWNA BAIU v PARNESWAR NARAYAN MAHTHA* (1913)

I L R. 47 Cal 370

34 ————— Holder of two independent mortgages—If cannot take separate suits there is nothing in the Civil Procedure Code or Transfer of Property Act to prevent the holder of 2 independent mortgages over the same property who is not restrained by covenant in either from obtaining a decree for sale on each in a separate suit subject to the reservation that he cannot sell the property twice over nor under the second decree subject to the first. *MILA v ASHABAD MALDAL* 25 C W N 129

35 ————— Mortgage extinguished by sale—Purchase by first mortgagee—Subsequent suit by second mortgagee who was not made a party to first mortgagee's suit—Act No 11 of 1882 (Transfer of Property Act), s 89. An order made under s 89 of the Transfer of Property Act 1882 for the sale of mortgaged property has the effect of substituting the right of sale thereby conferred upon the mortgagee for his rights under the mortgage, and the latter rights are extinguished. Where, therefore, a first mortgagee brought a suit for sale under the Transfer of Property Act on his mortgage without making a second mortgagee of the same property a party to his suit and obtained a decree for sale and purchased the property under that decree and the second mortgagee afterwards sued on her mortgage. *Held* the amount to be paid by the second mortgagee was to be calculated on the basis of the decree and not with regard to

MORTGAGE—contd

SALE OF MORTGAGED PROPERTY—contd

the amount due on the prior mortgage. *Het Pam v Shadi Pam*, I L R 40 All 407, L R 45 I A, 130, followed. *Umes Chander Sircar v Zahur Fatima* I L R 18 Cal 363 L R 17 I A 201, a case decided before the Transfer of Property Act, 1882 was passed distinguished on that ground. *MATRU LAL v DURGA KUNWAR*

I L R. 42 All. 364

36 ————— Prior and subsequent mortgagees' rights of, inter se—Separate and independent decrees obtained by each set of mortgagees—Property sold by prior mortgagee and purchased by a third party leaving a surplus of sale proceeds—Rights of auction purchaser and junior mortgagees. A mortgaged (1) same property first to B and then by two separate mortgage deeds to C and B and C both sued on their mortgages each party without implying the other and obtained decrees. B's decree was executed first. The mortgaged property was sold and was purchased by A. B's mortgage was paid up and a considerable surplus remained which was deposited in court. C then endeavoured to execute his decree against the surplus sale proceeds but failed, and the money was ultimately withdrawn by the mortgagor. C next proceeded with the execution of his decree against the property in the hands of A, the auction purchaser and A, in order to retain possession, paid up the amount of B's decree. A then sued the representatives of A to recover the amount so paid. *Held* that in the circumstances K was entitled to a decree. *Barhamdeo Prasad v Tara Chand* I L R 41 Cal. 651, referred to. *KARAN SINGH v ISHTIAQ HUSAIN*

I L R. 43 All 268

37 ————— Sale by mortgagor of part of the mortgaged property—Suit for sale on mortgage without implying the vendee—Subsequent suit for redemption by auction purchaser against vendee—Decree to which plaintiff is entitled—Limitation. In 1901, A took a lease of certain property from B and, as security for the due payment of the rent hypothecated two separate items of property x and y. In 1905, A sold property y to C. In 1906 the rent due to B having fallen into arrears. B sued to recover it and obtained a decree from the Rent Court. In 1908 B brought a suit in a Civil Court to enforce his lien against both x and y but apparently being unaware that y had been sold did not make C a party. In this suit B obtained a decree for Rs 6000.00. In 1912 properties x and y were brought to sale in execution of B's decree and purchased by him for Rs. 1000. In 1916 B sold both properties to D. In 1917 D sued C for the recovery of Rs. 2200 as representing the proportionate share of B's decree for Rs. 6000.00 which was attributable to property y. *Held* that the suit was in time and that D was entitled to recover from C the proportionate part of B's decree for Rs. 6000.00 (not of the amount which B had paid for the two properties) for which property y was liable. *Hajra Bibi v Shiam Norein*, 11 A L J 362, referred to. *MARADPO TAL v BALDEO RAI*

I L R. 43 All 539

38 ————— Suit for sale on—Defence that no money was due on mortgage—Mortgagor shown to have been under influence of mortgagee an unscrupulous man who abused that influence

MORTGAGE—contd**SALE OF MORTGAGE PROPERTY—contd**

—Mortgagee put in possession of all mortgagor's property never rendered accounts—Onus of proof—*Indian Trusts Act (II of 1882), ss 3, 6 B*, a very young man leading a most immoral life, mortgaged the ancestral property of his family to N and gave N possession of practically all his property which included other villages not mortgaged to N, who sold a considerable part of the property including some of the mortgaged villages and some of the mortgaged villages were purchased by N. Neither N nor the plaintiffs who claimed through A rendered accounts of what had been received by him from and in respect of any of the properties, not even of the mortgaged properties B was completely under the influence of A, an unscrupulous man who exercised that influence regardless of the interest of B and his infant son who was born subsequently to the two mortgages on which plaintiffs sued. *Held*, that this was not an ordinary case of a suit for sale based on a mortgage in which it would be for the defendant, the mortgagor, to prove that nothing remained due under the mortgage, if that was his defence, and the onus lay on the plaintiffs to prove that the mortgages had not been satisfied and what, if any, was due under each mortgage before they could get a decree for sale. The plaintiffs having failed to prove that anything was due, the suit should be dismissed. Shortly after the first of the mortgages, B executed an agreement by which he appointed N manager and receiver of all his property movable and immovable for 10 years and put N in possession under that agreement. N was to keep accounts and explain them to D in July of each year and was to receive certain remuneration for his work. *Held*, that the agreement did not constitute N a trustee within the meaning of the Indian Trusts Act. *D L RAI v BHATYALAL* . . . 24 C. W. N. 769

Mortgage—Equity of redemption, sale of—Purchaser retaining portion of purchase money to pay off mortgage, if personally liable for the mortgage debt A purchaser of mortgaged property who retains a portion of the purchase money in order to enable him to pay off the mortgage does not thereby become personally liable to discharge the mortgage debt. *NAKRU SINGH v KAMTA PRASAD* . . . 25 C. W. N. 771

SEVERANCE OF MORTGAGOR'S INTEREST

See UNDER SUB HEADING SALE OF MORTGAGED PROPERTY

Mortgage—Decree of Court splicing up mortgagee's right—Transfer of Property Act (IV of 1882), s 67, cl. (d), analogy of The principle of the rule embodied in s 67, cl. (d), of the Transfer of Property Act enabling one of several mortgagees to enforce by suit the payment of his portion of the mortgage-money, when the mortgagees sever their interests with the consent of the mortgagor, is applicable to a case where the severance effected by a decree of Court binding on the mortgagor. VIJAYABHUSHANMAL v EVALAPPA MUDALIAR (1914)

I. R. B. 39 Mad. 17

SIMPLE MORTGAGE

Single mortgage—Mortgagor's power to create leases binding on mortgagees. A simple mortgage in India, unlike a legal mortgage in England, does not arrest the mort-

MORTGAGE—contd**SIMPLE MORTGAGE—contd**

gagor's power of leasing in the ordinary course of management and the mortgagor acts within his powers in creating a temporary lease which does not impair the value or impede the operation of the mortgage. *Banes Pershad v Reet Bhunyan Singh, 10 W. R 325*, referred to *Keech v Hall, 1 Douglas 21*, not applied. *BALMUKUND REXIA v MOTI LAL BARMAN (1915)* . . . 20 C. W. N. 350

SUBROGATION

See SUBROGATION.

—One of the mortgagees paying off the mortgage—

See LIMITATION ACT (IX of 1908), SCH. I, ART 120 I. L. R. 45 Bom 587

1.—*Presumption of intention—Interest—Costs, if part of decree* Where the kothali by which mortgaged properties were sold recited certain mortgages which were paid off out of the purchase money and the mortgage bonds were preserved by the purchaser. *Held*, that there was a presumption of subrogation of the purchaser to the rights of the mortgagees. *Held*, further, that in order to establish right by subrogation it was not necessary for the purchaser to prove any intention or agreement to subrogate and the presumption from the circumstances would be in his favour. Where the contract rate of interest is not proved to be a penalty or unconscionable, the Court should not disturb. Costs form a part of the entire decree and carry Court rate of interest. *PRAYAG NARAYAN AFFRI v CHEDI RAI (1910)* . . . 14 C. W. N. 1093 note

2.—*Presumption of intention—Legal and equitable claim if both may be urged together* The principle of subrogation is one based on a presumption of intention which may be supported by circumstances or evidence of assignment or agreement or both. Where a debt on a mortgage decree obtained by A was paid off by money paid by plaintiff for which the defendant executed a fresh mortgage bond at an increased rate of interest, which recited the necessity for paying off the decretal debt and which actually mentioning one of the three mortgagees falsely stated that the property was otherwise free from encumbrance. *Held*, that the plaintiff stepped into the shoes of N on the principle of subrogation and had priority over the mortgagees. Subrogation by intention confers an equitable right and subrogation by agreement a legal claim. It is therefore open to a party to base his claim on both intention and agreement. *Gardio Singh v Chandrikah Singh, 5 C. L. J. 611*, distinguished. *Bussacree Prasad v Lala Sarnam Singh, 6 C. L. J. 134*, referred to. *TARA SUNDARI DEBI v KHEDAR LAL SAHU (1910)* 14 C. W. N. 1089

3.—*Transfer of Property Act (IV of 1882), s 95—Co mortgagor paying off mortgage—Charge—Subrogation, limits of—Interest, Court's discretion as to—Tender of insufficient amount when valid pro tanto—Decree, vague and incapable of execution—Execution, amendment of decree in, when permissible* Where a decree of the High Court which was sought to be executed did not specify the period during which interest on the principal money due was to be allowed, the decree as regards the interest was indefinite and was not capable of execution. But the High Court did not give effect to this plea where it was con-

MORTGAGE—contd.**SUBROGATION—contd.**

called that an application for a review of the decree if made would be heard by the Bench hearing the present appeal which arose in execution proceedings and proceeded to ascertain the rights of the parties as upon such application. If one of several joint mortgagors in order to protect his interest pays the joint debt, he is placed in the position of the mortgagee in relation to his co-mortgagors, to the extent of their shares of the debt. But the substitution of the new creditor in place of the original one does not place the former precisely in the position of the latter for all purposes. The extent to which subrogation will be availed in any particular case must be governed by equitable considerations. In so far as any question of priority is concerned he no doubt enjoys the same advantages as the original mortgagee and is entitled to priority over subsequent mortgagors from his co-mortgagors. In so far however as the amount of money which he is entitled to recover from his co-mortgagors is concerned, he can claim contribution only with reference to the amount actually and properly paid to effect redemption, to which sum his own and his legitimate expenses. In so far as interest on these sums is concerned he cannot claim it for any period antedating to the redemption. In regard to these matters the Court has a discretion which it will exercise with a view to secure substantial justice regardless of form. *Jarell v. J. J. 219* *Sarjima v. Burkhamba* 2 C L J 253 *Girdes v. Chandraiah* 1 L R 36 Cal. 193 *et seq.* 5 C L J 611 referred to. The doctrine that a mortgagor is not bound to accept any sum in part satisfaction of his decree and is entitled to an order absolute on the entire amount is brought into Court for payment to him is applicable only where there is no dispute as to what amount is due. An unconditional tender of a sum which turns out in the end to be less than what is really due may be valid *pro tanto* if there is a dispute as to the amount due though a tender to a part of what was admittedly due is of no avail. *Ganga Das v. Jopendra Nath*, 11 C W N 493 *et seq.* 5 C L J 315 *Ram Kamaldev v. Sakhu Singh* 7 C L J 112 *Dixon v. Clark* 5 C B 355 75 R R 14 referred to. Though a tender of a smaller amount than that of which an indivisible and entire claim consists may be invalid as a tender there is nothing to prevent the creditor from accepting the amount tendered in part-payment and his doing so will not preclude him from afterwards claiming the residuum of his account always provided that the debtor did not make it a condition of his tender that it be accepted in discharge of the whole. *Powers v. Owen* 11 Q B 139 75 R R 396 relied on. *Dinabhai Das v. Hanendra Narayan Pandey* (1910). . . . 14 C W N 617

4 *Mortgage subrogation of—Undertaking to pay subsequent incumbrance rebuts presumption of intention to keep alive prior mortgage.* Where property subject to two mortgages is sold and the purchaser who undertook to pay off both the mortgages with the purchase money discharges the prior mortgage only, he cannot, as against the subsequent mortgagee, claim to stand in the shoes of the prior mortgagee. His right to use the prior mortgage as a shield is based on a presumed intention to keep alive the prior mortgage for his own benefit and such presumption is rebutted when he undertakes to dis-

MORTGAGE—contd.**SUBROGATION—contd.**

charge both the mortgages. *Govindasami Tevan v. Dorasami Pillai* (1910) 1 L R 24 Mad. 219

5 *Mortgage—Sale, advance of money to set aside—Mortgage in favour of lender—Sale in execution of money decree after sale set aside but before mortgage executed.* Plaintiff advanced small sums of money to the mortgagor for payment to the mortgagee pending execution of a mortgage-deed, and the balance due to the mortgagee after sale in execution of the decree with the result that the sale was set aside. One month after the mortgagor executed a mortgage in favour of the plaintiff to secure the amounts paid by him but during this interval a portion of the property had been sold in execution of a money decree obtained against the mortgagor by the defendant and purchased by him. The sale was, however, not confirmed till after the plaintiff's mortgage held, that the plaintiff cannot claim to be placed in the position of the mortgagee whose debt he discharged with respect to the property purchased by defendant No. 1, which was free from encumbrances at the time he purchased it. *Shyam Lal v. Bashiruddin*, 1 L R 28 All. 775 and *Isamkalinga v. Chidambaram*, 1 L R 23 Mad. 37, distinguished. The defendant No. 1's title to the property accrued on the sale and not for the first time on confirmation thereof. *Bhawanis Koor v. Malhara Prasad* 7 C L J 1 and *Idhar Chander v. Aghore Nath*, 2 C W N 589 relied on. *Premchand v. Parmina* 1 L R 15 Cal. 516 and *Amir Kazim v. Durbasi Mal*, 1 L R 24 All. 475 distinguished. *Ram Saran Singh v. Anakhan Singh* (1910) 15 C W N 312

6 *Third mortgagee advancing money for discharge of first mortgage—Application of part only towards discharge—Priority over mortgage to that extent.* A mortgagee who advances money towards the discharge of a first mortgage on a property is entitled to priority over an intermediate mortgagee to the extent to which the money advanced by him went towards discharging the first mortgage. *Rapohai v. Induram* 1 L R 11 Mad. 315, followed. *Himmavithayan v. Meenakshi Nadu*, 1 L R 35 Mad. 181 referred to. *SAMINATHA PILLAI v. KRISHNA IYER* (1913) 1 L R 38 Mad. 548

7 *Partial discharge of prior incumbrance—Purchaser of equity of redemption entitled to stand in the shoes of prior incumbrancer to the extent that the incumbrance has been discharged.* A purchaser of the equity of redemption is entitled to stand in the shoes of a prior incumbrancer where the purchaser has, with the consent of that incumbrancer partially discharged the liability. *Girdes Singh v. Chandraiah* 1 L R 36 Cal. 193 dissented from. *Chetand v. Allen* 1 Ch. D. 353, followed. *Barnes v. Woodcock v. The River Dee Company, L.* 19 Q B 155 referred to. *UDIR NARAIN MISIR v. ASHARFI LAL* (1910) 1 L R 38 All. 502

8 *Suit for recovery of mortgage money—Payment of prior mortgage debt—Subrogation—Circumstances in which intention to keep prior mortgage alive is to be inferred.* On the 22nd of March 1911, one A executed two separate leases in favour of O L comprising a zamindari share in the village of Kura Mai and a house in the town of Maruhra. Upon this A.

MORTGAGE—contd**SUBROGATION—contd**

F brought a suit against A A and G L for specific performance of an agreement entered into by A A to mortgage to her the zamindari in Kura Mal, and for a declaration that the zar : pesghi leases entered into with G L were ineffective as against her. The plaintiff obtained a decree, which was upheld in appeal by the High Court and as the result a zar : pesghi lease was executed by A A in favour of A F under the order of the Court, and G L's leases were declared to be void as against A F. Immediately after the execution of the zar : pesghi leases of the 22nd of March, 1911, G L paid off two prior mortgages of 1907 and 1908. No reference, however, was made to these in the deeds of 1911 nor was there any contract between the parties to these deeds that the mortgagee was to be subrogated to the benefits of the earlier securities which were to be paid off. Moreover, the mortgages of 1907 and 1908 comprised other property besides that included in the deeds of 1911. *Held*, that it was not competent to G L in a suit on his zar : pesghi leases of 1911, to set up a title under the mortgages of 1907 and 1908 and claim to recover from A F the money which he had expended in their redemption. **GULZARI LAL v AZIZ FATIMA (1919)** I L R 41 All 372.

9 ————**Priority** over intermediate mortgage—*Mortgage pending execution proceedings*—*Estoppel—Civil Procedure Code (Act V of 1908)* O XXI, rr 13, 62, 66—*Decision in course of execution proceedings, effect of*—*Order by consent, how far binding* As to whether a subsequent mortgage is not entitled to be subrogated to the rights of the first depends upon the question whether the property has been sold subject to the mortgage or whether mere notice of the alleged mortgage has been given in the proclamation of sale. *Jayant Singh v Issul-un-nissa Begam I L R 27 All. 97, Ramachandra Joishi v Hazi Kusun, I L R 16 Mad. 207, Shanappa Medambaraya v Subrao Ramchandra Yellapur, I L R 18 Bom 175, Shri Anwar Singh v Saeed Prasad Singh, I L R 28 All. 418, Ganesh Moreshwar Joshi v Parashottam Balkrishna Rode, I L R 33 Bom. 311 and Jangai Mal v Radha Kishan, I L R 35 All. 257, referred to KALIDAS CHAUDHURI v PRASAD KUMAR DAS (1919) I L R 47 Cal 440*

TRANSFeree MORTGAGEE

———*Transferee from benamidar—Right of suit.* A transferee mortgagee can maintain a suit on the mortgage though the mortgagee named in the bond is only a benamidar and though the beneficial owner is not added as a party. *Krishnas Das v Gopal Jiu 19 C L J 193, and Paramashwar Das v Ana Das I L R 37 All. 113 followed. SINGA PILLAY v GOVINDA REDDY (1917)* I L R 41 Mad. 435

USUFRUCTUARY MORTGAGE

1 ————**Bombay Regulation V of 1827, s XV, cl 3—Usufructuary mortgage of 1869—Agreement to pay the debt after fixed period—Suit by mortgagee after the expiration of the period for the recovery of the debt by sale of mortgaged property.** A usufructuary mortgage executed in the year 1869 contained the following agreement—“The amount of Rs 1,750 is borrowed on the said premises. We three of us shall, after paying

MORTGAGE—contd**USUFRUCTUARY MORTGAGE—contd**

off the said amount of debt after fifteen years from this day, redeem our premises. I perhaps any one of us three might within the period pay off at one time the amount of rupees according to his share, you should allow redemption of the premises proportionately after receiving the amount and you should pass a receipt for the moneys received.” In the year 1903 the mortgagee having brought a suit for the recovery of the mortgage debt by sale of mortgaged property, the first Court allowed the claim, but the Appellate Court reversed the decree and dismissed the suit on the ground that where in the case of a usufructuary mortgage the mortgagor agrees to redeem by payment of the principal after a stated period, the mortgagee has no higher or better right than he has under a simple usufructuary mortgage. *Held*, on second appeal by the plaintiffs, that the mortgage in suit was governed by cl (3), s XV of Regulation V of 1827, and there being nothing in the terms of the agreement between the parties which either expressly or by implication indicated that the property should not by means of a suit be applied in liquidation of the debt, the suit would lie. The decree of the Appellate Court reversed and that of the first Court restored. *Mahaday v Joti, I L R 17 Bom 425 and Ramchandra v Tripurabai, (1898) P J 45, followed Shrik Idra v Abdul Rahman, I L R 16 Bom 303, Sadasahu v Syannkatrao, I L R 20 Bom. 296 and Krishna v Hari, 10 Bom L R 615, explained. PARASHRAM v PUTLJIRAO (1909)*

I L R 34 Bom 128

2 ————**Civil Procedure Code (Act XIV of 1932) ss 265, 274—Debt—Immovable property—Execution of money-decree—Attachment.** Where a deed of mortgage with possession provided that the mortgagee was to enjoy the profits in lieu of interest for ten years and was to be redeemed on the expiration of the term by payment of the mortgage money. *Held*, that the document created a purely usufructuary mortgage. *Held*, further that in the case of a usufructuary mortgage, there was no debt payable by the mortgagor to the mortgagee which could be attached in execution of a money decree against the assignee of the mortgagee, and that s 268 of the Civil Procedure Code (Act XIV of 1932) was not applicable to such a case. The procedure should be by attachment, under s 274 of the Civil Procedure Code of the interest in immovable property and its sale according to the provisions of the Code. *Taraddi Bholanath v Bai Kashi, I L R 28 Bom 305 explained. MANILAL JAYCHOD v MOTIBHAI HEMABHAI (1911)*

I L R 35 Bom 288

3 ————**Usufructuary, if implies personal covenant to pay—Suit against debtor personally on usufructuary mortgage—Limitation Act 1877, Sec 11, Art 115.** Every loan implies a promise to repay, and an unqualified admission of indebtedness is equivalent to an express covenant and creates a personal obligation. *Keer v Ruxton, 4 C L J 510, referred to.* A usufructuary mortgage providing for the repayment of the mortgage debt with interest from the rents and profits of the mortgaged property within a specified period on the expiry of which the mortgagor is to be put in possession, while prescribing a mode of payment, does not neces-

MORTGAGE—contd**USUFRUCTUARY MORTGAGE—contd**

sarily imply that the creditor is limited to that mode alone, if it is found insufficient to satisfy the debt. There was clearly a personal obligation to pay where the document expressly provided that the debtor would be responsible for the deficiency. *Marotam v Shro Panchab*, 1 P 111 A 53 1 I R 10 Cal 749 and *Kaila Singh v Lora Ram L B 22 I A 88*, 1 I P 22 Cal 434 distinguished. *Parbat (Karan v Corinda Chandra)*, 4 C I J 246, referred to. A suit to recover from the debtor personally money due on a registered mortgage bond, is a suit for compensation for the breach of a contract in writing registered within the meaning of Art 116 of Sch. II of the Limitation Act. *Kerr v Rastogi*, 4 C I J 519 relied on. *Sobh Cooper v Sir Mullaik I L B 6 Cal 91*, and *Hassan Ali v Hojaj Ali*, 1 L B 3 48 699, referred to. *Held* on a construction of the document, that the present case fell within the second division of Art 116 of Sch. II of the Limitation Act. Where the mortgage bond provided that a specified sum would be paid out of the income of certain properties at prescribed times towards the satisfaction of the debt but the document gave the debtor seven years time altogether for the repayment of his loan. *Held* that it could not be held upon a construction of the document as a whole that whenever the mortgagee found it impossible to collect the sums mentioned at the appointed time, there was a breach of contract and that time ran from the date of each successive breach. The intention was that the liabilities of the parties should be adjusted on the expiry of the term and time ran from that date. *Ram Narain Singh v Oodiyora Nath Mukherjee* (1911). . . . 17 C W. N 339

4. ———— *Covenant to pay money due on simple mortgage before redemption of the usufructuary mortgage—Suit on simple mortgage barred by limitation—Redemption of usufructuary mortgage.* Plaintiff executed a usufructuary mortgage and later executed a simple mortgage in favour of the defendant. In the latter bond he covenanted not to redeem the usufructuary mortgage till he had paid the money due on the second bond. The present suit was brought to redeem the usufructuary mortgage at a time when if the defendant had to sue on the simple mortgage it would have been barred by limitation. *Held* that the plaintiff was entitled to redeem the first mortgage without paying money due on the second bond. *Krishna Kumbhar v Kasht Ram* (1913). . . . 1 L R 27 All 634

5. ———— *Contract on of—Balance remaining due to mortgagee at end of term of mortgage—Allegation in plaint of wrongful acts by mortgagee by which mortgagee was deprived of part of his security—Transfer of Property Act (I) of 1882, ss 53, 59 and 63—Mortgage deed was void and not enforceable as a mortgage—Privy Council, practice of—Preliminary and rehearing after decision of cases ex parte.* The question for determination on this appeal was whether the respondents (mortgagees) were entitled to recover from the appellant (mortgagor) the balance due on a usufructuary mortgage dated 14th April 1896 where it was alleged that they had been deprived of part of their security by the wrongful acts of the mortgagor. It had been calculated that the amount borrowed, with interest, would be paid off by the

MORTGAGE—contd**USUFRUCTUARY MORTGAGE—contd**

rents of the properties mortgaged, on 14th January 1903 when they were to be returned to the mortgagee. Both parties acted on the deed. But on the date mentioned it was found that the mortgagee in possession had not by the collection of the rents received sufficient to discharge the principal of the loan with interest as mentioned in the deed. In a suit brought by the mortgagee on 13th January 1903, the deficiency was attributed in paragraph 6 and 17 of the plaint to the facts that the defendant (mortgagor) had taken rents which should have gone to the mortgagee but which had not been paid over to him by the mortgagee and that the rents in some cases were less than those mentioned in the deed and those were wrongful acts complained of. The claim was for a mortgage decree under O XXIV, r 4 of the Civil Procedure Code, 1904, or in the alternative for a decree for the amount due on the footing of the personal liability of the mortgagor. In the course of the suit it appeared that the mortgage deed had not been attested and the Subordinate Judge felt that it could not have regard to a 59 of the Transfer of Property Act (I) of 1882), be enforced as a mortgage, which decision as it was not appealed from became final. The sole question therefore was whether the mortgagee was personally liable. The facts on which the allegations of wrongful acts by the mortgagee were based were not investigated but both Courts in India held that on the construction of the deed it imposed a personal liability on the mortgagor and they made decrees in his favour. *Held* (reversing those decisions) that the nature and terms of the deed were such as to show that it was not originally intended that the mortgagor should be personally liable. The respondent ought to be given an opportunity of proving the allegations in paragraphs 6 and 7 of the plaint and of establishing that those facts were sufficient to bring a 59 of the Transfer of Property Act into operation. The position of the mortgagee under that section could not, however, by reason of the deed be better than it would have been if the mortgage had been duly attested. The case was for that purpose remitted to India for further trial. After the appeal had been heard ex parte and judgment had been given in favour of the appellant the respondents were allowed to have it reinstated and reheard on the ground that the person with whom they came to an agreement to defend the appeal on their behalf and to whom they advanced funds to pay the expenses of entering appearance and taking other necessary steps, in the conduct of the appeal defrauded them. Mortgagee plaintiff the money without doing anything in the matter of the appeal and left them in complete ignorance of its progress, until they discovered that there was not a word of truth in his misrepresentations and that the appeal had been decided ex parte against them. They had to pay the costs of the first hearing as the appellant was in no way to blame. *Ram Narain Singh v Adhishdra Nath Mukherjee* (1916). . . . 1 L R 44 Cal 398

MISCELLANEOUS

1. ———— *Suit to enforce earlier mortgages without joining the claim under the latest mortgage—Mortgageability.* There is nothing in law to

MORTGAGE—contd

MISCELLANEOUS—contd

prevent a person who has several mortgages over the same property from bringing a suit on the earlier mortgages without joining in that suit his claim under the latest, if he does not in such a suit pray for the sale of the property subject to the latest mortgage. *Kesharram Dulafram v Ranchhod Walra*, 1 L R 30 Bora 156, *Dorasami v Venkata Seshagayyar*, 4 C W N 814, *Bhagwan Das v Bhawanji*, 1 L R 26 All 14, *Rattu Krishnama Chariar v Annangara Chariar*, 1 L R 39 Mad 353, referred to. *GOPINDA PRASAD v LALA HARIBAB CHARAN* (1910) 1 L R. 38 Calc. 60 14 C W N 1053

2 ——— Two mortgages advancing money in equal shares—Discharge of debtor by one not binding on the other. One of two mortgagors who have advanced the mortgage money equally cannot give a good discharge for the entire mortgage debt without the consent of or reference to his co-mortgagee. *Manzur Ali v Mahmud un nissa*, 1 L R 25 All 155, followed. *Bhup Singh v Zain ul Abidin* 1 L R 9 All 205, and *Barber Maran v Ramana Goundan*, 1 L R 20 Mad 461, distinguished. *RAM CHANDRA v. GOSWAMI RAJYAN LAL* (1909) 1 L R. 32 All. 163

3 ——— Gross and culpable negligence of vendor (first mortgagee) in leaving title deeds with vendee (mortgagor)—Neither prior mortgage postponed thereby in favour of subsequent mortgage by deposit of title deeds—Search in *Registration of Property Act (IV of 1882)*, ss 3, 78. S 78 of the *Transfer of Property Act* makes its three ingredients "fraud misrepresentation or gross negligence" disjunctive and one cannot be defined in terms of the other or others. They are three different kinds of conduct and are in no way co-extensive. *Manindra Chandra Vandy v Troy Juckho Nath Barai* 2 C W N 759, discussed and distinguished. *Walker v Linom*, [1907] 2 Ch 104 followed. Neglect to recover the title deeds by a vendor from a vendee who has secured the greater part of the purchase money to the vendor by giving him a mortgage on the property itself, when the vendor has full notice that the vendee is impecunious and a bad paymaster, and thereby the vendee is enabled to obtain a second mortgage on the property by deposit of the title deeds is gross and culpable negligence (which postpones the prior mortgagee), and is rendered more so by a deliberate suppress on of the existence of the mortgage in the sale deed and a suggestion that the purchase money was required in cash and paid accordingly. *Colper v Finch*, 5 H L 295, followed. Registration not being itself notice, a search made by the clerk to the solicitor to the vendee (mortgagor), who has an interest to conceal the encumbrance from the second mortgagee, cannot saddle the latter with notice of the encumbrance. *Madras Building Company v Rocklandson*, 1 L R 13 Mad 353, 1 L R 15 Mad 256, and *Manya Karanbhai v Hoobas*, 1 L R 35 Bom 312, followed. *NANDA LAL ROY v ABDUL AZIZ* (1911) 1 L R 43 Cal. 1052

4. ——— Framing suit—A suit brought to enforce a mortgage against a person as the legal representative of the mortgagor cannot be thrown out as improperly framed because the defendant sets up a title paramount to that of the mortgagor in the mortgaged premises. *Jogirewar*

MORTGAGE—contd

MISCELLANEOUS—contd

Dutt v Bhudan Mohan Mitter, 1 L R 30 Cal. 425 sc 3 C L J 205, distinguished. *Bhaja Chaudhary v Chuni Lal Marwari* 5 C L J 95 sc 11 C W N 254, relied on. *NARAY CHANDRA KOONDGO v RATAN MALA* (1910)

15 C W N 66

5 ——— Mortgage of *sur land*—Purchase of proprietary rights by mortgagee—Suit for redemption—Amount payable by mortgagor. After a usufructuary mortgage of certain *sur lands* the mortgagee at an auction sale in execution of a simple money decree purchased the proprietary rights in the mortgaged property, the mortgagor becoming an ex proprietary tenant. On a suit for redemption being brought *Held*, that the mortgagee having himself broken up the integrity of his security, could not be permitted to cast the whole burden of the debt upon the ex proprietary rights. *Bisheshwar Dial v Pam Sarup* 1 L R 22 All 284, referred to. *CHUNY LAL v SIKISHAN SINGH* (1911) 1 L R 33 All 434

6 ——— Mortgage of *math* properties—*Math*, *Mahant* of, dispute between rival *chellars* to succeed to—Mortgage of *math* properties by *chellars* who established will but never got possession—Compromise, *chellars* agreeing to manage *math* properties jointly—Mortgage, if valid—Onus. On the death of the *Mahant* of a *math*, disputes arose between two *chellars* one of whom succeeded in establishing a will in his favour purporting to be that of the deceased *Mahant* but could not get possession and the other who alleged that he had been installed by the deceased as his successor, managed to obtain and keep possession of the properties of the *math*. Pending these disputes the former executed the mortgage in suit hypothecating *math* properties. Soon after there was a compromise between the claimants under which the survivor of the two was to be the *Mahant* and till the death of one of them neither was to take the place of the deceased but both should jointly manage the properties and the survivor would be bound to repay loans jointly raised by the claimants. No provision was made in the compromise regarding the discharge of the mortgage in suit. *Held*, that the mortgagee was aware that the property mortgaged was property of the *math* and that the mortgagor had not succeeded in establishing his title as *Mahant* and that this suit to enforce the mortgage should fail. *MADHO PRASAD v MAHANT KAMRATTAN GIN* (1911) 15 C W N 839

7 ——— Suit upon a mortgage executed by Hindu widow and reversioner—Investigation of mortgagor's title not permissible in mortgage suit. In a suit upon a mortgage where it was proved that the mortgage deed had been duly executed by a Hindu widow and her reversioner it is not open to the Judge to investigate the mortgagor's title, nor is it permissible to the mortgagee to deny their title and judgment should be given for the plaintiffs with costs. *GOPAL CHANDER SHAW v JADUMONEY DASSEE* (1911)

15 C W N. 915

8 ——— Mistake of fact in—Knowledge of mistake by second mortgagee—Notice—Specific Relief Act (I of 1877), s. 31. A second mortgagee who has advanced money with the knowledge of a mutual mistake of fact between the mortgagor

MORTGAGE—contd

MISCELLANEOUS—contd

and the first mortgagee as to the subject matter of the first mortgage has notice of that mistake of fact and cannot plead that he has acquiesced in his rights in good faith under s 31 Specific Relief of Act. Where a plaintiff alleges a mutual mistake of fact extrinsic evidence of such mistake is admissible although no rectification thereof is prayed for. *Karuppa Goundan alias Thoppala Goundan v Periyathambal Goundan*, 1 L R 30 Mad 397 followed. *MAHADEVA AIYAR v GOFALA AIYAR* (1910) 1 L R 31 Mad. 51

9 ——— Administration—Co mortgagees—Appointment of a mortgagee as administrator or to mortgagee a estate—Extinguishment of debt—Plaintiff by co mortgagee as administrator against mortgagee as he is instead of mortgagee as administrator—Improper frame of suit—Limitation—Pro forma defendant transfer of—Limitation on Act (XV of 1877) s 20—Mortgage administrator's right to sue set. A S the father of the two defendants executed a mortgage bond in favour of A J repayable on the 16th October 1894. Subsequently A S executed a second mortgage in favour of A A and A N repayable on the 14th March 1896. A J transferred his security to A A and A N. In 1896 A S died leaving an infant daughter and infant son the present defendants as heirs. In 1897 A N took out letters of administration to the estate of A S and was at all acting as administrator when the present suit was instituted. In 1897 A A died and A N took out a succession certificate to collect the debts due to his estate. In 1903 the plaintiff took out letters of administration to the estate of A A. On the 2nd October 1906 shortly before the expiry of 12 years from the date on which the first security was repayable the plaintiff as administrator brought the present suit for the recovery of Rs 1524 on both securities against the defendants and joined A N as a pro forma defendant. A N showed that he was always ready to join the plaintiff and on the 20th December 1906 his name was transferred from the category of defendant to that of plaintiff. Held that the appointment of one of the mortgagees as administrator to the estate of the mortgagor did not extinguish the right of action of the mortgagee other than the one who was appointed administrator and had sufficient assets to satisfy his own share of the debt. The mortgagee administrator could not however maintain an action on *Wentford v Wentford* 1 Salted 229. *In re Caer & Co* 4 Ir Ch Rep 110. *Harishwar Pershad v Bhoji Pershad* 6 C L J 333. *Maitron v Dennis* 4 De G J & S 315. *Vickers v Conwell* 1 Eras 599. *Smith v Skithope* 31 Ch D 730. *Powell v Brodhurst* [1910] 2 Ch. 160. *Steds v Steds* 22 Q B D 637. *Morley v Brad* 3 Ves 679. *Sitarum v Shrivihar* 1 L R 28 Bom 299. *Tamman Sugh v Lochman Kunawari* 1 L R 6 All 318 followed. *Banerjee v Nichols* L R 6 Fg 268. *Dexter v Arnold* 3 Moore 231. *Lowe v Pesket* 16 C B 569. *Berber Maran v Ramana Goundan*, 1 L R 20 Mad 451 dated 1906. *Bcha d v Molony* 2 Ir Ch Rep 1 and *Wallace v Kellogg* 7 M & W 264 disapproved from. Held also that the appointment of A V as administrator vested in him the estate of A S under s 4 of the Probate and Administration Act 1881 and the suit should therefore have been brought against him and not against the heirs. *Clegg v Rowland* L R 3 Fg 368. *Beresford v Ramasubbai*, 1 L R 13 Mad 197. *Francis v*

MORTGAGE—contd

MISCELLANEOUS—contd

Harrison 43 Ch D 183. *Morley v Morley* 25 Beav 253 distinguished. *Jaggewar Prutt v Babban Mohan Hittia* 1 L R 33 Calc. 425 referred to. The transfer of a party from pro forma defendant to plaintiff is not an addition of a new party within the meaning of s. 20 of the Limitation Act. *Nayendrabala Debba v Tara pada Aclaryee* 8 C L J 286. *Khad v Mouden v Rama Nank* 1 L R 17 Mad 190 followed. *Abdul Rahaman v Amir Ali* 1 L R 31 Calc 612 dated 1905. *Pyari Mohan Bose v Kedarnath Poo* 1 L R 26 Calc 403 referred to. No interest should be allowed to a mortgagee administrator from the date when sufficient assets became available to him for repayment of the mortgage money. *Robinson v Crampton* 2 Atk 469. *Pope v Lloyd* 5 Peters 304 and *Adams v Calc* 2 A k 106 referred to. *HOSAINABA BEGAM v PAHMANWESSA BEGAM* (1910) 1 L R 33 Calc 342

10 ——— Whether security kept alive for benefit of person making payment—Mortgage, discharge of. The question whether a mortgage which has been satisfied is to be construed as extinguished or kept alive for the benefit of the person who makes the payment is a question of intent on to be determined with reference to the surrounding circumstances as they exist at the time when the mortgage is discharged. If it is to the advantage of the person paying that the security should be kept alive the law will presume that he intended to keep it alive. *Bhawani Koer v Mathura Prasad* 1 C L J 41 referred to. *MAHALAKSHMINIMAL v SRINIVASA MADHWA SIDDHANTA GOVINDA NIDHI* LD (1910) 1 L R 35 Mad. 812

11 ——— Prior and subsequent mortgages—Suit by first mortgagee with impleading second—Decree and sale—Subsequent suit by second mortgagee against purchasers under decree in first suit—Plaintiff held bound to redeem first mortgage. The plaintiff brought his suit for sale of certain property in satisfaction of a mortgage of the year 1877 which was a renewal of a mortgage of 1876. The defendants were purchasers at a sale in execution of a decree on a mortgage which bore a later date in 1875 than the plaintiff's first mortgage but was a renewal of a previous mortgage of 1869. To the suit in which the decree had been passed the plaintiff had not been made a party. The defendants had been in possession of the property 20 years purchased by them for some twenty years. Held that the plaintiff had no absolute right to bring the property to sale in satisfaction of his mortgage subject to the mortgage of 1869 and that in the circumstances he ought to redeem that mortgage before bringing the property to sale. *Matu D n Kaseodan v Ram Huse* 1 L R 13 All 430. *Ram Shankar Lal v Ganesh Prasad* 1 L R 29 All. 385. *Raj Prasad v Bhagwan Das* 1 L R 4 All. 198. *Kanki Ram v Kanki datt Mohomed* 1 L R 22 Calc. 33. *Baldeo Prasad v Uman Shankar* 1 L R 30 All. 1. *Matiullah Khan v Banwari Lal* 1 L R 32 All. 138. *Kanoo Lal v Heloo Singh* 9 All. L J 29. *Gangayan Yankala amara Iyer v Henry James Colley Gompie* 1 L R 31 Mad 476 and *Har Pershad Lal v Dalmardan Singh* 1 L R 32 Calc 891 referred to. *Dindendra Narayan Poy v Ramnarayan Paterjee* 1 L R 30 Calc 599 discussed and doubted. *MAHOMAR LAL v PAN BART* (1910) 1 L R 34 All 523

MORTGAGE—contd.

MISCELLANEOUS—contd

12 ——— Prior and subsequent mortgages—Release of part of mortgaged property for less than its value—Suit for recovery of entire balance of mortgage debt from the remainder of mortgaged property *Held*, that a first mortgagee cannot be allowed to release part of the mortgaged property for less than its due proportion of the mortgage money and then claim a decree against the mortgagor and a puisne mortgagee for the recovery of the whole of the balance of the mortgage money out of the remainder of the property. *Mir Ekus Ali Haji v Panchanan Chatterjee*, 15 C W N 800, *Hars Aissen Bhagat v Velast Hossein*, 1 L R 30 Cal 755, and *Ponnusami Mudaliar v Srinivasa Naickan*, 1 L P 31 Mad 333 referred to. *JUGAL KISHORE SAHU v KEDAR NATH* (1912) 1 L R 34 All 608

13 ——— Company—Mortgage—Managing agents—Articles of association, breach of by managing agents—Acts requiring approval of directors—Presumption regarding internal management—Validity of deed irregularly executed—Equitable security—Winding up—Lease—Liquidators in possession—Acquiescence of landlord—Errors of rents and royalties, whether secured debts. The company's articles of association empowered the managing agents, with the approval of the directors, to borrow or raise sums of money for the purposes of the company, and to secure repayment of such sums by mortgage or charge of the property of the company, and to draw all such instruments as should be necessary for the carrying on of the business of the company, and directed that every instrument to which the seal of the company was affixed should be signed by at least one director, and countersigned by the managing agents. *L. D.*, a stranger, advanced money to the company which was credited in the company's books under loan account, and was given an instrument by way of hypothecation or security to which was affixed the seal of the company and which was signed by the managing agents, but it did not sufficiently appear that the money had been borrowed with the approval of the directors and the instrument was not signed by any of the directors as required by the articles. *Held* that it was not necessary to show the approval of the directors, inasmuch as this was a matter of internal management regarding which the lender was if he knew nothing to the contrary entitled to assume as against the company that the managing agents had the authority or approval of the directors. *The Royal British Bank v Turpin & Co Ltd & El 327*, *In re County Life Assurance Co*, 1 T & C App 233, *County of Gloucester Bank v Dudley Merthyr Colliery Co*, [1895] 1 Ch 629 and *In re Bank of Syria*, [1901] 1 Ch 115 followed. With regard to the signature of a director, even if the security be not complete, the lender who had advanced money to the company upon the terms that security should be given him, is entitled under the rules of equity to have a charge upon the property of the company. *In re Queensland Land and Coal Co*, [1894] 3 CA 181, and *Peppas v South Transvaal Co, Ltd*, [1905] 1 Ch 253 followed. Where a landlord to whom rents and royalties are payable by a company which goes into liquidation, acquiesces in the liquidators retaining in possession of the property leased, he cannot claim to be a secured creditor in respect of arrears of

MORTGAGE—contd

MISCELLANEOUS—contd

such rents and royalties. *CHAPNOCK COLLIERIES Co, Ltd, v BHOLAKATH DHAR* (1912) 1 L R 39 Cal 810

14 ——— Right of reversioner partly to mortgage to question surrender in favour of mortgagor. A Hindu mother inheriting one fifth share on death of *S* one of her five sons, gave it up to her remaining sons in consideration of an annuity. The interest of *S* derived by three of the sons, under the surrender was subsequently mortgaged. In a suit to enforce the mortgage instituted against the mother who had inherited the shares of the mortgagors in which *M*, the sole surviving son was joined as a party as reversioner the mother dying during the pendency of the suits. *Held* that the fact that *M*, the sole reversionary heir of *S*, was a party to the mortgage suit would not preclude him from questioning the validity of the surrender and establishing such right to one fifth share of *S* as he might have as a reversioner entitled to possession. The circumstances under which a *pardara* Hindu lady agrees to sell or mortgage property must be carefully examined to ascertain she had independent advice and sufficient intelligence. *MATI LAL DAS v THE EASTERN MORTGAGE AND AGENCY CO, Ltd* 22 C W N 165

15 ——— Paddy loan—Lands mortgaged to secure repayment of price of paddy—Money charged upon immovable property—Limitation—Limitation Act (IX of 1908), Sec 1, Art 12. Where paddy had been borrowed on an agreement to repay the price of the paddy with interest thereon on default the mortgagee being entitled to recover the same by attachment and sale of the mortgagor's lands which were given in mortgage, in a suit to enforce the mortgage bond. *Held* that the money was charged upon immovable property, and Art 132 Sec 1 of the Limitation Act was applicable. *Pashchhari Das v Anupabikari Patra* 21 C L J 349 distinguished. *Srinivas Lall Dutt v Sarat Chandra Mondal* 22 C B N 160 and *Ashwini Singh v Haradshan Das* 13 C B N 1, *eluzio* *n*, referred to. *INDRA NARAIN SHARMA v DRISABAN SAMANTA* (1919) 1 L R 47 Cal 125

16 ——— Priority in the mortgage—Sub-mortgage including property in Calcutta—Suit by sub mortgagee—Home of law—Jurisdiction of High Court—Waver—Levy, dicta. The mortgagee of a certain property situate in the mofussil transferred his interest therein to a sub mortgagee and included in that document a certain other property in Calcutta as further security. *Held*, that the sub mortgagee could not enforce in the mofussil Court the security under the original mortgage against the original mortgagee just as the mortgagee might have done. *Held*, also, that the sub mortgagee might also sue the mortgagor on the Original Side of this Court and for his equity of redemption. *Held*, also, that the sub mortgagee could not be allowed by the inclusion of two claims in one suit against his mortgagee and against the original mortgagor in respect of properties situated as regards one of them in the mofussil alone to make the composite suit against both the defendants maintainable in the Original Side of this Court. *Potterjee & Co Ltd, Ltd v Shargere Ltd*, 1 L P 25 Cal 824, *Sarat Chandra Roy Choudhury v M D Baidya*, 1

MORTGAGE—contd**MISCELLANEOUS—contd**

and the first mortgagee as to the subject matter of the first mortgage has notice of that mistake of fact and cannot plead that he has acquired his rights in good faith under s 31 Specific Relief Act. Where a plaintiff alleges a mutual mistake of fact extrinsic evidence of such mistake is admissible although no rectification thereof is prayed for. *Karappa Goundan alias Thoppala Goundan v Periyathambi Goundan*, 1 L R 30 Mad 397 followed. *MAHADEVA AIYAR v GOPALA AIYAR* (1910) 1 L R 34 Mad. 51

9 ——— Administration—Co mortgagees—Appointment of a mortgagee as administrator to mortgagee's estate—Extinguishment of debt—Partes—Suit by co mortgagees as administrators against mortgagee's heirs instead of mortgagee's administrator—Improper frame of a suit—Liability—Pro forma defendant transfer of—Limit on Act (XV of 1877) s 22—Mortgage administrator's right to interest. A S the father of the two defendants, executed a mortgage bond in favour of A J repayable on the 16th October 1894. Subsequently A S executed a second mortgage in favour of A A and A N repayable on the 14th March 1896. A J transferred his security to A A and A N. In 1898 A S died leaving an infant daughter and infant son the present defendants as heirs. In 1897 A N took out letters of administration to the estate of A S and was still acting as administrator when the present suit was instituted. In 1897 A A died and A N took out a success on certificate to collect the debts due to his estate. In 1902 the plaintiff took out letters of administration to the estate of A A. On the 22nd October 1906 shortly before the expiry of 12 years from the date on which the first security was repayable the plaintiff as administrator brought the present suit for the recovery of Rs 1524 on both securities against the defendants and joined A N as a pro forma defendant. A N showed that he was always ready to join the plaintiff and on the 20th December 1906 his name was transferred from the category of defendant to that of plaintiff. Held that the appointment of one of the mortgagees as administrator to the estate of the mortgagor did not extinguish the right of action of the mortgagee other than the one who was appointed administrator and had sufficient assets to satisfy his own share of the debt. The mortgagee administrator could not however maintain an action. *Wankford v Wankford* 1 Salted 299 in re *Curell* 4 Ir CA Rep 112. *Haniff Pershad v Bhatt Pershad* 6 C L J 383. *Mateem v Dennis*, 4 DeG J & S 315. *Tuckers v Cowell* 1 Bear 529. *Smith v Sidthorpe* 24 Ch D 732. *Powell v Brookhurst* [1910] 2 Ch 160. *Steele v Steele* 22 Q B D 537. *Morley v Erd* 3 Ves 679. *Sitaram v Shrivakar*, 1 L R 26 Bom 297. *Tamman Singh v Lakshmin Kulkarni* 1 I P 26 All 318 followed. *Biswas v Nichols* L R 2 Eq 216. *Dexter v Arnold* 3 Mason 284. *Lowe v Peckell* 16 C B 600. *Barber Maran v Ramana Goundan* 1 L R 20 Mad 491 distinguished. *Pickard v Molony* 2 Ir CA Rep. 1 and *Wallace v Kelsoff* 7 M & W 261 distinguished from. Held also that the appointment of A N as administrator vested in him the estate of A S under s. 4 of the Probate and Administration Act 1881, and the suit should therefore have been brought against him and not against the heirs. *Clegg v Bowland*, L R 3 Eq 368. *Beresford v Ramaswami*, 1 L R 13 Mad. 197. *Francis v*

MORTGAGE—contd**MISCELLANEOUS—contd**

Harrison 43 CA D 183. *Morley v Morley* 25 Bear 253 distinguished. *Jaggeswar Dutt v Bhuvan Mohan Mitter* 1 L P 33 Cal 425 referred to. The transfer of a party from pro forma defendant to plaintiff is not an addition of a new party within the meaning of s 22 of the Limitation Act. *Angendrabala Delya v Torapada Acharjee* 8 C L J 286. *Khad'r Mouden v Rama Naik* 1 L P 17 Mad 12, followed. *Abdul Rahaman v Amir Ali* 1 L R 34 Cal 612 distinguished. *Piyari Mohan Dose v Kedarnath Poy* 1 L R 26 Cal 409 referred to. No interest should be allowed to a mortgagee administrator from the date when sufficient assets became available to him for repayment of the mortgage money. *Robinson v Cumming* 2 All 402. *Puge v Lloyd* 5 Peters 301 and *Adams v Gale*, 2 All 106 referred to. *HOSAINARA BEGAM v RAHMANESSA BEGAM* (1910) 1 L R 35 Cal 242

10 ——— Whether security kept alive for benefit of person making payment—Mortgage discharge of. The question whether a mortgage which has been satisfied is to be construed as extinguished or kept alive for the benefit of the person who makes the payment is a question of intent on to be determined with reference to the surrounding circumstances as they exist at the time when the mortgage is discharged. If it is to the advantage of the person paying that the security should be kept alive, the law will presume that he intended to keep it alive. *Bhuvan Koor v Mathura Prasad* 1 C L J 31 referred to. *MAHALAKSHMINAMMAL v SRINIVAS MADHWA SIDDHANTA OOMATHI NIDHI* Ltd (1912) 1 L R 35 Mad. 642

11 ——— Prior and subsequent mortgages—Suit by first mortgage with impleading second—Decree and sale—Subsequent suit by second mortgagee against purchasers under decree in first suit—1st plaintiff held bound to redeem first mortgagee. The plaintiff brought his suit for sale of certain property in satisfaction of a mortgage of the year 1877 which was a renewal of a mortgage of 1875. The defendants were purchasers at a sale in execution of a decree on a mortgage which bore a later date in 1875 than the plaintiff's first mortgage, but was a renewal of a previous mortgage of 1869. To the suit in which this decree had been passed the plaintiff had not been made a party. The defendants had been in possession of the property so purchased by them for some twenty years. Held that the plaintiff had no absolute right to bring the property to sale in satisfaction of his mortgage subject to the mortgage of 1869 and that in the circumstances he ought to redeem that mortgage before bringing the property to sale. *Mata Din Kasodhan v Ka im Husa* 1 L R 13 All 439. *Ram Shankar Lal v Ganesh Prasad* 1 L R 29 All 385. *Har Prasad v Bhagwan Das* 1 L R 4 All 196. *Kanai Ram v Kuttub-uddin Mahomed* 1 L R 22 Cal 33. *Baldes Prasad v Lman Shankar* 1 L R 32 All 1. *Mata-ullah Khan v Panwar* Lal 1 L R 32 All 133. *Kanai Lal v Rulas Singh* 9 All L J 29. *Campbell Vankararamana Iyer v Henry James Colley Gompert* 1 L P 31 Mad 495, and *Har Pershad Lal v Dalimardan Singh*, 1 L R 32 Cal 491 referred to. *Debrunda Narain Poy v Ramaran Danerjee* 1 L R 30 Cal 599 discussed and doubted. *MAHOMAD LAL v RAM BABU* (1912) 1 I R 34 All 323.

MORTGAGE BOND—contd.

full settlement of the debt due, the mortgagor is entitled to get credit, as against the transferee, not only for what he actually paid but for the whole mortgage debt. Where a receipt by the mortgagee, in terms, only discharges a mortgage debt, it does not fall under s 17 (b) of the Registration Act, and is admissible in evidence, though it was not registered. Where, in a suit for sale instituted by the transferee of a mortgage bond against the mortgagee and mortgagor, a decree was passed against the latter, but on appeal by him, the decree against him was reversed, the Appellate Court had power, under O XII, r 33, Civil Procedure Code, to pass a decree against the mortgagee, who was a respondent in the appeal, even though the plaintiff had not filed an appeal or memorandum of objections. *NEELMANI PATTAIK MISSADEV v. SURADUV BEHARU* (1920) 1 L. R. 43 Mad. 803

MORTGAGE BY KARNAYAN.

See *MORTGAGE*. 1 L. R. 37 Mad. 420

MORTGAGE-DEBT.

See *CIVIL PROCEDURE CODE* (ACT V OF 1908), ss 11, 47 1 L. R. 37 Bom. 41

See *TRANSFER OF PROPERTY ACT* (IV OF 1882), s 90. 1 L. R. 34 Bom. 540

—*Mortgage debt, is movable or immovable property* Under the Hindu, as under English law, a mortgage is treated as personal or movable property, the land being considered as merely a pledge or security for the money lent. *SURESHWAR MISSEER v. MORESH RAO MESRAI* (1915) . . . 20 C. W. N. 142

MORTGAGE DECREE.

See *APPEAL*. 1 L. R. 41 Cal. 418

See *CIVIL PROCEDURE CODE* (ACT V OF 1908), ss 47, 73, 104

1 L. R. 39 Mad. 570

s 43 1 L. R. 40 Mad. 989

O XXXIV

See *COURT FEES* 4 Pat. L. J. 191

See *DAMNIFAT, RULE OF*

1 L. R. 40 Cal. 710

See *DECREE* 3 Pat. L. J. 478

See *EQUITABLE MORTGAGE*

1 L. R. 38 Cal. 824

See *EXECUTION OF DECREE*

1 L. R. 40 Cal. 704

See *INSOLVENCY*. 1 L. R. 42 Cal. 72

See *MORTGAGE*

See *SALE*. 1 L. R. 48 Cal. 69

See *SALE IN EXECUTION OF DECREE*

1 L. R. 44 Cal. 524

See *SPECIFIC RELIEF ACT*, s 12

3 Pat. L. J. 182

—decree nisi—

See *DEKKHAN AGRICULTURISTS' RELIEF*

ACT (XVII OF 1879), s 15B

1 L. R. 43 Bom. 477

—When personal decree will be given

as well—

See *CIVIL PROCEDURE CODE* 1908, O

XXXIV, s 6 6 Pat. L. J. 108

—*Held, upon a construction of the mortgage decree sought to be executed*

MORTGAGE DECREE—contd.

that the direction as to payment of interest at the rate stipulated in the bond "up to the date of payment" referred not to the date fixed by the preliminary decree for payment but to the date of actual realisation of the money. *RADHIKA MOHAN GHOSH v. BROJENDRA KUMAR SANA*

14 C. W. N. 125

1 (a). ——— Mortgage-decree, if also money decree and if decree holder may be allowed to execute against other property before exhausting security—*Civil Procedure Code*, 1908, s 73, O. XXXIV, rr 6, 6, and O XXI, rr 10 12, 13—*Transfer of Property Act* (IV of 1882), s 90. Where the holder of a mortgage decree applied to Court for an order to be allowed to execute the mortgage-decree as a money decree by attachment of some other property or for the passing of a supplemental decree for the purpose, but at the same time reserving his rights under the mortgage decree, on his giving an undertaking not to take any steps as against the mortgaged property till he has exhausted the other property. *Held*, that such an order could not be made having regard to O XXXIV, rr 5 and 6 of the Code of Civil Procedure. *Hari v. Tara Prasanna Mukerjee*, 1 L. R. 11 Cal. 718, commented on. A decree passed in a mortgage suit and directing the realization of the decretal amount from the mortgaged property and, if insufficient, from the defendant personally, is a mortgage decree and not a money decree. *Fasil Howladar v. Krishna Bandhoo Roy*, 1 L. R. 25 Cal. 580, *Lal Behary Singha v. Habibul Faohman*, 1 L. R. 26 Cal. 186, *Arituck Nath Pandey v. Juggernoth Ram Marwari*, 1 L. R. 27 Cal. 285, referred to. A person who has taken a mortgage decree should not be allowed to treat it as a money-decree and to execute the decree against other properties without exhausting his remedies in respect of the security under his decree. It is only after sale of the mortgage security that a decree for the balance due on the mortgage may be given, if it was recoverable from the mortgagor personally and his other property and the decree may be executed as an ordinary money decree. *Gopal Das v. Ali Mohammed*, 1 L. R. 10 All. 632, *Ram Runjan Chakrobarty v. Indra Narain Das*, 10 C. W. N. 862, 1 L. R. 33 Cal. 890, referred to. *SURJA KUMAR KARPHORA v. PRAMADA SUNDAREE DEBI* (1913) . . . 17 C. W. N. 1039

2. ——— Application for order absolute—*Transfer of Property Act* (IV of 1882), ss 85 and 89—*Successee applications within three years of each preceding application*—*Last application within twelve years of decree, if barred*—*Indian Limitation Act* (IX of 1908), Arts. 181, 182, 183—*Preliminary decree, executability of*—*Civil Procedure Code* (Act V of 1908), s 43. A decree for sale was passed in a mortgage suit on the 7th October 1901, and an application for order absolute was made on the 6th April 1904, subsequent applications were made in 1907, 1910 and 1912 all within three years of the immediately preceding application; notices were sent to the judgment debtor in most of the applications, but the latter were all dismissed without the relief prayed for being granted; the last application was made on the 15th April 1912; the judgment-debtor objected that the application was barred by limitation as more than

MORTGAGE—contd.**MISCELLANEOUS—contd.**

L R 37 Calc 507 and Harindra Lal Roy Chowdhury v Hari Das Deb I L R 41 Calc 372, I R 51 I A 110 referred to. Where the decision of the Court is void for want of jurisdiction over the subject matter of a suit it cannot operate as *res judicata* in order that a judgment may be conclusive between the parties the essential prerequisite is that it should be the judgment of a Court of competent jurisdiction under s 11 of the Civil Procedure Code. Where a Court judicially considers and adjudicates the question of its jurisdiction and decides that facts exist which are necessary to give it jurisdiction over the case the decision is conclusive till it is set aside in an appropriate proceeding. But where there has been no such adjudication the decree remains a decree without jurisdiction and cannot operate as *res judicata*. *Krishna Kishore De v Anant Khettry (1920) I L R 47 Calc 770*

17. — non joinder of all heirs of mortgagor—Decree for proportionate amount against defendants on record. All the heirs of mortgagor not made parties—Suit, if liable to be dismissed for non joinder of parties. A mortgage suit in which all the heirs of the mortgagor were not made parties had been dismissed by the lower Courts for non joinder of parties. Held that the plaintiffs were at the least entitled to a decree for a proportionate share of the mortgage money as against the defendants who were on the record. Even if it be assumed that the persons who had been left out, could if joined have successfully urged the plea of limitation that would not afford a defense in favour of the persons who had been joined as parties within the prescribed time. *Imam Ali v Bayanath Ram Sahu I L R 33 Calc 613 s c 10 C W N 551 (1906)* followed. *HAN CHANDRA ROY v MAHAMED HUSAIN 25 C W N 594*

18. — Of land comprising *air land* by U P.—Proprietor Decree for sale of property with all actual and reputed rights as detailed in the mortgage.—Sale if passed s c land—Act IX of 1882 s 42. A person whose proprietary rights in land comprised *air land* comprising his entire interest therein including the rights in the *air land*. In the decree for sale upon the mortgage the parties agreed that the properties scheduled in the decree for sale instead of including the cultivating rights in *air* should comprise the property with all actual and reputed rights as detailed in the mortgage. Held that in the face of the decree it was not open to the mortgagor to urge that the rights of the mortgagee to sell the *air lands* were taken away by the decree. *GULABSIINGH v DIWAT BAHADUR BALLABHIAN (P C.) 23 C W N 933*

19. — Successive mortgages—Suit by first mortgagee without impleading subsequent mortgagee—Purchaser at mortgage sale may set up first mortgagee as shield in subsequent mortgagee's suit—*Successive mortgagee's right to be placed in the same position as he would be if he had been impleaded.* Under s 3 of Ord XXIV of the Civil Procedure Code (which has repealed s 80 of the Transfer of Property Act) an owner of a property who is in the right of a first mortgagee and of the original mortgagor, as acquired at a sale under the first mortgage, is entitled, at the suit of a subsequent mortgagee who (not having been made a

MORTGAGE—contd.**MISCELLANEOUS—contd.**

party in the first mortgagee's suit) is not bound by the sale or the decree on which it proceeded to set up the first mortgagee as a shield. *Het Ram v Shadi Lal (1) Mairu Mal v Durga Kewar (2) and Vanmukulunga Madali v Chidambara Chetty (3),* referred to. But in such a case the puisne mortgagee (plaintiff) also is entitled to be put in the position which he would have occupied had he been made a party to the first mortgagee's suit. After two mortgages had been effected by the owner of certain properties the first mortgagee sued on his mortgage and purchased the property without impleading the second mortgagee. Later on his successor in interest executed another mortgage in favour of the plaintiff. Subsequently the second mortgagee sued on his mortgage without impleading the plaintiff and in that suit the then owners recovered from the second mortgagee the amount of the first mortgage (which they set up as a shield) but as they failed to redeem the second mortgagee the property was sold and purchased by the latter. In plaintiff's suit to enforce plaintiff's mortgage against the property in the hands of the second mortgagee. Held that the amount of the first mortgage had been wrongly taken away by the owners the same being then subject to the mortgage of the plaintiff and that therefore in this suit unless the defendant paid to the plaintiff that amount with interest plaintiff was entitled to get a decree for sale of so much of the estate as would realise that sum and for the rest on condition the plaintiff paid defendants the amount of the decree on the second mortgage. *MUSAMMAT SIKHI v MUNSHI GHULAM SAFFAR KHAN 28 C W N 283*

MORTGAGE BOND

See ATTESTING WITNESSES

I L R 49 Calc 61

See EXECUTION OF DECREE

I L R 45 Calc 530

S c LIMITATION ACT (IX of 1908) SCH I, ARTS 13^o 75 I L R. 39 Mad 951

See MORTGAGE.

See RECEIPT I L R 42 Calc 546

Attestation—Scribe, signature and attestation by validity of—Transfer of Property Act (IV of 1882) s 59. Where no mark seal or thumb impression of the mortgagor appears on a mortgage deed the scribe who executes the document for and on behalf of the mortgagor is not competent to attest his own signature as an attesting witness. *Shamu Patter v Abdul Kadir Raseetha I L R 35 Mad 697 I L R. 39 I A 218* referred to. *URENDRA CHANDRA BRADRA v HUKUM CHAND DE (1018)*

I L R 48 Calc 522

Transfer—Absence of notice to mortgagor—Payment to mortgagee by mortgagor after transfer without notice thereof—Payment in full settlement of debt—Effect of payment—Receipt by mortgagee necessary for registration—Registration Act (XVI of 1908) s 17 (b)—Civil Procedure Code O XXI s 33—Memorandum of objections whether necessary—Transfer of Property Act (IV of 1882) s 130, principle of Payment by the mortgagor to the mortgagee after, but without notice of a transfer of the mortgage, must, in the absence of collusion, be allowed to the mortgagor as against the transferee. Where such payment was accepted by the mortgagee in

MORTGAGE DECREE—could

is to have it set aside in accordance with law but until it is set aside its validity cannot be questioned in execution proceedings [But see *Jungti Lal v. Laddu Ram Marwari* (p 240)] Although no formal appointment of a guardian *ad litem* has been made, where the Court, by its action, has given its sanction to the appearance of a guardian, the absence of a formal order of appointment is not necessarily fatal to the proceedings unless the interests of the person acting as guardian are adverse to the interests of the minor *KESHAWESARINDRA SAHAI v. RANI DEENDRA BALA DASST* 4 Pat. L. J. 213

7 (a) ——— An application for final decree in a foreclosure suit should be made by the plaintiff but where it was made by the transferees from the defendants in the presence of the plaintiff it was held good. The proviso to O. XXXIV, r. 3 gives the Court a discretionary power to extend the time for payment of the decretal amount but a mortgagor has no absolute right to pay the money after the expiry of the specified period even though no final decree had at the time of such payment been made *RATNAKAR GOWSTIA v. CHAMRA SATPASTY* 4 Pat. L. J. 347

8 ——— Whether purchaser in execution of takes priority over purchaser under rent decree—*Bengal Tenancy Act (VIII of 1835), s. 167—Civil Procedure Code (Act I of 1908), O. XXI, r. 100* A purchaser under a rent-decree is not liable to be ousted by a person who purchases the same property in execution of a mortgage decree, even though the mortgage has not been annulled under s. 167 of the Bengal Tenancy Act *SUBAT LAL CHoudhury v. LALA MORLIDHAR* 4 Pat. L. J. 362

9 ——— Preliminary decree embodying compromise—increasing rate of interest—whether decree holder entitled to interest at increased rate A Court passing a preliminary decree in a suit on a mortgage is at liberty to make an order for the payment of interest at any rate that may seem suitable. If no appeal is made against the order fixing the rate of interest, then that order becomes final and cannot be questioned in any future proceeding. Where, therefore, a suit to enforce a mortgage was compromised on the following, among other conditions, namely—that the rate of interest stated in the bond should be increased from Rs 1 0 0 per mensem to Rs 3 2 0 per mensem, and this condition was mentioned in the decrees made upon the compromise, and there was no appeal from that decree—*Held*, that when the mortgagee applied for a decree absolute upon the taking of an account the mortgagor was not entitled to object that the rate of interest agreed upon in the compromise was in excess of the rate claimed in the plaint, or that the preliminary decree providing for interest at that rate was outside the jurisdiction of the Court making the decree *BENUDHAN PANDA v. KANGOI KRISHNA CHANDRA DAS* 4 Pat. L. J. 366

10 ——— Execution—Limitation In cases falling within Art 181 of the Limitation Act, 1908, the date upon which the right to apply accrues is, in the case of an application to convert a preliminary decree into a decree absolute, the date upon which the period of grace expires. *RAS BEHARI SINGH v. JUMAN LAL* 4 Pat. L. J. 523

MORTGAGE DECREE—could

11. ——— Preliminary Decree awarding interest—up to date of realization—Final decree, no provision as to interest—Date up to which interest recoverable Where a preliminary mortgage decree awarded the plaintiff interest at the bond rate up to the date of realization and the final decree merely made the preliminary decree absolute without mentioning the interest, *held*, that the Court must be presumed to have refused interest and the decree holder therefore was not entitled to any interest after the expiry of the days of grace. *TERATI KRISHNA PRASAD v. SURENDRA MOHON KUNDU* 5 Pat. L. J. 698

12. ——— Construction Direction to pay interest on decretal amount at bond rate up to "date of payment," if refers to date of actual realization *Held*, upon a construction of the mortgage decree sought to be executed that the direction as to payment of interest at the rate stipulated in the bond "up to the date of payment" referred not to the date fixed by the preliminary decree for payment but to the date of actual realization of the money 14 C. W. N. 125

MORTGAGE-DEED.

See EVIDENCE ACT (I of 1872), s. 68.

1 L. R. 40 All 256

See REGISTRATION ACT (XVI of 1908), ss 32, 33, 71, 73, 75, 87, 88.

1 L. R. 40 All 434

See STAMP ACT (II of 1909), s. 2 (17),

1 L. R. 38 Mad. 646

See TRANSFER OF PROPERTY ACT (IV of 1882)—

s. 59 1 L. R. 41 Bom. 384

ss 60 AND 68 1 L. R. 38 Mad. 607

——— attestation of when executed by *pardanashin ladies*—

See *PARDANASHIN LADIES*

1 L. R. 45 Cal. 743

See TRANSFER OF PROPERTY ACT (IV of 1882), s. 59 1 L. R. 37 All 474

MORTGAGE OR SALE

See CONSTRUCTION OF DOCUMENT

1 L. R. 40 Bom. 278

——— *Deed of sale with condition of repurchase, if mortgage—Extraneous circumstances if and when may be referred to to determine nature of deed—Mortgage transaction—Limitation Act (IX of 1908), Art 134—Perpetuity rule against, whether applicable* *D* executed in favour of *A* a deed of out and out sale with a condition of repurchase of a house but no date was fixed for repurchase. On the same date *B* executed a *kabulyat* in favour of *A* by which he accepted lease of the house sold. The Court took into consideration how the language of the document was related to the existing facts such as that the vendor continued in possession, paid rent at the usual rate of interest, etc., and, further, that the value of the property was much more than the consideration paid. *Held*, that these are legitimate materials on which a Court is entitled to say that the transaction was a mortgage, and in so doing the Court does not infringe the provisions of s. 92 of the Evidence Act or disregard anything laid down in *Balkrishna Das v. Legg*, 1 L. R. 22 All 149. A mortgagee's right to redeem is exempt from the operation of the rule against perpetuity. *SULAZADI BIR v. SURESH JAMAL* (1913) 17 C. W. N. 1053

MORTGAGE DECREE—contd.

three years have elapsed from the date of decree. *Held* that the application was not barred by limitation. *Held*, also, that the following propositions are deductible from the decided cases:—
 (i) The preliminary decree passed under s. 88 of the Transfer of Property Act is executable. (ii) In order to obtain the order absolute under s. 89 of the Transfer of Property Act, steps have to be taken in execution. (iii) To such application Art 182 or 183 of the Limitation Act will apply as the decree happens to be of a mutasaf Court or of the original side of the High Court. (iv) There is a fresh starting point given to the decree holder after the preliminary decree ripens into a final decree. (v) A decree holder will have twelve years under s. 43 of the Code of Civil Procedure, to perfect the preliminary decree and another twelve years under the same section, if he gets the order absolute within the first twelve years. *Abdul Majid v. Jannah Lal* 1 L. R. 36 All 359, followed. *Munna Lal v. Sarat Chandra*, 21 C. L. J. 115, followed. *Ashfaq Hussain v. Gauri Sahai*, 1 L. R. 33 All 261 explained. *Mallikarjuniah v. Lingamurthi Pasula* 1 L. R. 25 Mad 245, and *Rangiah Goundan and Co. v. Nanyappa Row*, 1 L. R. 28 Mal 789, referred to. *Husain v. Karim* (1915) 1 L. R. 39 Mad. 244.

3. ———— **Appeal by purchaser in execution of revenue-sale—Appellant declares not liable, effect of appellate Court's order.** An order in an appeal by one of several defendants ensures to the benefit of the other defendants only if the interests of the latter are inseparable from the interest of the defendant appellant. Where a decree in a mortgage suit made all the properties covered by the mortgage liable to sale, and a person who had purchased one of the properties at a revenue-sale appealed from the decree, and the Appellate Court exonerated him from liability under the mortgage. *Held*, that the result of the appeal was to free only the property in which the defendant appellant had an interest, leaving untouched the decree of the original Court in so far as the interests of the other defendants (mortgagors and pawns mortgagees) were concerned. *MAHENDRA KOVS v. SATYRAJ LALL*.

3 Pat L. 2. 168

3 (a). ———— **Compromise—binding other properties of mortgaged properties not sufficient—Recovery of balance—Practice—Code of Civil Procedure (Act 3 of 1908) O XXIV, r 6.** A formal order under O XXIV, r 6 Code of Civil Procedure, 1908 is a necessary preliminary to pursue properties not covered by mortgage even where the original decree is a compromise decree declaring that the judgment debtors' other properties are to be liable in the event of the mortgaged properties not realising sufficient to cover the decretal amount. *KABIMULLA SHAH v. MIRZA MUHAMMAD RAZA*. 3 Pat L. J. 649.

4. ———— **Whether pawns mortgage is bound to redeem prior mortgage before bringing property to sale—Sale of pawns mortgage of property subject to a prior mortgage—If both pawns mortgagee decrees holder entitled to notify prior mortgage held by himself but not mentioned in the pleadings.** A pawns mortgagee is not bound to make a prior mortgagee a party to his suit for sale and he is entitled to bring the mortgaged property to sale without redeeming the prior mortgage. A pawns mortgagee is entitled to bring the mortgaged pro-

MORTGAGE DECREE—contd

perty to sale subject to a prior mortgage held by another person or subject to a mortgage held by himself at all events when he is unable to sue upon the prior mortgage. Where a pawns mortgagee sued upon her mortgage without mentioning a prior mortgage held by her on the property, and obtained a decree absolute for sale of the mortgage property. *Held*, that the mortgagee was entitled to have the prior mortgage notified at the execution sale. *JAGANNATH SINGH v. MUHAMMAD MOHNA HUSSAN*. 2 Pat L. J. 118.

5. ———— **Grant of additional relief to that prayed for, validity of—Practice.** An usufructuary mortgagee who sues the purchasers of the equity of redemption and prays (i) for a decree on the mortgage (ii) for possession, or (iii) for a money decree, is not entitled to a decree for the usufruct of the property accumulated in the hands of the District Magistrate while the property was under attachment in proceedings under s. 145 of the Code of Criminal Procedure. *KUNDEAK OJHA v. GULAB OJHA*. 2 Pat L. J. 693.

6. ———— **Several properties covered by mortgage—order in which properties liable for sale—Code of Civil Procedure (Act 3 of 1908), s. 47 and O XXIV, r 4.** The Court executing a mortgage decree ought not to fetter the discretion of the decree holder to put up to sale whichever of the mortgaged properties he wishes first to sell. The discretion given to the Court making a decree by O XXIV, r 4, of the Code of Civil Procedure, 1908, to declare which portion of the mortgaged properties shall first be sold should not be arbitrarily exercised and is subject to the general principle that the Court cannot prejudice the rights of the mortgagee if he has not himself done anything which prejudices the rights of those having equities against the mortgagor. In the absence of a direction in the decree to the contrary it would seem that the discretion given to the Court making the decree by O XXIV, r 4, vests in the executing Court also. *Per Junda Prasad, J.*—If the mortgage deed specifically provides that on default of payment of the mortgage money the properties are to be sold in a particular order it is not open to the decree holder to change the order in enforcing repayment of his money. *JATADHAT SINGH v. BALDEO LALL*. 4 Pat L. J. 207.

7. ———— **Notice served under s. 89 of Transfer of Property Act—whether execution governed by Code of Civil Procedure, Act 3 of 1908, Order XXIV, rule 5—Defective decree whether can be executed—Minor—no guardian ad litem formally appointed—de facto guardian, position of—Limitation Act (IX of 1908), Sec. 1, Art 181—Trivial defects in decree, effect of.** *Held*, that where proceedings to make absolute a decree made under s. 89 of the Transfer of Property Act, 1882 were pending at the time when the Code of Civil Procedure, 1908, was brought into force, and notice of an application for an order under s. 89 had been served on the original mortgagor, it was not necessary for the plaintiff to apply for a decree absolute under O XXIV, r 6 (2), and no objection to the order under s. 89 having been taken by the original mortgagor during his lifetime it was not open to his legal representative to take such objection. So long as an order also lute subsists it is enforceable and its operation cannot be impugned if, for any reason, the order is defective, the remedy of the party aggrieved

MORTGAGE SUIT—contd.

purchaser at the mortgage sale, if maintainable, when plaintiff not a party to the mortgage suit—Such suit allowed to be framed as a suit for redemption. Where the plaintiff purchased a mortgaged property from the mortgagor in execution of a money decree, and subsequently the mortgagee brought a suit against the original mortgagor without making the purchaser a party, and in execution of the mortgage decree purchased the mortgaged property and then sold it to another, from whom the plaintiff sought to recover possession of the mortgaged property on declaration of his title. *Held*, that the plaintiff, by virtue of his purchase, acquired only the right to redeem the mortgage, and was not entitled to recover possession of the mortgaged property after the mortgage sale had taken place. The fact that he was left out of the mortgage suit did not nullify the mortgage decree, but left unaffected his right to redeem and he was entitled to possession upon redemption. It was not necessary for the mortgagee to sue again on his mortgage and he was not bound to deliver up possession to the plaintiff till the redemption of the mortgage. The case was remanded to the District Judge so that a decree might be made in favour of the plaintiff as if this was framed as a suit for redemption. **SHRI KALU SHARIF v. ARROY CHARAN KARNOKAR** 25 C. W. N. 253

6. —All heirs of mortgagor not made parties, effect of A mortgage suit in which all the heirs of a mortgagor were not made parties had been dismissed by the Lower Court for non joinder of parties. *Held* that the plaintiffs were at the last entitled to a decree for proportionate share of the mortgage money as against the defendants who were on the record. Even if it had been assumed that the persons who had been left out could, if joined, have successfully urged the plea of limitation that would not afford a defence in favour of the persons who had been joined as parties within the prescribed time. **HARCHANDRA ROY v. MAHAMED HUSEIN** 25 C. W. N. 594

7. —Second mortgagee not made party to suit by first mortgagee—First mortgagee purchaser if may claim to be paid on foot of mortgage contract or amount decreed. An order under s. 89 of the Transfer of Property Act 1882 for the sale of the mortgaged property has the effect of substituting the right of sale thereby conferred upon the mortgagee for the right under the mortgage and the latter rights are extinguished. Where a first mortgagee obtained a decree for sale upon his mortgage in a suit in which he did not make the second mortgagee a party and purchased the property at such sale. *Held* in a suit by the second mortgagee upon his mortgage, that the first mortgagee purchaser had no greater rights than any stranger would have had who had purchased the property under the mortgage decree and paid cash for it and the latter was entitled to set up only the amount of the decree made in his suit. **LALA MATHU MAL v. MUSAMMAT DURGHA KUNWAR** 25 C. W. N. 397

8. —Claims of title of decedent to mortgagor by representative of decedent mortgagor. Substituted on record—If should be entertained. *Held*, that such a plea could not be entertained without altering the scope of the suit and should be tried by separate suit. **KALIDAS ROY v. GIRENDRA MOHAN BAKSHI** 25 C. W. N. 192

MORTGAGE SUIT—contd.

9. —Separate suits by holder of independent mortgages over same property to obtain separate decrees for sale on each—Mortgagee—Holder of two independent mortgages over same property, if can institute separate suits to obtain a separate decree for sale on each of them—Civil Procedure Code (Act V of 1908), Or. 11, r. 2 (1)—s. 11, Frp. 4—Transfer of Property Act (11 of 1882), s. 61—Decrees made in such suits, how to be given effect to. There is nothing in the Code of Civil Procedure or in the Transfer of Property Act to prevent the holder of two independent mortgages over the same property, who is not restrained by any covenant in either of them, from obtaining a decree for sale on each of them in a separate suit, subject, however, to the reservation that he cannot sell the property twice over, nor sell it under the second decree subject to the first. The under the second decree subject to the first. The right course to follow in such circumstances is to direct that the property be sold free of both charges, whether in execution of the decree on the first mortgage or of the decree on the second mortgage, and that the balance of the sale proceeds, after payment of incidental expenses, be applied in discharge of the dues on the first mortgage and the second mortgage one after the other, the residue if any to stand to the credit of the holder of the equity of redemption. **NILO : ASHBAH MANDAL** 25 C. W. N. 129

10. —After the hypothecated property was sold in execution of a decree for money the mortgagee instituted a suit for the realisation of his dues against the mortgagors as also the purchasers of the equity of redemption. The latter contested the claim on the ground that the mortgage bond was not a bona fide document and was not properly executed. *Held*, that if an action to enforce a mortgage security is contested by the mortgagor and execution is admitted by or proved against him the onus lies upon him to prove that the rental as to the payment of consideration for the deed which he executed is untrue. **KRISHNA KISHOR DE : SREEKATI NAGENDRABALA CHOWDHURY** 25 C. W. N. 942

11. —Mortgage suit—Mortgagor's estate taken over by Court of Wards after preliminary decree—Decree absolute for sale passed against Court of Wards representing the mortgagor—Release of estate thereafter—Release not shown to have had retrospective operation—Refusal of Government to produce correspondence leading to release—Decree absolute of bonded mortgagor. A preliminary decree was made in a suit for sale of mortgaged properties on 15th June 1915. On 21st July 1915, the Court of Wards declared the mortgagor a disqualified proprietor and assumed superintendence of his estate under United Provinces Act IV of 1912. On 21st February 1916, a decree absolute for sale was passed against the Court of Wards representing the mortgagor on the application of the mortgagee. On 12th September 1917, the estate of the mortgagor was released from under the direction of the Central Government for reasons of State. The correspondence which passed between the two Governments upon the matter was not produced and its production could not be compelled by Court. *Held*, that *prima facie*, the Local Government acted within its powers in putting the Court of Wards in charge of the mort-

MORTGAGE SALE.

See CONTRIBUTION . 14 C. W. N. 261

MORTGAGE SUIT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXIV, r 1

1. L. R. 43 Bom 575
O XXXIV, r 6 2 Pat L. J. 533

See COMPROMISE 1. L. R. 42 Cal. 801

See JURISDICTION 1. L. R. 42 Cal. 116

See RES JUDICATA 2 Pat L. J. 313

See MORTGAGE.

See MORTGAGE DECREE

2 Pat. L. J. 118

— decree in—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 47, O XXII, r 10

1 L. R. 39 Mad. 488

— failure of, to deliver possession—

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 58 (a) AND (d), 67, 68 (c).

1 L. R. 41 Mad 259

— Parties—

See CIVIL PROCEDURE CODE, 1908 O XXIV, r 1 6 Pat L. J. 640

1 — Preliminary decree

— Payment out of Court if may be proved, though not certified, to oppose passing of a decree absolute—
Civil Procedure Code (Act V of 1908), O XXI, r 2, O XXIV, r 5 Payment in pursuance of a preliminary decree in a mortgage suit, if not made in Court, must be certified under O XXI, r 2, failing which the Court has no discretion except to follow the statutory form of the decree when no payment has been made into Court as mentioned in O XXIV, r 5, unless there has been adjustment made under O XXI, r 2 of the Civil Procedure Code *PRAN BHAI v JENDRA MONU MUSHRAJI* (1917) . 21 C W. N. 920

2 — Pira of payment—

Onus, nature of—Evidence Act (I of 1872), s. 114—Shifting of onus—Trial Judge's estimate of testimony value of, in doubtful cases In a suit to enforce a mortgage bond, in which the defence sought to prove that the debt had been discharged by payments endorsed on the bond, the trial Court, on a review of the evidence, held that the endorsements were fictitious and decided in favour of the plaintiff; but the High Court on appeal was of opinion that the plaintiffs had failed to discharge the burden which rested on him to prove his case and dismissed the suit. *Held* by the Judicial Committee, that though the initial burden of proof rests on the appellant in such a case as this, both on general grounds and by reason of the provisions of s. 114 of the Evidence Act, this burden is one which shifts easily as the evidence is developed, and their Lordships did not attach much importance in this case to the question on whom the initial onus lay. That the evidence in this litigation, taken as a whole, was of such a character and so full of doubtful statements that it could only be weighed adequately by the Judge who had seen the witnesses; and the balance of probabilities in this case also being in their Lordships' opinion on the side of the conclusion reached by the trial Judge, the judgment of the High Court was reversed and that of the trial Judge was restored. *KUNDAL Lal v. BEHAR CHAND* (1918)

22 C. W. N. 937

*** MORTGAGE SUIT—contd**

3 — Mortgagee related

to mortgagor—Bond executed in consequence of mortgagee becoming aware of the demand by another creditor of mortgagor for repayment of his dues—Mortgage bond, whether fraudulent Where the defendants Nos. 1 to 3 executed a mortgage bond in favour of the plaintiff for Rs. 16,000 due to the latter in consequence of the latter having come to know that defendant No. 4, another creditor of the defendants Nos. 1 to 3, was pressing for payment and thereafter defendant No. 4, obtaining a decree against defendants Nos. 1 to 3, purchased the mortgage properties, and then the plaintiff brought the present suit to enforce the security whereupon the defendant No. 4 contended that the mortgage was fraudulent. *Held*, that because the plaintiff was related to defendant No. 2 and was aware of the fact that defendant No. 4 was demanding his dues from defendants Nos. 1 to 3 and was bringing pressure to bear upon them was no reason why the plaintiff should not require the defendants Nos. 1 to 3 to secure the repayment of the money due to him. *RASH MOHAN SHARMA v. KRISTODAS RAY* (1918) . 22 C W N. 982

4 — On bond executed by defendants Nos. 1 and 2 for selves, as executors, and as certificated guardians of defendants Nos. 3 to 6—No permission obtained from Court to mortgage—Intention of testator to pay off his debts by sale of his properties and not by another mortgage—Defendants Nos. 1 and 2, whether bound by the mortgage bond—Power of the *Karta* of a joint Hindu family as guardian of minors appointed under Guardians and Wards Act (VIII of 1890)—Whether the adult male member of a joint Hindu family entitled to borrow what he thinks necessary for the joint family In a suit upon a mortgage bond executed by defendants Nos. 1 and 2 for selves, as executors to the estate of their father and as certificated guardians of their four minor brothers defendants Nos. 3 to 6, it was contended on behalf of defendants Nos. 3 to 6 that they were minors at the date of the mortgage bond, that the defendants Nos. 1 and 2 did not obtain sanction of the Court for the mortgage and that therefore the mortgage was not binding upon them. *Held*, that the intention of the testator being that his debts should be paid off by sale of the two mahals and not by another mortgage there was an implied restriction on the power of the defendants Nos. 1 and 2 to mortgage the property. There being no permission of the Court the defendants Nos. 1 and 2 had no power to mortgage as executors under the will. That if the *Karta* of a joint Hindu family chooses to apply under Act VIII of 1890 for being appointed as guardian of a minor and has been appointed as such guardian, he comes under the control of the Court and cannot exercise the power of a *Karta* to mortgage without previous sanction of the Court; *Held*, that the defendants Nos. 1 and 2 as adult male members of a joint Hindu family were entitled to borrow what they considered necessary for joint family expenses provided the minors had been actually benefited by money borrowed. *UPENDRO NATH BISWAS v. SHIB KUMARI DEBI* (1915) . 23 C W. N. 634

5 — Suit by purchaser of redemption, not a party to the mortgage suit, against purchaser at the mortgage sale—mortgage—Suit for declaration of title and recovery of possession by the purchaser of equity of redemption against the

MORTGAGE SUIT—contd

purchaser at the mortgage sale, if maintainable, when plaintiff not a party to the mortgage suit.—Such suit allowed to be framed as a suit for redemption. Where the plaintiff purchased a mortgaged property from the mortgagor in execution of a money decree, and subsequently the mortgagee brought a suit against the original mortgagor without making the purchaser a party, and in execution of the mortgage decree purchased the mortgaged property and then sold it to another, from whom the plaintiff sought to recover possession of the mortgaged property on declaration of his title: *Held*, that the plaintiff, by virtue of his purchase, acquired only the right to redeem the mortgage, and was not entitled to recover possession of the mortgaged property after the mortgage sale had taken place. The fact that he was left out of the mortgage suit did not nullify the mortgage decree, but left unaffected his right to redeem and he was entitled to possession upon redemption. It was not necessary for the mortgagee to sue again on his mortgage and he was not bound to deliver up possession to the plaintiff till the redemption of the mortgage. The case was remanded to the District Judge so that a decree might be made in favour of the plaintiff as if this was framed as a suit for redemption. **SHAIKH HAJI SHAIKH v ARROY CHABAN KAPMOKAR** 25 C. W. N. 253

6. — *All heirs of mortgagor not made parties, effect of* A mortgage suit in which all the heirs of the mortgagor were not made parties had been dismissed by the Lower Court for non joinder of parties. *Held*, that the plaintiffs were at the least entitled to a decree for proportionate share of the mortgage money as against the defendants who were on the record. Even if it had been assumed that the persons who had been left out could, if joined, have successfully urged the plea of limitation that would not afford a defence in favour of the persons who had been joined as parties within the prescribed time. **HARCHANDRA ROY v MAHAMED HUSEIN** 25 C. W. N. 594

7. — *Second mortgagee not made party to suit by first mortgagee—First mortgagee purchaser if may claim to be paid on foot of mortgage contract or amount decreed* An order under s 89 of the Transfer of Property Act 1882 for the sale of the mortgaged property has the effect of substituting the right of sale thereby conferred upon the mortgagee for the right under the mortgage and the latter rights are extinguished. Where a first mortgagee obtained a decree for sale upon his mortgage in a suit in which he did not upon his mortgage a party and purchased the property at such sale. *Held* in a suit by the second mortgagee upon his mortgage, that the first mortgagee purchaser had no greater rights than any stranger would have had who had purchased the property under the mortgage decrees and paid cash for it and the latter was entitled to set up only the amount of the decree made in his suit. **LALA MATHU MAL v MOHAMMAD DUNGA KUNWAR** 25 C. W. N. 397

8. — *Claim of title ad verse to mortgagor by representative of deceased mortgagor* Substituted on record—If should be entertained. *Held*, that such a plea could not be entertained without altering the scope of the suit and should be tried by separate suit. **KALIDAS ROY v GURINDRA MOHAN BAKSHI** 25 C. W. N. 192

MORTGAGE SUIT—contd

9. — *Separate suits by holder of independent mortgages over same property to obtain separate decree for sale on each—Mortgage—Holder of two independent mortgages over same property, if can institute separate suits to obtain a separate decree for sale on each of them—Civil Procedure Code (Act I of 1908), Or II, r. 2 (1)—s 11, Fp 4—Transfer of Property Act (15 of 1882), s 61—Decrees made in such suits, how to be given effect to* There is nothing in the Code of Civil Procedure or in the Transfer of Property Act to prevent the holder of two independent mortgages over the same property, who is not restrained by any covenant in either of them, from obtaining a decree for sale on each of them in a separate suit, subject, however, to the reservation that he cannot sell the property twice over, nor sell it under the second decree subject to the first. The right course to follow in such circumstances is to direct that the property be sold free of both charges, whether in execution of the decree on the first mortgage or of the decree on the second mortgage, and that the balance of the sale proceeds, after payment of incidental expenses, be applied in discharge of the dues on the first mortgage and the second mortgage one after the other, the residue if any to stand to the credit of the holder of the equity of redemption. **HAU v ASIEBAD MANJAL** 25 C. W. N. 129

10. — *After the hypothe- cated property was sold in execution of a decree for money the mortgagees instituted a suit for the realisation of his dues against the mortgagors as also the purchasers of the equity of redemption. The latter contested the claim on the ground that the mortgage bond was not a bono fide document and was not properly executed. Held*, that if an action to enforce a mortgage security is contested by the mortgagor and execution is admitted by or proved against him the onus lies upon him to prove that the recital as to the payment of consideration for the deed which he executed is untrue. **KEPANA KISON DE v SREENATH NAQINDRABALA CHOWDHURANI** 25 C. W. N. 942

11. — *Mortgage suit—Mortgagor's estate taken over by Court of Wards after preliminary decree—Decree absolute for sale passed against Court of Wards representing the mortgagor—Release of estate thereafter—Refusal of Government to produce correspondence leading to release—Decree absolute if bound mortgagor* A preliminary decree was made in a suit for sale of mortgaged properties on 15th June 1915. On 21st July 1915, the Court of Wards declared the mortgagor a disqualified proprietor and assumed superintendence of his estate under United Provinces Act IV of 1912. On 21st February 1916, a decree absolute for sale was passed against the Court of Wards for representing the mortgagor on the application of the mortgagee. On 12th September 1917, the estate of the mortgagor was released from the superintendence of the Court of Wards under an order of the Local Government which was made under the direction of the Central Government for reasons of State. The correspondence which passed between the two Governments upon the matter was not produced and its production could not be compelled by Court. *Held*, that *prima facie*, the Local Government acted within its powers in putting the Court of Wards in charge of the mort-

MORTGAGE SUIT—*contd.*

gagor's estate and it could not be presumed until the contrary was shown that the order of release or rated retrospectively. That the Court in India was therefore right in holding that the decree absolute bound the mortgagor NARINDRA BHADUR SINGH & THE OODH COMMERCIAL BANK FYZABAD (P O) 28 C W N 896

MORTGAGED PROPERTY

See MORTGAGE.

See SALE IN EXECUTION OF DECREE.

sale of—

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 73 104

I L R 33 Mad 570

See MORTGAGE I L R 38 Cal 913

MORTGAGEE

See ADVERSE POSSESSION

I L R 44 Cal 425

See CIVIL PROCEDURE CODE, 1882 s 317 1908, s 66

I L R 35 Bom 342

See COMPANY I L R 47 Cal 901

See DECREE I L R 34 Bom 280

See DEKKAN AGRICULTURISTS RELIEF ACT (XVII of 1879)

I L R 40 Bom 433

See LIMITATION ACT (IX OF 1908) SCH. I

ARTS. 13^o 75 I L R 39 Mad 981

See MORTGAGE I L R 33 Mad 548

See NORTH WESTERN PROVINCES REVT ACT (VII of 1881)

I L R 37 All 444

See PUISNE MORTGAGEE.

I L R 40 Mad 77

See RECEIVER I L R 47 Cal 418

See TRANSFER OF PROPERTY ACT (IV OF 1882)—

ss. 60 AND 98 I L R 38 Mad 667

s. 67 I L R 40 Mad 77

s. 73 14 C W N 186

s. 83 I L R 39 Mad 579

s. 101 I L R 38 Bom 369

dispossession of—

See USUFRUCTUARY MORTGAGE

I L R 38 Mad 903

in possession—

See MORTGAGE I L R 38 All 411

See SALE FOR ARREARS OR RENT.

I L R 44 Cal 573

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 60 AND 91

I L R 38 Mad 310

Position of when different persons become entitled to different positions of equity of redemption—

See MORTGAGE I L R 47 Cal 223

MORTGAGEE—*contd.*

holding two mortgages—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 61 80 AND 99

I L R 38 Mad 927

If a creditor—

See MORTGAGE BY MINOR

I L R 38 Mad 1071

prior and subsequent—

See CIVIL PROCEDURE CODE 1882 s 317

I L R 33 All 382

See MORTGAGE.

I L R 33 All 368 370

purchase by—

See MORTGAGE

See SALE FOR ARREARS OF REVENUE.

I L R 40 Cal 89

right of to redeem property—

See MORTGAGE I L R 41 Mad 403

right of, to sue for sale—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 58 (a) AND (d) 67 68 (c)

I L R 41 Mad 259

right of, to an order for sale—

See TRANSFER OF PROPERTY ACT s 67

I L R 34 Bom 462

right of to exonerate—

See MORTGAGE I L R 40 Mad 968

right of, to pay rent—

See MORTGAGE I L R 44 Cal 448

suit for possession by—

See DEKKAN AGRICULTURISTS RELIEF ACT (XVII of 1879)

I L R 35 Bom 204

title of—

See REGISTRATION

I L R 41 Cal 872

to remain in possession as long as fruit trees on the land—whether a clog or redemption—

See TRANSFER OF PROPERTY ACT 1882,

s 60 I L R 45 Bom 117

whether can dispute validity of gift by a Hindu widow—

See HINDU LAW I L R 45 Bom 105

with possession right of, to recover rent—

See MADRAS LOCAL BOARDS ACT (V OF 1884), s 73 I L R 39 Mad 269

1. *Leasehold property.* Mortgagee is entitled to pay rent to preserve property from being lost. The mortgagee is entitled to preserve mortgaged property from being lost for non payment of rent. Where rent is thus paid after the preliminary decree and before the final decree the money paid for rent should in the final decree be added to the mortgage money found due in the preliminary decree. *ALLAHABAD BANK LD v MATI LAL BHAN (1916)*

I L R 44 Cal 443

2. *Right of mortgagee to sue to transfer.* Transfer of Property Act (IV of 1882) s 68 The provision of s 68 of the Transfer of Property Act, 1882 are designed for the purpose of indemnifying a mortgagee against any disturbance of his enjoyment of the property. They are provisions of an enabling nature but they do not

MORTGAGEE—contd.

preclude a mortgagee who has been disturbed by a person claiming without title from suing the trespasser according to the general law and claiming as against him a declaration of title and recovery of possession. There is nothing in the law to debar a mortgagee from asserting his right against a trespasser alone without claiming the indemnity which s. 83 empowers him to claim from the mortgagor. *BECHO SARU v ANJOU SARU*

3 Pat. L. J. 162

3. ————— A prior mortgagee has a paramount claim outside the controversy of a suit on a subsequent mortgage unless his mortgage is impugned. *RADHA KISNOY v KURUK SUDH HOSSEN*

25 C. W. N. 417

MORTGAGOR.

See ADVERSE POSSESSION.

I. L. R. 44 Calc. 425

See MORTGAGE

————— dispossession of, after mortgage—

See ADVERSE POSSESSION

I. L. R. 39 Mad. 811

————— In possession duty of, to pay public charges—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 85 (c)

I. L. R. 39 Mad. 859

————— personal execution against—

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 47, 73, 100

I. L. R. 39 Mad. 570

————— redemption suit by—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss. 366, 371

I. L. R. 40 Bom. 248

MORTGAGOR AND MORTGAGEE.

See ADVERSE POSSESSION

I. L. R. 37 Mad. 545

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 11, 47.

I. L. R. 39 Bom. 41

See LIMITATION I. L. R. 46 Calc. 111

See LIMITATION ACT, 1908 s. 19

I. L. R. 45 Bom. 834

See MORTGAGE

See TITLE I. L. R. 37 Calc. 239

————— Mortgagee retaining possession of mortgaged property under a rent note executed to mortgagee—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 47, O XXXIV, s. 14.

I. L. R. 45 Bom. 174

————— Tenant under a mortgagee—Adverse possession against mortgagee—

See ADVERSE POSSESSION

I. L. R. 45 Bom. 661

————— Subsequent mortgagee redeeming prior mortgagee—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 74 I. L. R. 45 Bom. 1112

1. ————— Suit to redeem—Decree obtained by mortgagee for a claim independent of

MORTGAGOR AND MORTGAGEE—contd.

the mortgage—Mortgagee purchasing the equity of redemption in execution of the decree—Leave to bid not obtained—Irregularity of practice—Sale not a nullity In 1888, plaintiffs mortgaged the property in suit with possession to defendant No 1 In 1897, the defendant brought a suit against the mortgagor for a claim independent of the mortgage and in execution of the decree obtained therein the equity of redemption was sold and purchased *tenants* by the defendant. In 1913, the plaintiffs sued to redeem and recover the property The trial Court held that the purchase by the defendant mortgagee was valid until it was set aside and not having been set aside in execution proceedings was binding upon the plaintiffs The lower Appellate Court reversed the decree holding that the mortgagee purchased the property without leave to bid and therefore the mortgagor could disregard the sale and redeem On appeal to the High Court: *Held*, reversing the decree, that the disregard of the statutory provision that leave to bid should be obtained by a judgment creditor was a mere irregularity of practice, and was not a fundamental breach of trust which nullified the apparent effect of the Court-sale *DAYESH NARAY v GOPAL VISWU* (1918)

I. L. R. 41 Bom. 357

2. ————— Redemption—Lasting

improvements made by mortgagee—Right to recover costs of improvements—Transfer of Property Act (IV of 1882), ss. 63, 72 and 76 In a redemption suit, a mortgagee is entitled to recover from his mortgagor the reasonable and proper costs incurred in making lasting improvements *HENDERSON v ASHWOOD*, [1894] A C 150, approved *PER MARTIN, J.*—In allowing costs of improvements the Court must naturally be on its guard against extravagant or unfounded claims It should inquire strictly into the *bona fides* and fairness of the claim in each particular case *NUALINGAPPA v CHANNASAWA* (1918)

I. L. R. 43 Bom. 69

3. ————— Mortgage with possession—Profits to be enjoyed in lieu of interest—

Amount to be realized by sale of property—Suit to recover amount with interest by sale of property—Interest cannot be allowed—Transfer of Property Act (IV of 1882), ss. 53, 67 and 68 The property in suit was mortgaged with possession to the plaintiff Under the terms of the mortgage the profits were to be enjoyed in lieu of interest and if after the stipulated period the principal amount was not paid it was to be recovered without interest by sale of the mortgaged property The plaintiff never got possession of the property After the stipulated period he sued to recover the principal amount and interest from the date of the mortgage to the date of suit by sale of the mortgaged property *Held*, that the plaintiff was entitled only to recover the principal amount by sale of the mortgaged property, as under the terms of the mortgage bond the property was a security only for the amount borrowed and not for interest. There is nothing in ss. 53, 67 and 68 of the Transfer of Property Act which enables a mortgagee to make a claim to interest which is not given to him by the mortgage bond *MANIKCHAND MAGANCHAND v. RANGAPPA KONDAPPA* (1920)

I. L. R. 45 Bom. 523

MOTOR VEHICLES—contd

and the former has not been repealed by implication by the latter. *Held*, as to the contention that the rule must be taken to have repealed the bye law because the punishment which may be inflicted for contravention of the two provisions are not identical—That the principle recognised in *Henderson v. Sperber* 11 D. L. J. 36 (1817) and *Hursey v. Orrell* 11 L. R. 318 (1812), namely, that where the punishment or penalty is altered in degree but not in kind the later provision is considered as superseding the earlier one has no application because the offences are not identical. **THE MANAGER, INDIAN MOTOR TAXI CAR CO. LTD. v. CORPORATION OF CALCUTTA** 25 C. W. N. 21

MOTOR VEHICLES ACT (VIII OF 1914).

ss 3, 10—

See **MOTOR VEHICLES**

I L R 45 Cal. 430

— ss 8 and 11—*Driving licence—Obligation on owner of licence to carry it about with him.* *Held* on a construction of s. 8 of the Indian Motor Vehicles Act 1914 that the implication of the section is that the driver of a motor vehicle must carry his driving licence about with him so as to be able to produce it there and then when its production is demanded by a police officer. **EMPEROR v. MADAN MOHAN NATH JAHA**

I L R 43 All. 128

s 11—

Held that there was no repugnancy between bye-law 10 framed under s. 550 (8) of the Calcutta Municipal Act, 1914, under this section and the former has not been repealed by the latter. **THE MANAGER, INDIAN MOTOR TAXI CAR CO. LTD. v. CORPORATION OF CALCUTTA** 25 C. W. N. 21

MOURASI MOKURARI KABULIYAT

— Stipulation in for payment of rent partly in cash and partly in kind with statement of the money value of the portion payable in kind and declaring the total rent as the amount made up by the two—Rent if to be taken and fixed in perpetuity at such amount. See **Rent Ashutosh Mukhopadhyay v. Haran Chandra Mukherjee** (1919) 22 C. W. N. 1021

— Mourasimokurari is creating a heritable and transferable tenancy at a fixed rate of rent—Agreement by successors in interest to pay an enhanced rate of rent if destroys the character of the original tenancy or creates a new tenancy—Variation of contract. Where a mourasimokurari lease created a transferable permanent and heritable tenancy at a rate of rent fixed in perpetuity and the successors in interest of the tenant by an agreement consented to pay rent at an enhanced rate and a decree for rent was obtained by consent on this basis. *Held*, that the circumstance that one of the terms of the lease was altered by agreement of parties namely, that the rent originally fixed was increased did not destroy the tenancy. It cannot be said that there was a supersession of the original tenancy or that there was a novation of contract. The consent decree for rent at an enhanced rate did not give the tenancy a fresh start in all respects nor did the alteration of rent necessarily destroy the transferable character of the tenancy. *Result*—Though the enhancement was made by consent of the parties the

MOURASI MOKURARI KABULIYAT—contd

enhancement should be deemed to have been made subject to the original agreement that the rent was not enhanceable. **IRINATH GHOSH v. SURENDRANATH DAS** 28 C. W. N. 657

MOVABLE PROPERTYSee **ATTACHMENT BEFORE JUDGMENT**

I L R 45 Cal. 17

See **HINDU LAW—WIDOW**

I L R 48 Cal. 100

See **MORTGAGE** I L R 38 Mad. 18

— attachment of—

See **JURISDICTION** I L R 46 Cal. 520See **SANCTION FOR PROSECUTION**

I L R 47 Cal. 741

— hypothecation of—

See **ADMINISTRATION**

I L R 45 Cal. 853

See **MORTGAGE (MOVABLE)**

I L R 1 Lah. 422

— suit to recover—

See **PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)** s. 19 cl. (5).
I L R 37 Mad. 219

— transfer of—

See **DECREE ASSIGNMENT OF**

I L R 37 Mad. 227

— wrongful seizure of—

See **LIMITATION ACT (IX OF 1908)**, s. 4.
I, Arts. 29, 62 and 120.

I L R 38 Mad. 972

MUAFISee **AGRA TENANCY ACT (II OF 1901)**,

s. 150 I L R 40 All. 656

ss 154 158 I L R 40 All. 60

ss 154 177 I L R 41 All. 318

s 158 I L R 39 All. 669

ss 158 167 I L R 41 All. 37

See **PRE-EMPTION** I L R 38 All. 260**MUAFIDAR**

— mortgage by—

See **N. W. P. AND OUDH LAND REVENUE ACT (XIX OF 1873)** ss 146 148 167
I L R 35 All. 100

MUKHTARSee **LEGAL PRACTITIONERS ACT 1879**

ss 12 14 14 C. W. N. 1073

s 13 I L R 42 All. 68

s 14 15 C. W. N. 269

See **LIMITATION ACT 1908** s. 7, Sub. 1.

Art. 44 I L R 38 Bom. 94

s. 111A

1 — Application for reinstatement after a lapse of years—Dismissal from the roll on account of an offence implying moral turpitude—Discretion on the part of the court of allowance of sentence and of an order directing in his prosecution for such a false affidavit—If user of the High Court to re-instate a legal practitioner after a disbarment—Grounds of reinstatement. The High Court has power when a legal practitioner has been disbarred for misconduct of any description in the widest sense of the term to re-admit him after a lapse of time if he satisfies the Court that he has in the interval conducted

MUNICIPAL BOARD—*contd.*

- ss 87, 152 . . . I L R 36 All 329
 s 128 (4) (i) . . . I L R 35 All 24
 ss 147, 152 . . . I L R 36 All 227
 See UNITED PROVINCES MUNICIPALITIES
 ACT (U P ACT II of 1916) s 267
 I L R. 43 All 644
 ss 267 AND 263 I L R. 42 All 495
 ss 293 AND 318 I L R. 42 All 294

— powers of—

- See UNITED PROVINCES MUNICIPALITIES
 ACT (I of 1900) s 83
 I L R 35 All 375

— suit against—

- See UNITED PROVINCES MUNICIPALITIES
 ACT (II of 1916) s 326 (4)
 I L R. 41 All 182

— suit against member of—

- See UNITED PROVINCES MUNICIPALITIES
 ACT, 1900, s 40
 I L R. 33 All 540

MUNICIPAL BYE-LAWS

- See UNITED PROVINCES MUNICIPALITIES
 ACT (II of 1916) ss. 209, 210
 I L R. 39 All 386

— must be in accord with the Act—

- See PUNJAB MUNICIPAL ACT 1911
 I L R. 2 Lah 239

MUNICIPAL COMMISSIONER

- See BOMBAY CITY MUNICIPAL ACT (BOM
 III of 1888), s 297
 I L R 36 Bom 495
 s 303 . . . I L R. 34 Bom. 593
 s 377 . . . I L R 34 Bom 346
 s 390 . . . I L R 34 Bom. 344

— powers of—

- See LAND ACQUISITION
 I L R 44 Bom 797

MUNICIPAL CONTRACTOR.

- See UNITED PROVINCES MUNICIPALITIES
 ACT, 1916 s 324
 I L R. 43 All 614

MUNICIPAL CORPORATION

Chairman—General
Committee—Building plans, refusal of sanction of
Calcutta Municipal Act (Beng III of 1899),
ss 375, 377—Action for mandamus or damages
whether maintainable—Specific Relief Act (I of
1877) s 45 Where plans for building have been
rejected by the Chairman and the General Com-
mittee of the Calcutta Municipal Corporation, no
suit is maintainable to have the plans approved
or for damages. If the Chairman and General
Committee have acted honestly and within their
authority, their decision cannot be reviewed by
any Court. If the plans have been rejected mala
fide the only remedy is by an application under
s. 45 of the Specific Relief Act, for an order to
compel the Chairman and the General Committee
to hear the matter in the manner provided by
law. Datta v Bombay Corporation (1963) 1 K
B 170 and 171 with v Charley Rural Council (1907),
1 Q B 678 followed. London and North Western
Railway v Western Water Corporation, (1906), 1 Ch
753, referred to. Prosad Chunder Das v Cor-
poration of Calcutta (1913)
 I L R. 40 Calo. 838

MUNICIPAL COUNCIL

adverse possession,
against—Nature of adverse possession—Right to a
pial—Pial over a drain—Right of Municipality to
street drains etc—Nature of the right—Right of
Government—Adverse possession against Government
—Length of possession—Pial, an encroachment or
obstruction to drain, street, etc—Right of municip-
ality to remove encroachment, even when right to
site of pial barred—No injunction against Muni-
cipal Council—Against right to remove obstruction
—The Madras District Municipalities Act (IV of
1888)—Indian Limitation Act (XV of 1877) Art.
140 4—Amending Act (XI of 1900)—Declaration
A person can acquire a title to the site of a pial
over a drain in a street vested in a municipality
by adverse possession against the municipality for
the prescriptive period which was 12 years before
the art 140 4 of the Indian Limitation Act (XV
of 1877) was passed in 1900 under Act XI of 1900
The right of a Municipal Council to the street and
the drains is not a mere right of easement but is
a special right of property in the site previously
unknown to law but created by statute. Although
it is not open to the municipality to give up the
rights of the public by any act of their own, that
would not affect the capacity of a person in adverse
possession to acquire rights which would affect the
public. The question whether possession has been
adverse or not does depend upon the needs or
requirements of the owner but on the character of
the occupation of the person in possession. Fug-
itive or unimportant act of possession would not be
sufficiently effective to make the possession ad-
verse. Even if the Municipal Council had no
right to the possession of the space above the
drain but only a right of user for the discharge
of its functions with respect to the drains, still
the plaintiff as the person in possession of the
pial would have a right to it against all but the
true owner which was the Government in this
case but as against the Government the plaintiff
had not established a title as he had not been
in adverse possession for sixty years. Although
the plaintiff had acquired a title to the site of
the pial by adverse possession as against the
Municipal Council the right of the latter to the
drain under the pial had not been affected, and
the Council was entitled to remove the pial as
an encroachment or obstruction under s. 168 of
the Madras District Municipalities Act. The
prayer of the plaintiff for an injunction against
the Municipal Council could not therefore be
granted, nor could the prayer for declaration
of title be granted, as it was only incidental to
the substantial relief asked for, namely, an injunc-
tion which was refused. Sankaran Ayyer v
The Municipal Council of Madurai, 1 L R 25
Mad. 635, followed. Rolle v Vestry of St. George
the Martyr, Southwark, 14 Ch. D 785 at pp. 793
and 794. Municipal Council of Sydney v Bourne,
(1938) 4 C 457, and Midland Railway v Wright,
(1907) 1 Ch. 733 referred to. HARAWESWARA
SWAMI v THE BRITISH MUNICIPAL COUNCIL
(1912) 1 L R. 38 Mad. 8

MUNICIPAL COUNCILLORS.**— election of—**

- s. 4 BOMBAY CITY MUNICIPAL ACT
 (III of 1888 AS AMENDED BY BOMBAY
 ACT V OF 1903) ss 33 AND 34
 I L R. 34 Bom. 659

MUNICIPAL COURTS

----- Jurisdiction of-----

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 86 I. L. R. 28 Mad. 635

MUNICIPAL ELECTION.

See BOMBAY MUNICIPAL ACT, 1888, ss. 33, 34. I. L. R. 34 Bom. 659

See MUNICIPALITY I. L. R. 34 All. 643

See UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900), s. 187

I. L. R. 35 All. 450

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916), ss. 19 to 26

I. L. R. 41 All. 646

----- Invalidity of-----

See RIGHT OF SUIT

I. L. R. 36 Mad. 120

----- rules for regulation of-----

See UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900) s. 187

I. L. R. 35 All. 578

1. ----- Bengal Municipal Act (III of 1881) ss. 6, 15, 103 and 105--Voter, qualification of--Illegal levy of Income tax and payment of Municipal rate effect of--'Owner' meaning of--Property acquired by father with contribution from son. A person whose income is below the taxable minimum, but who submits to the levy of the tax does not thereby acquire the statutory qualification contemplated by s. 15 of the Bengal Municipal Act. Similarly a person who is not legally liable to pay Municipal rate but pays it, does not become entitled to become a voter by the mere fact of such payment, unless it is proved to have been made by him as a person legally liable to satisfy the Municipal demand. An "owner" for the purposes of the Municipal Act includes not only an owner in the actual occupation of the holding but also an owner entitled to receive rent from the occupier or otherwise. It also includes a manager or agent, or a trustee for any such person. Where a house was purchased in the name of the father, and the major portion of the consideration money was paid by the son out of joint funds belonging to himself and his brothers, and further the expenditure on subsequent extensive alterations and additions were similarly defrayed by the son out of the said funds, and the son was occupying the house while the father was living abroad. Held, that the son having a substantial interest in the property should be treated as owner in the ordinary acceptance of that term and he being the manager or agent, of the father could also be treated, as owner, and he was therefore liable under s. 103 of the Municipal Act to pay the rates assessed on the holding. Held, further, that where the son being in possession of the house paid the municipal demands with his own money, it could not be said that such a payment was made by a person neither liable nor competent to make it under the provisions of the law, he being an occupier was as such liable to pay the rates under s. 103 of the Bengal Municipal Act. *NAKENDRA NATH BISHA v. NAKENDRA NATH BISHA* (1911) I. L. R. 38 Cal. 501

2. ----- Claims, applications and objections of voters, notice of--*Last of Voters Calcutta Municipal Act (Ben. III of 1899), Sec.*

MUNICIPAL ELECTION--contd.

IV, rr. 8 and 9--Extension of time by Chairman, power of, for giving such notice--*Specific Relief Act (I of 1877), s. 45, sub-s. (c)*--*Mandamus* Under rr. 8 and 9 of Sch. IV of the Calcutta Municipal Act, 1899, written notice of all claims, objections, and applications referred to therein must be given to the Chairman on or before the 1st January immediately preceding each general election, and the Chairman has no power to extend the time beyond such date. Such notices must be lodged with the Chairman of the Election Department and a lodging of such notices with the Secretary is not a proper lodging as required by the terms of the Act, even though the Secretary resides in the same building as the Corporation has its office unless it can be shown that the Chairman had authorised the private residence of the Secretary to be used as a place where such notices could be lodged. The omission of a statutory officer to perform his public duties as to attestation of the election roll in the manner provided by the Act is a forbearance to do something that is not consonant to right and justice within the meaning of s. 45 of the Specific Relief Act, 1877 and therefore if the Chairman has not performed his statutory duties the Court will issue an order in the form of a *mandamus* in the matter of R. C. Sax (1912) I. L. R. 39 Cal. 593

3. ----- Representation of associations for voting power--*Calcutta Municipal Act (Beng. III of 1899), ss. 37, 38 and Sch. IV, rr. 9 and 10*--"Any one individual person" meaning of--*Specific Relief Act (I of 1877), s. 45*--*Practice--Appeal, right of* In r. 9 of Sch. IV of the Calcutta Municipal Act of 1899 the expression "any one individual person" is controlled by the expression "association of individuals immediately preceding and the selection for the representation of the several associations indicated in the rule is limited to the individuals composing the associations. A rule was obtained by a candidate for election as Commissioner of a certain ward calling upon the Chairman of the Corporation of Calcutta to show cause why he should not prepare and publish the revised list of voters for the ward under r. 10 of Sch. IV of the Calcutta Municipal Act by rejecting applications filed by a second candidate to have his name entered in the list as the representative of certain associations and a copy of the rules was served on the second candidate who together with the Chairman appealed and *reversed* cause. The Rule was made absolute. *NATH C. SAX* I. L. R. 39 Cal. 754

4. ----- Election Roll--Qualification of voters--Sitting Commissioner as candidate for election--Objections to voter's claims to be on Election Roll--Chairman's decision refusing to expunge names of voters from the Roll--Jurisdiction of the High Court to interfere--"Occupier"--*Specific Relief Act (I of 1877), s. 45*--*Calcutta Municipal Act (Beng. III of 1899), ss. 3 (36), 37, 47, and Sch. IV, rr. 3 & 5 (1)* The sitting Commissioner for one of the wards in the Calcutta Municipality, who was one of the candidates for election as a Commissioner for that same ward at the forthcoming Municipal election, and who was also a voter on the list of voters in respect of another ward, objected that the names of various persons should not be entered and retained on the Municipal

MUNICIPAL ELECTION—contd

Election Roll for the ward for which he was a candidate. The Chairman of the Corporation having heard the objections, refused to expunge those names from the Election Roll. *Held*, that the High Court had jurisdiction under s 45 of the Specific Relief Act to interfere in this matter. *In re Nandh C Sen, I L R 39 Calc. 751*, and *In re Ramesh Chandra Sen, 16 C W N. 472*, followed. *Held*, also, that to make a person, who occupied certain premises, and who was entitled to the owner's vote in respect thereof, entitled to a vote as occupier in respect of the same premises, he must either pay rent to the owner or be liable to pay rent. *Held*, also, that voters must give written notice of their claims whether they sign the notice or not, to the Chairman of the Corporation under the provisions of s 8 (i) of Sch IV of the Calcutta Municipal Act prior to 1st January immediately preceding each general election. It was upon the persons objecting to the votes to prove that the voters had not complied with the provisions of the Act or the rules. *Held*, also, that the only persons to whom r 3 of Sch IV of the Calcutta Municipal Act applied were persons who were actually liable for the rates in respect of the six months specified therein. *Held*, also, that persons occupying flats or portions of houses used as flats which were not separately assessed as such in the records of the Corporation, were not associations of individuals within the meaning of s 37 of Calcutta Municipal Act. *Held*, also, that the word "occupier" in s 37 (2) (i) (c) and in s 37 (2) (i) (a) of the Calcutta Municipal Act meant an occupier in the ordinary sense and not as defined in s 3 (39) of that Act, and the only person who fell within s 37 (2) (i) (c) was a person who occupied a building separately numbered and valued for assessment. *In re SURENDRA CHANDRA GHOSH (1918) I L R 45 Calc 950*

5. — *Calcutta Municipal Act, s 50 Sch 5, r 2—Specific Relief Act (I of 1877), ss 45, 50—Public officer, failure of, to exercise a discretion—Nomination paper—Description of the candidate—Rai Bahadur, of sufficient description—Delay in presenting the petition, effect of—Infructuous order whether ought to be passed.* The appellant sent in his nomination paper on the 4th March, 1918, in which he was described as Rai Bahadur and it was also stated that he was Voter No 679. On the 16th March a list of nominated candidates was published. On the 18th March judgment was delivered by the Appeal Court in the election case of Narendra Nath Mitter. On the afternoon of the same day the applicant (respondent in this case) applied to the Chairman of the Corporation to reject the nomination paper of the appellant on the ground that the nomination paper did not contain the description of the appellant. The Chairman declined to entertain the application on the ground that it was too late. On the morning of the 19th March a petition was presented by the applicant before Chaudhuri, J., and a rule was issued on the appellant returnable at 4 P.M. on the same day to show cause why his name should not be expunged from the list of nominated candidates and the rule was made absolute. In pursuance of this the appellant's name was taken out of the list. On the 20th, which was the day fixed for election, the respondent being the only nominated candidate was elected commissioner. This appeal was filed on the 20th March and came on for hearing on the

MUNICIPAL ELECTION—contd

21st after the election had taken place. *Held*, that an order overruling the decision of Chaudhuri, J., would be infructuous, for the appellant's name had been expunged from the list of nominated candidates, the election had taken without the inclusion of the appellant's name in the list of candidates and the Appeal Court had in this appeal no power to set that right, and so the appeal must be dismissed. The Court's order ought to have been limited to a direction to the Chairman of the Corporation to exercise his jurisdiction and to hear and determine the application which had been made to him and which he had refused to entertain on the ground that it was too late. The Court will, in all cases, regard its exercise of the extraordinary jurisdiction as discretionary, and subject to considerations of the importance of the particular case or of the principle involved in it of delay on the part of the applicant, and of his merits with respect to the case in which the interference of the Court is sought. Should other special causes appear for, or against, the Court's intervention, due weight is to be given to them, regard being always had to the principles already enumerated. *MANI LAL NAIKAR v MOWDAB RAHAMAN (1918)*

(22 C. W. N 951)

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Nomination paper

—Description of candidate—Approver—Calcutta Municipal Act (Beng 111 of 1899) Sch V, r 2 (a) (d)—Practice—Affidavits—Civil Procedure Code (Act V of 1908), O XXI, r 27—Specific Relief Act (I of 1877), s 45. A candidate for election as Municipal Commissioner sent to the Chairman by way of his nomination paper, three nomination forms gummed together under cover of and attached to a letter by a clip. The letter contained a description of the candidate. The first form contained the name of the candidate and his number on the electoral roll, as also the names of his proposer, his seconder and eighteen approvers one of whom was the seconder and another the name of a firm. The second and third forms contained some names of approvers, but did not contain the names of the candidates, his proposer or seconder. *Held*, that the four documents could not be taken together as one nomination paper, and that the nomination was invalid. A nomination paper should be self contained and complete. The first form did not contain a description of the candidate and reference could not be made to the covering letter for the purpose. Out of the list of approvers on the first form, the names of the firm and of the person who was also the seconder should be excluded, and the deficiency could not be made up by reference to the second and third forms which were not complete by themselves owing to the absence therefrom of the names of the candidate, his proposer and seconder. Certain affidavits prepared for, but not used at the hearing before the Court of first instance, on objection, held to be inadmissible on appeal. *NARENDRA NATH MITTER v RADHA CHARAN PAL (1918) I L R 43 Calc 119*

7. — Preparation, revision and publication of list of voters—Election Poll finally of—Nomination paper—Sitting Commissioner as candidate for election—Objection to rival candidate's nomination—Qualifications of voters—Application to declare nomination paper inoperative—Power of High Court to interfere—Calcutta

MUNICIPAL ELECTION—contd

Municipal Act (Beng III of 1883), s. 36, 37 (2) (c), 37, 38 Sch II, 1 Persons objecting to the final publication of the Election Roll should take steps to prevent the publication before the Election Roll is finally published according to the rules. In an application to have it declared that the nomination paper of a rival candidate for election as Commissioner be rejected and declared inoperative on the ground that some of the approvers to the nomination were not entitled to vote. *Held* that the Court could not alter the Election Roll at that stage. *The Queen v. Tugwell, L. R. 3 Q. B. 704* relied upon. *Asado Lal Bose v. The Corporation for the Town of Calcutta, 1 L. R. 11 Calc. 275*, and *Chairman of Giridih Municipality v. Suresh Chandra Mazumdar, 12 C. W. N. 709* referred to. *AMLIYADHAN ADAR, In the matter of (1918)*

I L. R. 46 Calc. 132

8 ——— *Infringement of Rules effect of—Onus of proof—Estoppel—Bengal Municipal Act (Beng III of 1884) s. 15 69* The infringement of a rule of election framed by the Local Government under s. 15 and 69 of the Bengal Municipal Act of 1884 does not necessarily invalidate the election, unless the rule is mandatory in character. R. 17 of the election rules framed by Local Government under s. 15 and 69 of the Bengal Municipal Act of 1884 for the Dacca Municipality is not mandatory. The party who maintains the validity of an election notwithstanding the infringement of the rule must satisfy the Court that the result of the election was not affected by the error or irregularity. The Court will uphold an election, if it is satisfied that the result has not been affected by infringement which actually took place. But an election will be avoided even if the tribunal be satisfied that there is reasonable ground to believe that a majority of electors may have been prevented from electing the candidate they preferred. Decisions in England and the United States of America on election are not binding upon Indian Courts. English and American decisions referred to as illustrative. *R. S. Ramaniya v. Parthasarathy Aiyengar, (1915) M. W. N. 290, 17 M. L. T. 331*, approved. Estoppel cannot be pleaded where statutory requirements are disobeyed with full knowledge by the officers entrusted with the discharge of public duties. *SYAM CHAND BASAK v. CHAIRMAN Dacca Municipality (1919)*

I L. R. 47 Calc. 524

9 ——— *Bengal Municipal Act (Beng III of 1884), s. 15—R. 6 and 11 framed by Local Government, if ultra vires—Civil Courts jurisdiction of* The provisions of s. 15 of the Bengal Municipal Act (Beng III of 1884) authorise the Local Government to frame rules in all matters necessary to the proper conduct of elections. R. 6 and 11 made by the Government are *intra vires*. The Government by rule may require the preparation of a register of voters and entry in the register in the case of persons duly qualified to vote under s. 15 of the Act or the rules framed thereunder is to be regarded not so much as in itself a qualification but as the evidence upon which the polling officer must proceed, and the register is conclusive for this purpose. R. 6, read with rr. 5, 7, 9, and 10 in effect allows 15 days for inspection by residents, of the published re-

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gister and 30 days for the adjudication on claims and objections in the first instance by the Chairman and on appeal, by the Magistrate, and within the said 30 days and not less than 15 days before the election, the register as amended by the revising authorities must be republished. The periods allowed by r. 6 for inspection and for adjudication on claims and objections appear to be reasonable and should be sufficient in the generality of cases. The interval of 15 days between the republishing and election is intended to give electors a further opportunity for the rectification of possibly accidental errors. R. 11 read with r. 9 has the effect of closing the register 15 days before the date of election. The proviso to r. 11 gives qualified electors a further opportunity of substantiating their claims. There is no basis for the contention that the proviso to r. 11 applies only to the rectification of the register for the purpose of by-election. In view of the finding that the Chairman acted in contravention of the rules, the provisions of s. 9 of the Civil Procedure Code (Act V of 1908), of s. 42 of the Specific Relief Act (I of 1877) and of the 2nd proviso to s. 15 of the Act under consideration, the Civil Courts have jurisdiction to entertain this suit. *ATUL HUGH v. THE CHAIRMAN, MANICKTALA MUNICIPALITY (1920)*

I L. R. 48 Calc. 375

MUNICIPAL LAW.

See BOMBAY DISTRICT MUNICIPALITIES ACT (Bom III of 1901), s. 42

I L. R. 40 Bom. 168

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 115 I L. R. 40 Bom. 509

1 ——— *Removal of structures—Compensation—Declaration—Specific Relief Act (I of 1877), s. 42—Calcutta Municipal Act (Beng III of 1899), s. 311, 617* Upon the Corporation of Calcutta giving notice under the Calcutta Municipal Act, 1899, s. 241, to the owner of a building requiring him to remove a fixture attached thereto so as to project over, encroach on, or obstruct any public street or land, the payment of compensation provided for in the case of a fixture, erected before June 1st, 1863, is not a condition precedent to its removal or its demolition under s. 450, sub s. (3), the compensation is assessable by the Court of Small Causes under s. 817, and not in a suit. If, however, the Corporation declines to admit the owner's right to compensation, a Subordinate Judge has a discretionary power under the Specific Relief Act, 1877, s. 42, to make a declaration that the fixture was erected before June 1st, 1863, and that the owner was entitled to compensation. *JOSEPH v. CALCUTTA CORPORATION*

L. R. 43 I. A. 243

2 ——— *Roads which vest in the Municipality—Public, when they have a right to go over private pathway—Difference between roads vested in the Municipality and others as regards Municipality's rights—Bengal Municipal Act (Beng III of 1884), s. 30, 31* Under s. 30 of the Bengal Municipal Act as amended by recent legislation, private pathways do not vest in the Municipality. *Chairman of the Howrah Municipality v. Kheta Krishna Mitter I L. R. 33 Calc. 1290*, followed. *Kum. d. Eandhu Das Gupta v.*

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Kishori Lal Goswami, (1911) S A Nos 458 and 838 of 1909 (unrep.), and Kamol Kamini Deb v Chairman, Howrah Municipality, (1909) S A No 2134 of 1907 (unrep.) dissented from The Municipality may however, have control over such a pathway, if the public have a right to go over it, as provided for in s 31 of the Bengal Municipal Act. The difference between roads vested in the Municipality and other roads is that in the former case the Municipality is responsible for lighting, watering, sewerage and clearing the roads, and in the other case, the Municipality has only the power of control to prevent the road from becoming a nuisance, or the rights of the public from being interfered with. *CHAIRMAN, HOWRAH MUNICIPALITY v HARIDAS DATTA (1916)* . I L R 43 Calc 10

MUNICIPAL OFFENCE

See UNITED PROVINCES MUNICIPALITIES ACT (II of 1916) s 307

I L R 40 AH 563

prosecution for—

See UNITED PROVINCES MUNICIPALITIES ACT (II of 1916) ss 183 186

I L R 39 AH 482

MUNICIPAL OFFICER

dismissal of—

See DISTRICT MUNICIPAL ACT (BOM III of 1901) ss 2 46 AND 167

I L R 39 Bom 600

MUNICIPAL RULES

See GENERAL CLAUSES ACT (I OF 1904) s. 23

I L R 34 AH 381

MUNICIPAL TAXES

See MORTGAGE I L R 38 Mad 18

MUNICIPALITY

See BOMBAY, BENGAL, CALCUTTA AND MADRAS MUNICIPAL ACTS

See MUNICIPAL BOARD

See MUNICIPAL COMMISSIONERS

See MUNICIPAL ELECTION

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 195

I L R 37 Bom 365

See PUBLIC DRAIN

I L R 44 Calc 229

See RAILWAYS ACT (IX OF 1890 AS AMENDED BY ACT IX OF 1896), s 7

I L R 41 Bom 291

adversely possession against—

See MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884) s 103

I L R 38 Mad 456

sale by—

See RIGHT OF SUIT

I L R 36 Mad 373

Election—Practice—

Petition upon not elected member on ground of per

MUNICIPALITY—contd

sonation of voters.—Imitation.—Fresh instances of personation allowed to be pleaded after expiry of time for filing petition. An elector on the roll of a municipality filed a petition under the rules framed in that behalf by the Local Government against a successful candidate in a municipal election alleging various instances of personation of voters for which the opposite party was stated to be legally responsible. The petition was filed within the time limited by law. Held, that it was competent to the Court in which such petition was presented to allow the petition to be amended by the addition of fresh instances of personation. *NAWAB KHAN v MUHAMMAD ZAMIN (1912)* . I L R 34 AH 649

Assessment, principle of—

—Circumstances meaning of.—Onus of proving value of circumstances and property.—Bengal Municipal Act (Beng III of 1884) ss 85 116

—Evidence Act (I of 1872) s 106. The word 'circumstances' in s. 85 of the Bengal Municipal

Act is equivalent to means Assessment according to that section, must be made according to the means and property within the municipality.

The burden of proving the value of the circumstances and property within the municipality is on the municipality. *Chairman of the Giridih*

v Sri Sri Chandra Mohundar I L R 35 Calc. 359 referred to *DEE NARAIN DUTT*

v CHAIRMAN, BARUIPORE MUNICIPALITY (1913) . I L R 41 Calc 158

Roads which rest in—Under s 30 of the Bengal Municipal Act private footpaths do not rest in the Municipality. *CHAIRMAN HOWRAH*

MUNICIPALITY v HARIDAS DATTA . I L R 43 Calc 130

Parties.—Bengal Municipal Act (Beng III of 1884) ss 6 (3) 29 103.—Holding splitting of.—Valuation.—Assessment

Where in a suit the claim is directed against the Municipality as such and no damages are claimed against the chairman and vice-chairman and other officers of the Municipality for any wrong done by them personally the only proper defendant in the suit is the chairman of the Municipality in whose name only the Municipality can properly be sued and the addition of the vice chairman and other officers of the Municipality as parties defendants to the suit is not in order.

The splitting of a holding held under one title and surrounded by one set of boundaries into two separate holdings and separate valuation and assessment thereof, is not justified under the Bengal Municipal Act. Where after the general quinquennial assessment of such a holding lands included in the premises became for the first time liable to the imposition of rates and taxes: Held that the Municipality could not revise the valuation and assessment of the holding under s. 108 of the Bengal Municipal Act. *Held, further, that in the circumstances of the case the plaintiff was liable to taxation in respect of the portion of the premises which was found by the Civil Court to fall within the municipal limits and that the fact that subsequently thereto the remaining portion of the premises became liable to taxation by reason of the extension of the municipal limits made no difference as regards the liability of the plaintiff.* *TARAFADA MATUN DAR v SATISH CHANDRA SHARMA (1915)* . I L R 48 Calc 784

MUNICIPALITY—contd

Rules framed by Local Government under s 290 of the Bengal Municipal Act 1919—Water connection of municipality can cut off for non payment of costs of water meter—*Bengal Municipal Act (Beng 111 of 1884) s 297 291 292 293 295 297* Rr 4 D and 21 e) framed by the Local Government for the (a) Municipal Act 1884 are intra vires and do not conflict with ss 293 and 297 of the same Act. The Municipality is therefore entitled to compel the proprietor or owner of a house to pay for cost of water meter to measure the amount of water consumed in the house or to cut off water supply for non payment of the same. *NAGENDRA LAL DAS v THE CHAIRMAN CATTAGOUDA MUNICIPALITY (1919)* I L R 17 Cal 428

MUNIM

See PAKKI ADAT SYSTEM

I L R 39 Bom 1

MUNICIPAL

See PROVINCIAL SMALL CAUSE COURTS
Act (IX of 1897) s 33

I L R 37 All 450

I L R 39 All 567

See SANCTION FOR PROSECUTION

I L R 39 Cal 774

See JURISDICTION OF—

See ADULTERY I L R 37 Cal 863

See EXECUTION OF DECREE

I L R 47 Cal 1100

See SALE BY—

See RATEABLE DISTRIBUTION

I L R 46 Cal 64

MUSSALMAN WAKF VALIDATING ACT (VI OF 1913)

See MAHAMMADAN LAW (WAKF)

I L R 40 Mad 116

I L R 41 All 1

See WAKF I L R 43 Cal 158

See 3—

See WAKF VALIDITY OF

I L R 43 Cal 158

Construction of Statute—whether effect retrospective—Wakf—Mahomedan Law The Mussalman Wakf Validating Act 1913 has no retrospective effect and consequently the old law applies to wakfs created before the passing of that Act. *AMIRBIBI v AMIRBIBI (1914)*

I L R 39 Bom 563

See Preamble and ss 3 4—

See MAHOMEDAN LAW—WAKF

I L R 41 All 1

MURDER

See AUTREFOIS ACQUIT

I L R 41 Cal 1072

See PENAL CODE (Act XLV of 1860)
ss 37 302 304

I L R 35 All 506, 509

ss 299 341 I L R 39 All 161

ss 300 375 I L R 35 All 329

MURDER—contd

s 300 CL (J). I L R 41 Bom 27

s 302 I L R 40 All 390

Committed during a dacoity—

See CAL (C P 54 3) 303

I L R 2 Lab 472

Violent and determined attack by a number of persons regarded as of the consequences on a other causing other injuries and severe rupture of a healthy spleen—Intention to cause death or such bodily injury as the offender knows to be likely to cause death—Penal Code (Act XLV of 1860) ss 300 (1) (2) and 302 A body of 12 persons attacked another with cattle goads in a violent and determined manner inflicting sixteen wounds on his body and causing several and severe ruptures of his spleen and so caused his death. The person attacked was a strongly built man of 35 years of age, and his spleen was in a healthy state. *Held* that such acts, committed by several persons on one in such a manner apparently regardless of the consequences and with such results, warranted the interference that the acts were done by those persons with the intent either of causing the death of the person attacked or such injury as the offenders knew to be likely to cause his death and that the offence amounted to murder. *ELEM MOLLA v FAMEBOR (1907)*

I L R 37 Cal 315

Information of to police—Disposal by Magistrate without examination of complainant or witnesses An information of murder was lodged with the police, and the Sub Divisional Magistrate before whom the police report was placed, on a perusal of the police papers but without any examination of the complainant or any of his witnesses, refused process on the ground that the case was one in which no jury would convict. *Held* that it was the duty of the Magistrate to examine the complainant and the witnesses he wished to produce and the order made was liable to be set aside as improper. *FAZLUR RAHMAN v ABDAR RAHMAN (1918)*

23 C W N 392

Circumstantial evidence—No ground for imposing lesser sentence If the Court is satisfied beyond reasonable doubt that the accused is guilty of murder and the circumstances require the imposition of the death penalty the fact that the conviction is based on circumstantial evidence is not a reason for passing the lesser sentence allowed by law. *PUBLIC PROSECUTOR v PARAMANDI (1921)*

I L R 44 Mad 443

MUSCOORAT AND NANKAR RIGHT

See NAVIGABLE RIVER

I L R 46 Cal 390

MUSHA.

See MAHOMEDAN LAW—GIFT

I L R 39 Cal 518

15 C W N 328

MUTALIK DESAI VATAN

See BOMBAY HEREDITARY OFFICERS ACT
1874 s 15 I L R 41 Bom 237

MUTATION OF NAMES

See ARBITRATION I L R 43 All 389

MUTATION PROCEEDINGS.

See FALSE EVIDENCE

I. L. R. 23 Calc. 368

MUTAWALLI

See CIVIL PROCEDURE CODE (1908),

s 92

I. L. R. 37 All. 63

See MAHOMEDAN LAW—MUTAWALLI

See MAHOMEDAN LAW—WAKF

See WAKF

appointment of—

See MAHOMEDAN LAW—WAKF

I. L. R. 43 Calc. 13

See MAHOMEDAN LAW—ENDOWMENT

I. L. R. 47 Calc. 856

appointment of a minor as—

See ELECTION . I. L. R. 40 Mad. 941

lease by—

See MAHOMEDAN LAW—WAKF

I. L. R. 47 Calc. 592

suit by for possession—

See MAHOMEDAN LAW—ENDOWMENT

I. L. R. 47 Calc. 860

mortgage executed by—

See MAHOMEDAN LAW—ENDOWMENT

I. L. R. 37 Calc. 179

suit for the office of—

See MAHOMEDAN LAW—ENDOWMENT

I. L. R. 37 Calc. 263

MUTH

nature, object and custom of—

See HINDU LAW—ENDOWMENT

I. L. R. 43 Calc. 707

MUTT.

See HINDU LAW—ENDOWMENT

See MUTH

appointment of successor—

See ISSUE . . . 25 C. W. N. 145

1. *Head of a mutt*
whether trustee or life tenant of mutt properties It cannot be predicated of the head of a mutt, as such, that he holds the mutt properties as a life tenant or trustee. The question must be determined in each case upon the conditions on which they were given or which may be inferred from the long established usage and custom of the institution. *Giyana Sambandha Pandara Sannadhi v Kondasami Tambiran*, I. L. R. 10 Mad. 375, referred to *Vidyapurna Tirthaswami v Vidyasidhi Tirthaswami*, I. L. R. 27 Mad. 435, referred to *Kailasam Pillai v Nataraja Thambiran* (1909) . . . I. L. R. 33 Mad. 265

2. *Improper alienation of mutt properties by the head of the mutt—*
Suit by disciples under O. I. r. 8 Civil Procedure Code (Act V of 1908) to set aside the alienation and for possession to be given to the head of the mutt for the time being, whether maintainable—
Limitation—Limitation Act (IX of 1908), Arts 120, 134, and 144, applicability of. The disciples of a mutt have sufficient 'interest' within O. I. r. 8, of the Civil Procedure Code to maintain a representative suit not only for a declaration of the invalidity of an improper alienation of the mutt properties by the head of the mutt, but also for a decree directing possession to be given to the head of the mutt for the time being. It is immaterial whether the head of the mutt be a trustee or only a life-tenant. The suit being one for possession, the article of the Limitation Act applicable is not 120, but Art. 134 or 144, according as the head of the mutt is a trustee or only a life-tenant; and the right to sue for possession

MUTT—could

arise from the date of the alienation or when possession begins to be adverse. Possession which is adverse to the institution is equally adverse to the plaintiffs who sue on its behalf. *Chidambaramatha Thambiran v Nallasiya Mudaliar* (1917) . . . I. L. R. 41 Mad. 124

3. *Lease in perpetuity of mutt properties, validity of—Right of successors to dispute, whether void or voidable—Confirmation by immediate successor—Right of the latter's successor to repudiate the same—Suit to set aside, if necessary—Limitation Act (XV of 1877), Arts 142 and 144—Nature of the estate of a matathipathi (head of a mutt), of an absolute estate or estate for life—Local Boards Act (V of 1894), ss 63, 66 and 73—The Madras Revenue Recovery Act (II of 1864), ss 32 and 42—Suit for arrears of road cess—No notice to inamdar but to tenant—Sale irregular, not without jurisdiction—Suit to set aside sale—Limitation Act (XV of 1877), Art. 12—Revenue Recovery Act (II of 1864), s 59* The head of a mutt made an alienation by way of a lease in perpetuity in 1872 of some lands which had been granted as inam for the support of the mutt, and died in 1900; his immediate successor in the office received the rent reserved by the old lease from the lessee's transferees from 1900 and treated the occupants under the old lease as the tenants until his death in 1906, the latter's successor in office brought the present suit in 1908 to set aside the lease and recover possession of the inam lands from the defendants who were sublessees or assignees from the original lessee and from the fifth defendant who was a purchaser in a revenue sale of some of the inam lands which were sold in May 1902, for arrears of road cess due under the Local Boards Act (V of 1894). *Held*, that the mutt was not barred by limitation except as regards the lands which were sold in revenue sale. A permanent lease is in excess of the powers of the head of a mutt. An alienation by the head of a mutt is not necessarily void and of no effect but is good for the life time of the alienor. A matathipathi (head of a mutt) is not a tenant for life but is in the position of one who, though in a certain sense owner in fee simple, yet in many respects has only the powers of a tenant for life. An alienation by the head of a mutt is voidable by the alienor's successors in very much the same way that an alienation by a Hindu widow in excess of her powers is voidable by her successors. The successors of a matathipathi cannot validate a case of his predecessor so as to bind his successors, he validates the lease only for the period during which he holds the office or avoids it altogether. *Alkum Ganesami v Sanyama Charan Nandi*, I. L. R. 26 Cal. 1003, *Narappa Upada v Venkataswami Bhatta*, 23 Mad. L. J. 270, *Vidyapurna Tirthaswami v Vidyasidhi Tirthaswami*, I. L. R. 27 Mad. 435, and *Kailasam Pillai v Nataraja Thambiran*, I. L. R. 33 Mad. 265, followed. The corpus of the mutt property is inalienable except in special circumstances, but the income subject to the upkeep of the mutt is at the absolute disposal of the matathipathi (see *Vidyapurna Tirthaswami v Vidyasidhi Tirthaswami*, I. L. R. 27 Mad. 435). Where owing to the failure of the holders of a portion of the inam lands to pay the local-cess due under the Local Boards Act (V of 1894), the Revenue officers sell some of the inam lands without giving notice of the proceeding

MUTT—contd

to the head of the mutt as the defaulter but notice was given to the tenant in occupation of the lands the sale was a regular but not one held without jurisdiction and was consequently liable to be set aside, but the suit to set aside the same was barred as not brought within the time allowed by s. 53 of the Madras Revenue Recovery Act (II of 1904) or Art. 12 of the second Schedule of the Limitation Act (XV of 1877) *Ramachandra v. Pitchaikani* 1 L R 7 Mad 434 *Chinnasami Mudali v. Tirumalai Pillai and the Secretary of State for India* 1 L R 25 Mad 572, *Malkarajun v. Varkari* 1 L R 25 Bom 337, and *Rajay Gopal Mukerji v. Krishna Mahesh Debi*, 1 L R 34 Cal 329, referred to, *Per SADASIVA AYYAR J.*—The position of a mathathipathi is not analogous to that of a Corporation sole under the English Law, because there is this fundamental distinction, namely whereas the properties belonging to an English Bishop (a Corporation sole under the English Law) including his savings from the revenues of the benefice devolve upon his legal representatives or heirs, the savings of mathathipathi devolve upon the succeeding mathathipathi. The procedure laid down by the Revenue Recovery Act (II of 1904) has been incorporated into the Local Boards Act by s. 76 of the latter Act but the substantive provisions in the Revenue Recovery Act (ss. 32 and 37) that the sale for the recovery of arrears of land revenue frees the land from all incumbrances and from all favourably rented leases do not apply to a sale under the Local Boards Act. See *Ramachandra v. Pitchaikani* 1 L R 7 Mad 434 and *Chinnasami Mudali v. Tirumalai Pillai and the Secretary of State for India* 1 L R 25 Mad 572. **MUTRASAMIER v. SAKK SURESHANTHATHI SWAMIKAR** (1913)

1 L R 33 Mad 356

4 ————— *Dharmapuram Adinam Pandarasannadhi of Junior Pandarasannadhi*—Mode of appointment of—Nomination by will—Ordination—Abishegam, effect of—Nature of the office—Removal of junior from office, grounds of—Power of Pandarasannadhi to remove junior, if at pleasure or for good cause—Notice of charges, necessity for—Dismissal without notice or opportunity for defence, validity of—Compromise-decree, nature and effect of—Suit for setting aside, necessity for—Limitation for such suit—Compromise-decree partly illegal, effect of—Decree, if void altogether. The Pandarasannadhi or the head of the Dharma param mutt has no power to dismiss at his pleasure the junior Pandarasannadhi of the mutt from his office though he can do so for good cause, but a dismissal directed by the former without giving the latter any notice of the charges alleged against him (or an opportunity for making his defence thereto) is wholly void and inoperative in law. The nomination and ordination of a junior Pandarasannadhi is the customary mode of provision for the line of succession in mutts. The position of a junior Pandarasannadhi during the lifetime of the senior is analogous to that of an coadjutor with the right of succession under the Canon law, a right of which he cannot be deprived except for grave cause. Where an office is held at pleasure the incumbent may be removed even on charges of misconduct without any opportunity of being heard in his defence because he is removable at pleasure without any misconduct at all, but in all other cases the objection of want

MUTT—contd

of notice can never be got over. *Rez v Chancellor and Master of the University to Cambridge*, 1 Str. 557, followed. A consent decree is binding on the parties and their representatives until it is set aside just as much as if it had been passed after contest. *Fateh Chand v. Nursing Das*, 23 C L J 353, and *In re South American and Mexico Company Ex parte Bank of England* (1895) 1 Ch 37 followed. A suit to set aside a compromise decree will be barred after three years from the date of the decree. An illegality in a compromise decree in so far as it restrains the Pandarasannadhi from removing the junior in case of any future misconduct is not a ground for setting aside the decree altogether in a suit instituted for that purpose. *Aarney v. Whitehaven Colliery Co.*, (1893) 1 Q B 700, referred to. *Per SESHAGIRI AYYAR, J.* Where a suit is brought in a representative capacity, the legal representative must show that the estate devolved on him, the estate in this connection is not the estate which the deceased had but the estate which he represented, that is the estate which he laid claim to. Mutts are not voluntary associations or brotherhoods or proprietary clubs. A person who has been appointed as a junior Pandarasannadhi to whom abishegam has been duly performed acquires a status which is not lost unless he is removed from his office for good cause. An ascetic who holds an office like that of a head of a mutt or a junior Pandarasannadhi does not incur forfeiture of his office by reason of his immorality but is liable to be removed from his office on proof of his immoral conduct. In a suit by a junior Pandarasannadhi against the head of a mutt disputing the validity of his dismissal from his office it is competent to the head of the mutt to enter into a compromise which does not affect the usage of the institution whereby the senior Pandarasannadhi recognizes the title of the junior under his original appointment as subsisting and admits that his removal was invalid as the grounds of dismissal were not justifiable, a decree in accordance therewith is not illegal. **THIRUVARALLA DEVIKAR v. MANIKKA VACHAKA DEVIKAR** (1915) 1 L R 40 Mad 177

5 ————— *Sanyasi*—Simple money debts incurred by head for necessities of the Mut—Suit against successor—Liability of mutt properties—Personal liability of the debtor—Lay trustee executor or administrator, analogy of. In a suit to recover a simple money debt, incurred by the sanyasi head of a mutt for the necessary purposes of the mutt, the properties of the mutt can be made liable, whether the suit is brought during the lifetime of the incumbent who incurred the debt or his successor. Cases of debts incurred by lay trustees of religious or charitable institutions, executors or administrators distinguished. *Shankar Bharati Sromi v. Yenlapa Naik* (1855) 1 I R 9 Bom 422 followed. **LAKESEMINERA TUTHRA SWAMIKAR v. PACHAVENDRA RAO** (1920)

1 L R 45 Mad 795

MUTUAL CONSENT.See **BURNETT LAW—MARRIAGE**

1 L R 59 Cal 492

MUTUALITY

—WANT OF—

See **SPECIFIC PERFORMANCE**

1 L R 79 Cal 232

N

NAIKINS.

Adopted as—Adoption of daughter by a Nainik—Adoption invalid—Will—Construction—Gift to the adopted daughter as persona designata One Sundra, a nainik (a professional prostitute), adopted her near relative Hira as her daughter. She next made a will whereby she bequeathed the bulk of her property to Hira. In the will, Hira was referred to at some places by her name and as others as "adopted daughter." On Sundra's death, Hira claimed Sundra's property as her adopted daughter and also as persona designata under Sundra's will. Held, that Hira could not succeed as an adopted daughter, because Sundra being a nainik, could not validly adopt a daughter to herself. *Mathura Nainik v. Esu Nainik*, 1 L. R. 4 Bom. 545, followed. *Varku v. Mahalinga*, 1 L. R. 11 Mad. 393, dissented from. Held, further, on construction of the will that Hira was entitled to succeed as persona designata under Sundra's will, for Hira was not to take the property as being the adopted daughter but she was the adopted daughter and was to take the property because she was the special object of Sundra's bounty. *HIRA NAIKIN v. PADMA NAIKIN* (1919) 1 L. R. 37 Bom. 116

NAVIGABLE RIVER—contd

—test for determining whether a river is a public Navigable River—contd

Flowing in rivers and streams. PRASAD ROW v. THE SECRETARY OF STATE FOR INDIA

1 L. R. 40 Mad. 886

*Pennell's Map of inland navigation—Zemindars, status of, whether proprietors under Moghul Rule—Cession of Burdwan, Midnapore and Chittagong, effect of, on zemindar's rights—Fifth Report of Select Committee of House of Commons—Mussorah and Nankar Zemindar's chartered rights—Permanent Settlement, whether bed of river Damodar included in—Bengal Regulation XIX of 1816, s. 9—Fishery exclusive right of, presumption from—Bengal Allotment and Diluvion Regulation XI of 1825—Chura, principle of resumption of—Public domain gain from—Middle thread privilege of, as to right to bed of river—Rules as to construction of boundaries—Revenue, whether Government entitled to assess on churs forming within the Burdwan zemindari—Water duties—Doul behdool—At the date of the Permanent Settlement of Bengal (1791) the River Damodar was not a navigable river i.e., one in which boats could ply throughout the year. Rennell's Map of inland navigation appearing in his Atlas, which was published by authority of the East India Company, does not require to be proved. Prior to 1760 A. D. the zemindari or chakla of Burdwan was settled with the Maharaja's ancestors not by pargana but as a whole. They were not mere revenue agents of the Ruling Power for the principal zamindars of Bengal had clearly a title to their estates. Under the treaty of 1760 Burdwan, Midnapore and Chittagong were ceded to the East India Company subject to the rights of the zamindars which were expressly reserved by the Sanad executed to give effect to the treaty and accepted by the East India Company. The farming out of the revenues of Burdwan by public auction for three years in 1762, did not put an end to the rights of the Maharaja's predecessors for "a scrupulous regard seems to have been paid to the then Maharaja's chartered rights of Mussorah and Nankar, etc." At the time of the Permanent Settlement the bed of the River Damodar in so far as it flowed through the chakla or zemindari of Burdwan formed a part of the estate permanently settled with the Maharaja's predecessor. Regulation XIX of 1816, s. 9, provides only for compensation being paid not for a reduction of the land revenue. Although an exclusive right of fishery does not of itself pass the right to the soil in the bed of the river still where the river is a public domain, as in the case of the Damodar, the rights are unknown or uncertain, it is a matter of importance that the plaintiff has a several right of fishery in the river, the bed of which he claims. Under the Bengal Allotment and Diluvion Regulation, of 1825 chura in non-navigable rivers forming part of the permanently settled estate cannot be resumed for, before there can be a further assessment of Government revenue there must be a 'gain' from the public domain. *Secretary of State v. Fakamondar Row* 125 Ind. J. L. R. 17 Cal. 150, and *Prasad Row v. Secretary of State for India*, 1 L. R. 40 Mad. 886 referred to. It is the common law of the country the right to the soil of a river when flowing within the estates of different proprietors belongs to the riparian owners up to the middle thread. *The British India v. Charles Chander Choudry* 2 Poy 511 and *Kol Assam**

NARVA TENURE

—mortgage of—

See BHAGDARI AND NARVADARI ACT (Bom. V of 1862) s. 3

1 L. R. 35 Bom. 42

NATIVE INDIAN SUBJECT OF HIS MAJESTY.

See CRIMINAL PROCEDURE CODE (Act V of 1898) s. 188

1 L. R. 41 Bom. 667

NATIVE STATE.

See LIMITATION ACT (IX of 1908) Sch. I, Art. 182, cl. s. (5) AND (6)

1 L. R. 42 Bom. 420

NATTUKOTTAI CHETTIERS.

See LIMITATION ACT, 1908 Sch. I Arts. 60, 17

1 L. R. 43 Mad. 629

See PRESIDENCY TOWNS INSOLVENCY ACT, 1900, s. 115

1 L. R. 43 Mad. 747

NATURAL SON.

See HINDU LAW—STRIDHAN

1 L. R. 40 Cal. 204

NAVIGABLE RIVER.

See FISHERY 1 L. R. 42 Cal. 489

—dry lands formed through recession—whether can be assessed for revenue.

See PUBLIC NAVIGABLE RIVER

24 C. W. N. 639

—test for determining whether a river is a public Navigable River.

See PUBLIC NAVIGABLE RIVER 24 C. W. N. 809

The Law of the Madras Presidency as to Rivers and Streams certainly differs from the English law and it is quite possible that it recognizes some proprietary rights on the part of government in the water

NAVIGABLE RIVER—*contd*

test for determining whether a river is a public Navigable River—*contd*
Tagore v Jado Lal Mullick, 5 C I R 97, referred to Where property is bounded by a road or river, the boundary, even if given as the road or river, is the middle of the road or river as the case may be. *Commissioners for Land Tax for the City of London v Central London Railway Company [1913] 1 C 361* and *Attorney General for British Columbia v Attorney General for Canada, 1914] 4 C 153*, referred to The assessment of the Government revenue on the riparian mouzabs of the Burdwan zemindari was imposed not only in the mouzabs but also on the adjoining half of the bed of the river, and Government is not entitled to assess further revenue on *chaks* forming therein SECRETARY OF STATE FOR INDIA v *BOJOY CHAND MAHATAP (1918)* 1 L R 46 Cal 390
 24 C W N. 872

NAZARANA

See MORTGAGE. 1 L R. 35 Bom 371

NAZIR.

appointment of, as guardian—
 See GUARDIAN 1 L R 38 Cal 783

NECESSARIES

See CONTRACT ACT (IV OF 1872) s 68
 1 L R 32 All 325

NECESSITY FOR ALIENATION

See HINDU LAW—ALIENATION
 See HINDU LAW—JUAL NECESSITY

NEGLECT

See BANKER AND CUSTOMER.
 1 L R 36 Bom 455
 See BOMBAY DISTRICT MUNICIPAL ACT (BOM III OF 1901) ss 50 54
 1 L R 35 Bom 492
 See CARRIERS. 1 L R. 43 Cal 716
 1 L R 41 Cal 80
 1 L R 47 Cal 1027
 See CONTRIBUTORY NEGLIGENCE.
 1 L R 37 Bom 575
 See GAS COMPANY 14 C W. N. 158
 See HORSE. 19 C W. N 916
 See MORTGAGE. 1 L R. 43 Cal 1052
 See PEVAL CODE (ACT XLV OF 1860)—
 s. 304. 1 L R. 42 All 272
 ss. 337, 338 1 L R. 39 Bom 523

See RAILWAY COMPANY
 1 L R. 37 Bom. 1
 1 L R. 39 Bom. 191
 See STEAMSHIP COMPANY
 1 L R. 47 Cal 6
 See TORT.
 See VENDOR AND PURCHASER
 1 L R. 35 Bom. 269

NEGLECT—*contd*

Causing death—
 See PENAL CODE, s. 304
 1 L R. 42 All 272
 Indemnity against—
 See COMMON CARRIER.
 1 L R 33 Cal 28
 liability of landholder for—
 See AGRA TENANCY ACT (II OF 1901),
 ss 184, 160 1 L R. 40 All 246
 of agent, damages for—
 See TRANSFER OF PROPERTY ACT (IV OF
 1882), s. 6 (c) 1 L R. 33 Mad. 133
 of Government Servant—
 See TORT 1 L R. 39 Mad 351
 of municipality—
 See BOMBAY IRRIGATION ACT, 1879
 1 L R 33 Bom. 116
 See TORT 1 L R. 41 Mad. 538
 of servants—
 See JUDICIAL DESCRIPTION
 4 Pat. L J. 331
 of servants of Public Works Department—
 See TORT 1 L R. 39 Mad. 351
 Railway accident—*Railway Company—Breach of statutory duty—Injury to passengers with arm outside carriage window—Contributory negligence—Contractual obligations* The fact that the door on a moving train is open is evidence, but not conclusive proof, of negligence on the part of the Railway Company. Where there is a statutory obligation, any breach of it which causes an accident is conclusive against the defendant apart from special proof of negligence. But the breach must in itself be the cause of the accident, and the rule does not extend so far as to exclude the defence of contributory negligence. In view of the contractual relations between the parties, a Railway Company is not liable for injuries caused to any part of a passenger which is outside the carriage in which he is travelling, provided that such injuries could not have been rectified had the passenger remained inside the carriage. The application of the rule that, where there is negligence on both sides the negligence of the person who had the last chance of averting accident is the efficient cause thereof, must be restricted to cases where the danger was apparent to both or at least one of the parties before the accident actually happened. *DELLABHJI SAKHIDAS v G. I. P. RAILWAY CO. (1909)*
 1 L R 34 Bom. 427
 See CONTRIBUTORY NEGLIGENCE
 1 L R. 37 Bom. 575
 Suit against Tramway Company
—Passenger entering car while in motion—Contributory negligence. T brought an action against the Tramway Company claiming damages for injuries sustained by him by reason of the Company's negligence. T alleged that while attempting to board a stationary tramcar the car was suddenly started at a signal given by the conductor and the footboard tilted and slipped sideways from beneath T's foot, in consequence of which T lost his balance, was thrown to the ground and his

NEGLIGENCE—contd.

right foot was injured. *Held*, dismissing the suit that the footboard was not loose and that T's fall was due to his attempting to enter a car while in motion and was not due to any fault or defect in the fixity of the board. *Per Curiam*.—Whether there is a bye law or there is not a bye law to that effect, the fact remains that if a passenger chooses to attempt to enter or leave a moving car, he does so at his own risk. It is not what a prudent or a reasonable man should or would do, and if he does it and sustains injury while in the act of so doing, it would be an accident or a misfortune for which the defendant Company would in no way be liable. **TEJULJI JAMSETJI v. BOMBAY ELECTRIC SUPPLY AND TRAMWAYS COMPANY, LTD.** (1911)

I. L. R. 35 Bom. 478

Driving motor-car at excessive speed

—*Injury to bare licensee being driven in car—*

—*Liability of car-owner—Quantum of damages*

The defendant was driving a party of relatives and friends (including the plaintiff) in his motor car from Deolali to Igarpuri. The road at one point turned somewhat abruptly to the left and crossed the lines of the Great Indian Peninsula Railway by means of a level crossing, after the level crossing the road turned abruptly to the right. The defendant, who was driving his car at an excessive speed, drove over the crossing at the time that a train was there due. Though it got over the crossing safely the car failed to take the abrupt turning to the right and jumping an embankment rushed into a paddy field below. The occupants of the car, with the exception of the defendant, were thrown out with much violence and the plaintiff received such grave injuries as would render him a cripple for the rest of his life. The plaintiff sued to recover damages caused to him by the defendant's negligence. *Held*, that putting the skill and caution exigible from the defendant at the very lowest, he was grossly and culpably negligent, that he was liable in damages to the plaintiff, and that in assessing damages the same principles should be applied whether the person who had incurred the liability was a private individual or a wealthy company. **SOHABJI HORMUSJI v. JAMSHEDJI MERWANJI** (1914)

I. L. R. 38 Bom. 552

Public authority, breach of statutory duty by, causing injury—when cause of action arises—Bengal Local Self Government Act (III of 1883), ss 20 and 146—Bengal Municipal Act (III of 1883), ss 29 and 363—Bihar and Orissa General Clauses Act of 1917, s 4 (2)—Suit against District Board or Municipality—Limitation. The words "anything done under this Act" in s. 146 of the Bengal Local Self Government Act, 1883, and in s. 363 of the Bengal Municipal Act, 1883, include omissions. Where personal injuries are caused by a negligent act or omission of defendant a fresh cause of action does not arise whenever the damage suffered becomes aggravated without any fresh act or omission in the part of the defendant. In such a case the plaintiff is entitled to compensation not only for the damage actually visible at the time when the suit is instituted, or at the time of the trial, but also for such consequential damage as may reasonably be expected to arise in the future from the wrongful act or omission complained of. For if a suit for damages for the wrongful act or omission has been decided or has become barred, no fresh cause of action

NEGLIGENCE—contd.

accrues to the plaintiff on the development of the consequential damage. s. 146 of the Bengal Local Self Government Act, does not include a suit against a District Board as a body corporate, as distinct from a suit against the members of such Board, and, therefore a suit against a District Board may be instituted more than three months after the cause of action arises. But a suit against a Municipality must be brought within the period of limitation prescribed in s. 363 of the Bengal Municipal Act 1884. **ALLAN MATTHEWSON v. CHAIRMAN OF THE DISTRICT BOARD OF MANDUR** 5 Pat. L. J. 359

Railway Company—Derailment of train—Removal of rail—Onus of proof—Discharge of onus

The respondent was injured by reason of a train of the appellants in which he was a passenger leaving the line and being wrecked, and he sued the appellants for damages for negligence. The immediate cause of the accident was the removal of a rail, which the appellants pleaded had been effected maliciously by some person for whom they were not responsible. *Held*, that the onus of proof that the respondents' injuries were not due to the appellants' negligence was upon the appellants, but that upon the evidence they had discharged that onus. Judgment of the High Court (**SANDHSON v. J.**, dissenting) reversed. **FAST INDIAN RAILWAY COMPANY v. KIRKWOOD** (1919) I. L. R. 48 Calc. 757

NEGOTIABLE INSTRUMENT.

See **BILLS OF EXCHANGE**

See **HUNDI**

See **NEGOTIABLE INSTRUMENTS ACT (XVI of 1881)**

See **NOTE OF HAND** 14 C. W. N. 414

See **PROMISSORY NOTE**

See **SHARES** I. L. R. 46 Calc. 331, 342

Party to suit on—Limitation Act, s. 22—Amendment by adding party cannot relate back to date anterior to application to add party

A suit on a negotiable instrument must be instituted in the name of the person who on the face of the instrument is entitled thereto or by a holder deriving title from him. Where the suit is instituted in the name of a wrong person, the Court has power under O. 1 r. 10 (1), to amend the plaint by bringing the proper party as plaintiff. Such person cannot be brought on the record as from the day the suit was instituted. The amendment will relate back, at the most, to the date on which the application to be added as plaintiff was made and if such application was made after the right to sue was barred by limitation, such amendment should not be allowed. In suits of this kind, a mistake to be corrected under O. 1 r. 10 (1), must be corrected before the limitation period of the suit expires. **Sankar v. Chatterjee** I. L. R. 20 Mad. 457, referred to **SUBBARAYA IYER v. VATHINATHA IYER** (1909)

I. L. R. 23 Mad. 115

It may be transferred by registered deed of gift—XVI of 1881, ss 46, 47, 48, 50—Transfer of Property Act (IV of 1882), s. 123—Mode in which transferee may enforce his right—Successor Act (I of 1872), s. 12—Creditor entitled to prove deed of gift to be set aside in certain cases When the holder of a Government Promissory note

NEGOTIABLE INSTRUMENT—*contd*

purported to transfer it to another by a registered deed of gift. *Held* that though there was no endorsement and delivery as contemplated by the Negotiable Instruments Act there was a valid transfer of the document as a chattel and the transferee was entitled to it and to the property referred to in it. [How such a voluntary transferee is to enforce recognition of his title and payment of the note not decided.] Delivery of the property is not necessary where the gift is by a registered instrument. Oral evidence is not admissible to prove that a document which in terms is an out and out gift was really meant to be a *donatio mortis causa*. **BRADSHAW v. GOSWAMI v. ASHUTOSH MUKHOPADHYA (1912)**

18 C. W. N. 888

— *In favour of Agent—In favour of A as agent of B—Endorsement by A, simpliciter in C—No prima facie title to C* If a negotiable instrument executed in favour of A, as the agent of B, is endorsed by A simpliciter (i.e., without describing himself as the agent of B) to C the endorsement cannot in the absence of any evidence to show that A was intended to be the beneficial owner of the note, convey, in this country, any title to C so as to enable C to sue the person or persons liable on the note. **MUTHAR SAHIB MARAKAR v. KADAR SAHIB MARAKAR, I L R. 23 Mad. 244** referred to **VEERAYAN CHETTIAR v. PONNUSWAMI CHETTIAR (1913)** I L R. 36 Mad. 362

— *In favour of several—Discharge by one of several payees validity of Held by the Full Bench (THE CHIEF JUSTICE dissenting), that one of several payees of a negotiable instrument could give a valid discharge of the entire debt without the concurrence of the other payees* **ANNAPURNAMMA v. ARKATTA (1913)**

I L R. 36 Mad. 544

— *Handl—Whether by mercantile usage at Delhi oral acceptance is binding—What constitutes a mercantile usage* *Held*, that by mercantile usage at Delhi a drawee who has accepted a *Handl* orally is liable on the instrument. *Held*, also, that to establish a mercantile usage it is enough if the usage appears to be so well known and acquiesced in, that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract. **Jyotsnabehn v. Manickchand & Alcos, I A 263 289, P. C.**, referred to **PANNA LAL LAUGHMAN DAS v. HARGOPAL KHUBI RAM** . I L R. 1 Lah. 80

— *Accompanied deposit of title-deeds—Endorsement of negotiable instrument without transfer of equitable mortgage by registered instrument—Right of endorsee to enforce the mortgage* The endorsee for value of a negotiable instrument, the amount of which had been secured by a mortgage by deposit of title-deeds cannot claim to enforce the mortgage in the absence of a registered instrument conveying the mortgage right to him. **Permal Immal v. Permal Vaidyar (1921)** I L R. 44 Mad. 198 dissenting from **ELP MALAI CHETTI v. NAIKARISHNA MUDALIAR (1921)** . I L R. 44 Mad. 985

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)

ss. 4 and 28—

See NOTE ON HAND 14 C. W. N. 414

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—*contd*

— ss. 4 and 80—*Certain person, whether manager of a bank is—Interest whether enlargement of time is good consideration for promise to pay—Promissory note where suit on, should be mat. lated* A promissory note payable to the manager of a bank is payable to a certain person within the meaning of the Negotiable Instruments Act, 1881 s. 4 & 80 being an enabling section is no bar to the recovery of interest which the debtor subsequently to the execution of a promissory note agrees to pay in consideration of the creditor not pressing his demand immediately. A suit on a promissory note is properly instituted at the place where payment is to be made. **MAHANTH DAMODAR DAS v. DEVARAS BAYE, LTD**

5 Pat. L. J. 536

— ss. 5 and 8—*Cheque Bill of Exchange—Banker—Local Boards Act (V of 1891), ss. 55, 144 to 147—Government Treasury, whether a banker—Power of Local Board to make or issue negotiable instruments—Implied power—Rules and Forms under the Act—Local Fund Code, s. 512—Endorsee of an order of District Board, whether holder in due course* A Local Board is impliedly empowered under the Local Boards Act (V of 1891) to make, endorse or accept negotiable instruments, as such a power can be inferred from the rules and forms made by the Governor in Council under s. 144 cl. (16) of the Act and contained in the Local Fund Code which have the force of law under s. 147 of the Act. A Government Treasury, in which a District Board deposits its money under s. 54 of the Act and issues orders for payment on which are respected by the former, is not a 'Bank.' **Foley v. Hill (1848)** 2 H. L. Cas. 28 at p. 43 and **Halifax Union v. Wheelwright (1875)** L. R. 10 Exch. 133, followed. An unconditional order in writing for payment of money to, or to the order of a person, issued by a District Board on the Government Treasury, is not a cheque under s. 6 but is a bill of exchange under s. 5 of the Negotiable Instruments Act; and a *bona fide* endorsee for value of such an order is entitled to payment as a holder in due course. **RANKA SWAMI PILLAI v. SANKARALINGAM ATTAR (1920)**

I L R. 43 Mad. 818

— s. 13—

See SHIBRA I L R. 46 Cal. 331, 342

— s. 16—*Endorsement, what constitutes—Holder in due course—Bill payable on demand, when overdue* S. 16 of the Negotiable Instruments Act does not lay down any specific form of words for an endorsement. A promissory note payable on demand was executed on 18th December 1901. On the 12th September 1904, the payee received the amount due on the note from one S and the following was endorsed on the note by the payee: 'I have this day received from you, S the sum of

Rs. for principal and interest and assigned this note to you with power to recover the amount due under it by showing the same.' No demand for payment was made before the 12th September 1904. *Held* that S was an indorsee of the promissory note, that the promissory note was not overdue on the date of indorsement and that S was entitled as holder in due course to sue on the note. **SIVASANKARISHNA PATTAR v. MAN GATASERI KUNNU MOIDET (1909)**

I L R. 33 Mad. 34

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1891)—*contd*

s. 22—*Liability payable after sixty one days—Draw of maturity—Liability of endorser—Held, (i) that a bill of exchange which is not expressed to be payable on demand, at sight or on presentment, is at maturity on the third day after the day on which it is expressed to be payable, and (ii) that a bill drawn in the customary form, that is, expressed to be payable after so many days, does not require to be presented for acceptance in order to render liable thereon the payee, who had endorsed it in favour of a third party* GANGA PRASAD v HIRA LAL (1916)

I. L. R. 39 All. 86

s. 26, 27, 28—

See HUNDI, *SUIT ON*.

I. L. R. 46 Cal. 683

Agent, meaning of—Hundi or promissory note drawn or made by a trustee of a charity—Personal liability of trustee—Liability of charity property and other members of the family—Signature of trustee with vilasam of charity prefixed, effect of—Liability of non executors—A person drawing a hundi or bill of exchange or making a promissory note as trustee of a temple or of a charity is personally liable on such bill or note. Rule of English Law as to bills drawn or notes made by church wardens, overseers and others who describe themselves in their official capacities, applied. English and Indian cases reviewed. 'Agent' referred to in s. 27 and 28 of the Indian Negotiable Instruments Act, means the agent of a person capable of contracting within the meaning of s. 26, and when the agent is not liable, the principle is. A person drawing a bill or making a note as trustee of a temple or charity is not acting on behalf of such a principal and cannot claim the benefit of s. 28. When the agent of a Chetti firm is executing a negotiable instrument prefixed the firm's vilasam, that is, a well understood indication that he is acting only as an agent and has been so recognized by the Courts, but when a man signs as trustee prefixing the charity vilasam, there is on the face of the document no clear indication that he contracts for any one else but himself. PALANIAPPA CHETTIAR v. SHAN MUGAM CHETTIAR (1918)

I. L. R. 41 Mad. 815

s. 27—*Promissory note executed under the authority of a markman but not marked by him, validity of—Contract Act (IX of 1872), s. 226, applicability of. The law of Agency as stated in s. 226 of the Indian Contract Act is applicable to Negotiable Instruments and a promissory note executed by a person under the authority of a markman is valid though the markman has not affixed his mark thereto.* BALAYYA v. SUBBAYYA (1917)

I. L. R. 40 Mad 1171

s. 28—*Promissory note by agent, with out any indication of execution as agent—Personal liability of executant. Unless an executant of a promissory note clearly indicates therein either by an addition to his signature or otherwise, that he executes it as agent of another or that he does not intend thereby to incur personal responsibility, he is liable personally on the promissory note according to s. 28 of the Negotiable Instruments Act. Merely describing oneself in the note as, the holder of a power of attorney from another does not show that the power included a power to*

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1891)—*contd*.s. 29—*contd*

sign promissory notes or that the note was signed in pursuance of the power. Applicability of English Law on the subject considered. KOTATI NAICKER v. GOPALA AYYAR (1913)

I. L. R. 33 Mad. 482

s. 23, 50—

See PROMISSORY NOTE IN GUARDIAN OF MINOR I. L. R. 39 Mad 915

s. 30, 47, 59, 74, 91—*Hundi, payable to bearer—Surety—Contract of suretyship only between surety and creditor—Right of surety against principal debtor—Indian Contract Act (IX of 1872), s. 126, 140, 141, 145, 69 and 70—Right of holder, not being holder in due course—Delivery of hundi, payable to bearer, effect of—Holder, right of. A person who becomes a surety without the concurrence thereto of the principal debtor, gets as against the latter, only the rights given by ss. 140 and 141 of the Indian Contract Act (IX of 1872) and not those given by s. 145. Such a person cannot invoke in his favour the aid of ss. 69 and 70 of the Act. *Hodgson v. Shaw*, 3 My K 183, referred to. A person obtaining by payment, after dishonour by the drawee, delivery of a negotiable instrument payable to bearer, acquires the rights of a holder thereof and can, under s. 59 of the Negotiable Instruments Act (XXVI of 1891) recover from the drawer, the amount due thereon, on proof of presentment and notice of dishonour as required by ss. 74, 30 and 94 of the Act. *Gajapathy Krishna Chandra Deo v. Srinivasa Charlu*, Appeal No. 26 of 1909, referred to. *Nanal Ram v. Mehru Lal*, I. L. R. 1 All. 457, distinguished. *MURTHU RAMAN v. CHINPA VELAYAN* (1916) I. L. R. 29 Mad. 965*

s. 32, 43—

See ARBITRATION I. L. R. 2 Lah. 335

See BILL OF EXCHANGE

I. L. R. 41 Bom. 566

s. 43—

See C I F CONTRACTS

I. L. R. 42 Bom 473

s. 47—

See s. 30 I. L. R. 39 Mad 965

s. 48—*Promissory note, making over of, without endorsement, if constitutes valid transfer of gift—Chose in action, transfer of—Negotiable Instruments Act, scope of—Transfer of Property Act (II of 1932), s. 123, 130, 137. The defendant executed a promissory note in favour of one N who handed over this note without any endorsement to an idol through its pujari, and having done so died. The plaintiff the shewast of the idol thereupon sued the petitioner for the amount due on the note. Held, that although a promissory note to order may be transferred otherwise than by endorsement and delivery as contemplated by s. 48 of the Negotiable Instruments Act, there was no legal transfer of the promissory note to the plaintiff or the Deity whom the plaintiff represented either as a negotiable instrument or as a chose in action under s. 130 of the Transfer of Property Act nor was there a valid gift of the promissory note under a 123 of the Transfer of Property Act. That even assuming that there was a valid transfer, the plaintiff was not entitled to sue in his*

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—contd

s. 43—contd

own name. It may be generally true that a valid assignment of a negotiable instrument as an action-able claim gives the assignee the rights of the holder subject to equities, but this broad proposition must be subject at any rate to the qualification that it is true only so far as it is not inconsistent with the special provisions of the Negotiable Instruments Act. *Per* RICHARDSON J. The object and purpose of the Negotiable Instruments Act is to legalise a system under which claims arising upon certain instruments of a mercantile character can be treated like ordinary goods which pass by delivery from hand to hand. But except within the prescribed limits such claims cannot be so treated. **AKHOY KUMAR PAL v. HARIDAS BYSACK (1913)** 18 C. W. N. 494

s. 57—

See PROMISSORY NOTE

I L. R. 41 Mad. 253

s. 59—

See s. 30. I L. R. 39 Mad. 965

ss. 64, 76—Hundi—Presentation—

Liability of drawer—Burden of proof. Where it is sought with reference to s. 76 (d) of the Negotiable Instruments Act, 1881, to render liable the drawer of a *hundi* which has not been presented for payment the onus of proving that the drawer could not suffer damage from the want of presentment is on the party who wants to excuse himself for the non presentation of the *hundi*. **Madho Ram v. Durga Prasad** I L. R. 33 All. 4 followed. **Phul Chand v. Ganga Ghulam** I L. R. 21 All. 459, distinguished. **GAYA DIX v. SRI RAM (1917)** I L. R. 39 All. 364

Hundi—Non-present-

ment by holder—Liability of drawer—Burden of proof. Where a *hundi* has not been presented for payment and the holder is seeking to recover from the drawer, it lies on the plaintiff to show that the drawer could not have suffered any loss by reason of the *hundi* not having been presented. **NATHE MAL v. CHET RAM (1913)** I L. R. 41 All. 40

ss. 76 (a), 87, 93 and 98—Altering

period of payment of a *hundi* without consent of all the drawers—Material alteration—Consequence—*Hundi* payable at a specified place—Presentment—Necessity of notice of dishonour. In this case the Diamond Jubilee Mills, Delhi, (the 4th defendant) being in need of money in 1913, the Directors decided to borrow money. Consequently three persons namely Sundar Singh (defendant No. 1) Manager of the Company, and Ram Singh (defendant No. 2), and Chhajju Ram (defendant No. 3) two of the Directors drew five *hundis*, including the *hundi* which is the subject-matter of this appeal on the Company (defendant No. 4) in favour of the plaintiff firm Gulab Rai Mehar Chand. The *hundis* were drawn on 1st October 1913 and were accepted by the drawee Company on the 4th October who noted it as payable at the Alliance Bank of Simla, Limited, Delhi. Originally it was payable after 93 days but this was subsequently altered to 63 days under the initials of the Sunjar Singh alone. The plaintiff firm endorsed the *hundi* to the Alliance Bank of Simla Limited which paid the money to the acceptor Company. On the

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—contd

s. 76 (a) 87, 93 and 98—contd

due date the *hundi* was dishonoured by the Company and the Bank recovered the money from the plaintiff firm. The plaintiff firm in its turn then brought the present suit to recover the money not only from the acceptor Company, but also from the three drawers. It was pleaded *inter alia* that the due dates of the *hundis* as executed were altered without the knowledge of Ram Singh and Chhajju Ram that the *hundis* were never presented for payment and that no notice of dishonour was given to them. The District Judge decreed the claim against all the defendants except Chhajju Ram. Ram Singh then appealed to the High Court claiming exemption from liability and the plaintiff appealed to have Chhajju Ram also rendered liable. *Held* that the alteration in the *hundis* reducing the period of payment was a material alteration within the meaning of s. 87 of the Negotiable Instruments Act, and plaintiff having failed to prove that this was done with the consent of Ram Singh and Chhajju Ram, or in order to carry out the common intention of the original parties, the *hundi* was thereby rendered void as against them and plaintiff could not be allowed to fall back upon the contract as it existed prior to the alteration. **Suffel v. Bank of England, 9 Q. B. D. 555**, and **Wood v. Steel, 6 Ball & B. 89**, followed. *Held*, also, that the fact that the *hundis* had not been presented for payment on due date did not in this case have the effect of non suiting the plaintiff as the *hundis* were expressly payable at the Alliance Bank of Simla and Delhi, and neither the acceptor nor any person authorised to pay had attended there during the usual business hours, presentment was, therefore, not necessary—*vide* s. 76 (a) of the Act. *Held* further, that the law embodied in s. 93 of the Act requires the holder to give notice of dishonour to the person or persons other than the drawer or acceptor whom he seeks to make liable on a bill and this rule does not admit of any departure except in the cases enumerated in s. 98 and as the plaintiff in this case had failed to prove the only exemption relied upon by him, *viz.*, that the party charged could not suffer damage for want of notice, his suit against the drawers must also fail on the ground of want of notice of dishonour. **RAM SINGH v. GULAB RAI MEHAR CHAND** I L. R. 1 Lah. 282

s. 80—

See s. 4. 5 Pat. L. J. 536

See EVIDENCE ACT, 1872 s. 92

1 Pat. L. J. 71

See HAND NOTE 2 Pat. L. J. 451

Promissory note silent about interest—oral agreement as to it provable—Evidence Act (of 1872) s. 92 (2). Where there was no mention of interest in a promissory note and it was sought by the plaintiff to prove that by a contemporaneous oral agreement it was settled between the plaintiff and the defendant that interest would run at the rate of 5 per cent per annum. *Held*, that under s. 92 (2) of the Indian Evidence Act, the plaintiff was not entitled to prove any such oral agreement as to the rate of interest. Where the defendant admitted in his written statement that he had verbally agreed to pay interest on the promissory note at the rate

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—*contd*s. 80—*contd*

of 12 per cent per annum, s. 80 of the Negotiable Instruments Act (XXVI of 1881) was no bar to the interest being decreed at that rate. *LACHMI CHAND JHAWAR v. HEMENDRA PRASAD GHOSH* (1914) . . . 18 C. W. N. 1260

s. 87—

See s. 76 . . . I. L. R. 1 Lah. 281

See DEED . . . I. L. R. 38 Mad. 746

ss. 93, 98—

See s. 76 . . . I. L. R. 1 Lah. 281

s. 94—

See s. 30 . . . I. L. R. 39 Mad. 965

s. 98—Want of notice of dishonour

—Whether damage caused by reason of such want of notice—Burden of proof. In a suit by intermediate endorsers of a *hund* against earlier endorsers, the court found that the *hund* had not been presented for payment within a reasonable time and that notice of dishonour was not given. *Held*, that it lay upon the plaintiffs to prove that the defendants could not suffer damage by reason of want of notice of dishonour, not upon the defendants to prove that they had suffered damages. *Moti Lal v. Moti Lal* I. L. R. 6 All. 78, followed. *MADHO RAM v. DURGA PRASAD*

I. L. R. 33 All. 4

s. 118—

See PROMISSORY NOTE

I. L. R. 47 Calc. 861

Shah Jog Aundis—consideration—Onus probandi—Second appeal—Where lower appellate Court has placed onus on the wrong party. The respondent N M drew upon himself two *Shah Jog Aundis* in favour of the appellant M R, one on 5th November 1914, payable after 31 days, and the other on 9th November 1914, payable after 61 days. On 15th December 1914, N M brought an action for cancellation of the *Aundis* on the ground that they were without consideration. A week later M R brought a counter action claiming principal and interest on the earlier *Aundi*, the period for payment on the second *Aundi* had not then expired. Both actions were tried together and the first Court held that the onus of want of consideration was on M R, the drawer, and that he had failed to discharge this onus. On appeal the Additional District Judge placing apparently the onus of proving consideration on M R, the drawee, held that he had proved consideration on the second *Aundi* but not on the first. M R then presented a second appeal to this Court. *Held*, that the *Aundis* in dispute is what is called *Shah Jog Aundi*, i. e., a bill payable to a *Shah* or banker, which is similar to some extent to a cheque crossed generally which is payable only to, or through some banker, and that such a *Aundi* satisfies the requirements of a negotiable instrument. *Held*, also, that under s. 118 of the Negotiable Instruments Act there is a statutory presumption in favour of the passing of consideration, and that the onus of proving want of consideration was therefore upon the drawer. *Held* further, that in cases of this character in which the question of allocation of onus

NEGOTIABLE INSTRUMENTS (ACT XXVI OF 1881)—*concld*s. 118—*contd*.

is the most vital question between the parties, it is the duty of the Court in Second appeal to rectify a mistake made by the lower Appellate Court in this respect. *MADHO RAM v. NARAYAN MAL* . . . I. L. R. 1 Lah. 429

s. 135—

See BILLS OF EXCHANGE

I. L. R. 48 Calc. 534

NEPAL

—whether a "Foreign State"—

See EXTRADITION WARRANT

I. L. R. 42 Calc. 793

NEW CASE.

See PROCEDURE I. L. R. 48 Calc. 832

See REMAND . . . I. L. R. 42 Calc. 888

NEW CHANNEL

See FISHERY . . . L. R. 41 I. A. 221

NEW TRIAL.

See EVIDENCE I. L. R. 47 Calc. 671

See PRESIDENCY SMALL CAUSE COURT

I. L. R. 38 Calc. 425

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), s. 38

16 C. W. N. 25

—application for—

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), ss. 9, 38

I. L. R. 38 Mad. 823

Presidency Small Cause Courts Act, 1882, 1895, ss. 9, 38—Notice returnable before Full Bench—Practice in the Small Cause Court of Calcutta—High Court, power of, to frame rules—Matters of procedure and practice—Calcutta Small Cause Court Rules 92, 93, 94 and 95. By a notification dated the 9th July 1919 and published in the Calcutta Gazette of the 16th July 1919, Part I, page 1128, the following rule framed by the High Court under s. 9 of the Presidency Small Cause Courts Act 1882 1895 was added to rule 92 of the Rules of Practice of the Court of Small Causes of Calcutta: "Provided that the Court may, if in its opinion no sufficient grounds are shown for the application, dismiss it without directing service on the party against whom the application is made." *Held*, that the addition to rule 92 was not *ultra vires*, but that the rule did not contemplate the exercise by one Judge of the Small Cause Court of the powers conferred on the Court by s. 38 of the Presidency Small Cause Courts Act, 1882, 1895. *Madurai Pillay v. J. Muthu Chetty* I. L. R. 38 Mad. 823, referred to. *RAM CHANDRA SAGORENUL v. AMARCHAND MURALIDHAR, In re* (1920)

I. L. R. 47 Calc. 763

NEWSPAPER.

See FORFEITURE I. L. R. 47 Calc. 190

See PRESS ACT (I OF 1900), ss. 3 (1), 4 (1), 17, 19, 20, 22

I. L. R. 39 Mad. 1085

NEWSPAPER COMMENT.

—on party under cross-examination—
See COMPELLED OF COURT

15 C. W. N. 771

NII CHAS.

See ORISSA TENANT ACT, 1913

8 Pat. L. J. 67

NEWSPAPER CORRESPONDENT.

—statement of—

See LABEL

I. L. R. 37 Calc. 760

NOMINATION PAPER.

See MUNICIPAL ELECTION.

I. L. R. 48 Calc. 133

NEWSPAPERS (INCITEMENT TO OFFENCES)
ACT (VII OF 1908).

—s. 2, 3—

See PRINTING PRESS

I. L. R. 33 Calc. 202

—s. 3—

press S 3 of the Newspaper (Incitements to Offences) Act, 1908, provides for the making of a conditional order declaring the printing press used for the purpose of printing or publishing the offending newspaper to be forfeited. The section refers to the whole of the press and no order could be made under it limited only to such portion of the press as were employed in printing the offending newspaper. *Dhondoo KASHMIRI PHADKE, 14 re (1909)* I. L. R. 34 Bom. 327

Order—Forfeiture of

Nature of offences under the Act—Incitement to assassination—"Incite" means meaning of direct or indirect incitement—General incitement, not addressed to particular person—Construction of offensive article. The question of the intention or knowledge of an individual may determine his criminal liability under the ordinary law of abetment by incitement by means of words, written or spoken but under the Newspapers (Incitement to Offences) Act no question of the intention of the writer, printer or publisher arises and no personal liability is imputed to any particular person. The order thereunder is not one against any person, but is purely restrictive and directed against the use, or intended use, of a press for the purpose of printing or publishing a newspaper containing any incitement to murder or to any offence under the Explosive Substances Act (VI of 1908) or to any act of violence. The words any incitement in s. 3 (1) of the Newspapers Act include direct and indirect incitement, and need not be addressed to any particular person, nor expressed in violent and outrageous terms. To "incite" means "to move to action to stir up, to stimulate, to instigate or to encourage," and a newspaper article comes within the scope of s. 3 if it is, as a matter of fact calculated, directly, or indirectly, to produce that effect. *PER RIVER, J.* There can be no hard and fast canon as to what words or given set of words constitute "incitement." It is a question of fact in each case, and must usually depend largely on concomitant circumstances. The article must be read as a whole and as far as possible, in the sense in which it was read by the section of the public to which it was primarily addressed, and also considered with regard to the occasion and place of publication and the class or status of persons likely to be affected by it. I. L. R. 36 Calc. 403

NEXT FRIEND.

See CIVIL PROCEDURE CODE (1908)
O XXXII, R. 7

I. L. R. 41 All. 553

See Courts.

I. L. R. 43 Calc. 676

NIMAK SAYAR MEHAL.

Permanent Settlement

Separate grants of zamindari and Nimak Sayar over the same village, rights which pass under—Right of grantee of Nimak Sayar to enter orders of zamindari for working saltpetre—Right of grantee of grantee—Reasonable exercise of right—*Ouyas est solum ejus est usque ad colant ad sajeros doctrine of application in India—Plaint, amendment of—excludes right to dig saltpetre misunderstood and wrongly described in plaint as a monopoly. The zamindari in village Manpura was settled on the predecessors in title of the defendant at the Permanent Settlement and at the same Settlement the Nimak Sayar Mehal in the said and other villages (i.e., an exclusive right to collect nitrous earth from the lands in those villages with a view to extracting saltpetre therefrom) was settled by Government on the plaintiff's predecessors. The plaintiff urged that the grant of the Nimak Sayar Mehal entitling her to enter on the land comprised in defendant's zamindari and exercise therein in a reasonable manner the rights vested in her under the grant, whilst the defendant, a recent purchaser of the zamindari right, contended that the grant in question conferred on the plaintiff the right to collect the revenue only if and when saltpetre happened to be manufactured, and that she had no right to come on the land except by the leave and license of the defendant much less to authorise others to utilize the tenuous soil for the collection of saltpetre. Held, that what passed under the grant of the Nimak Sayar Mehal were not rights of this precarious character. That the Nimak Sayar Mehal was no part of the assets of the zamindari, and that the zamindari and the Nimak Sayar Mehal were separately settled by the Government, as it was English real property *ejus est solum ejus est usque ad colant ad sajeros* *Goonoo Prasad Bhow v. Bhow Chandra Bhow, 1 Sel. Rep. 337 (All. L.J. 1911, and Byram v. Deo Dyal 2 Sel. Rep. 133, referred to, The Bengal Government v. Bhow Chandra Bhow, 5 Mo. 1 A. 437, distinguished. That the grant of the Nimak Sayar Mehal carried with it the means reasonably necessary for its enjoyment. Precedence of Saltpetre, 12 Cal. Rep. 12, referred to. That by virtue of plaintiff's rights as owner of the Nimak Sayar Mehal, she, her agents, servants and workmen, licensees and licensees were entitled to enter on the land of the village and to exercise an exclusive right to dig for saltpetre, but so that this be done with as little inconvenience and prejudice as possible**

NIMAK SAYAR MEHAL—contd

to the defendant as the owner of the village and that the ground be made and left as commodious to the defendant as it was before Plaintiff whose claim of exclusive right to work saltpetre was erroneously described in the plaint as a monopoly, was allowed in Second Appeal to amend her plaint and formulate her claim in happier and more precise language. As the plaint in its original form occasioned the prolongation of the suit the plaintiff, though successful, was ordered to pay costs throughout. **GOLAP CHAND v JANZI KUAR** (1913) . . . I. L. R. 41 Calc. 286
17 C. W. N. 1195

NOABAD.

See LAND ACQUISITION ACT, 1894

18 C. W. N. 531

Khas Mehal—Taluk, a tenure—Non permanent taluk—Sale for arrears of revenue—Purchaser's title—Beng Act VII of 1863, s 12—Cause of action A Noabad taluk is a tenure, the land being khas mehal land of Government. Where it was found that the tenure in question was not a permanent tenure, the purchaser thereof at sale under Act XI of 1859 acquired it in the same estate in which it was held at the time of the last settlement as provided by s 12 of Bengal Act VII of 1808. **GANGADAS SHAH v THE SECRETARY OF STATE FOR INDIA** (1916) 20 C. W. N. 636

Whether a permanently by settled taluk A Noabad taluk may or may not be a permanently settled taluk. **ASHRAF ALI v KARAM ALI** (1918) 22 C. W. N. 1025

Noabad lands, settlement of—Right of Government in respect of such lands *Settled*, Government stands in the same position as an ordinary zamindar in respect of Noabad lands which it has a right to settle with whomsoever it likes. **NAZIR AHAMAD CROWDHURY v SECRETARY OF STATE** . 26 C. W. N. 913

NOLLE PROSEQUI.

See CRIMINAL PROCEDURE CODE s 437
16 C. W. N. 983

See JURISDICTION OF CRIMINAL COURT—
I. L. R. 40 Calc. 71

NOMINATION OF JUNIOR OR SENIOR

See BARRISTER I. L. R. 44 Calc 741

NON-AGRICULTURAL LAND.

See RECORD OF RIGHTS
I. L. R. 46 Calc. 441

NON-AGRICULTURAL TENANCY.

Held that non agricultural tenancies created by the Dowry before the Transfer of Property Act are not heritable or transferable. **MAHOMED AYE-JUDDIN MEA v PRODYOT KUMAR TAGORE** 25 C. W. N. 13

NON-APPEALABLE CASE.

See SUMMARY TRIAL.
I. L. R. 43 Calc 260

NON-APPEARANCE.

Plaintiff—Non-appearance of one of the plaintiffs, effect of—Civil Procedure Code (Act V of 1908), O IX, rr 5, 10, 12

NON-APPEARANCE—contd

Reading together rr 8 and 10 of O. IX, Civil Procedure Code, it seems that r 8 provides for the case where a single plaintiff or all the plaintiffs, if there are more than one, do not appear and r 10 provides for a case when there are more plaintiffs than one and one or more of them appear and others do not appear. In a suit on a mortgage bond for sale where one of the two plaintiffs did not appear in person in spite of Court's order nor showed cause but the Court proceeded with the trial of the suit and decreed the claim in favour of both the plaintiffs. *Held*, that there was nothing illegal in the decree. **KULVENDRA KISHORE ROY v RAI KISHORI SHARA** (1920)
I. L. R. 48 Calc. 57

NON-COMPOUNDABLE OFFENCE.

Conveyance executed in consideration of complainant withdrawing prosecution Suit to set aside same after prosecution withdrawn if lies. **BINDESHARI PRASAD v LEKH-RAJ SAHU** (1916) 20 C. W. N. 760

NON-CONFESSIONAL STATEMENTS.

See MISDIRECTION I. L. R. 45 Calc. 557

NON-FEUDATORY ZAMINDARS OF CENTRAL PROVINCES.

See ACT OF STATE
I. L. R. 39 Calc. 615

NON-JOINDER.

See CIVIL PROCEDURE CODE, s 90, O I,
RR 9 and 13

See MORTGAGE I. L. R. 35 All. 247

See MORTGAGE SUIT 25 C. W. N. 594

See PARTIES I. L. R. 33 All. 272

See RIGHT OF WAY 25 C. W. N. 249

— of causes of action—

See CIVIL PROCEDURE CODE (1908),
O II, r 2 I. L. R. 41 All. 583

— of parties—

See CIVIL PROCEDURE CODE 1908, O
XXIV, r 1 I. L. R. 35 All. 484

Suit for rent—Heirs of the original tenant not in possession of the holding, if necessary parties Where, after the death of the original tenant a suit was brought against some of his men who were in possession of the holding and against whom a previous decree was obtained for arrears of rent accrued due during the period of latter's occupation: *Held*, that the suit was not defective by reason of the non joinder of the other heirs. **MEERAN MAHDAL v JOGENDRA NATH DE** (1920) . . . I. L. R. 48 Calc. 518

NON-JUDICIAL STAMP.

See STAMP ACT (II of 1899) s. 52
14 C. W. N. 1101

NON-OCCUPANCY HOLDING.

See NON OCCUPANCY RAIYAT

Non occupancy raiyats holding sale of, in execution of money decree— Raiyats' right to raise question of non transfer ability A non occupancy raiyat holding was sold in execution of a money decree whereupon the judgment-debtors objected on the ground of non

NON-OCCUPANCY HOLDING—contd

transferability. The *patish* of the land prohibited any kind of transfer without the consent of the landlord and gave the landlord the right of *khaz* possession in case any such transfer took place. Held that if the terms of the lease gives the landlord a right of re-entry in the case of a transfer without his consent that may raise a question between the purchaser, if any, at the Court sale and the landlord but does not clothe the raiyat with a right to object to the sale. *LELOVA JEMIA v RAJANI KANTA CHOWDHURY* (1913) 22 C. W. N. 792

heritability of.—In the absence of a custom to the contrary a non occupancy raiyat's interest is heritable. *KALBU GARRI v JANGALI CHOUDBHARI* 1 Pat. L. J. 273

NON-OCCUPANCY RAIYAT

See CHOTA NAAGUR LANDLORD AND TENANT PROCEDURE ACT s 6

14 C. W. N. 297

See EJECTMENT, I L. R. 40 Calc. 838

See LANDLORD AND TENANT
L. L. R. 37 Calc. 709

See NON OCCUPANCY HOLDING

See NON OCCUPANCY RIGHT

Under registered lease, if holds on from year to year.—Ejectment. Under the Bengal Tenancy Act there is no raiyat who holds from year to year and if the tenant is a non-occupancy raiyat who does not hold under a lease for a term, he cannot be ejected under the provisions of cl. (c) of s 44. *JOTIRAM KHAN v JOXAMI NATH GHOSH* (1914) 20 C. W. N. 258

Khairat land.—Statute.—Headings of Chapters.—Bengal Tenancy Act (VIII of 1885) Ch. XI, s 45 and Sch III, cl I (a). A tenant of a Khairat land is not a non occupancy raiyat. The heading of a chapter in a statute may be looked at for the purpose of interpreting a section in the statute. *DWARKANATH CHAUDHURI v TAYALAR RAHAMAT SARKAR* (1916) 21 C. W. N. 267

I. L. R. 44 Calc. 267
Under registered lease, eviction of.—"Jote," meaning of.—"Makal," meaning of. That a non occupancy raiyat who has been admitted to occupation of the land under a registered lease is liable to be ejected on the expiry of the term of his lease but it being found that the defendants were not admitted into occupation of the land by the *kabulyats*, it was necessary to determine whether the defendant in each case was in occupation as tenant of the particular lands in respect of which he subsequently executed his *kabulyats*. That the description in the *kabulyats* "without right *jote makal*" was not clear to show that the defendants admitted that the plaintiffs were raiyats. That the words "without right" standing alone might mean that the plaintiffs were owners of a non occupancy *jote* but the word "*jote*" does not necessarily mean the interest of a cultivator and the word "*makal*" is not used in connection with the interest of a raiyat. That the statement in the lease as to the purpose of the tenancy and the fact that the tenancy was treated all along by Government as non occupancy *jote* were in favour of the plaintiffs but not conclusive against the defendants. *RAJANI KANTA MUKHERJEE v YUSUF ALI* (1916) 21 C. W. N. 188

NON-OCCUPANCY RIGHT.

Heritability.—Bengal Tenancy Act (VIII of 1885), ss 5, cl (2), 20, cl (3), 44, 82. The holding of a non occupancy raiyat is heritable. *AARIM CHOUDHURY v SUNDAR DEWA, I. L. R. 24 Calc. 207*, overruled. *Lakhan Narain Das v Jainsath Pandey, I. L. R. 34 Calc. 516*, referred to. *MIDNAPORE ZEMINDARY COMPANY, LD. v. HIRSHIKESH GHOSH* (1912)

I. L. R. 41 Calc. 1108

Acquisition of, in rural land.—Ejectment of tenant of rural land, limitation for.—Bengal Tenancy Act (VIII of 1885)—ss 4, 5, 20, 44 45 and 116, 180 and Sch III, Art 1 (a).—Construction of Statutes, reference to heading of Chapter. Held, (CHAPMAN and JWALA PRASAD, JJ., dissenting), that a suit by a landlord to eject a tenant of rural lands on the ground of the expiration of the term of his lease is governed by Art 1 (a) of Sch III to the Bengal Tenancy Act, 1885, and the operation of Art 1 (a) is not excluded in such a case by s 110. *Per CHAPMAN, C. J.*—Chapter VI of the Bengal Tenancy Act, 1885, applies to tenants of proprietors' private lands except where such land is held under a lease for a term of years, or where it is held under a lease from year to year, and such tenants may acquire non occupancy rights in the land within the meaning of the Act. *Per CHAPMAN, J.*—The classification of tenants in ss 4 and 5 is not intended to be scientific and precise. These sections should be applied with a reasonable amount of elasticity. A tenant of rural land may possibly be classified as a tenure holder, but he is not a non-occupancy raiyat. Rural land is not raiyat's land although the zamindar may lose his right in it by treating it as if it was raiyat's. But if he lets it for a term or from year to year it remains his own and the tenant of it is not a raiyat. *Per MULLICK, J.*—Although the definition of raiyat in the Act is not exhaustive yet the classification of the various classes of raiyats in s 6 is exhaustive. Both occupancy and non occupancy right can under certain circumstances be acquired in rural lands. A cultivator may be a settled raiyat of rural lands but as such he has no rights. The position of a tenant of proprietors' private lands under the present law is as follows.—The landlord can make successive enhancements of rent, but the tenant can no longer take advantage of s 13 of the Bengal Rent Act, 1850, or s 14 of the Bengal Tenancy Act, 1889, on the tenant's failure to pay an arrears of rent he can only be ejected after a decree although it was otherwise before the passing of the Bengal Tenancy Act 1885, and a suit for ejectment of the tenant on the expiry of his lease must now be brought within six months instead of twelve years as formerly. A non occupancy raiyat whose lease has expired is liable to ejectment under the general law as a trespasser. Art 1 (a) of Sch III is applicable to every suit in which it is sought to eject a non-occupancy raiyat and is not confined to suits under s 44. *Per JWALA PRASAD, J.*—The classification of tenants in s 4 is not exhaustive. The provisions of the Act barring the acquisition of non-occupancy rights in proprietors' private lands do not cease to apply when a tenant of such lands holds over after the expiry of his lease. S. 51 lays down that where a tenant holds over the conditions under which he held the land in the last preceding agricultural year shall be presumed to continue. *Per CHAPMAN and JWALA PRASAD, JJ., (MULLICK, J., contra)*—The

NON-OCCUPANCY RIGHT—contd.

Heading of a chapter of an Act may be used to extend the meaning of a section which follows it.
JAYKE SINGH v MAHATATH JAGANNATH DAS
 3 Pat. L. J. 1

NON-PERFORMANCE OF WORK.

See **BARRISTER I. L. R. 44 Calc. 741**

NON-RIPARIAN OWNER.

—right of, to the flow of river water—
 See **ELEMENTS ACT (V of 1882), ss 2 (c) AND 17 (c)** . I. L. R. 42 Bom. 288

NON-TRANSFERABLE HOLDING.

See **LANDLORD AND TENANT**
 I. L. R. 43 Calc. 878
 See **OCCUPANCY HOLDING** }

1. ———— *Question of transferability of araises between vendor and vendee and between vendee and co-sharer landlords* Plaintiffs who had purchased certain shares in an alleged non transferable holding partly in execution of a mortgage decree against one tenant and the rest by private alienation from another, having sued for partition, the sons of one of the former opposed the suit on the ground that they had been recognised as tenants of the whole holding by some of the co sharer landlords, whilst the plaintiffs also were found to have obtained recognition from some of the co sharer landlords The District Judge gave the plaintiffs a decree for an interest proportionate to that of the co sharer landlords who had recognised them *Held*, that no question of transferability of the holding arose in the case and the plaintiffs in this suit were entitled to get all the interest they purchased from their vendors **RAJAD ALI v DEVA NATH SHANA (1915)**
 19 C. W. N. 1305

2. ———— *Mortgage of—Purchase of holding by co-sharer landlord in execution of decree for his share of rent—Money-decree—Question of transferability, if arises* In a suit to enforce his mortgage by the mortgagee of an occupancy holding against co sharer landlords, who since the date of the mortgage purchased the holding in execution of a decree for their share of the rent, the question of transferability does not arise **CHANDI PRASANNO SINGH v GOUR CHANDRA DEB (1915)** . . . 19 C. W. N. 1307

3. ———— *Non transferable rayati holding—Sale in execution of money decree—Purchaser allowed by rayat to take a portion of the holding—Surrender by rayat of whole holding—Rayat continuing in occupation—Purchaser if may be ejected* Where a purchaser (in execution of a money decree) of a non transferable rayati holding being resisted by the rayat, by arrangement with the latter, was given a portion of the holding, the rayat retaining the rest, and subsequently the rayat expressly surrendered the whole holding to his landlord, though it appeared that even after such surrender he went on occupying the portion retained by him under the arrangement. That the surrender being obviously illusory, the original tenancy subsisted and protected the purchaser from ejectment by the landlord. **NOBO KRISHN SAMA v DHANANJOY SAMA (1916)**.
 20 C. W. N. 610

NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1873).

— ss. 7, 70—**Pennal Code (Act XLV of 1860), s 426—Cutting walls of canal—Mischief**
 —**Pennal Provisions of the Canal Act not exclusive of the Indian Penal Code** *Held*, (i) that s. 70 of the Northern India Canal and Drainage Act, 1873, does not bar the prosecution of an accused person under any other law, for any offence punishable under the Canal Act; (ii) that it is an act of willful mischief punishable under the Indian Penal Code for any person to make a breach in the wall of a canal **EUPHOR v BAYAT (1912)**
 I. L. R. 34 All. 210

— s. 70—
 See **PENAL CODE (ACT XLV OF 1860), s 430** . . . I. L. R. 41 All. 699

— s. 70 (4)—“*Authorised distribution*”
 —*Whether it includes the internal distribution made by a village community* One P S mortgaged 14 bighas of his land to B S According to arrangement in the village every man was allowed to use the water from the canal for a period of one ghora (24 minutes) for every seven bighas of land B S wanted to take his turn but P S prevented him. The former then presented a complaint and P S was convicted by a magistrate of an offence under s 70 (4) of the Canal and Drainage Act On appeal the District Magistrate acquitted P S holding that the distribution of water with which P S interfered was not an “authorised distribution” within the meaning of s 70 (1) of the Act The Government appealed to the High Court from the order of acquittal It was admitted that that Canal authorities distribute the water between the different villages, but that the internal distribution in any village was left to the proprietary body of that village and was accepted by the authorities. *Held*, that the internal distribution in the village was not an “authorised distribution” within the meaning of s 70 (4) of the Canal and Drainage Act, as it had never been formally approved or sanctioned by any Canal authority, the latter having merely accepted the distribution made by the villagers **CHOW v PAKHAR SINGH**
 I. L. R. 1 Lah. 604

NORTHERN INDIA FERRIES ACT (XVII OF 1878).

— s. 23—*Ferry—Illegal toll taken by servants of lessee—Lessee himself not responsible.* *Held*, that the lessees of a ferry could not be held responsible under s 29 of the Northern India Ferries Act, 1878, for the taking of unauthorised tolls by their servants when they were not present and took no part in the extortion **Queen Empress v Tysb Ali, I. L. R. 24 Bom. 423, distinguished.**
EMPEROR v BEHARY LAL (1911)
 I. L. R. 34 All. 146

NORTH-WESTERN PROVINCES AND OUDH ACTS.

See **ODH ACTS.**
 See **UNITED PROVINCES ACTS.**

— 1867—III—
 See **PUBLIC GAMBLING ACT.**

— 1869—I—
 See **ODH ESTATES ACT.**

NORTH-WESTERN PROVINCES AND OUDH ACTS—*contd*

1873—VIII—

See NORTHERN INDIA CANAL AND DRAINAGE ACT, XIX—

See NORTH WESTERN PROVINCES AND OUDH LAND REVENUE ACT

1876—XVII—

See OUDH LAND REVENUE ACT

1876—XVIII—

See OUDH LAWS ACT

1878—XVII—

See NORTHERN INDIA FERRIES ACT

1881—XII—

See NORTH WESTERN PROVINCES RENT ACT

1883—XV—

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT

1899—III—

See UNITED PROVINCES COURT OF WARDS ACT

1900—I—

See UNITED PROVINCES MUNICIPALITIES ACT

1901—II—

See AGRA TENANCY ACT

1901—III—

See UNITED PROVINCES LAND REVENUE ACT

1903—I—

See BONDDEKHAND EYENBERED ESTATES ACT

1904—I—

See GENERAL CLAUSES ACT

1910—IV—

See UNITED PROVINCES EXCISE ACT

NORTH-WESTERN PROVINCES AND OUDH LAND REVENUE ACT (XIX OF 1873).

ss. 148, 149, 187—"Proprietor"—*Mortgage by muafidars—Sale of mahal for default in payment of Government Revenue—Rights of purchaser and mortgagees of muaf.* Where certain muafidars, whose rights as such accrued before the year 1870, and were not shown to have been created by the zamindars of the mahal in which the muaf land in question was situate, executed a usufructuary mortgage of such land thereafter the mahal was sold for default in payment of Government revenue, it was held that the rights of the mortgagees were not extinguished in favour of the purchaser. *KESWAN DAS v. JWALA PRASAD* (1913). I L. R. 35 ALL 190

s. 194 (g)—*Act (Local) No. III of 1839 (U. P. Court of Wards Act), ss. 2 (2), 8, 9 and 34—Act (Local) No. 11 of 1912 (U. P. Court of Wards Act), ss. 10 and 37 (c), proviso (2)—"Disqualified proprietor"—Competence of disqualified proprietor to make a will. A person who has been declared to be "a disqualified proprietor" on his own application under the provisions of s. 194 (g) of*

NORTH-WESTERN PROVINCES AND OUDH LAND REVENUE ACT (XIX OF 1873)—*contd.*

s. 194 (g)—*contd*

the North Western Provinces Land Revenue Act, 1873, is not disqualified thereby, at any rate after the passing of the United Provinces Court of Wards Act, 1899, from making a will. *MUHAMMAD ISMAIL KHAN v. HAMIDA KHATUN.*

I L. R. 42 AU 503

s. 205B—

See OUDH LAND REVENUE ACT (XVII OF 1876), ss. 173, 174

I L. R. 33 ALL 271

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883)

s. 10—*United Provinces Municipalities Act (I of 1900), s. 187—Municipal Board—Election—Suit to set aside election—Jurisdiction of Civil Court—Simulation Act (IX of 1908), Sch. 1, Art. 120 Held,* that an order of the Government directing that a particular municipal election held in the year 1911 should be conducted according to certain rules passed in 1884, and not according to the rules passed in *pari mater* in 1910, which superseded those of 1884, was *ultra vires*, and that inasmuch as the rules of 1884 did not apply and the election was not held under the rules of 1910 a suit would lie in a civil Court to contest the election, irrespective of anything contained in either set of rules, the period of limitation applicable to which was that prescribed by Art. 120 of the first Schedule to the Indian Limitation Act, 1908. *Our Charan Das v. Har Sarpur*, I L. R. 31 AU 391, referred to. *RAGHUNANDAN PRASAD v. SNEH PRASAD* (1913)

I L. R. 35 ALL 338

s. 130—*Breach of rule made under cl (e) of a 130—Notice.* In order to render a person liable to punishment for breach of a rule made under cl (e) of s. 130 of the Municipalities Act (Local I of 1900), by reason of the continuance of sale or exposure for sale of certain specified articles upon any premises which were at the time of the making of such rules used for such purpose, it is necessary that six months' notice in writing should have been served upon him in the manner provided by law; and conviction in the absence of such notice is bad in law. *EXPONER v. GHANMAN* (1916)

I L. R. 33 ALL 455

NORTH-WESTERN PROVINCES RENT ACT (XVIII OF 1873)

Held, that this Act and the succeeding Act XII of 1881 rendered void the terms of any will in existence on the date on which they were passed if contrary to the acts. *MAHADYO MISER v. DIBOPAL PANDU*

I L. R. 41 ALL 356

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881).

Mortgage of occupancy holding—Relinquishment—Rights of mortgagee. An occupancy tenant mortgaged his occupancy holding at a time when the Rent Act of 1880 was in force. In the year 1911, he entered into an agreement with his samandars to relinquish his rights with the object of defeating the rights of the mortgagee. *Held,* that the relinquishment was

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—contd

ineffectual as against the mortgagee. *Jangopal Narain Singh v Uman Dasi*, 8 All L. J. R 695, approved *Brij Kumar Lal v Sheo Kumar Misra* (1915) . . . I. L. R. 37 All. 444

Sale of zamindari—
Agreement to relinquish ex-proprietory right in air lands—Void contract In 1899 one R. D., the widow of a Hindu who had died heavily in debt, sold most of her husband's property to his principal creditor D. S. By the terms of the sale deed the vendor agreed to file a relinquishment of her ex proprietary rights in the air lands and the vendee agreed to certify to the Civil Court full satisfaction of the claim under his decree. No thing, however, was done to carry out this agreement until 1901, when D. S. executed a document in favour of R. D., in which was stated that the parties had come to an agreement, that R. D. was to file her relinquishment and in consideration thereof D. S. would file his certificate of satisfaction of his Civil Court decree, and further bound himself to pay to R. D. a monthly allowance of Rs 5 for the rest of her life, which was to be a charge on the property transferred by the sale deed of 1899. *Held*, on suit by R. D. to recover arrears of her maintenance allowance from the transferee of the property which purported to have been charged with its payment, and from D. S. personally, that the arrangement between the parties was merely a device to get round the provisions of the Rent Law, and that the suit would not lie. *Moti Chand v Ikram-ullah Khan*, I L R 39 All 173, referred to *Ratan Dei v Durga Shankar Bajpai* (1917)

I. L. R. 39 All. 645

Occupancy holding—
Will—Attempt to dispose of occupancy holding by will *Held* that the North Western Provinces Rent Act No XVIII of 1873, and the succeeding Act No XII of 1881, rendered void the terms of any will in existence on the date on which they were passed, if those terms contravened the prohibition against transfer by will which was thereby enacted. *MAHADEO MISIR v DINGPAL PANDU* (1919) . . . I. L. R. 41 All. 358

Occupancy tenant—
Usufructuary mortgage of holding—Relinquishment by mortgagor in favour of zamindar Where a mortgage with possession of an occupancy holding had been made by the tenant before the coming into force of the Agra Tenancy Act, 1901. *Held* that the tenant mortgagor could not defeat the rights of the mortgagees by surrendering the holding to the zamindar. *CHRIDDU v SNEO MANOAL SISON* (1916) . . . I. L. R. 39 All. 188

NOTE OF EVIDENCE.

See SUMMARY TRIAL

I. L. R. 43 Calc. 280

NOTE OF HAND.

Where a hand note recited a loan and the liability of the executant to repay it, but there was no covenant that the re payment would be made to the plaintiff or to his order. *Held*, that it was not a negotiable instrument under the Negotiable Instruments Act; s. 4 or s. 23 of the Negotiable Instruments Act would not therefore apply to such a hand-note. Illustrations cannot control the plain

NOTE OF HAND—contd

meaning of the words of a statute. Illustration (b) of s. 4 of the Negotiable Instruments Act not relied on. *SATTA PRITA GOSWAL v GOSINDO MONROY RAY CHOWDERY* (1909).

14 C. W. N. 414

NOTICE.

See AGREEMENT . . . I. L. R. 41 All. 417

See ARBITRATION.

I. L. R. 47 Calc. 29, 951

See ARREST OF SHIP

I. L. R. 42 Calc. 85

See BOMBAY CITY MUNICIPAL ACT (1888), ss 379, 379A I. L. R. 38 Bom. 81

See BOMBAY COURT OF WARDS ACT, 1905, s 14 . . . I. L. R. 44 Bom. 489

See BOMBAY LAND REVENUE CODE, 1879, s 83 . . . I. L. R. 45 Bom. 303

See CIVIL PROCEDURE CODE, 1908, s 80.

I. L. R. 40 Bom. 541

s 437 . . . I. L. R. 40 All. 416

O VII, r 22 I. L. R. 43 All. 411

O XXI, r 16 I. L. R. 26 Bom. 88

O XXI, r 89 I. L. R. 37 Bom. 387

O XXXIII, r. 1

I. L. R. 42 Bom. 155

See COMPANY I. L. R. 36 Bom. 564

See CONSTRUCTIVE NOTICE.

See CRIMINAL PROCEDURE CODE, s 203 437 . . . I. L. R. 35 All. 78

s 437 . . . I. L. R. 40 All. 416

See DEKKAN AGRICULTURISTS, RELIEF ACT, 1879, s 10

I. L. R. 45 Bom. 87

See EJECTMENT I. L. R. 44 Calc. 272

See EXECUTION OF DECREE

I. L. R. 33 Calc. 482

See HUNDI SHAH JAG

I. L. R. 39 Bom. 513

See INSOLVENCY I. L. R. 42 Calc. 72

See INSOLVENT I. L. R. 47 Calc. 254

See LAND ACQUISITION ACT (I of 1894), s 9 . . . I. L. R. 39 All. 534

See LIMITATION ACT (IX of 1908)—

s 28, SCH. I ART. 47

I. L. R. 38 Mad. 432

SCH I, ART 12 A

I. L. R. 45 Bom. 45

SCH I, ART 182, CL (6)

I. L. R. 42 Bom. 558

See MUNICIPAL ELECTION

I. L. R. 39 Calc. 599

See NOTICE OF DISHONOUR

See NOTICE TO QUIT

See NOTICE OF SUIT

See N. W. P. AND OUDH MUNICIPALITIES ACT (X of 1900), s 132

I. L. R. 38 All. 455

See PROSECUTION I. L. R. 37 Calc. 545

See PUNJAB DIAMOND RECOVERY ACT, ss 10, 31. I. L. R. 45 Calc. 498

NOTICE—*contd.*

- See PUTNI . . . 25 C. W. N. 106
- See RAILWAYS ACT (IX of 1890), s. 77
I. L. R. 33 All. 544
21 C. W. N. 751
- See REASONABLE NOTICE.
- See RESUMPTION.
I. L. R. 39 Bom. 279
- See REVIEW . . . I. L. R. 43 Calc. 178
- See REVIVOR . . . I. L. R. 43 Calc. 903
- See SECRETARY OF STATE FOR INDIA
I. L. R. 35 Bom. 382
I. L. R. 39 Calc. 797
- See SPECIFIC RELIEF ACT, 1877, s. 31
26 C. W. N. 26
- See TRANSFER OF PROPERTY ACT ss. 3, 41
I. L. R. 35 Bom. 342
s. 40 . . . I. L. R. 40 Bom. 493
- See TRUSTS ACT, s. 5.
I. L. R. 35 Bom. 396
- See UNDER-RAITAY.
I. L. R. 39 Calc. 27
- See UNITED PROVINCES MUNICIPALITIES
ACT (I of 1900), s. 49
I. L. R. 33 All. 540
- See UNITED PROVINCES MUNICIPALITIES
ACT (II of 1916), s. 226 (4)
I. L. R. 41 All. 182
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- See WITHDRAWAL OF SUIT
I. L. R. 44 Calc. 454
- constructive —————
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I. L. R. 44 Bom. 139
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I. L. R. 45 Bom. 170
- dismissal without, or opportunity
for defence —————
- See MUTT . . . I. L. R. 40 Mad. 177
- disobedience of —————
- See CITY OF BOMBAY MUNICIPAL ACT
(Bom. Act III of 1888), s. 303
I. L. R. 34 Bom. 593
- form and method of —————
- See PUTNI SALE I. L. R. 47 Calc. 337
- imputed —————
- See PRINCIPAL AND AGENT
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- of order under Calcutta Police Act —————
- See PROCESSION I. L. R. 40 Calc. 470
- official assignee of suit against —————
- See PRESIDENCY TOWNS INSOLVENCY
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- Receiver, suit against —————
- See CIVIL PROCEDURE CODE, s. 80
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- See CIVIL PROCEDURE CODE, 1908 O VII,
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NOTICE—*contd.*

- Talukdar, suit against —————
- See COURT OF WARDER ACT (Bom.), 1903,
ss. 31 AND 32 I. L. R. 44 Bom. 936
- through Collector —————
- See RAILWAY ADMINISTRATION
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- to co-sharers —————
- See PRE EMISSION I. L. R. 34 Bom. 567
- necessity of —————
- See FURTHER INQUIRY.
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- of charges, necessity for —————
- See MUTT . . . I. L. R. 40 Mad. 177
- of claim, to public officers —————
- See CANTONMENTS ACT (XIII of 1859),
s. 60 . . . I. L. R. 34 Bom. 583
- of oral unregistered sale —————
- See SALE . . . I. L. R. 44 Bom. 536
- of sale for arrears of road-tax —————
- See MUTT, HEAD OF
I. L. R. 33 Mad. 358
- Prosecution for non-compliance
with —————
- See UNITED PROVINCES MUNICIPALITIES
ACT (I of 1890), ss. 147, 152
I. L. R. 36 All. 185, 227
- Privileged occupant—Resignation
of occupancy in favour of Khot—Adverse
possession against —————
- See KHOTI SETTLEMENT ACT (Bom. Act
I of 1850), ss. 8 AND 10
I. L. R. 45 Bom. 1001
- Sale-deed in the nature of mort-
gage —————
- See DEKKHAY AGRICULTURISTS' RELIEF
ACT (XVII of 1879), s. 101
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- Sale by Revenue Courts for arrears
of revenue—Judgment-debtor disputing sale
—Purchaser's plea of want of notice of judg-
ment debtor's title —————
- See LIMITATION ACT (IX of 1908), ART
12A. . . . I. L. R. 45 Bom. 45
- Service of —————
- See CIVIL PROCEDURE CODE 1908, O
VII s. 22 . . . I. L. R. 43 All. 411
- State Railway—Before suit against
See LOSS OF GOODS
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- to government —————
- See LOSS OF GOODS.
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- See NOTICE (OF SUIT)
- See SECRETARY OF STATE.
- To Purchaser by Title deeds —————
- See SPECIFIC RELIEF ACT, s. 31
26 C. W. N. 26

NOTICE—*could*

—Terminating service agreement of school master—

See SCHOOL-MASTER.

I. L. R. 44 Calc. 817

—under Public Demands Recoveries Act—

See SERVICE OF NOTICE

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—whether amounts to prosecution—

See MALICIOUS PROSECUTION

I. L. R. 37 Mad. 181

1. —Secretary of State—*Suit against notice by two out of six, three joint owners of land—Sufficiency of notice—Waiver—Estoppel—Objection taken at a late stage, if permissible—Civil Procedure Code (Act V of 1908), s. 80* Under a 80 of the Code of Civil Procedure it is essential that the notice should state the names, descriptions and places of residence of all the plaintiffs. Where a suit was brought by sixty three plaintiffs against the Secretary of State for India in Council and others, and the notice of the suit contained the names, descriptions and places of residence of two out of the sixty three plaintiffs. *Held*, that such a notice was insufficient and did not fulfil the requirements of the statute. *The Secretary of State for India v. Feranul Pillas*, I. L. R. 24 Mad. 279, and *Manindra Chandra Nandi v. The Secretary of State for India*, 5 C. L. J. 148, referred to. It is competent to the Secretary of State to waive the notice, and he may be estopped by his conduct from pleading the want of notice at a late stage of the case. *Manindra Chandra Nandi v. The Secretary of State for India*, 5 C. L. J. 148, referred to. Where the written statement contained an object on as to the validity of the notice, but no objection was taken by the Secretary of State at any stage of the trial to its omission and it was the second defendant who prayed, just before the trial began, that an additional issue might be raised on this question: *Held* that it was not competent to the second defendant to raise this question. *Bhola Nath Roy v. Secretary of State for India* (1912)

I. L. R. 40 Calc. 503

2. —Search in the Registry Office—

—*Failure to discover at—Misdirection as to evidence*

—*Second appeal—Finding of fact—Error of law—*

Where the question was whether a purchaser for valuable consideration had notice, at the date of his purchase, of a registered instrument, dated the 20th Bhadra, 1300, when it was found that he, before the purchase, had caused a search to be made by his agent of the books in the Registry Office extending to the year 1300 in which the document was entered, and the agent had stated that he did not find the document in the book, and whereupon these facts the District Judge held that he had no notice of the registered instrument: *Held*, that there was a presumption of notice of the contents of the book and it could not be rebutted by the mere statement that though a search was made it was unsuccessful. *Held*, further, that although the question at issue was in essence a question of fact, yet the District Judge having misdirected himself in regard to the most important part of the evidence bearing upon the question and having approached the consideration of that evidence from a wrong

NOTICE—*could*

standpoint, had committed an error of law. *Bushell v. Bushell*, 1 Sch. & Lef. 90, 9 R. R. 21, *Hodgson v. Dean*, 2 Sim. St. 221, 25 R. R. 188, *Procter v. Cooper*, 2 Drew, referred to. *AKHOY KUMARI DEBI v. KANAI LAL KUNDU* (1912)

17 C. W. N. 224

3. —of Appeal—*Preliminary objection—Suit for possession of land by several plaintiffs*

—*Decree for joint possession—Failure to serve notice on some of the plaintiffs respondents—Direction of Court dismissing appeal against them—Effect of such dismissal on the whole appeal.* Where in an appeal by the defendants against a decree for joint possession of land passed in favour of five plaintiffs there was a failure to serve notices of the appeal on two of the plaintiffs respondents and the result was that the Court directed the appeal to be dismissed in so far as those two plaintiffs were concerned, and the appeal came on for disposal against the remaining plaintiffs respondents. *Held*, that the appeal could not proceed and it was accordingly dismissed. *BABER SHEIKH S. FAZLE KARIM BISWAS* (1914)

19 C. W. N. 290

4. —Service by registered post—*Post mark, evidentiary value of, in absence of oral evidence as to date of posting and receipt at office of destination—Endorsement by post office returning registered cover as refused by addressee, admissibility of—Presumption of arises from such endorsement as to date of tender to addressee.* That the preponderance of judicial authority is in favour of the view that what purports to be the impression of a post office seal on an envelope which has been posted may be presumed to be genuine, at any rate, when its genuineness is not expressly questioned, that the post mark when proved or assumed to be genuine implies an assertion that the date on the mark is the date of affixing it, that it is evidence that the place or office mentioned therein was actually the place where it was affixed and from the date in the post mark of the office of posting on the cover it might be inferred that the letter was posted at that office on that date and from the date in the post mark of the office of destination it might be inferred that the letter reached that office on that date, but the endorsement on the cover was not admissible in evidence in proof of the allegation that the cover was tendered to and refused by the addressee on the date of the endorsement and in the absence of any evidence on this point and the cover being addressed to the defendant 'at his place of business which there was nothing to show was his residence within the meaning of s. 106, the plaintiff failed to prove that the notice was duly served on the defendant. That proof of the fact that a letter correctly addressed has been posted and has not been received back through the Dead Letter Office may justify the presumption that it had been delivered in due course of mail to the addressee, but proof of the fact that a letter has been duly posted and has been returned by the Postal authorities does not justify the presumption that it has been so returned, because it has been refused by the addressee, much less is there a presumption that the cover has been tendered to the addressee on a particular date. The presumption mentioned in s. 114 of the Evidence Act is not a presumption of law but a presumption of fact and whereas in the present case the defendant pledges his oath that the cover was never

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tendered to him the Court could not treat the presumption of regularity of official business as conclusive against him *GOMEDA CHANDRA SHANU v DWARAKA NATH PATTA* (1914)
19 C. W. N. 439

5. ——— **Notice of lease—If notice of term of lease.** A party having notice of a lease must be taken to have notice of the terms of the lease *SARAT CHANDRA MCKHOPADHYAY v RAJYNDRA LAL MITRA* (1913)
18 C. W. N. 420

6. ——— **Constructive notice—Possession**
Mortgage with possession—Sale effected in favour of mortgagees who continued in possession—Subsequent sale to a stranger—Second vendee having knowledge of first vendee's possession—No enquiry made as to the nature of possession—But first vendee to get a sale deed executed—Second vendee must be held to have constructive notice of first vendee's title as purchaser. The plaintiff was in possession of the property as a mortgagee from defendant No. 1. On the 4th March 1917, defendant No. 1 agreed to sell the property to the plaintiff but subsequently refused to execute a sale deed in plaintiff's favour and sold the property to defendant No. 2 by a deed, dated the 19th January 1918. The plaintiff, therefore, sued to get a sale deed executed by the defendants. The defendant No. 2 relied upon the sale deed in his favour though he admitted that he knew that the plaintiff was in possession and that he made no inquiry as to the nature of plaintiff's possession. Both the lower Courts dismissed the suit on the ground that the second defendant had no notice actual or constructive of the contract of sale between the first defendant and the plaintiff although defendant No. 2 might be fixed with notice of the plaintiff's possession as mortgagee. In second appeal *Held*, decreeing the suit that the second defendant having had knowledge of the plaintiff being in possession and having made no inquiry why the plaintiff was in possession, must be taken to have had constructive notice of all the equities in favour of the plaintiff *Daniels v Davison* (1809) 16 Ves (Jun.) 219 s. c. (1811) 17 Ves (Jun.) 433 relied on *Sharfudin v Govind* (1902) 27 Bom 432, referred to. *FAKI IBRAHIM v. FAKI GULAM* (1920)
1 L. R. 45 Bom. 810

7. ——— **Registration—Whether by itself amounts to notice.** *Held*, that whether registration is or is not notice in itself depends upon the facts and circumstances of each case upon the degree of care and caution which an ordinarily prudent man would necessarily take for the protection of his own interest by search into the registers kept under the Registration Act. *TILAKDHAR LAL AND ANOTHER v KHEDAR LAL AND OTHERS*
25 C. W. N. 49

8. ——— **Bengal Municipal Act—(Beng. III of 1881), s. 363—Anything done under this Act.** In a suit for damages against the Vice Chairman of a municipality for having issued a warrant wrongfully *Held* that the action of the Vice-Chairman was in pursuance of the Act and a notice under s. 363 of the Bengal Municipal Act (Beng. III of 1881) was necessary. *Water house v Aew, 4 B and C 250 Selmes v Judge, L. R. 6 Q. B. 724 Midland Railway Co. v Wittington Local Board 11 Q. B. 783 Cress v St Pancras Vestry [1899] 1 Q. B. 693 Haseldine v Orose, 3 Q. B. 297, Lea v Facey 19 Q. B. D 332, Agnew v Johnson, 47 L. J. M. C. 87, Heath v*

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*Brewer, 9 L. T. 533 Darling v Harley 3 H. and N. 271, Booth v Clive, 20 L. J. C. P. 151, Richard Spooner v Juddow, 4 Moo 1 A 333, 6 Moo P. C. 237, Chunder Bikhar v Oikhy Churn, 1 L. R. 6 Calc. 3, Shyamsingh Bhawan v Drjoy Kabi, 3 C. L. J. 376, Shama Ebee v Baranagore Municipality, 12 C. L. J. 410, Scouder Lall v Baillie, 24 W. R. 237, Gopee Aishen Gossain v Ryland, 9 W. R. 279, referred to. *SASANKA SAKHAR BAIKARJEE v SUDHANUSU MOHAY GANGULI* (1920)
1 L. R. 43 Calc. 45*

NOTICE OF ARRIVAL

See CARRIERS . 1 L. R. 41 Calc. 703

NOTICE OF DISHONOUR

See BILLS OF EXCHANGE.
1 L. R. 46 Calc. 584,
See NEGOTIABLE INSTRUMENTS ACT, 1881.
s. 98 1 L. R. 33 All. 4

NOTICE OF EXECUTION.

See EXECUTION OF DECREES.
1 L. R. 40 Calc. 45

NOTICE OF LOSS.

See COMMON CARRIERS
1 L. R. 38 Calc. 50

NOTICE OF SUIT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 60 1 L. R. 40 Bom 392
See MADRAS COURT OF WARDS ACT, 1902
s. 29 1 L. R. 87 Mad. 283
See NOTICE
See SECRETARY OF STATE FOR INDIA.
1 L. R. 38 Calc. 797
1 L. R. 35 Bom. 362
See UNITED PROVINCES COURT OF WARDS ACT (III OF 1899) s. 48.
1 L. R. 36 AU. 331
1 L. R. 37 All. 13

NOTICE TO QUIT.

See EVIDENCE, ACT s. 114
23 C. W. N. 319
See LANDLORD AND TENANT

*Bengal Tenancy Act (VIII of 1855), ss. 42, 167—Annulment of sub-tenancies, when necessary—Last of an oral and sub-lease—Purchase at a sale for arrears of rent and a purchaser under a conveyance distinction between—The provisions of s. 167 of the Bengal Tenancy Act for annulment of sub-tenancies and the provisions of s. 49 of the Act which require notice to quit to be served on the under-tenant, have reference to cases where there is a subsisting tenancy which stands good against the landlord unless put an end to in the manner provided in those sections. They have no application to a case where the sub-lease is invalid from the beginning as against the landlord. *Peary Mohun Mondaljee v Badal Chandra Bagdi, 1 L. R. 28 Calc. 205, and Gangadhar Mandal v Rajendra Nath Ghosh, 17 C. W. N. 360, followed. Amirullah Mahomed v Na v Mahomed 1 L. R. 31 Calc. 932, and Lal Mahomed Sarkar v Jagur Sheikh 13 C. W. N. 913, distinguished. There is a distinction between a purchaser at a sale for arrears of rent and a purchaser under a con-**

NOTICE TO QUIT—could

veyance *Lal Mahomed Sarkar v Jager Sheikh*,
13 C. W. N. 213, referred to *BHUBAN MORAN*
GCHA v SHEIKH BADAN (1919)

I. L. R. 46 Calc. 766

NOTIFICATION.

See **FORFEITURE** I. L. R. 41 Calc. 466

See **REVENUE SALE** L. R. 45 I. A. 205

defect in—

See **SALE FOR ARREARS OF REVENUE.**

I. L. R. 42 Calc. 897

publication of—

See **REVENUE SALE.**

I. L. R. 41 Calc. 276

See **SALE FOR ARREARS OF REVENUE.**

I. L. R. 46 Calc. 255

By decree holder to the Court of payment—

See **EXECUTION OF DECREE.**

I. L. R. 43 Calc. 207

NOTIFIED AREA.**Leases of Government land in—**

See **REGISTRATION ACT (XVI of 1903).**
ss. 17, 90 . I. L. R. 36 ALL 178

NOVATION.

See **CONTRACT ACT, 1872, s. 62**

I. L. R. 2 Lah. 323

See **LIMITATION, ACT, 1908, Art. 95**

I. L. R. 37 Bom. 159

NOVELTY.

See **DESIGN** . I. L. R. 45 Calc. 608

NUISANCE.

See **BOMBAY CITY MUNICIPAL ACT, 1838—**
s. 377 . I. L. R. 34 Bom. 346
ss. 379 AND 370A.

I. L. R. 36 Bom. 81

See **BOMBAY DISTRICT MUNICIPALITY**
ACT, 1901, s. 151

I. L. R. 44 Bom. 738

See **CALCUTTA MUNICIPAL ACT, s. 3**

15 C. W. N. 100

See **EASEMENT** . I. L. R. 38 Calc. 89

I. L. R. 42 Calc. 46

See **PENAL CODE, s. 114, 263**

I. L. R. 35 Bom. 368

See **RAILWAYS ACT, s. 120**

25 C. W. N. 603

Hindus making noises to interfere with worship of Muhammadans—

See **SPECIFIC RELIEF ACT, 1877 s. 65**
I. L. R. 1 Lah. 140

Calcutta Municipal Act, s. 632—
“Nuisance.” Building sanctioned by Municipality
if may be—Nuisance if must be public—Building
in contravention of regulations if to be proceeded
against only under s. 412—Partition decree, effect of.

NUISANCE—could

The term “nuisance” in s. 632 of the Calcutta Municipal Act does not refer only to nuisance affecting the public generally. It applies as well to nuisances affecting an individual. The mere fact that the Municipality could have proceeded against a building erected contrary to the building regulations under s. 449 of the Act does not preclude the Municipal Magistrate from interfering with it under s. 632 at the instance of the person whose house has been deprived of light and air by the building. If a building is a nuisance, it is no answer in a proceeding under s. 632 to say that the Corporation had sanctioned it. Whether erected with or without sanction, or in contravention of the building regulations or not, any person residing in Calcutta affected by it can move the Magistrate and it is within the jurisdiction of the Magistrate to pass an order under s. 632, if in his discretion he is so advised. A partition decree previously passed which purported to specify the easements reserved to the portion which fell to the complainant, cannot be held to override the provisions of the Calcutta Municipal Act, which is directed to provide for public sanitation among other public conservations. *BHAGWAN DAS v RASH BEHARI MULLICK* (1909)

14 C. W. N. 637

Public and private nuisance—

Erection of a high wall on ones own land very close to another’s dwelling house—Likelihood of injury to the health of the inmates of the adjoining tenements and of the public inhabiting the neighbourhood by the propagation of disease—Propriety of order of partial demolition—Feasibility of other remedial measures—Calcutta Municipal Act (Beng. III of 1899) s. 632. The words “any nuisance” in s. 632 of the Calcutta Municipal Act mean any nuisance as defined in s. 3 (29) thereof. The definition, though wider than that of a “public nuisance” at the common law, does not extend to the inclusion of all private nuisances. *Elogow Das v Rash Behari Mullick*, 14 C. W. N. 637, explained. The erection of a wall, however high, on ones own land very close to the dwelling-house of a neighbour, in order to prevent him from acquiring a right of easement, is not in itself a nuisance under the Calcutta Municipal Act, but where the evidence shows that it is, or is likely to be injurious to the health of the residents of the adjoining tenements and of the public inhabiting the neighbourhood, by propagating the seeds of consumption and typhoid, it becomes a nuisance under the Act. Where, however, the only matter which causes a wall to be a nuisance is not its height but the accumulation of filth at the bottom and want of space to clear the drainage between it and the adjacent house, the Magistrate, instead of ordering its reduction in height, should consider whether the nuisance cannot be abated by the adoption of other remedial measures. The use of the Act for the purpose of interfering in any way with the rights of private ownership beyond the limited powers given to the Corporation by it for the necessary protection of the public and the enforcement of proper sanitation, is much to be deprecated. *KHAGESDRA NATH MITTER v BUDHESDRA NARAIN DEB* (1910).

I. L. R. 38 Calc. 296

Legal nuisance—Erection of horse stables, when a nuisance—Easements Act (I of 1882), s. 15—Degree of nuisance—Value of expert

NUISANCE—contd

medical evidence in a case of nuisance—Consideration of policy or abstract public rights, outside the scope of inquiry—License from the Municipal Sanitary authorities for erection of stables, no defence in an action for nuisance—Specific Relief Act (I of 1877)—Relief by injunction as well as damages—Plaintiffs suing as trustees interested in reversion and as residents—Civil Procedure Code (Act V of 1908), O I, r 1. Prior to the year 1903, the first plaintiff was absolutely entitled to, and possessed of, a piece of land with a house standing thereon situate at Thakurwar Road, Bombay. By an Indenture of Settlement, dated the 12th of January 1903, the first plaintiff conveyed the said property to herself and her husband, the second plaintiff, upon trusts for the benefit of herself and her husband and their issue. The defendant was the lessee for a period of 21 years commencing from 1st of January 1911, of an open piece of land adjoining the property of the plaintiffs and situate on the eastern side thereof. The said piece of land was formerly used for many years, and, as the defendant alleged, for nearly a century, for tethering bullocks and keeping bullock carts, up to the year 1908 when such user terminated. In October 1913, the defendant erected a block of stables, parallel to the length of the plaintiff's house and at a distance of about 20 to 35 feet therefrom for the accommodation of 75 horses, to which was added another block for the accommodation of 35 hack carriages. The plaintiffs complained that the stables erected by the defendant rendered their house uncomfortable and unhealthy and constituted a serious nuisance. They also alleged that in consequence of the nuisance, the tenant on the first floor vacated the same and that the plaintiffs and their family suffered in health and were obliged to remove to another house. The plaintiffs sued in their double capacity as trustees interested in the reversion and as actual residents, praying for a perpetual injunction to restrain the defendant from the continuance or repetition of the said nuisance and for damages in the sum of Rs 1,221 for nuisance caused up to the date of the suit, or in the alternative for a sum of Rs 15,000 as damages for the depreciation in value of the plaintiff's property, by reason of the said nuisance. The defendant denied that the stables were a nuisance in law and pleaded without prejudice to his afore said contention—(a) that the nuisance complained of had been acquired by him as an easement, (b) that the stables were erected in accordance with the Bye laws of the Bombay Municipality, and the license of using them as stables was granted to him after the said premises were inspected and due inquiries made by the Municipal Commissioner and the Health Officer of Bombay, and (c) that the plaintiffs were not entitled to sue in their double capacity. *Held*, (i) that under the Indian Easements Act, whatever easement may have been acquired by the owners of the land to cause a nuisance to the adjacent servient tenement by the tethering of bullocks on the vacant land admittedly came to an end in the year 1908, i.e., considerably more than two years before the nuisance complained of came into existence and before the date of the suit; (ii) that the nuisance complained of by the plaintiffs was totally different from the nuisance which previously existed, and on general principle, the defence of easement could not be sustained; (iii) that if the nuisance existed, it was no answer to say that the defendant

NUISANCE—contd

had conformed to the latest requirements of the Municipal Sanitary authorities, and had done everything in his power and taken all reasonable precautions to prevent its existence; (iv) that the stables erected by the defendant, having regard to their size and their distance from their dwelling house of the plaintiffs constituted a nuisance; (v) that having regard to the comprehensive language of O I, r 1, of the Civil Procedure Code of 1908, there could not be any objection to the plaintiffs suing in their double capacity, and that the plaintiffs were entitled to obtain relief by way of injunction and damages. A legal nuisance is rather an evasive shifting and intangible thing hard to be pinned down by a verbal definition. It must always be conditioned by time and place and circumstances and the Court shall have regard to the station in life of the plaintiff and his family, and the locality and the nature of the nuisance complained of. *Waller v Selfe, 4 De G & Sm. 315, 322, and Sturges v Bridgman, 11 Ch. D 552, referred to.* Where the nuisance was of the kind to injure the health or seriously imperil the life of those complaining of it, the Court would not hesitate to prevent it by way of injunction; but where the nuisance went no further than to diminish the comforts of human life, there would always be a question whether the Court would proceed against him who causes that nuisance by injunction, or compensate the sufferer in damages. In the absence of statutory enactments, no general considerations of mere policy, or rather abstract public rights, can be allowed to prevail against what the law recognises, and always has recognised, as the legal rights of the individual. *The Attorney General v. The Town Council of the Borough of Birmingham, 6 W. R. 811, referred to. Bai Brichaji v. Purnushaw Jivaji (1915).* . . . I. L. R. 40 Bom. 401

—Sale of fish in railway shed—and its precincts in prohibited quantities resulting in attraction of crowds, impeding of business, and rendering the place offensive—Railways Act (IX of 1890), s 127 (b). Where the Railway authorities prohibited the sale in their special delivery shed and its precincts of fish below certain quantities, but the unauthorized sales went on and attracted large crowds, obstructed the transaction of business for which the shed was intended, impeded the removal of fish therefrom, and more particularly rendered the place offensive. *Held*, that such sales amounted to a nuisance, and that the petitioners having persisted in contributing to it were guilty under s 120 (b) of the Railways Act (IX of 1890). *DROU SHA v. EMPEROR, (1921)*

I. L. R. 48 Calc. 1043

NULLITY OF DECREE.

See DECREE. . . . I. L. R. 39 Bom. 34

NULLITY OF MARRIAGE.

See DIVORCE. . . . I. L. R. 43 Calc. 283

NUMBERS.

See TRADE MARK, INFRINGEMENT OF.
I. L. R. 41 Bom. 49

NUNC PRO TUNC.

See ARBITRATION. . . . 14 C.W. N. 759

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OATH.

See OATHS ACT

Prescription as to due administration—

See UNITED PROVINCES EVIDENCE ACT (IV of 1910), s. 60

I. L. R. 23 All. 573

OATHS ACT (IV OF 1840).

See OATHS ACT (XIV of 1841), s. 3, s. 14

I. L. R. 34 Bom. 115

OATHS ACT (X OF 1873).

See HIS HONOUR

I. L. R. 26 Mad. 237

s. 4—

See OATHS ACT XIX OF 1841

I. L. R. 34 Bom. 115

See JUDICIAL PROCEEDINGS

I. L. R. 37 Cal. 52

s. 5—

See WITNESS I. L. R. 45 Cal. 723

ss. 5, 6, 13—

See APPEAL I. L. R. 41 Cal. 493

Evidence Act II of 1872, s. 115—Evidence—Statement of witness not recorded on oath—Capacity of child of tender years to testify. The fact that a Court has advisedly refrained from administering an oath to a witness is not sufficient in itself to render the statement of such witness inadmissible. But a Court should only examine a child of tender years as a witness after it has satisfied itself that the child is sufficiently developed intellectually to understand what it has seen and to afterwards inform the Court thereof, and if the Court is so satisfied it is best that the Court should comply with the provisions of s. 6 of the Indian Oaths Act in the case of a child, just as in the case of any other witness.

Queen Empress v. Mary, I. L. R. 16 All. 207 disapproved from *EMPEROR v. BHANI RAM* (1915)

I. L. R. 38 All. 49

When in a trial for murder the Sessions Judge deliberately abstained from administering an oath or affirmation to the only eye witness to the murder on the ground that she was only 6 or 7 years of age held that the evidence was admissible. *Queen Empress v. Mary, I. L. R. 10 All. 207*, *Queen Empress v. Lal Sahai, I. L. R. 11 All. 133* and *Queen Empress v. Virapornum, I. L. R. 16 Mad. 103*, disapproved from. In every case where a witness is competent within the meaning of s. 113 of the Evidence Act 1872 the provisions of ss. 5 and 6 of the Oaths Act 1873 should be complied with. The omission of the Judge to examine accused under s. 342 of the Criminal Procedure Code after the witnesses for the prosecution have been examined and before he is called on vitiate the trial. *PATU SAKTAL v. THE KING EMPRESS*, 6 Pat. L. J. 145

ss. 5 and 13—Evidence, admissibility of where witness not sworn. The evidence of two children aged eight and six years was admitted against an accused person without the children having been sworn or affirmed. Held, that in view of s. 13, Indian Oaths Act, the failure to

OATHS ACT (X OF 1873)—contd

ss. 5 and 13—contd

administer oath or affirmation did not render the evidence inadmissible. *Queen Empress v. Virapornum, I. L. R. 16 Mad. 103* (PARKER, J.), followed. *Queen Empress v. Mary, I. L. R. 10 All. 207*, disapproved from. *Per CRANFORD, S. C.* of the Oaths Act is imperative and if a Court holds that a person may lawfully give evidence, it is the duty of the Court to administer oath or affirmation to that witness. *De OLIVERA v. KRISHNA* (1913)

I. L. R. 33 Mad. 550

ss. 8, 9, 10—Principal and agent—Agent holding power of attorney to conduct suit for principal—Power of agent to agree to suit being decided according to statement on oath of defendant. A lady who was plaintiff in a suit gave to her husband a special power of attorney to conduct the case in her behalf "as he should deem fit". He was authorized to compromise or withdraw the suit, to refer it to arbitration and to nominate arbitrators, and finally the plaintiff said that every step that he might take in the conduct of the case was to be considered as having been taken by herself. Held, that the husband had power to take action under ss. 8, 9, and 10 of the Oaths Act, 1873. *Nafisur Raza v. Maruthi Vithal, I. L. R. 14 Bom. 455*, disapproved from. *WASI CRAMAN KHAN v. FAIZA BINTI* (1915)

I. L. R. 33 All. 131

ss. 9, 11—Special oath—Inadmissibility of special oath in proceedings under ss. 14 and 15 of the Village Police Act (Bombay Act VIII of 1867). ss. 9 to 11 of the Indian Oaths Act, 1873, are not applicable to proceedings before a Village Police Panch under ss. 14 and 15 of the Bombay Village Police Act, 1867. *Queen Empress v. Maruys Gokuldas* (1883) 13 Bom. 339, followed. *Per BHANU, J.* The proceedings before the Police Panch under ss. 14 and 15 of the Village Police Act (VIII of 1867) are essentially criminal proceedings and the same rule which applies to criminal proceedings ought to apply on general grounds to proceedings before the Village Panch so far as the effect of any special oath is concerned. *EMPEROR v. CHUKAS* (1820)

I. L. R. 45 Bom. 96

s. 13—

See APPEAL I. L. R. 41 Cal. 493

See UNITED PROVINCES EVIDENCE ACT (IV of 1910) s. 60

I. L. R. 23 All. 573

Omission to administer oath or affirmation. Where in a case under s. 304, Indian Penal Code, a girl was examined as a witness without oath or affirmation, the trial Judge being of opinion that she was too young to take oath or give affirmation. Held, that on the authority of the full Bench in *Queen v. Sewa Bhagya, 11 B. L. R. 294 (F.B.)* (1874), the omission to administer an oath or affirmation even if intentional would be cured by s. 13 of the Oaths Act and the evidence of the child was admissible. *KING EMPRESS v. SASHI DEEVA MAITY*

24 C. W. N. 767

OBJECTION.

See ATTACHMENT BEFORE JUDGMENT

I. L. R. 38 Cal. 443

See CIVIL PROCEDURE CODE, 1908, O. XXI, s. 22

I. L. R. 34 All. 140

See CROSS OBJECTIONS

OBLIGATION

See Gift with Obligation

I L R. 42 Bom. 83

OBSCENE PUBLICATION

— — — — — I have power of my own mind and a general character based on an incident which is a sacred book of great antiquity and dignity and the title of obscene language—Work and what it is a piece of corrupt morals—Final Code I L R. 137 (1) 9. Finding of facts. The court observed that the tenor of the matter charged as obscene is to deprave and corrupt the mind and is open to such immoral influences and into which lands such a publication must fall. If in fact the work is one which would certainly suggest to the minds of the young of either sex or even to persons of more advanced years the rights of a man's impure and lascivious character its publication is an offence, though the accused has in view an ulterior object such as innocent or even laudable. *Reg. v. Hichin*, L. R. 3 Q. B. 349. *Archie v. Lumsden*, L. R. 7 T. P. 251. *Queen Empress v. Lumsden*, Trial, L. R. P. 22 Bom. 191, *Emperor v. Hari Singh* I L R. 25 All. 103. *Emperor v. Indramani*, I L R. 3 All. 437 followed. A religious or classical work does not become obscene within s. 292 of the Penal Code simply on account of its containing some objectionable passages because the tenor of such publications is not to deprave or corrupt morals. If objectionable passages in a religious book are extracted and printed separately and they deal with matters which are to be judged by the standard of human conduct, as where they relate to immoral acts of human beings, and the tenor of such publication is to deprave and corrupt those whose minds are open to immoral influences the publication may not be justified though the passages form part of a religious book. Where, however, a story which appears objectionable is taken from a religious book and printed separately, but it relates to beings whose conduct is not to be judged by the standard of human beings, it is not an obscene publication, as it would not, on account of its religious character, raise immoral thoughts in the minds of persons who believe in the divinity of beings whose acts and conduct are described in the story. Where a poem was published in the Uriya language containing a story, complete in itself so far as it goes, of the dalliance of Radha and Krishna, who were described as divine personages and their acts as supernatural, the latter being represented to be a boy of five, taken from the *Uriya Haribans*, a very sacred book of the Uriyas, the incidents and sentiments being the same as and the language not more objectionable than, that of the original and it was in itself an old religious book of a spiritual and allegorical character which had often been published and registered without exception taken and which was apparently intended for Hindus who form the vast majority of the Uriyas and I believe in the divinity of Radha and Krishna, and I do not consider their doings as immoral. *Held*, that the publication was not obscene within the meaning of s. 292 of the Penal Code. *KHENDRA CHANDRA ROY CROWDERY v. EMPEROR* (1911) I L R. 39 Calc. 377

OBSTRUCTION—contd.

See FETTER, I L R. 48 Calc. 202

See MEDICAL COUNCIL

I L R. 39 Mad. 6

See PENAL CODE—

ss. 114, 243 I L R. 35 Bom. 205

s. 243 I L R. 33 Mad. 305

— of Pathway—

See CRIMINAL PROCEDURE CODE, ss. 131

135 139 14 C. W. N. 546

See PUBLIC HIGHWAY

I L R. 41 Calc. 61

OCCUPANCY.

See LAND REVENUE CODE, BOMBAY—

ss. 26, 214 I L R. 55 Bom. 81

s. 24 I L R. 41 Bom. 170

OCCUPANCY HOLDING

See ABANDONMENT 2 Pat. L. J. 225

See AGRA TENANCY ACT (II OF 1901)—

ss. 11 et seq. I L R. 25 All. 474

R. 20 I L R. 22 All. 623

I L R. 25 All. 475

I L R. 40 All. 214

I L R. 43 All. 547

s. 20 (2) I L R. 32 All. 136

I L R. 37 All. 278

I L R. 43 All. 547

s. 21 I L R. 33 All. 799

s. 22 I L R. 22 All. 314

I L R. 34 All. 419

I L R. 37 All. 7, 658

I L R. 38 All. 225

I L R. 42 All. 668

R. 24 I L R. 40 All. 300

ss. 79 AND 85 I L R. 35 All. 299

ss. 95, 107 I L R. 36 All. 48

See CIVIL AND REVENUE COURTS.

I L R. 33 All. 464

See CIVIL PROCEDURE CODE O. XX.

R. 18 I L R. 36 All. 461

See FETTER I L R. 24 All. 528

I L R. 39 Calc. 513

See JURISDICTION (CIVIL AND REVENUE COURTS).

I L R. 42 All. 64

See LANDLORD AND TENANT

I L R. 43 Calc. 166

See MANDARIN TENURE.

I L R. 34 All. 155

See MORTGAGE I L R. 39 All. 539

See N W P RENT ACT (XVIII OF 1873).

I L R. 41 All. 356

See N W P RENT ACT (XII OF 1881).

I L R. 37 All. 444

s. 6 I L R. 36 All. 166

See OBIWA TENANCY ACT, 1893

ss. 31, 250 3 Pat. L. J. 351

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 16, 30, 43

I L R. 39 All. 120

ss. 16 AND 18 I L R. 43 Calc. 510

OBSTRUCTION

See CALCUTTA POLICE ACT (ENG. IV OF 1866) s. 64 (f) 22 C. W. N. 455

OCCUPANCY HOLDING—*contd*

See RIGHT OF OCCUPANCY

See SUIT FOR CANCELLATION OF DOCUMENTS. I. L. R. 38 All. 232

Occupant's right to cut trees.

See FOREST CUT 1878

s 75. I. L. R. 45 Bom. 111

transfer what amounts to recognition of—

See BENGAL TENANCY ACT 1885, s. 86
1 Pat. L. J. 414

transfer of a portion of—

See ENCUMBRANCE
I. L. R. 46 Calc. 891See LANDLORD AND TENANT
I. L. R. 43 Calc. 878

transfer of whole—

See BENGAL TENANCY ACT 1885 s 161
1 Pat. L. J. 403

transfer of a portion without landlord's consent and subsequent surrender—

See BENGAL TENANCY ACT, 1885 s 23
25 C. W. N. 717

position of insolvent tenant—

See PROVINCIAL INSOLVENCY ACT 1907
s 16 & 56 I. L. R. 43 All. 510

1. Mortgage—Suit by mortgagee—

Co-sharer landlord who has purchased in execution of money decree if may question transferability of holding. A co-sharer landlord who has purchased an occupancy holding in execution of a decree of his own, cannot resist a mortgagee's suit to enforce his mortgage on the holding on the ground that the holding was non transferable, he himself being a purchaser without the landlord's consent, taking the word landlord in its proper signification of the whole body of landlords. *Ayazuddin Vayya v. Sush Chandra Danerji*, 11 C. W. N. 76 followed. *Achanulla Sarkar v. Solemnassa Bibi*, 9 C. W. N. 210, not followed. *HARO CHANDRA POPDEY v. UMESH CHANDRA BHATTACHARJEE* (1909)

14 C. W. N. 71

2. Transfer—Recognition by landlord—

Receipt of rent from transferee as agent of transferor—Acquisition of occupancy right by adverse possession. The receipt by the landlord of rent from a transferee of a holding not on his own account but as an agent of the transferor is not a recognition of the transfer. *Balakumari Debi v. Babur Lal Sen*, 11 C. W. N. 385 & 1 J. L. R. 34 Calc. 902, distinguished. *Rhodesram Chatterjee v. Poolkines Dasgupta*, 15 W. R. 197, and *Rasamoy Purkait v. Srinath Moyra*, 7 C. W. N. 132, referred to. Case remanded for trial of the question whether the transferee had acquired the right to hold the land as an occupancy raiyat by possession as a raiyat for a period of 12 years and by assertion of his title as such. *DENYARAIN DUTT v. RAIDYA NATK* (MADAG) 14 PTT (1909)

14 C. W. N. 69

3. Non-transferability. Question

if, may be raised by assignee of holding pending mortgage suit—Consent of landlord obtained subsequent to filing written statement. A purchaser of an occupancy holding from the raiyat after a decree for sale has been passed in favour of a

OCCUPANCY HOLDING—*contd*

mortgagee of the holding but before sale thereof is bound by the sale both because a mortgagor and consequently an assignee from him cannot be allowed to deny the mortgagee's title and also by reason of the operation of the rule of *lis pendens*. The rule of *lis pendens* is applicable to proceedings to realise the mortgage after the decree for sale. The purchaser cannot be allowed to raise the question of non transferability of the holding when in his written statement he stated that his purchase had not been recognised by the landlord, by showing that such recognition on the part of the landlord, has been subsequently obtained. An occupancy raiyat is estopped from setting up as between himself and a mortgagee of the holding, the invalidity of the mortgage. *SHATAMA CHARAN BHATTACHARYA v. MOHUNDA SUNDARI DEBI* (1911)

15 C. W. N. 703

4. Transferability—Usage of, how

established—Usage should be grown up and not grown up—Usage after it has grown up may apply to pre-existing tenancies—Bengal Tenancy Act (VIII of 1885) s 50—Presumption if applies to suit to eject transferee of holding—Misconstruction of written evidence—Second appeal—Civil Procedure Code (Act I of 1908), s 100. In order to prove a custom or usage of transferability of occupancy holdings, what is necessary to prove is that such transfers have been made to the knowledge and without the consent of the landlord and that they have been recognised by him either without the payment of *nazar* or upon payment of a *nazar* also fixed by custom. It is not necessary to prove that the landlord has actually made an objection to a transfer and has been unsuccessful. The usage to be effective must not be a growing usage but one which has already grown up. A usage of transferability, after it has grown up, affects not merely tenancies created thereafter but also existing tenancies. S 80 of the Bengal Tenancy Act has no application in a suit for ejectment by the landlord on the allegation that the tenant of a non transferable holding has sold it to the defendant and has abandoned the land as such a suit is obviously not a suit or proceeding under the Bengal Tenancy Act. But even in cases where the section is not directly applicable, the Court may act on a similar presumption if the facts justify the necessary inference. Although the misconstruction of a document which is the foundation of the suit or which is in the nature of a contract or a document of title is a ground for second appeal, such appeal does not lie because some portion of the evidence is in writing and the Judge in the Court below makes a mistake as to the meaning of it. *BELLE KARIM v. BATEA CHAN RA GINI* (1911)

15 C. W. N. 722

5. Usufructuary mortgage by

tenant—Tenant remaining on land as sub-lessee of portion of holding and paying rent—Abandonment—Ejectment. The execution by a tenant of a mortgage of his non transferable occupancy holding does not by itself amount to an abandonment of the holding because it is only on the assumption that the tenancy continues in operation that the mortgagee can have any subsisting interest in the land. *Krishna Chandra Dutta v. Mirza Fajala*, 10 C. W. N. 492 and *Bank Ltd. Dutt v. Bidkumari Das*, 10 C. W. N. 719, & L. J. 368, referred to. Where an occupancy raiyat executed a usufructuary mortgage of his holding, but continued to pay rent to the landlord and remained in possession of a portion of the holding as a sub-tenant

OCCUPANCY HOLDING—contd

under the mortgagor *Held*, that the landlord was not entitled to treat the raiyat as a trespasser and sue him in ejectment. **CHOWDHURY MAHADEO PERSHAD v. SURESH PACHARI (1911)**

18 C. W. N. 322

6. ——— Disposition by landlord of raiyat for two years.—*If extinguishes tenant's title—Limitation Act, 1777 (XV of 1877), s. 25—Regal Tenancy Act (VIII of 1885), Sch. III, Art. 3—Mortgage of holding to Government for agricultural loan—Sale under Public Demands Recovery Act (Beng. I of 1895)—Interest which passes—Adverse possession against mortgagor of adverse to mortgagor.* An occupancy raiyat borrowed money from Government for agricultural purposes on the security of his holding, but having failed to pay up a certificate, under the provisions of the Public Demands Recovery Act, was sued for the realization of his debt and the holding was sold. *Held*, that only the right, title and interest of the raiyat passed under the sale, as the Secretary of State for India in Council in adopting the procedure of the Public Demands Recovery Act, which does not contemplate the realization of a security, must be taken to have abandoned the security. That the Secretary of State for India in Council could enforce the security only by a regular suit. **NANDA KUMAR DUTTA v. AJAY K. SARKAR (1911)**

18 C. W. N. 351

7. ——— Sale in execution of decree—Consent of fractional landlord.—*Sale of legal.* Where a decree-holder's application for sale of an occupancy holding was granted to the extent of a 15 annas share upon the finding that co-sharer landlords to that extent had consented to the sale. *Held*, that in the present state of authorities the order should be maintained, the purchaser purchasing at his peril. **SHAKARUDDIN CHOWDURY v. RAJ KUMAR DAS (1911)**

18 C. W. N. 420

But see Post

10 C. W. N. 814

2 Pat. L. J. 630

8. ——— Mortgage by raiyat.—*Subsequent transfer to stranger—Collusive suit by landlord for ejectment and recovery of possession—Landlord if in possession under paramount title—Suit on mortgage—Landlord if necessary party—Transfer of Property Act (IV of 1882), s. 35.* When it is found that a landlord obtained possession of an occupancy holding, alleged to be non transferable, by bringing a collusive suit for ejectment against a transferee from the raiyat. *Held*, that in a suit by a mortgagor of the holding on his mortgage, the landlord would be a proper party, his possession of the holding resting on acquisition from the transferee and not on a paramount title. **JOGENDER DUTTA v. BHUBAN MOHAN MITRA, I. L. R. 33 Cal. 425**, distinguished. **PANCHANAN GHOSE v. MIN ABDEL MOLIK (1912)**

15 C. W. N. 820

9. ——— Transferability—Bengal Tenancy Act—(VIII of 1885)—*Custom and usage, proof of—Sale in execution of decree—Landlord's consent on receipt of nazaranam.* Where nazars were as a rule paid to the zemindar and on payment of the note the purchaser was usually recognised by the landlord. *Held*, that it was not evidence of any custom or usage by which an unwilling landlord was bound, or evidence that the landlord was compelled, to recognise the purchaser on payment of nazars whether he wished to do so or not.

OCCUPANCY HOLDING—contd.

BRUGIRATH CHANDRA MANDAI v. SITAL CHANDRA SIKAR (1912)

16 C. W. N. 955

10. ——— Mortgage taken by landlord, if evidence of transferability.—*Assignment of mortgage by landlord to another, effect of—Assignment to purchaser of holding, if recognition of the purchaser's tenancy.* The fact of a landlord himself taking a mortgage of a non transferable holding is by itself no evidence of its transferability. Where, however, the landlord allowed a purchaser of the holding to take an assignment of his mortgage from him. *Held*, that he was stopped from denying that the purchaser had acquired a valid title by his purchase. A mere assignment of the mortgage by the landlord to a third person by itself would not amount to anything more than a representation that the mortgage was valid and could be enforced against the sole. **MAHESH NARAIN ROY v. MAHARAJA BAHADUR SYON (1912)**

17 C. W. N. 70

11. ——— Transfer—Acceptance of rent from transferee—*if evidence of validity of transfer—Peculiar, scope of authority of.* The acceptance of rent from the transferee of a non-transferable occupancy holding, not as transferee but as the agent or representative of the original tenant, does not amount to a recognition of the validity of the transfer. **KHOODERAM CHATTERJEE v. RULHINE DASGUPTA, 15 W. R. 127, Gour. Lab. v. Rameshwar, 6 B. L. R. App. 82, Wilson v. Radhakrishnan, 2 C. W. N. 63, Rameshwar Purkait v. Srinath Moyn, 7 C. W. N. 132, relied on Kuran Das v. Begun Kanti, 12 C. W. N. 539, referred to Baroda Churn Dutt v. Hemlata Das, 15 C. W. N. 833, Thomas Dorelay v. Hossain Ali Khan, 6 C. L. J. 601, Naba Kumar v. Behary Lal, 11 C. W. N. 565; 1 L. R. 34 Cal. 802, distinguished. **DIMANJOY ROY v. ATA RAHMAN (1911)****

17 C. W. N. 156

12. ——— Transfer contrary to local usage of portion of holding, if constitutes forfeiture of tenancy.—*Surrender of portion of holding—Landlord's right to re-enter that portion—Encumbrance created prior to surrender, effect of.* Where the entire holding of an occupancy raiyat has not been transferred contrary to local usage and custom, it cannot be said that there has been a forfeiture of the tenancy. **Ras Kamalchandra Persad Singh Bahadur v. Maharaja Harbulla Singh Narain Singh Bahadur, 2 C. L. J. 569, followed.** Where a raiyat surrenders a portion of his holding to the landlord, the landlord is entitled to re-enter the portion notwithstanding any subordinate rights which the raiyat may have created upon the particular portion, and the mere fact that the landlord was aware of the encumbrance created by the raiyat, can not take away his right of re-entry. **Baldev Chandra Das v. Rajeswar Dey, 2 C. L. J. 570 and Rajendra Kishore Adhikari v. Chandra Nath Datta, 12 C. W. N. 578, referred to. GAGAN CHANDRA CHOWDURY v. ATUL CHAND SANA (1913)**

17 C. W. N. 698

13. ——— Abandonment.—*If question of fact—Unfructuary mortgage—Raiyat if necessary party in suit to recover from transferee.* Where an occupancy raiyat mortgaged his non transferable occupancy holding by way of an unfructuary mortgage for a certain number of years and the mortgagee continued in possession of the land through their *burgadar* even after the expiry of the term, and the lower Appellate Court found that the raiyat did not live in the village and had cut

OCCUPANCY HOLDING—contd

off connection with the holding. *Held*, that these findings amounted to holding that the raiyat had abandoned the jama. The mere execution of an usufructuary mortgage might not be sufficient to establish abandonment; whether there has been abandonment of a holding or not is principally a question of fact. The conditions prescribed by s. 87 of the Bengal Tenancy Act do not preclude a landlord from entering upon a land abandoned by tenant. The raiyat was not a necessary party to a suit to recover a non transferable holding from the transferees thereof, nor would he be bound by the decree in the suit. *MOCHAB PAL v ANANTA MOYEE DASSEE* (1913). 17 C. W. N. 802

14. ———— Transfer of portion without landlord's consent—Surrender by original raiyat to landlord—Landlord if may eject transferee—Abandonment. After the sale by an occupancy raiyat of a portion of his holding, the raiyat may surrender that portion or the whole of the holding to his landlord, and s. 87, cl. (7) of the Bengal Tenancy Act is no bar to the landlord accepting the surrender, as the interest, if any, of the transferee which the landlord is not bound to recognise, is not an incumbrance. Upon such surrender, the landlord may sue to eject the transferee as a trespasser. *Aabli Sardar v Chandra Nath*, 1 L. R. 20 Calc 599, distinguished. The remedy of the transferee, if any, is against his vendor. *RAMONI MOHAN RAY v SURESH KALIMUDDI* (1912).

17 C. W. N. 1101

15. ———— Transfer by tenant of whole—Landlord's right to eject transferee—Disclaimer by original tenant if must be proved—Original tenant if necessary party—Custom of transferability—Nazar, payment of. In order to entitle a landlord to eject a transferee of the whole of a non transferable raiyati holding, it is not necessary for him to prove as a fact that the raiyat has left the holding and disclaims any interest in it. It is a direct inference from the fact that he has sold the entire holding and given possession of it to the purchaser and distinct repudiation or refusal to pay rent need not be proved. Unless the nazar is fixed by custom, the landlord is not bound to recognise a transfer upon payment of nazar. *Bazul Karim v. Sahib Chandra Gari*, 15 C. W. N. 752, 756, referred to. In a suit by the landlord to eject a transferee of a non transferable holding the transferor is not a necessary party. *CHAND PRASANTIK v ROMONY MOHAN RAY* (1912).

17 C. W. N. 1105

16. ———— Non-transferable occupancy holding, whether devisable by will—Bengal Tenancy Act (VIII of 1885), ss. 26, 178, sub s. (3) of (d)—*How, if estopped by testator's act from claiming inheritance under the statute*. A non transferable occupancy holding cannot be the subject of a valid testamentary disposition. In the case of a testamentary devise of such a holding, the heir at law is not debarred by the doctrine of estoppel from questioning its validity. *Hari Das Barrai v. Ladoy Chandra Das*, 12 C. W. N. 1036, 8 C. L. J. 261, not followed. *ANULTA PATAN SIKAR v. TARINI NATH DEY* (1914).

I. L. R. 42 Calc 254

18 C. W. N. 1290

17. ———— Not transferable by custom or local usage, if can be sold wholly or partially, in execution by co-sharer landlord—If ten raiyat objects to sale. A co-sharer landlord is not entitled to sell the whole or part of an occu-

OCCUPANCY HOLDING—contd

pancy holding not transferable by custom or local usage in execution of a decree obtained for his share of rent, when the raiyat objects to the sale. The Full Bench decision in *Dayamoyi Das v Annada Mohan Roy*, 18 C. W. N. 971, by implication holds that the raiyat is entitled to have a sale of the holding in execution of a money decree set aside after it takes place and that the holding cannot be sold in execution of such a decree when the raiyat objects to the sale before it takes place. This view is in accord with the cases of *Durga Churn Mondul v Kals Prasanna Sircar*, 1 L. R. 26 Calc 727, s. c. 3 C. W. N. 536, *Sadagar Sircar v Krishna Chandra Nath*, 3 C. W. N. 742, and *Sheikh Jarp v Ram Kumar De*, 3 C. W. N. 747. The principle deducible from the Full Bench decision is applicable to an involuntary transfer of the whole as well as of a part of the holding. *BADRAK-NESSA CHOUDHURANI v ALAN GAZI* (1915).

19 C. W. N. 814

18. ———— Revenue Sale Law, 1859, s. 37—Occupancy raiyats at fixed rates—Purchaser—Doctrine of Protection—Its extension. The protection of occupancy raiyats at fixed rates, referred to in s. 37 of the Revenue Sale Law (Act XI of 1859) is not one of the ordinary exceptions in that section. It is a proviso expressing the determination of the Legislature that no purchaser shall disturb any of the permanent tenants on the land who are in actual occupation of the soil and are cultivating it. This doctrine of protection has recently been extended to ordinary occupancy raiyats. *Sarat Chandra Roy v Asman Bibi*, 1 L. R. 31 Calc 725, referred to. *Bhus Nath Naskar v Surendra Nath Dutt*, 13 C. W. N. 1025, distinguished. *ANULU GANI CHOWDHURY v MAH BUL ALI* (1914).

I. L. R. 42 Calc. 745

19. ———— Transferability of part or whole—Consent of landlord—Operation of transfer as against raiyat landlord and other persons—Civil Procedure Code (Act XIV of 1882), s. 244—Bengal Tenancy Act (VIII of 1885), s. 87. In transfers, for value, of occupancy holdings, apart from custom or local usage: (i) The transfer of the whole or a part is operative against the raiyat—(a) Where it is made voluntarily, (b) where it is made involuntarily and the raiyat with knowledge fails or omits to have the sale set aside. A sale is made involuntarily, where it is in execution of a money decree, but not of a decree founded on a mortgage or charge voluntarily made. (ii) The transfer is operative as against the landlord in all cases in which it is operative against the raiyat, provided the landlord has given his previous or subsequent consent. Where the transfer is a sale of the whole holding, the landlord, in the absence of his consent, is ordinarily entitled to enter on the holding; but where the transfer is of a part only of the holding, or not by way of sale, the landlord though he has not consented, is not ordinarily entitled to recover possession of the holding unless there has been (a) an abandonment within the meaning of s. 87 of the Bengal Tenancy Act, or (b) a relinquishment of the holding, or (c) a repudiation of the tenancy. Whether there has been a relinquishment or repudiation or not depends on the substantial effect of what has been done in each case. (iii) The transfer of the whole or a part is operative as against all other persons where it is operative against the raiyat. *DAYAMATYI ANNADA MOHAN ROY CHOWDHURY* (1914).

I. L. R. 42 Calc. 172

18 C. W. N. 971

OCCUPANCY HOLDING—contd

19 (a) ——— Ejectment—Notice to quit—The rayats of certain lands in dispute executed a mortgage of these lands, and put the mortgagee in possession. Subsequently the mortgagee settled the land with the under rayats. The superior landlord then brought a suit for rent against his rayats and purchased the holding at a sale for arrears of rent. Thereafter the landlord sold permanent rayats to one Moajan who after having taken a lease from the landlord and redeemed the mortgage sold the same to the present Plaintiffs who brought a suit to eject the under rayats. *Held*, that the occupancy still continued to exist after the sale but there had been due notice to quit given. **YAKUB ALI v MEASAN**

I. L. R. 41 Calc 164

20. ——— Receipt of rent by landlord from mortgagee of—Effect of—Recognition. Receipt by the landlord of an occupancy holding, with or without protest, of rent deposited by the mortgagee as such is a recognition of the rights of the mortgagee and the landlord cannot evict the mortgagee as a trespasser. **MATOOKDHARI SINGH v JUGDIS NARAIN SINGH** (1914)

19 C. W. N. 1319

21. ——— Non-transferable—Purchaser of share—Rights of, as to possession against landlord. Plaintiffs Nos. 2 and 3 were tenants in respect of one half only of an occupancy holding which was not transferable and the plaintiff No. 1 purchased their interest. *Held*, that the plaintiff as purchaser of a share of an occupancy holding was entitled to possession even as against the landlord who had no right to take possession of the property. **PURNA CHANDRA TRIVEDI v CHANDRA MOHINI DAS** (1916)

20 C. W. N. 586

22. ——— Non-transferable—Sale, by landlord in execution of rent-decree—Under Civil Procedure Code, prevented by deposit by purchaser from registered tenant—Withdrawal of deposit by landlord, if amount to recognition of purchaser's interest. Prior to the passing of the Bengal Tenancy (Amendment) Act of 1907, a co-sharer landlord obtained a decree for rent against the registered tenant of a non-transferable occupancy holding in favour of himself and his other co-sharer. He took out execution under the Civil Procedure Code and not under the provisions of the Bengal Tenancy Act. The plaintiff who had purchased the holding in execution of a money decree against the registered tenant deposited the decretal amount in Court for payment to the decree holder landlord alleging in his petition that he had acquired a right to the hold by purchase and that he made the deposit to protect his right and reserved his right to realise the amount deposited by him from the former tenant or his heir as the tenants of the holding. The decree was thereupon treated as satisfied and the attachment was withdrawn, and the amount deposited was withdrawn by the landlord. *Held*, that upon such deposit the landlord could not as in a case under the Bengal Tenancy Act, contest the right of the purchaser to make the deposit, and the withdrawal of the deposit did not amount to a recognition of the purchaser by the landlord. **Thomas Barclay v Sayal Hossain Ali Khan** 6 C. L. J. 691, and **Behary Ray v Fulman Das** 14 C. L. J. 333, 391, distinguished. **SURENDRA NARAIN MAHATA v JERAL KISHORE GHOSH** (1916)

20 C. W. N. 849

OCCUPANCY HOLDING—contd

23. ——— Non-transferable—Whether fresh settlement holder required to serve notice on under-ryat after ejectment of transferee—By landlord—Notice—Bengal Tenancy Act (VIII of 1885) s. 49, cl. (b). Where a person has obtained settlement of a holding from the superior landlord after the latter had ejected the transferee of the occupancy rayat from the said holding as it was not transferable, he is not required to serve a notice to quit on the under rayat under s. 49 of the Bengal Tenancy Act in his suit for ejectment. **Nilkanta Chaki v Ghalos Shaha** 4 C. W. N. 667, and **Badan v Rayeswari**, 2 C. L. J. 570 followed. **Lal Mahomed Sarkar v Jagu Sheikh** 13 C. W. N. 913, **Amirullah Mahomed v Aziz Mahomed**, 1 I. L. R. 31 Calc 932, **Amirullah Mahomed v Aziz Mahomed** 1 I. L. R. 31 Calc 191 and **Eyymath Singh v William Cox**, 19 C. W. N. 263 distinguished. **JADAN SARDAR v GORINDA CHANDRA MANDAL** (1916)

I. L. R. 44 Calc. 272

24. ——— Hindu Joint Family—Occupancy holding held under joint family, not transferable without landlord's consent—Transfer of karta to recognise transfer. The karta of a joint Hindu family has authority to consent on behalf of the joint family to the transfer of an occupancy holding held by the tenants under the joint family as landlords and not transferable without their consent duly given by themselves or on their behalf. **GOLATDI MEAH v PURNO CHANDRA DUTTA** (1917)

21 C. W. N. 774

25. ——— Attachment—Objection of rayats—Consent of landlords. A non-transferable occupancy holding or a part of it cannot be sold in execution of a decree for money obtained against the rayat when the rayat objects to the sale on the ground of non-transferability, even if the landlords give their consent to the sale. The above rule does not, as expressly laid down by the Full Bench in **Dagmays v Ananda Mohan Roy Chaudhuri**, 1 I. L. R. 42 Calc 172, 18 C. W. N. 971, apply to a sale held in execution of a decree founded on a mortgage or charge voluntarily made by the rayat. **Badrinassa Choudhroni v Alam Gari**, 19 C. W. N. 814 referred to **Ananda Das v Rainsakar Panda** 7 C. W. N. 572 **Shalaruddin Choudhry v Rani Hemangini Das**, 16 C. W. N. 420, commented on. **NARAYAN v NARIN CHANDRA CHAUDHURI** (1916)

I. L. R. 44 Calc. 720

26. ——— Gift, validity of—Revocation of gift—Transfer of property Act (I of 1882), ss. 122, 123, 126. In cases of transfer by gift of occupancy holdings, the question of transferability cannot be raised by the heir of the donor to the prejudice of the donee or his representative in interest. **Rahim Jan Dibi v Imam Jan**, 17 C. L. J. 173, referred to. Where a gift duly registered and executed is not suspended or made revocable on the happening of any specified event or in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded as provided for in s. 126 of the Transfer of Property Act, it cannot be maintained that the property comprised in such gift continued to form part of the estate of the donor. The property ceased to be part of the donor's estate and the heir did not succeed thereto by right of inheritance. In cases of transfers for value, the title passes from the transferor to the transferee, although the validity

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of the transfer is liable to be questioned by the landlord who is not a party to the transaction and may possibly refuse to recognise the transfer. *Dayamayi v. Ananda Mohan Roy Chowdhury*, 1. L. R. 42 Cal. 172, followed. *Yellers v. Beaumont*, 1 Vern 191, referred to. *Misroy v. Lord*, 4 D. G. F. & J. 251, *Richards v. Delbridge*, 1 L. R. 18 Er. 11, *Amalysa Ratan Sircar v. Tarani Nath Dey*, 1. L. R. 42 Cal. 251, distinguished. *BEHARI LAL GOSWAMI v. SINDHUBALA DAS* (1917)

1. L. R. 45 Cal. 431

27. ——— Part of holding, bequest of—*If valid*—Principle of estoppel and waiver or acquiescence, if applies. The testamentary disposition of a part of a non transferable occupancy holding like that of the whole holding is invalid, and it was so held in a suit by the devisee against the rayat's heir at law. *UMESH CHANDRA DUTTA v. JOY NATH DAS* (1917) . 22 C. W. N. 474

28. ——— Custom of payment of nazar—In order to establish a custom of transferability subject to the payment of a customary nazar, the evidence must show that the landlord is bound to recognise when nazar of the amount, or at the rate determined by custom is tendered to him. A practice or course of business in a zemindary office according to which a transferee is recognised provided that the amount of the nazar is satisfactory to the landlord is not sufficient. The payment of nazar without more is an indication that the *jois* are not transferable without the landlord's consent given on receipt of the nazar. A custom which leaves the amount or rate of nazar indefinite must be void for uncertainty. *MINA KUMARI v. ICHHARMOYEE CHAUDHRY RAY* (1918) . 22 C. W. N. 829

29. ——— Gomasta's power to sanction transfer—In order to rely on a receipt granted by a landlord's Gomasta as evidence of recognition by the landlord of a transfer of a holding it is necessary for the transferee to show that the Gomasta's duties actually or ostensibly included at least some of the duties of management. *JAYKI SARK v. THAKUR RAO BANAHUR SINGH*

2 Pat. L. J. 231

30. ——— Purchaser of non-transferable occupancy holding, whether entitled to object to sale of holding—*Code of Civil Procedure (Act V of 1908), s. 47 and O. XXI, r. 100*. The purchaser of the whole or part of an occupancy holding not transferable by custom is a representative of the judgment-debtor and entitled to object under s. 47 of the Code of Civil Procedure, 1908, to a sale of the holding in execution of a decree for rent. He is, therefore, not entitled to maintain proceedings under O. XXI, r. 100. *PANCHABATAN KOPPAL v. RAM SARKAT SINGH*

3 Pat. L. J. 579

31. ——— Transferability—A 10 anna landlord cannot sell his rayat's occupancy holding in execution of a money decree unless the rayat's occupancy holding is transferable by usage. *MIC PHANSON v. DESHABHAI LAL*

2 Pat. L. J. 539

32. ——— Transferability of, in execution of money decree—*Bengal Tenancy Act (B. & O. Act II of 1913), s. 31 (1)*. An occupancy tenant in *possession* is entitled to object to the sale

OCCUPANCY HOLDING—contd

of his holding in execution of a money decree on the ground that the holding is not transferable without the consent of the landlord. *MADHU PADHAN v. JAGU JAY* . 4 Pat. L. J. 294

33. ——— Transfer of portion of non-transferable—Collusive rent suit between landlord and transferee—*Deposit of transferee*—*Suit to set aside fraudulent decree and for recovery of deposit*—*Bengal Tenancy Act (VIII of 1935), s. 170 (3)*—Principles governing transfers of non-transferable holdings—*Fraud*. The recorded tenant of a non transferable occupancy holding sold a portion of his holding. Subsequently the landlord brought a collusive suit for rent against the transferee and obtained a decree. The transferee deposited the decretal amount and cost under s. 170 (3) of the Bengal Tenancy Act, and the deposit was withdrawn by the landlord. In a suit by the transferee to set aside the decree and for recovery of the amount withdrawn. *Held*, (1) that as, at the time of the deposit, it had not been finally decided that the transferee of a portion of a non transferable occupancy holding is not entitled to make deposit under s. 170 (3), the plaintiff was justified in adopting the only course at that time open to him to save the holding from sale and the suit was maintainable although there was no privity of contract between the parties. (2) That the deposit should be considered as money paid under terror of inceptive legal proceedings fraudulently directed against the transferee and as such recoverable. (3) That the decree obtained against the recorded tenant was void not only against the latter, but was a nullity. (4) That in such a case, irrespective of a deposit, if the transferee has suffered actual damage by an unlawful infraction of his legal rights, the suit would be maintainable. The following principles govern the transfer of the whole or a portion of a non transferable occupancy holding—(i) Where the transfer is a sale of the whole holding, the landlord is ordinarily entitled to enter on the holding. (ii) (a) Where the transfer is otherwise than by sale of the whole holding, and (b) Where the transfer is a part only of the holding, whether by sale or otherwise, the landlord is not ordinarily entitled to recover possession, unless there has been an abandonment within the meaning of s. 87 of the Bengal Tenancy Act, or a repudiation of the tenancy. (iii) The transferee of a portion of a non transferable occupancy holding has certain interests and legal rights which for certain purposes are limited by the provisions of the Bengal Tenancy Act, read with the provisions of the Code of Civil Procedure, 1908. (iv) All such transferees have, irrespective of the Bengal Tenancy Act, and altogether dehors that Act, certain legal right which if infringed the Common Law of the land will not be powerless to protect in appropriate cases. (v) One of such rights is the right to possession which the transferee has even against the landlord until abandonment, relinquishment or repudiation takes place. (vi) The Common Law imposes an obligation on the landlord to refrain from extinguishing the right of the transferee by committing a tortious act in conspiracy with a third person. If this obligation is not observed, and damage to the transferee results, the Common Law may be invoked to vindicate the latter's rights. (vii) The period at which damage accrues may vary in different cases, but as soon as it does accrue the transferee may immediately institute a suit to attack all fraudulent proceedings between the land-

OCCUPANCY HOLDING—contd

lord and the recorded tenant. Where a person or body of persons inflicts actual damage upon another by the intentional employment of unlawful means, even though such unlawful means may not comprise an act which is *per se* actionable, then such person or body of persons commits an actionable wrong. Even honest or disinterested motives cannot justify the employment of illegal means. *A fortiori*, where it is found that the motives were dishonest and fraudulent the wrong is actionable.

ASAFI SINGH v. RAMKELAWAN SINGH

4 Pat. L. J. 115

34. — **Purchase of, by thikedar, effect of—Bengal Tenancy Act (VIII of 1885) s. 22 (3)—Mesne profits power of court to reduce rate agreed upon by parties.** A thikedar was not debarred from acquiring occupancy rights by purchase during the period of his thika prior to the amendment of s. 22 (3) of the Bengal Tenancy Act, 1885, and that section does not prevent him from acquiring occupancy rights by purchase after the period of his lease has expired. Where a thikedar purchases an occupancy holding during the period of his lease he becomes a non-occupancy raiyat in respect to the holding purchased and a suit to eject him must be brought within the period of limitation prescribed by sch. III to the Bengal Tenancy Act 1885. Where a lease contains a stipulation that the lessee shall pay mesne profits at a particular rate on failure to give up the lands which form the subject matter of the lease on the expiry of the period for which it is granted the court has power to alter the rate agreed upon.

JOHN PIERPONT MORGAN v. BABU RAMJEE RAM

5 Pat. L. J. 302

35. — **Transferability—Custom of—**An occupancy raiyat in a village where no custom of transferability without consent of landlord exists can object to the sale of his holding by an execution creditor who is not his landlord. On an execution sale of portion of holding remainder becomes an entire holding and on its sale it is the sale of an entire holding not a portion only. Where a portion of a holding has been sold in execution of a mortgage decree the tenant is not estopped from denying the existence of the custom of transferability in the case of a sale of the remainder under a money decree.

DEWAN RAM CHOUDHURY v. ATUL MUKHERJEE

6 Pat. L. J. 203

36. — **Abandonment—what amounts to—**Where a tenant having a non-transferable right of occupancy sells such right to a third person and having obtained a sub-lease from the purchaser remains in possession of the land and cultivates it, the landlord (in the absence of repudiation by the tenant of his relation to the landlord as such) is not entitled to recover possession inasmuch as it does not amount to abandonment.

SURESHCHANDRA BISHY v. RAMDEB PAI

24 C. W. N. 117

37. — **Transferability—Whether occupancy holding not transferable by usage or custom can be sold in execution of sole landlord's money-decree—Share *durum* *apli* *c* *tion* and limitations of.** The sole landlord of a raiyat is competent to sell, in execution of a money decree against the raiyat, his occupancy holding even though the holding may be non-transferable by usage or custom.

BHARAM ALI SHAH SHALDAR v.

OCCUPANCY HOLDING—contd

Gopi Kanth Shaha, 1 L. R. 24 Cal. 355, overruled. Durga Charan Mandal v. Kala Prasanna Sarkar, 1 L. R. 26 Cal. 727, Sadugar Sircar v. Krishna Chandra Nath, 1 L. R. 26 Cal. 937, Majed Hossain v. Baghubur Chowdhury, 1 L. R. 27 Cal. 187, Cakar Khalipa Biswas v. Kasi Mudli Jomadar, 1 L. R. 27 Cal. 415, Sita Nath Chatterjee v. Almasam Kar, 4 C. W. N. 671, Murulla v. Burulla, 9 C. W. N. 972 and Khoda Bux v. Sada Pramanick, 14 C. L. J. 620, commented on. Macpherson v. Debibhawan Lal, 2 P. L. J. 530, discredited from. Narayani v. Nabin Chandra Chaudhuri, 1 L. R. 44 Cal. 720, referred to. Ananda Das v. Rinkar Pandit, 7 C. W. N. 572, Shakeruddin Chatterjee v. Hemangini Das, 16 C. W. N. 420 and Dwarikanath Pal v. Tarani Sankar Ray, 1 L. R. 24 Cal. 199, approved. The transfer for value of the whole or a part of an occupancy holding apart from *cushm* or *local usage* is operative as against the *raiya*, whether it is made voluntarily or involuntarily. Authorities reviewed at length. CHANDRA PINGOY KENDU v. ALA BUX DEWAN (1920)

1 L. R. 48 Cal. 184

24 C. W. N. 818

38. — **Mortgage—Collateral covenant for the protection of a mortgage of occupancy holdings not enforceable.** Certain occupancy holdings were mortgaged usufructually with a covenant that if the mortgagor failed to pay, or if the mortgagees were dispossessed from the property mortgaged, they would be entitled to recover the mortgage money by sale of certain other property of the mortgagor. Held on suit brought on this covenant by the mortgagees after dispossession, that the mortgage of the occupancy holdings being itself illegal the covenant fell with it, and the plaintiffs could not recover. Ram Prasad Rai v. Ram Phul Teli, 13 Indian Cases, 9 and Pooran Singh v. Jas Singh, 17 Indian Cases, 522, referred to. Dayram Lal v. Ghara Rai, 1 L. R. 34 All. 232 and Fayendra Prasad v. Ram Jatan Pasi, 1 L. R. 39 All. 29, distinguished. TULSI RAM v. SAT NARAYAN

1 L. R. 63 All. 81

OCCUPANCY RAIYAT

See CENTRAL PROVINCES TENANCY ACT, 1898, s. 35. 3 Pat. L. J. 88

See LAND ACQUISITION ACT (I of 1894) ss. 23, 40. 1 L. R. 40 All. 367

See LANDLORD AND TENANT. 1 L. R. 37 Cal. 742

See OCCUPANCY HOLDING

See OCCUPANCY RIGHT

See SURRENDER. 1 L. R. 43 Cal. 605

— at fixed rates—

See OCCUPANCY HOLDING

1 L. R. 42 Cal. 745

— suit for declaration of status as—

See COURT FEES ACT (VII of 1870) Sch. II Art. 5, s. 7 xi

1 L. R. 40 All. 358

1. — Appointed *iyar*

dar, if loses occupancy right. The mere fact that a

raiya who has a right of occupancy in his agricultural

lands is at the same time a rent collector of

OCCUPANCY RAIYAT—*contd*

the village and is remunerated as such does not deprive him of his right of occupancy. *Durga Prosad Singh v Hari Ram Mahto* (1914)

19 C. W. N. 578

2. ——— *Mortgage of part of occupancy holding—Subsequent lease of same while mortgage was yet unregistered—Rights of mortgagees and lessee.* An occupancy tenant made a usufructuary mortgage of certain plots of land comprised in his occupancy holding. He apparently gave the mortgagees possession but refused to get the mortgage duly registered, and in consequence the mortgagees were obliged to bring a suit to compel registration. Whilst this suit was pending, the occupancy tenant leased certain plots covered by the mortgage at a yearly rent for a period of five years. *Held*, on suit by the lessee for possession, that the plaintiff was entitled to a decree, and that he was not bound, as a condition precedent to pay off the mortgagees. *Baharan Upadhyay v Utamgarh*, 1 L. R. 33 All. 779, referred to. *Haris Ullah v Manrup* (1917) L. L. R. 40 All. 223

3. ——— *Settlement, whether of raiyat holding or of tenure—Statutory presumption—Bengal Tenancy Act (VIII of 1885), s. 5 sub-s. (5)—Suit under s. 104 II—Incidents of tenancy.* In a suit under a 104 II of the Bengal Tenancy Act the plaintiff sued for a declaration that he was an occupancy raiyat in respect of certain lands. He based his title on two documents: one was an *amalnama* granted to his predecessor in 1808 which recited that certain mouzahs were allotted with the grantees for bringing them under cultivation and directed the grantee to extirpate wild beasts, clear jungles, raise embankments at his own expense, carry on cultivation and enjoy the crops thereof, and the other document, which fixed the rent, was executed in 1869 and recited that on the strength of the aforesaid *amalnama*, the grantee took possession and had commenced to reclaim jungles, raise embankments and cultivate lands. The grantee was further authorised to make settlements with tenants. *Held*, that the settlement was of a raiyat holding and not of a tenure. The *amalnama* was expressly granted for the purpose of reclamation and cultivation by the grantee and the regular lease which followed did not indicate any intention to alter the nature of the tenancy. *Held*, also, that the mere fact that the tenant had sublet his land did not by itself establish conclusively that this status was that of a tenure holder and not that of a raiyat. The test to be applied to determine his status was the intention of the contracting parties. Where the terms of the original grant were known, the statutory presumption in s. 5, sub-s. (5) of the Bengal Tenancy Act did not apply, where the origin of the tenancy was unknown, the mode of user of the land might furnish a valuable clue to determine its original purpose, and where it was ambiguous, evidence of subsequent conduct of parties might be admissible. *Prometho Nath Kumar v Nilmani Kumar*, 14 C. L. J. 35, 15 C. W. N. 802. *Prometho Nath Roy v Anuradha Mandal* 15 C. W. N. 826. *Dama pata Roy v Madnapore Zemindary Co.*, 15 C. L. J. 322, referred to. *Held*, further that in a suit under a 104 II of the Bengal Tenancy Act it was not sufficient for the Court to hold that the entry in the Settlement Fall as to the status of rent was erroneous. The Court must affirmatively

OCCUPANCY RAIYAT—*contd*

determine the exact conditions and incidents of the tenancy as also the rent to be settled on such basis. *Secretary of State for India v Digam Bar Nanda* (1917) L. L. R. 46 Cal. 160

4. ——— *Suit for settlement of equitable rent, whether less—Enhancement of rent—Bengal Tenancy Act (VIII of 1885), ss. 46 and 158, Chapters V and X.* Defendant was a non occupancy raiyat under a lease for 9 years ending on the 1st *Assin*, 1319. On the expiry of that period, the defendant having held over, the plaintiff sued for *khas* possession or, in the alternative, for fair and equitable rent for the years 1319 to 1322 inclusive. *Held* (1) that so far as the years 1319 to 1321 were concerned during which the defendant was a non occupancy raiyat the plaintiff, not having availed himself of the procedure laid down in s. 46 of the Bengal Tenancy Act, 1885, was entitled to rent at the rate provided in the lease only and (2) that so far as the year 1322 was concerned, by which time the defendant had become an occupancy raiyat, the provisions of Chapter X and s. 158 not being applicable to the case, the plaintiff was entitled to sue for enhancement of rent under Chapter V but could not recover rent at an enhanced rate in the present suit. *Per Dawson Miller, C.J.* Even had the present suit been one for the enhancement of rent it would not have been within the competence of the court to award rent at an enhanced rate for previous years. *Dnyal Kundu v Mahib Pathan* 5 Pat. L. J. 406

OCCUPANCY RIGHT

See *BENGAL TENANCY*

1 L. R. 48 Cal. 460

See *BENGAL TENANCY ACT 1885*, s. 180

2 Pat. L. J. 48

See *CHOTA NAAGPUR LANDLORD AND TENANT PROCEDURE ACT* s. 6

14 C. W. N. 297

See *LANDLORD AND TENANT*

See *LAND TENURE IN MADRAS*

L. R. 46 L. A. 33

See *OCCUPANCY HOLDING*

See *OCCUPANCY RAIYAT*

— acquisition of, by a firm—

See *ENDOWMENT* 4 Pat. L. J. 533

— acquisition of, by joint family—

See *HINDU LAW (JOINT FAMILIES)*

4 Pat. L. J. 354

— acquisition of, by landholder—

See *MADRAS ESTATE LAND ACT (I OF 1904)* s. 4 SUB-S. (6) AND A 8

L. L. R. 39 Mad. 944

— extinguishment of—

See *LANDLORD AND TENANT*

1 L. R. 37 Cal. 709

— Purchaser of—

See *MADRAS ESTATE LANDS ACT, 1903*, ss. 54 AND 146.

L. L. R. 44 Mad. 43

OCCUPANCY RIGHT—contd**transfer of—**

See CENTRAL PROVINCES TENANCY ACT
(XI of 1898) s 45

I L R 48 Calc 78

1. *_____ Mokurandur cult*
valuing land for more than 12 years—Protection from
ejecton. Where a mokurandur tenure was created in
1890 by an under-tenure-holder in favour of a
tenant who went on cultivating the land for 12
years. Held in a suit by a purchaser of the under
tenure under Act VIII of 1865 that the tenant
acquired an occupancy right and retained it even
though the mokurandur right which he had also
obtained was extinguished by operation of s 16 of
Act VIII of 1865 and the tenant was not liable to be
ejected. *Nirmalchandra v Shibu* 13 W P 430 and
Enam Ali v Ator Ali 22 H R 133 followed.
Jogeshwar Marumdar v Ibad Mahomed Serkar
3 C W N 13 distinguished. *BAMA CHARAN*
CORAI v RAM KANAI DUBEY (1914)

19 C W N 858

2. *_____ Incidents of an*
other tenancy under the same landlord but in different
localities as to occupation of the occupancy right—
Bengal Tenancy Act (VIII of 1885) s 182. The
provisions of the Bengal Tenancy Act are appli-
cable to a tenancy for building a shop in a market
in which the tenant afterwards came to reside
where the tenant has occupancy right on certain
jamas under the same landlord in a different village
from before the acquisition of the tenancy for
building the shop. *Gulam Moola v Abdul Sower*
Mundul 13 C L J 255. *Protap Chandra Das v*
Biswasnath Pramanick 9 C W N 416. *Kripa Nath*
Chakroborty v Sheikh Anwar 10 C W N 944 and
Norihar Chatterji v Dinu Bera 14 C L J 170
referred to. *BHAKTARAM BHAGAT v MAHARAJ*
BARADUR SINGH (1915) I L R 43 Calc 185

3. *_____ Under-tenancy—*
Ejectment—Bengal Tenancy Act (VIII of 1885)
ss 49 (b) 113 183—Usage or custom. An under-
tenant may by usage or custom obtain a right of
occupancy and he is not then liable to ejectment
after notice to quit under s 49 of the Bengal
Tenancy Act. *Akhil Chandra Bhow v Hasan*
Ali Sadagar 19 C W N 246 referred to. *GORAL*
MONDAL v TAPAI SAKSEHARI (1918)

I L R 46 Calc 43

4. *_____ If may be acquired*
by skilled raiyat as a protected interest. A Raiyat
holding at a fixed rent from the inception of the
tenancy may subsequently acquire a right of occu-
pancy (s 9) by continuous occupancy for 12 years
so as to be protected by s 160 of the Bengal
Tenancy Act. *Bhat Nath Naskar v Surendra Nath*
Dutt 13 C W N 1025 considered. *SARASWAT*
PATRA v MAHARAJA SIR BHOJO CHAND MONATAP

25 C W N 15

5. *_____ Transferability of*
in Orissa—Sale in execution of mortgage—procedure
for. In Orissa occupancy rights are transferable
without the landlord's consent unless it is shown
to the satisfaction of the Collector that the land-
lord has good reason for his objection. The correct
procedure in cases in which it is desired to put up
for sale an occupancy right in execution of a decree
on a mortgage is to allow the sale to go through
and then for the purchaser to apply to the landlord
under s 31 of the Orissa Tenancy Act 1915 for
registration of the transfer. If the landlord accepts

OCCUPANCY RIGHT—contd

the fee authorised the sale will hold good. If he
refuses to do so the purchaser should apply to the
Collector and the Collector will decide whether
there is good and sufficient reason for the landlord's
objection. *CHANDHARI NAIK v KASBI TENDI*

2 Pat. L J 478

OCCUPANCY TENANT

See AGRA TENANCY ACT (II of 1901)
s 16 I L R 41 All 223

ss 18 AND 89

I L R 43 All 606

See KUCHI SETTLEMENT ACT (BOM I of
1890)—

ss 9 AND 10 I L R 44 Bom 257

ss 33 (c) 40 (a) R. I 111 VIII

I L R 3 Bom 284

See LANDLORD AND TENANT
I L R 33 All 335

See OCCUPANCY HOLDING

See SURRENDER I L R 48 Calc 605

OCCUPANT

—Growth of sandalwood trees on
occupancy lands subsequent to survey settle-
ment—

See FOREST ACT (VII of 1885) s 75
CL (c) R 2 I L R 45 Bom 110

OCTROI DUTY

See GENERAL CLAUSES ACT (I of 1904)
s 74 I L R 40 All 105

See UNITED PROVINCES MUNICIPALITIES
ACT 1916 s 306

I L R 42 All 207.

—suit for refund of—

See LIMITATION ACT (IX of 1908) SCH I
ARTS * 82 190

I L R 28 All 555

OFFENCE

See HIGH COURT JURISDICTION OF
I L R 37 Calc 287

See ROTTING I L R 39 Calc 781

See WORKMEN'S BREACH OF CONTRACT
ACT 1859 s * 1 I L R 43 All 281

—brought to the notice of Court in
the course of judicial proceeding—

See COURT MEANING OF
I L R 37 Calc 642

—committed in respect of different
persons—

See JOINDER OF CHARGES
I L R 28 All 457

—compounding of—

See CRIMINAL PROCEDURE CODE (ACT V
of 1898) s 345

I L R 39 Mat 946

—Whether it can be spoken of as a
surely personal one—

See PENAL CODE 1860 s * 4 AND
373 I L R 2 Lah. 27

OFFENCE—concl'd

Whether omission to give rent rece pt amounts to—

See BENGAL TENANCY ACT, 188 , s 58
1 Pat L J 143

Triable with the aid of assessors—
Conviction o' accused of minor offence triable by a jury—

See CRIMINAL PROCEDURE CODE (ACT V OF 1908), s 238
I L. R. 45 Bom. 619

Committed at Sea.

See HIGH COURT, JURISDICTION OF
I L. R. 39 Calc. 457

OFFENDING MATTER.

proof of—

See PRINTING PRESS, FOPPLITURE OF
I L. R. 38 Calc. 202

OFFER AND ACCEPTANCE

See CONTRACT I L. R. 42 All 167
See CONTRACT ACT 1872, s. 2

See LAND ACQUISITION

I L. R. 44 Bom. 797
See REGISTRATION ACT, 1908, ss 17 AND 19 . I L. R. 45 Bom. 8

Counter-proposal does not amount to—

See REGISTRATION ACT (XVI OF 1908), ss. 17 & 19 . I L. R. 45 Bom. 8

OFFERINGS.

See SEBASTY I L. R. 41 L. A. 267

permanent alienation of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 I L. R. 40 Mad. 212

Suit by pujari against guravs to recover offerings—

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss 9 AND 92
I L. R. 45 Bom. 683

to a temple—Transferability—Transfer of Property Act (IV of 1882), s 6, cl (a) There are certain rights that cannot be transferred They are *res extra commercium*, for instance, sacerdotal office which belongs to the priest of a particular class Similarly a right to receive offerings from pilgrims, resorting to a temple or shrine, is inalienable The chance that future worshippers will give offerings is a mere possibility and as such it cannot be transferred. *Lakshmanaswami Nadu v Rangamma*, 1 L R 28 Mad 31; *Rashi Chandra v Kailash Chandra*, 1 L R 26 Calc 356, *Dano Nath Chuckerbutty v Pratap Chandra Goucoms*, 1 L R 27 Calc 30, referred to *PUNCHA THAKUR v BINDRESWARY THAKUR* (1915)

I L. R. 43 Calc. 28

to deity—Dispute concerning the possession of a temple and its offerings—Offerings not "profits" arising out of a temple—Jurisdiction of Magistrate—Apportionment of the offerings—Criminal Procedure Code (Act V of 1898), s 145 S 145 of the Criminal Procedure Code includes within its scope a dispute concerning the actual possession

OFFERINGS—concl'd

of a temple and the land on which it stands, but not one relating to the right to, and apportionment of, the offerings given by the worshippers Such offerings are not "profits" arising out of the temple within the meaning of s. 145 (2) An order made under s 145 declaring a party entitled to the actual possession of a temple, and its offerings is, therefore, *in rem* as to the temple, but not as to the offerings *Gusram Ghosal v Lal Behari Das*, 1 L R 37 Calc 378, referred to *RAM SAKAN PATHAK v RAJHU NANDAN GH* (1911)

I L. R. 33 Calc. 387

OFFICER.

in the Army—

See ATTACHMENT I L. R. 43 Bom. 718

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 60, cl (2) (b)
I L. R. 37 Bom. 26

OFFICIAL ASSIGNEE

See CIVIL PROCEDURE CODE, 1908—

S. 80 I L. R. 37 Bom 243

O XXII, s 10

I L. R. 39 Bom. 588

See INSOLVENCY I L. R. 37 Calc 418

See INSOLVENT I L. R. 43 Bom. 690

See LIQUIDATOR I L. R. 43 Calc. 688

See PRESIDENCY TOWNS INSOLVENCY ACT, 1909—

Ss 7 & 86 I L. R. 35 Bom. 473

Ss 38 AND 52 I L. R. 44 Bom 555

—duties and rights of—

See SALE OF GOODS

I L. R. 40 Calc 523

—prospect of litigation with—

See INSOLVENCY I L. R. 44 Calc. 374

—right of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXVIII, s 5
I L. R. 39 Mad 903

—sale by—

See INSOLVENCY I L. R. 42 Calc. 72

—title of—

See INSOLVENCY I L. R. 40 Calc. 78
I L. R. 42 Calc. 72

—verbal orders by—

See INSOLVENCY I L. R. 47 Calc. 56

OFFICIAL CORRUPTION

See CONTRACT I L. R. 43 Calc 115

OFFICIAL RECEIVER.

See PROVINCIAL INSOLVENT ACT (III OF 1907), ss. 20 AND 22
I L. R. 39 Mad. 479

See RECEIVER.

—order of—

See PROVINCIAL INSOLVENT ACT (III OF 1907), ss 15 TO 22, 46, 52
I L. R. 33 Mad. 15

OFFICIAL RECEIVER—*concl'd*

— order to, without notice—

See **PROVINCIAL INSOLVENCY ACT (III OF 1907)** s 46 cl (3)
I L R 39 Mad. 593

— whether a Court—

See **PROVINCIAL INSOLVENCY ACT (III OF 1907)** ss 2 (c) AND (g) 2^o 46 5^o
I L R. 40 Mad. 752

— *Insolvency—Convey*

ance if necessary to perfect title to land purchased at auction at the instance of Official Receiver—

Transfer of Property Act (IV of 1882) s 54 There is nothing to exempt a conveyance by an Official Receiver in Insolvency from the operation of s 54 of the Transfer of Property Act 1882 **ABDUL HASHIM v ALIA KRISHNA SAMA** (1919)
I L R 46 Calc 887

OFFICIAL RECORD

See **TRISHKANA PAPER**
I L R. 39 Calc 995

OFFICIAL TRUSTEE

See **PROBATE** I L R. 37 Calc 387

— *Probate—Official Trustee* s Act (XII of 1884) ss 8 10 3^o The official Trustee as constituted by Act XVII of 1884 is not entitled by virtue of his office and in his character as Official Trustee and in the name of Official Trustee to obtain a grant of probate **Aashbury Pulver Co v Age and Iron Co v Bickel** L R 7 H L 653 referred to **GREY v CHARUSILA DASI** (1910)
I L R. 38 Calc 53

OFFICIAL TRUSTEE'S ACT (XVII OF 1884)

See **PROBATE** I L R 37 Calc 387

— ss. 8, 10 32—

See **OFFICIAL TRUSTEE**
I L R. 38 Calc. 53

OFFICIAL WITNESS

— privilege of—

See **CHARGE** I L R. 42 Calc 957

OLD WASTE GROUNDS

— ejectment from—

See **MADRAS ESTATES LAND ACT (I OF 1908)** ss 3 (7) 153 AND 157
I L R 38 Mad. 163

OMISSION

See **CHARGE**
I L R 40 Calc. 168

— by mistake—

See **POWER OF ATTORNEY**
I L R. 37 Calc. 399

— to serve notice—

See **EXECUTION OF DECREE**
I L R. 40 Calc 45

ONUS OF PROOF

See **AGREEMENT TO SELL**
I L R 36 Bom 448

See **DEMANI** 25 C W N 409

See **BURDEN OF PROOF**

See **CARRIERS** I L R. 40 Calc 716

ONUS OF PROOF—*concl'd*

See **CHAUHDARI CHAKHAN JANDS**
I L R. 42 Calc 710

See **CONSIGNMENT LOSS OF**
I L R 41 Calc 576

See **DEATH PRESUMPTION OF**
I L R 37 Calc 103

See **EJECTMENT** I L R 42 Bom 357

See **EVIDENCE ACT (I OF 1872)**—

S 92 I L R 39 Bom. 399

S 110 I L R 45 Bom 789

See **EXECUTOR, SALE BY**
I L R 36 Mad 575

See **FORFEITURE** I L R 41 Calc. 466

See **FRAUD** I L R 41 Calc 990
I L R 37 All. 837

See **HINDU LAW—MOTOR**
I L R 38 Mad 166

See **JURY** 24 C W N 619

See **LEASEHOLD** I L R. 39 Bom. 625

See **LANDLORD AND TENANT**
I L R. 37 Calc 723

See **LEGAL INCAPACITY**
I L R 43 Calc 417

See **LIMITATION ACT (IX OF 1908)** s 11
I Arts 140 141

See **MUNICIPAL ELECTION**
I L R 47 Calc 524

See **NEGLIGENCE** I L R 48 Calc. 757

See **POSSESSION** 23 C W N 593

See **PRESS ACT (I OF 1910)** ss 3 (1)
4 (1) 17 19 20 AND 22

See **PATRI** I L R. 39 Mad 1085
25 C W N 106

See **RAILWAY COMPANY**
I L R 37 Bom. 1

See **RENT SUIT**
I L R 43 Calc. 554

See **SECOND APPEAL**
I L R 2 Lah 249

See **WILL** I L R 47 Calc 1043
I L R. 43 Bom 845

— placed on wrong party—

See **NEGOTIABLE INSTRUMENTS ACT 1881** s 118 I L R. 1 Lah. 429

— In a suit for succession—

See **CUSTOMS (SUCCESSION)**
I L R. 1 Lah. 434

— Presumption in favour of continuance of life—

See **HINDU LAW (SUCCESSION)**
I L R 1 Lah 554

— Hindu Joint Family on member of, to show that his raising was not at the expense of the Joint Family—

See **HINDU LAW (JOINT FAMILY PROPERTY)**
I L R. 2 Lah 40

— In endow case—second appeal—

See **PUNJAB COURTS ACT 1918** s 41
See **JURISDICTION** I L R 2 Lah. 187

ONUS OF PROOF—*concl'd*

That suit not within cognizance of Court

See JURISDICTION I L. R. 2 Lah. 302

Unoccupied village site—Presumption of title vesting in Government—

See EVIDENCE ACT (I of 1872), s 110

I L. R. 45 Bom 789

Suit by Government paltadar to eject tenants—Claim by tenants to right of occupancy—Facts establishing rights of occupancy—Title of plaintiff and service of notices to quit undisturbed—Onus on defendants to prove claim, how satisfied—Second appeal—Jurisdiction of High Court on second appeal to deal with facts, Civil Procedure Code (1908) s 103 In suits brought by the appellant as Government paltadar against the respondent after due service of notice to quit, to eject them from agricultural land in a ryotwari village, the respondents pleaded that they had a permanent tenancy or right of occupancy, and the appellant's title and the notices purporting to determine the tenancy were not disputed. *Held*, that the onus was on the respondents to prove the existence of their right of permanent occupancy, but that it had been established by the evidence that they had been immemorially in possession of the lands, and that they had not been proved to have been ever let into occupation by the appellant, that they had been paying uniform rate of rent, that the lands were reclaimed and brought under cultivation by them, that they had made great improvements and carried on cultivation either of dry or garden crops of their own choice without any interference or objection, and that they had for a very long time been sometimes making alienations of wells and lands, and the onus of proof had been thereby satisfied. The District Judge had passed decrees in the appellant's favour for possession of all the lands in suit. The High Court was of opinion that the District Court had omitted to determine a question of fact which was essential to the right decision of the suit on the merits, and framed issues which it asked the District Judge to decide as to whether the respondents were yearly tenants or had a permanent right of occupancy. These the District Court returned without dealing with them in a satisfactory manner. The High Court on second appeal drew an inference of the respondents' occupancy rights, and decided the appeal (dealing with it under s 103 of the Civil Procedure Code, 1908) in favour of the respondents. *Held*, that the inference not being contradictory to any finding of fact by the District Court, and there being materials from which such inference could be drawn, the High Court had jurisdiction under the circumstances to deal with the case under s 103 and make a decree as it had done. *SURENDRAM AYYAR v. VENKATACHALA GOUDAN* (1920).

I L. R. 93 Mad. (P. C.) 587

OPIMUM

See OPIMUM ACT

See OPIMUM ACT (I of 1878) s 5, 9

I L. R. 34 All. 219

1. —Illicit sale of—Proof of the factum of the sale—Presumption from inability to account satisfactorily for opium in absence of evidence of any sale—Opium Act (I of 1878) s 9, 10 The effect of ss 9 and 10 of the Opium Act, 1878,

OPIMUM—*concl'd*

is that, when once it is proved that the accused has dealt with opium in one of the ways described in s 9, the onus of showing that he had a right so to deal with it is placed on him by s 10. But the commission of the act, which is the foundation of the particular offence charged under s 9 must be proved before the presumption raised by s 10 comes into operation at all, and the presumption cannot be used to establish such act. Where, therefore, there is no evidence to prove the fact of any sale of opium by a person accused of illicit sale, the deficiency is not supplied by the statutory presumption and a conviction of illicit sale is bad. *ISHWAR CHANDRA SENGH v. EMPEROR* (1910)

I L. R. 37 Cal. 581

2. —Illegal possession of—Opium Act (I of 1878), s 9 (c) 10—Mere possession contrary to the Act without guilty frame of mind—Respective liabilities of owner of boat and crew—Presumption of commission of offence under the Act—“Conveyance”—Boat. Under ss 9 (c) and 10 of the Opium Act (I of 1878), mere possession of opium without being able to account for it satisfactorily, apart from any frame of mind is an offence. The owner of a boat in which opium found is in possession of it, but not the crew when they are neither owners nor jointly interested with him in any venture as an incident of which possession might be attributed to them. Where the owner of a boat alleged that opium was carried on board by a passenger without his knowledge, but there were circumstances disproving his story. *Held*, that as he had not satisfactorily accounted for its possession it must be presumed under s 10, that it was opium in respect of which he had committed an offence under the Act. *Quare* Whether a boat in which opium is carried is a “conveyance” used in carrying it so as to be liable to confiscation on conviction of the owner under the Act. *EMPEROR v. HAMID ALI* (1909)

I L. R. 37 Cal. 24

3. —Possession by consignee of railway receipt covering contraband opium—Lying undelivered in a railway office—Expiry of interference on revision when accused guilty of importing such opium—Opium Act (I of 1878), s 9, cl. (c) and (e). *Per RICHARDSON J.* Possession by the consignee of a railway receipt covering a parcel of contraband opium lying undelivered in the railway office under circumstances showing knowledge of its contents, constitutes possession of the opium within s 9 (c) of the Opium Act though, after its arrival, the police tied up the parcel with tape and instructed the Parcels Clerk not to part with it in order to prevent delivery without their cognizance. *KASHI DASH DANIYA v. EMPEROR* I L. R. 32 Cal. 557, and *ASHRAF ALI v. EMPEROR*, I L. R. 35 Cal. 1016 followed. *Kali Charan Mukherjee v. EMPEROR*, I L. R. 41 Cal. 637, referred to. *Per SHANKAR LAL HUDA J.* It is very doubtful whether under the circumstances the accused was in possession of the opium within s 9 (c) of the Act. *Per GHAZALI*. The accused was guilty under s 9 (c) of importing opium and the case was not therefore, a fit one for interference on revision. *FOSSA KUN v. FARRUKH* (1919). I L. R. 45 Cal. 820

OPIMUM ACT (I OF 1878).

—ss. 3 and 9—

Morphium—whether included in the term “Opium” *Held*, that morphia

OPIUM ACT (I OF 1878)—*contd***—ss. 2 and 9—*contd***

is not included in the term "Opium" as defined in the Opium Act; it being only one of the many ingredients of opium and not a preparation or admixture of opium or a drug prepared from the poppy. Punjab Government Notification No 951 of 15th October 1916, as amended by Notification No 6333 C. and I., dated 27th March 1917 (page 78 of volume II of the Punjab Excise Manual), referred to *SITA RAM v THE CROWN*

I. L. R. 1 Lah. 443

—ss. 4, 5, and 9—

Contract by which person without license is enabled to sell opium void A and B were farmers of opium revenue under Government. They obtained a license from the Collector for the sale of opium, subject to the condition, among others, that they should not sell, transfer or sub-rent their privileges without the permission of the Collector. A and B, without the sanction of the Collector, entered into an agreement with C, by which they admitted him as a partner in the opium business. C brought a suit for dissolution and winding up of the business. Held, that the agreement was void and the suit was not maintainable. The effect of the agreement between A and B on the one hand and C on the other was to enable C to sell opium without a license, an act directly forbidden by s. 4 of the Opium Act and made penal by s. 9. The contract being intended to enable C to do what was forbidden by law was unlawful and void. The provisions of the Abkari and Opium Acts are not intended merely to protect public revenue but the prohibitions contained in them are based on public policy. The agreement was also illegal as it amounted to a transfer by A and B of their privilege to C, in violation of the condition against transfer subject to which the license was granted. The combined effect of s. 4, 5 and 9 of the Opium Act is to make the transfer in violation of the conditions in the license, illegal. *NALAY PADMANABHAN v SAIY BADEENADH SAEDA* (1912) I. L. R. 35 Mad. 532

—ss. 5, 9—

Master and servant—Liability of master for act of servant Where the servant of a licensed vendor of opium, in the course of his employment as such servant, sold opium to a person under the age of fourteen years, it was held that the licensed vendor also was liable under s. 9 of the Opium Act even though he might not have been aware of the sale. *Queen Empress v. Tyab Ali*, I. L. R. 24 Bom. 423, followed. *EMPEROR v. BABU LAL* (1912) I. L. R. 34 All. 319

—s. 9—**See OPIUM.****OPIUM ACT (I OF 1878)—*contd*****—s. 9—*contd.***

could not be sustained. *MAHOMED KAZI v KING-EMPEROR* (1916) 20 C. W. N. 1209

Possession of Railway receipt relating to an undelivered parcel of contraband opium The possession of a railway receipt relating to an undelivered parcel of contraband opium lying in a railway office under circumstances showing knowledge of its contents, constitutes possession of the opium within s. 9, cl. (c) of the Opium Act. *KANSHI NATH BANIA v EMPEROR* (1) dismissed and followed I. L. R. 26 Calc. 1016

—ss. 9 and 10—

See CRIMINAL PROCEDURE CODE, s. 235

3 Pat. L. J. 433

See OPIUM I. L. R. 37 Calc. 24 & 581
I. L. R. 46 Calc. 820

Sale of morphia by medical practitioner There is a clear distinction between use of morphia in practice by an approved medical practitioner and sale to his patients and such sale is punishable under s. 9 of the Opium Act. *JOSEPH CHANDRA LAHRI v KING EMPEROR* 24 C. W. N. 343

s. 11—Boat, unlawful user by hire—Confiscation, without hearing owner An order of the Magistrate confiscating a boat under s. 11 of the Opium Act was set aside when such order was passed without giving the owner of the boat an opportunity of being heard. S. 11 of the Opium Act does not seem to contemplate that every receptacle in the nature of a ship or a house or a carriage in which a small quantity of opium may happen to be found is liable to confiscation, the liability arises from the owner of such conveyance using the conveyance for the purpose of transporting opium. *ABDUL RAHAMAN v EMPEROR* (1910) 15 C. W. N. 296

—s. 15—

See RESCUE FROM LAWFUL CUSTODY.

I. L. R. 43 Calc. 1161

OPTION OF PURCHASE.

See LEASE I. L. R. 42 Bom. 103

ORAL AGREEMENT

See EVIDENCE ACT, 1872, s. 92
I. L. R. 34 Bom. 59

S. 92 AND PROV. (2)
I. L. R. 33 Bom. 399

See LANDLORD AND TENANT (INTEREST)
I. L. R. 46 Calc. 1079

See LEASE I. L. R. 29 Calc. 663

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 54, 118

I. L. R. 37 Mad. 423

ORAL EVIDENCE.

See CONTRACT FOR SALE
I. L. R. 45 Calc. 431

See DEKKHAN AGRICULTURISTS' RELIEF ACT, s. 10A I. L. R. 36 Bom. 305

See EVIDENCE ACT (I OF 1872), s. 91
I. L. R. 41 Bom. 486

See PINT I. L. R. 41 Calc. 347

Illicit possession of opium—Possession of substance unfit for use as opium and containing only traces of opium The accused were convicted under s. 9 (c) of the Opium Act for being in illicit possession of two and a half seers of opium. The substance seized from the possession of the accused was, on chemical analysis, found to contain traces of opium amounting to less than one per cent. and to be unfit for use as opium. There was no evidence as to whether the traces of opium could be extracted from the mass and used as opium: Held, that the conviction

ORAL EVIDENCE—*conold*

By Magistrate as to unrecorded statement of accused

See EVIDENCE ACT, s 27

25 C. W. N. 738

of agreement preceding a written agreement, whether admissible—

See REGISTRATION I. L. R. 1 Lah. 438

to vary terms of a written document—

See EVIDENCE ACT (I OF 1872)—

S 92

I. L. R. 42 Bom. 512

I. L. R. 44 Bom. 710

ORAL SALE.

See SALE I. L. R. 44 Bom. 586

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS 4 AND 64

I. L. R. 33 Mad 1158

ORAL SURRENDER.

See RAYAT I. L. R. 47 Calc. 129

ORDER.

appeal from—

See CIVIL PROCEDURE CODE 1908, ss 47

AND 104

I. L. R. 44 Bom. 472

granting leave to sue Receiver for negligence—not appealable—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XLIII, R 1

I. L. R. 45 Bom. 93

For compensation without examining all complainant's witnesses.

See CRIMINAL PROCEDURE CODE 1898, s 250

I. L. R. 44 Mad 51

ORDER ABSOLUTE

See LIMITATION I. L. R. 47 Calc. 746

See MORTGAGE I. L. R. 37 Calc. 796

15 C. W. N. 337

See MORTGAGE DECREE

I. L. R. 39 Mad 544

ORDER-IN-COUNCIL.

See CIVIL PROCEDURE CODE, 1908, O

XLV, R 15

1 Pat. L. J. 385

2 Pat. L. J. 496

See LETTER PATENT (PAT'AL), CL 39

2 Pat. L. J. 684

of 21st December 1903 and Paper Book—

See PRIVY COUNCIL, APPEAL TO

6 Pat. L. J. 114

Construction—Interest, from what date payable—*Life's profits*—Compensation for improvements—*Excessive time taken by litigation in India, commented upon.* An order in Council directed that on payment by the Appellant of certain sums of money, due in respect of mortgage, and interest thereon at 6 per cent., the Appellant should recover possession of the property together with *means profits*. *Held*—That interest should run concurrently with the *means profits*, that being the construction which the Board had placed upon the order upon an application for review. *Held*, also—That part

ORDER-IN-COUNCIL—*conold*

of the *means profits* having been due to permanent improvements made by the dissensor, a deduction of 10 per cent. was properly allowed by the High Court in respect thereof. *Held*, further—That the increased rents that could be properly attributable to the improvements could be properly set off against the *means profits* even though they were not actually executed by the persons in possession of the date of the decree, but by persons from whom they had purchased the property. *RAJA RAJ BRAGHAT DAYAL SINGH v. RAM RATAN SAHA* (P. C.)

26 C. W. N. 258

ORDINANCE.

1914—III—

See HABEAS CORPUS

I. L. R. 44 Calc. 459

VI—

See COMMERCIAL INTERCOURSE WITH ENEMIES ORDINANCE

I. L. R. 42 Calc. 1094

1919—I—

See COURT MARTIAL. 15 C. W. N. 701

See CRIMINAL LAW

I. L. R. 2 Lah. 34

I & IV—

Trial of offences by special Commission—

See GOVERNOR GENERAL IN COUNCIL

I. L. R. 1 Lah. 326

ORIGIN

See CUSTOM I. L. R. 45 Calc. 835

ORIGINAL COURT

competency of, to entertain application—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XLV, RR 10 AND 16

I. L. R. 33 Mad. 832

ORIGINAL SIDE, HIGH COURT.

See CONTEMPT OF COURT

I. L. R. 41 Calc. 173

Decision of Judge of, if binding on another Judge on Original Side. A Judge on the Original Side of the High Court should follow the decision of another Judge sitting on the same side, but such decision is not binding on the Judges hearing appeals from the Original Side. *CHAITRAM RAMBILAS v. PRINCE CHAND KESHU CHAND* (1015)

I. L. R. 42 Calc. 1140

19 C. W. N. 820

ORISSA.*

See SALE I. L. R. 46 Calc. 811

ORISSA ZAMINDARI.

estates in—

See CHAKRABARTI CHAKRABARTI

I. L. R. 42 Calc. 710

OPIUM ACT (I OF 1878)—*contd*— ss 3 and 9—*concl'd*

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Master and servant—

Liability of master for act of servant Where the servant of a licensed vendor of opium, in the course of his employment as such servant, sold opium to a person under the age of fourteen years it was held that the licensed vendor also was liable under s 9 of the Opium Act even though he might not have been aware of the sale. *Queen-Empress v Tyab Ali*, I L R 34 Bom. 423, followed *EMPHOR v BABU LAL* (1912)

I L R. 34 All. 319

— s. 9—

*See OPIUM**Illicit possession of*

opium—Possession of substance unfit for use as opium and containing only traces of opium The accused were convicted under s. 9 (c) of the Opium Act for being in illicit possession of two and a half seers of opium. The substance seized from the possession of the accused was, on chemical analysis, found to contain traces of opium amounting to less than one per cent and to be unfit for use as opium. There was no evidence as to whether the traces of opium could be extracted from the mass and used as opium: *Held*, that the conviction

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I L R. 36 Calc. 1016

— ss. 9 and 10—

See CRIMINAL PROCEDURE CODE, s 235
3 Pat. L J 433

See OPIUM I L R 37 Calc 24 & 581
I L R 46 Calc 820

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24 C W. N. 343

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15 C W. N. 296

— s. 15—

See RESCUE FROM LAWFUL CUSTODY,
I L R. 43 Calc 1161

OPTION OF PURCHASE

See LEASE I L R. 42 Bom. 103

ORAL AGREEMENT.

See EVIDENCE ACT 1872 s 92
I L R 34 Bom 59

S 92 AND PROV (2)—
I L R 39 Bom 399

See LANDLORD AND TENANT (INTEREST)
I L R. 46 Calc 1079

See LEASE I L R. 39 Calc. 683

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss 54, 118
I L R. 37 Mad. 423

ORAL EVIDENCE

See CONTRACT FOR SALE
I L R. 45 Calc. 481

See DEKKHAN AGRICULTURISTS' RELIEF ACT, s 10A I L R. 38 Bom 305

See EVIDENCE ACT (I OF 1872) s 91
I L R 41 Bom. 486

See FIRST I L R 41 Calc. 347

ORAL EVIDENCE—*could*

By Magistrate as to unrecorded statement of accused.

See EVIDENCE ACT, s. 27.

25 C. W. N. 788

of agreement preceding a written agreement, whether admissible—

See REGISTRATION I. L. R. 1 Lah. 436

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O I. L. R. 44 Bom. 710

ORAL SALE.

See SALE I. L. R. 44 Bom. 586

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss 4 AND 64

I. L. R. 38 Mad. 1158

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I. L. R. 45 Bom. 99

For compensation without examining all complainant's witnesses.

See CRIMINAL PROCEDURE CODE 1898, s 250 I. L. R. 44 Mad. 51

ORDER ABSOLUTE.

See LIMITATION I. L. R. 47 Calc. 746

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of 21st December 1908 and Paper Book—

See PRIVY COUNCIL, APPEAL TO 6 Pat. L. J. 114

from that date payable—*Mesne profits*—Compensation for improvements—Excessive time taken by litigation in India, commented upon An order in Council directed that on payment by the Appellant of certain sums of money, due in respect of mortgage, and interest thereon at 6 per cent., the Appellant should recover possession of the property together with *mesne profits* Held—That interest should run concurrently with the *mesne profits*, that being the construction which the Board had placed upon the order upon an application for review. Held, also—That part

ORDER-IN-COUNCIL—*could*

of the *mesne profits* having been due to permanent improvements made by the disseisor, a deduction of 10 per cent. was properly allowed by the High Court in respect thereof Held, further—That the increased rents that could be properly attributable to the improvements could be properly set off against the *mesne profits* even though they were not actually executed by the persons in possession of the date of the decree, but by persons from whom they had purchased the property RAJA RAI BHAGWAT DAYAL SINGH v. RAS RATAN SAMA (P. C.)

26 C. W. N. 258

ORDINANCE.

1914—III—

See HABEAS CORPUS

I. L. R. 41 Calc. 459

VI—

See COMMERCIAL INTERCOURSE WITH ENEMIES ORDINANCE

I. L. R. 42 Calc. 1094

1919—I—

See COURT MARTIAL 15 C. W. N. 701

See CRIMINAL LAW

I. L. R. 2 Lah. 34

I & IV—

Trial of offences by special Commission—

See GOVERNOR GENERAL IN COUNCIL

I. L. R. 1 Lah. 326

ORIGIN.

See CUSTOM I. L. R. 45 Calc. 835

ORIGINAL COURT

competency of, to entertain application—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XLV, R 15 AND 16

I. L. R. 38 Mad. 532

ORIGINAL SIDE, HIGH COURT.

See CONTENTY OF COURT

I. L. R. 41 Calc. 173

Decision of Judge of, if binding on another Judge on Original Side A Judge on the Original Side of the High Court should follow the decision of another Judge sitting on the same side, but such decision is not binding on the Judges hearing appeals from the Original Side CHAITRAM RAMBULAS v. BHIDRI CHAND KESRI CHAND (1915) I. L. R. 42 Calc. 1140

19 C. W. N. 520

ORISSA.*

See SALE I. L. R. 48 Calc. 811

ORISSA ZAMINDARI

restates in—

See CHAUKHATI CHAKRAN LAXI*

I. L. R. 42 Calc. 710*

ORISSA TENANCY ACT (II OF 1913).

ss. 3 (4) and (6) and 31—

Madri Sarbarkari tenure, transfer of—Landlord's consent, what amounts to—Notification conferring powers of a Deputy Collector, effect of—Cause of action, whether can arise from pleadings If a landlord refuses to register the transfer of a non transferable tenure registration cannot be enforced against him under s. 16 (3) of the Orissa Tenancy Act, 1913. A landlord is not entitled to claim the mutation fee under s. 16, until he has registered the transfer. The institution of a suit for recovery of the mutation fee under s. 16 does not amount to a consent to the transfer. *Held*, therefore, that where the landlord had not consented to the transfer before the institution of a suit to recover the mutation fee there was at the time the suit was instituted no cause of action. *Held*, that a mere request by the landlord's servants (who were not shown to have authority to sanction a transfer) to the transferee for payment of the mutation fee did not constitute a consent to the transfer on the part of the landlord and the latter was not, therefore, entitled to maintain a suit for recovery of the mutation fee. Where a person has been empowered by notification to discharge any of the functions of a Deputy Collector under the Act, such person is a Deputy Collector within the meaning of s. 3 (4) and (6) and is therefore a Collector within the meaning of that section and has jurisdiction to try a suit for recovery of a mutation fee. A cause of action must be antecedent to the institution of a suit and cannot arise from the pleadings themselves. **MAHANT GOBIND RAMANUJ DAS v RANI DEBENDRABALA DAS**

4 Pat. L. J. 337

s. 31—

See S. 3 . . . 4 Pat. L. J. 337

See OCCUPANCY HOLDING

4 Pat. L. J. 294

See OCCUPANCY RIGHTS

2 Pat. L. J. 476

Transfer of occupancy holding, whether fee for registration is payable when landlord's consent is not necessary Whenever an occupancy holding in Orissa is transferred, whether the transfer be with or without the consent of the landlord the transferee must apply for registration of the transfer and is bound to pay a fee for such registration. **BALMUKUND KARANDEO v MAITEWJOY PAHARAJ**

5 Pat. L. J. 357

ss. 31 and 250—Transfer of occupancy holding non payment of registration fee on—Suit for registration fee—Second Appeal The transferee of an occupancy holding is bound to deposit the registration fee prescribed by s. 31 of the Orissa Tenancy Act 1913, and if he fails to do so the landlord may sue for it. In such a suit a second appeal lies to the High Court from the order of the lower appellate Court. **MAHANT GOBIND RAMANUJ DAS v JAGANNATH JEU**

3 Pat. L. J. 351

ss. 57, 235, 220 and 221—Incumbrance whether the interest of an under riyat is—Ejection of under riyat by auction purchaser, procedure for An under riyat in occupation of land is an incumbrance within the meaning of s. 215 of the Orissa Tenancy Act, 1913, and, therefore, ss. 220 and 221 regulate the manner in which the incumbrance can

ORISSA TENANCY ACT (II OF 1913)—contd.

ss. 57, 235, 220 and 221—contd

be annulled by an auction purchaser. Where the procedure for the annulment of incumbrances provided by s. 221 is not followed and a year is allowed to elapse by the purchaser without taking steps to annul the incumbrance he is not entitled to eject the under riyat under s. 57. But if the purchaser takes the prescribed steps to annul the incumbrance and the under riyat refuses to give up possession the latter can be ejected under s. 57. **SIDA DAS v GAJENDRA NATH DAS**

3 Pat. L. J. 112

ss. 154 and 332—Nij chas land, acquisition of occupancy rights in—Bengal Tenancy Act VIII of 1885, ss. 20 and 21—Bengal Rent Act X of 1859, s. 7 S. 154 of the Orissa Tenancy Act, 1913, does not entitle a landlord to a declaration that lands are *nij chas* or proprietor's private lands unless the land was recorded as *nij chas* not only in the Provincial Settlement but also in the settlement between the years 1906 and 1912. That section makes a distinction between the expressions *nij chas* and *nij jote*. Where lessees were introduced on to certain land and executed *labzhyats* in May and June, 1906, stipulating that in the expiry of the term of their lease, they would leave the lands to the *thas* possession of the lessors: *Held*, that this stipulation amounted to a contract by the lessees that they should not acquire occupancy rights in the land, and was binding on them, as at that time there was no provision in force in Orissa which prevented a tenant from contracting himself out of the provisions of ss. 20 and 21 of the Bengal Tenancy Act, 1885, which were then in force there. The provisions of s. 232 (2) of the Orissa Tenancy Act, 1913, make it clear that the Legislature, when they enacted that Act, meant to give effect to contracts made between landlords and tenants under which the tenants could be prevented from acquiring occupancy rights in land, provided the contracts had been made more than six years before the commencement of the Act. **SHEIKH AKBAR ALI v GOTAL PRASAD CHOLE**

3 Pat. L. J. 475

ss. 193 and 210—"Court having jurisdiction to determine a suit"—whether Civil Court is—Application to determine rent payable by tenant, whether Civil Court has jurisdiction to entertain An ordinary suit for possession of land is not a suit under any part of the Orissa Tenancy Act, 1913. The words "the Court having jurisdiction to determine a suit for the possession of land" in s. 210, include the Civil Court, and therefore, such a Court has jurisdiction to determine, under sub-s. 1 (d) of that section, the rent payable by the tenant. **KANAKALI SATKATHI v CHOUDEHRI ARJUN MAHAPATRA**

4 Pat. L. J. 72

s. 204 (2) and (3)—Decision deciding no rent is payable, whether appealable to Collector or District Judge—Tenants whether person released from payment of rent ceases to be Where in a suit for arrears of rent the Deputy Collector decided that no rent was payable by the defendant for a *sarbarkari* tenure held by the latter, *held*, that under s. 204 (3) of the Orissa Tenancy Act, 1908, the plaintiff should have appealed not to the Collector of the district but to the District Judge. **PER CHAPMAN J** A person does not cease to be a tenant merely because by an arrangement with his

ORISSA TENANCY ACT (II OF 1913)—*concl'd.*s. 204 (2) and (3)—*concl'd*landlord he is released from the payment of rent.
GOPI BISWAL v. RAM CHANDRA SAHU

2 Pat. L. J. 46

ORPHAN ADOPTION.*See HINDU LAW—ADOPTION*

1 L. R. 37 Mad. 529

See LIMITATION ACT (IX OF 1908), SCH. I,
ART. 18. 1 L. R. 37 Bom. 513**OSTENSIBLE MEANS OF SUBSISTENCE.***See SECURITY FOR GOOD BEHAVIOUR*

1 L. R. 39 Calc. 458

—*Conducting the play of*
 “ring” game—*Criminal Procedure Code (Act I of 1893), s. 109* The conducting of the “ring” game is an ostensible means of subsistence within the meaning of s. 109 of the Criminal Procedure Code. **HARI SING v. KING EMPEROR, 6 C L J 708**, referred to **BANGALI SHAH v. EMPEROR (1913)**

1 L. R. 40 Calc. 702

OSTENSIBLE OWNER*See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 41* 1 L. R. 34 All. 22

1 L. R. 43 All. 263

OTTI-DEED.*See MALABAR TARWAD*

1 L. R. 39 Mad. 918

ODDH ESTATES ACT (I OF 1869).

—*Will of Taluqdar*—A Taluqdar in 1862 in compliance with the directions issued by the Government made a declaration that “I wish to file this application that after my death Umrao Singh the eldest son (sic) my estate should continue to my family undivided in accordance with the custom of the ‘Rajgaddi’ and that the youngest brothers shall be entitled to maintenance from the Oaddi Nashan. *Held*, that this was a valid testamentary disposition in favour of the eldest son **UMRAO SINGH v. LACHMAN SINGH**

1 L. R. 33 All. 344

—*ss. 2, 3, 8, 10, 22—Summary and regular settlements of Odh—Villages settled on grantee whose name was entered as owner in Lists I and 2 of those prepared under s. 8—“Taluqdar” —“Estate” under s. 2—Impartible property—Kabusat executed by grantee after the time limit specified in s. 3—Suit for partition—After acquired properties held to be partible, there being no intention shown to incorporate them with the impartible property* At the summary settlement of Odh, an order was made on the 5th of October, 1859, for the settlement of certain villages with the ancestor of the parties to these appeals who, however, did not execute his *kabusat* until the 13th of October, 1859, and so not within the time limit specified in s. 3 of the Odh Estates Act (I of 1869) namely, “between the 1st of April, 1858, and the 10th of October 1859.” At the regular settlement, shortly afterwards, the grantee recovered decrees for possession of other villages and subsequently acquired other properties by purchase. In respect of all the settled villages his name was entered in Lists I and 2 prepared under the statutory provisions of s. 8 of the Act. In a suit for partition to which the defence was that all the property was impartible. *Held*, (affirming the decisions of the Courts in India), that the grantee

ODDH ESTATES ACT (I OF 1869)—*cont'd*—*ss. 2, 3, 8, 10, 22—concl'd*

(the defendant) was on the construction of the provisions of Act I of 1869 relating thereto, a “*taluqdar*,” and the villages so settled with him formed, within the meaning of the Act, an “*estate*” which was impartible and descendible to a single heir. On a question whether the delay in executing the *kabusat* deprived the taluqa of the character of an “*estate*” defined in s. 2 of the Act, the Judges of the Judicial Commissioner’s Court differed in opinion. *Held*, in the absence of an express declaration that non execution within the time specified would be fatal to the right given to the grantee by s. 3, that no such construction could be put on that section, but the execution of the *kabusat* related back to the date of the settlement, namely, the 5th of October 1859. As to the after acquired properties the defendant contended that by the custom of the family they became part of the original estate and were therefore not subject to the ordinary Hindu law of inheritance. *Held*, (affirming the decisions of both the Courts below), that the evidence was insufficient to establish that custom, that no intention of the taluqdar was shown to incorporate the subsequently acquired properties with the taluqa, as was necessary on the authority of the case of **Parbati Kumari Devi v. Jagadai Chandra Dhabal, 1 L. R. 29 Calc. 433, 453, 1 L. R. 29 I. A. 82, 98**, and that the plaintiff was therefore entitled to a decree for his share (one half) of such properties as being partible. **JAYKEE PRASAD SINGH v. DWARKEE PRASAD SINGH (1916)**

1 L. R. 35 All. 391

—*ss. 2, 13 and 16—Transfer by taluqdar of part of taluq—Transferee a title based on will of deceased taluqdar—Transfer in accordance with will—Absence of registration under Act* These appeals, related to lands owned by the taluqdar of Dhan garh, whose name was one of those entered in the 4th list prepared under s. 8 of the Odh Estates Act (I of 1869). He died in 1890, leaving a great grandson the appellant, and three grandsons (uncles of the appellant) the respondents, and having made a will, dated the 30th of August 1892, and registered under s. 13 of the Act, by which he devised the taluq to the appellant a minor, and appointed the mother of the boy to be his guardian and the first respondent to be manager of the estate during his minority. The will also provided that in case the respondents separated from the appellant, they should receive a maintenance allowance in the form of grants of taluqdar villages to be selected by the appellant. On the death of the testator the first respondent entered on the management of the estate, in accordance with the directions of the will, until 1908, when the appellant attained his majority and assumed possession and control of it, the respondents continuing to reside with him. But in 1910 they separated from the appellant and he made grants to them of villages of which mutation of names took place in 1911, the villages declared to be held by the several respondents “for generation after generation without right of transfer.” S. 16 of Act I of 1869 enacts that no “transfer otherwise than by gift of any estate or any portion thereof, or of any interest therein made by a taluqdar . . . under the provisions of this Act shall be valid unless made by a registered instrument signed by the transferor, and attested by two or more witnesses.” By s. 2 of the Act “transfer” is defined as meaning “an alienation.

ODDH ESTATES ACT (1 OF 1889)—contd

ss. 2, 13 and 15—*contd*

Inter vivos—In suits brought by the appellant to recover possession of the villages granted to the respondents on the ground (among others) that the grants were invalid as not having been made by a registered and attested deed as required by s. 15 of the Act, that the respondents' right to maintenance out of the estate was conferred by the will, which imposed on the taluqdar the duty of selecting the villages from which the maintenance should be derived. In making the selection the taluqdar imposed no additional burden on the estate but limited and defined in accordance with the will, the burden thereby imposed. The selection once made and accepted could not be disturbed either by the taluqdar or the *guzara* holders and no registered and attested deed was required. The provisions of the will followed by the appropriation of villages and delivery of possession vesting in the *guzara* holders a good and sufficient title. S. 15 of Act was therefore not applicable. **LAL JAGDISH BANARJEE SINGH v. MAHARAJ PRASAD SINGH**

L. L. R. 42 All. 422

s. 6—

See MORTGAGE **L. L. R. 34 All. 620**

See TALUQDAR **L. L. R. 33 All. 125**

United Provinces

Municipalities Act (1 of 1900) as 87 (5) 147 152—Municipal Board—Order for demolition of building—Order ultra vires—Revision—Jurisdiction *Held*,

(1) that s. 152 of the Municipalities Act 1900 does not apply where the prohibition, notice or order issued by the Board is *ultra vires* and (2) that s. 87 (5) of the Act applies only to buildings of the kind referred to in the preceding sub-sections that is new buildings in respect of which notice should have been given under sub-s. (1) **Alopi Das v. The Municipal Board of Allahabad** *All Weekly Notes* (1907) 2 and **Hymn v. The Calcutta Corporation**, 10 C 19 N 1921 referred to **EXPRESS v. RAM DIAL** (1910) **L. L. R. 33 All. 147**

ss. 7, 8, 10, 22—

See HINDU LAW—INHERITANCE

L. L. R. 40 All. 470

ss. 8, 10, 22—

See S. 21 **L. L. R. 35 All. 391**

Sanad granted by Government and death of grantee before Act passed into law—Status and rights of grantee—Name of grantee entered in lists 1 and 2 after his death—Descent by primogeniture—Custom of descent of non-taluqdars' property acquired by taluqdar, a Mahomedan—Burden of proof—Presumption of pre-existing custom—*Wajih-ul-azras* value of—On the 17th of October, 1811, J., a Mahomedan and the ancestor of the parties to this appeal, received from the British Government a sanad conferring on him the full proprietary right, title and possession of the taluqa of Dooqoon, with a condition that in the event "of you or any of your successors dying intestate, the estate shall descend to the nearest male heir, i.e., sons, nephews, etc., according to the rule of primogeniture. He died in 1865, but his name was entered in lists 1 and 2 of those prepared under s. 3 of the Oudd Estates Act (1 of 1889). *Held* that J. had acquired, as declared by s. 3 of the Act, a "permanent, heritable and transferable right" in his estate, and was unquestion-

ODDH ESTATES ACT (1 OF 1839)—contd

ss. 8, 10, 22—*contd*

ably a "taluqdar" within the meaning of the Act. His death before the Act was passed into the law made no difference in his status or in his rights. The provision in s. 8 that the lists should be prepared "within six months after the passing of the Act" was clearly meant as a limit for their completion, and not for the initiation. Descent by primogeniture was not confined to cases coming under list 3. The provision in s. 10 that "the Courts shall take judicial notice of the said list and shall regard them as conclusive evidence that the persons named therein are taluqdars" does not mean that they shall be conclusive merely as to the fact that the persons entered therein are taluqdars as entered in s. 2 but also that the Courts shall regard the insertion of the names in those lists as conclusive evidence of the fact on which is based the status assigned to the persons named in the different lists. **Achal Pam v. Udas Pratab Adhya Das Singh**, 1 L. R. 10 Cal. 511 L. R. 11 I. A. 1, and **Phakur Isher Singh v. Phakur Baldeo Singh**, 1 L. R. 10 Cal. 792, 1 L. R. 11 I. A. 135, discussed and explained. A name could therefore only have been included in list 2 by virtue of a pre-existing custom governing the devolution of the estate to a single heir, and s. 10 made that entry conclusive evidence of that fact. The present suit related to property acquired by the son of J. who succeeded him, which it was contended by the appellant (plaintiff), descended not by the custom of local primogeniture set up by the respondent (defendant) but in accordance with the ordinary Mahomedan law. *Held* that the provision as to conclusiveness in s. 10 is confined to estates "within the meaning of the Act," and does not apply to non-taluqdars' property, but the existence of the pre-existing custom gives rise to a presumption in the case of a family governed by Mahomedan law, which makes no distinction between ancestral and self-acquired property, that if a custom governs the succession to the taluqa, it attaches also to the personal acquisitions of the last owner left by him on his death, and it is for the person who asserts that these properties follow a line of devolution different from that of the taluqa to establish it. **Janki Prasad Singh v. Dwarka Prasad Singh**, 1 L. R. 35 All. 391, L. R. 40 I. A. 170, **Maharajah Perib Narayan Singh v. Maharajah Subhao Koor** 1 L. R. 3 Cal. 626; L. R. 4 I. A. 223, and **Parbati Kumari Devi v. Jagatis Chander Dhabal**, 1 L. R. 29 Cal. 431, L. R. 29 I. A. 80, distinguished as being cases governed by the Hindu law of the Mitakshara which recognizes different courses of devolution for ancestral and self-acquired properties. *Wajih-ul-azras* which merely narrated traditions and purported to give the history of devolutions in certain families, not even of the narrator, were held to be not sufficient to rebut the presumption of pre-existing custom. **MURATA HOSAIN KHAN v. MUHAMMAD YASIN KHAN** (1918)

FL. L. R. 38 All. 552

ss. 8, 22, sub-s. (11)—Succession to estate of taluqdar dying intestate whose name is entered in lists 1 and 2—Impartible estate—Primogeniture—Meaning of "sanad granted by British Government in 1850"—Effect of passing of Act No. 1 of 1869—Lineal primogeniture and not nearest of degree. A sanad granted to a taluqdar in 1850 contained the condition that "in the event of your

ODDH ESTATES ACT (I OF 1869)—contd

—ss. 8, 22, sub-s (II)—*concld*

dying intestate the estate shall descend to the nearest male heir according to the rule of primogeniture." After the passing of the Oudd Estates Act (I of 1869), his name was entered as a "taluqdar" in list 1, and in list 5, which was a list "of the grantees to whom sanads or grants may have been or may be given or made by the British Government up to the date fixed for the closing of the list, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture." *Held*, that the meaning of the word "primogeniture" in the sanad was the ordinary meaning of the same word in the law of England. On the death of the taluqdar's widow the succession to his estate was contested by his cousin the respondent, who would be the heir if the succession was governed by the rule of lineal primogeniture and his uncle, who would succeed if it was regulated by nearness of degree. *Held*, that the question whether the estates of taluqdars for the purposes of intestate succession must be treated as impartible, is settled by authority in the affirmative, *Raja Bijay Bahadur Singh v Jagajpal Singh* 1 L R 18 Cal 111, L E 17 I A 173 and *Jaykish Bahadur v Sheo Parab Singh*, 1 L R 23 All 369; L E 23 I A 100. The succession therefore to a taluq must be to an impartible estate, whether the estate "ordinarily devolved upon a single heir" as in list 2 of s 3, or whether the succession was to be regulated by the rule of primogeniture as in lists 3 and 5 of s 8. S 22, in so far as it describes in the first ten of its sub sections the specific order of heirs preferred to the succession, must have force given to it to the effect of standing as a statutory substitute for any law of succession set forth in the sanad. Where sub s 11 of s 22, coming as it does at the close of the long list of specific stages of prescribed succession sets up the rule that in default of any one taking under the previous sub sections there should be preferred "such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdar etc., are subject" it must be construed as being a general relegation of parties to the situation in which they would have been found apart from the Act. In the present case that situation was found in the sanad itself, and was also contained either by way of affirmation or at least by way of narrative in list 5 of s 8 of the Act. While the specific rules of succession in Act I of 1869 must be held to displace this, the general reference to what is not covered by those specific rules must include a reference to the rights of parties ascertained in the sanad which was the original title to the property. On these principles and this construction. *Held*, (affirming the decision of the Court of the Judicial Commissioner) that the succession should be regulated by the rule of lineal primogeniture and not by nearness of degree and that the respondent was entitled to succeed. *DEBI BAKSH SINGH v CHANDRABHAY SINGH* (1910) . . . 1 L R 32 All 599

—ss 8, 22, cls 11, 14, 15—*Succession to taluqdar in list 3 under s 8 when specified heir fails*
—*Bill*—*Limitation* Cl. 11 to s 22 of the Act which provides that in default of any descendants specified in the previous ten clauses as heirs upon intestate to taluqdars or grantees whose names have been inserted in the second or third lists pro-

ODDH ESTATES ACT (I OF 1869)—contd

—ss 8, 22, cls. 11, 14, 15—*concld*

vided for in cl 8 of the Act the estate is to descend to such persons as would have been entitled to succeed under the ordinary law provides special limitations. When the succession is regulated by cl. 11 the simple heir in cases coming under list 2 is the one nearest in succession and may be male or female but under list 3 primogeniture applies. *THAKUR SITLA BAKSH SINGH v THAKUR SITLA SINGH* . . . 25 C W N 721

—s 13—

See S 2 . . . I L R. 42 All 422

—ss. 13, 16 and 17—*Transfer of immovable property in Oudd—Oral gift inter vivos—Transfer of Property Act (IV of 1882), s 123—Deed, construction of—Whether testamentary or deed of gift inter vivos—Legatee per decreasing testator* Under the Oudd Estates Act (I of 1869) immovable property is not transferable by gift inter vivos otherwise than by registered deed. Although an adopted son is exempt from the operation of s 13, as being one of the special class therein designated a gift to him to be abrid must comply with the provisions of ss 16 and 17 of the Act, the two acts of sections not being contradictory of each other. By a deed dated the 6th May, 1887, executed by a taluqdar in favour of his adopted son the predecessor in title of the appellant the executant (after stating that he had by a deed of will on 26th May 1883, appointed his adopted son as his successor to the whole of the property and that it had become necessary to alter some of the provisions of that deed) declared that it was written "by way of deed of adoption and codicil to a will, and that he had made over the whole of the property in suit to his adopted son and had absolutely and unconditionally relinquished all right and proprietorship as well as ceased interference with the property. In a subsequent clause he described the person in whose favour the deed was made as 'my adopted son and donee and legatee under the deed, dated the 26th May, 1883 as well as under this deed

in respect of all my moveable and immovable property which has already been acquired, or which may be acquired hereafter during my lifetime or which may come to me by inheritance, or to which I may become entitled." *Held*, (affirming the decision of the Court of the Judicial Commissioner), that on a consideration of the provisions of the deed and of the circumstances which led up to its execution, it was testamentary in character and could not be construed as a gift inter vivos to the appellant's predecessor in title, who predeceased his adoptive father. In styling him "donee" the donor intended simply to what was given him by the deed and codicil. *UPATI RAJ SINGH v BHAGWAT BAKSH* (1910) . . . I L R. 32 All 422

—ss. 14, 15 and 23—*Oudd taluqdar's estates—Succession Primogeniture sanad—Treating the line of succession* The predecessor of a Hindu Oudd taluqdar was included in list 3 made under the Oudd Estates Act (I of 1869), s 8 as a taluqdar to whom the British Government had granted a primogeniture sanad. The taluqdar died in 1899, having by his will bequeathed the taluq to his mother. *Held* the taluqdar died intestate the taluq would have descended under s 22, cl. (11), of the Act to "such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe"

ODDH ESTATES ACT (I OF 1869)—concl'd

—ss. 14, 15 and 22—concl'd

of the taluqdar were subject. Upon the death of the widow in 1906 a dispute arose whether the succession was according to primogeniture or according to the ordinary rule of Hindu law. *Held*, that as the taluqdar's mother would not have been the successor under s. 22, cl. (11) if the taluqdar had died intestate the succession upon her death was by virtue of s. 15 governed by the ordinary rule of Hindu law. *Seem* that s. 22, cl. (11) does not in the cases in which it applies simply remit the succession to the ordinary law of the religion and tribe unqualified by the limitations in the Act. Review of the authorities as to the succession to taluqdari estates in lists 2 and 3. *Judgment of court of the Judicial Commissioner affirmed*. **SITLA BAKSH SINGH v. SITLA SINGH**

I. L. R. 43 All. 245

—ss. 16 and 17—

See S. 13 I. L. R. 32 All. 227

—s. 22—

See HINDU LAW—INHERITANCE

I. L. R. 40 All. 470

See MAHOMEDAN LAW—GIFT

I. L. R. 38 All. 627

See PRA EMPLOY

I. L. R. 32 All. 301

ODDH LAND REVENUE ACT (XVII OF 1876)

—s. 74—*Suit to dispute title and recover possession of shares to which plaintiff was entitled by Hindu Law—Estoppel—Suit is a Civil Court on title after partition.* The plaintiff and defendants were claimants to the estate consisting of 30 villages of a deceased Hindu and though by the ordinary Hindu law the plaintiff as brother of the deceased, was entitled to the whole property as against the defendants, who were nephews (son, of a deceased brother) the three claimants in the mutation proceeding signed in 1896 a document which stated that the property was held one moiety by the plaintiff and the other moiety by the defendants, and that "there is no other legal heir, except the deponents the mutation in respect of the deceased's share in all the villages should be allowed and nobody has any objection thereto" and the revenue authorities effected mutation of names in that way. In 1902 partition which left the parties in the same date as to possession was effected in accordance with the provisions of the Odh Land Revenue Act (XVII of 1876) in a suit brought in 1904 to recover possession as heir of the deceased of the half share held by the defendants, the latter pleaded (*inter alia*) that their possession was the result of a compromise come to between the parties in the mutation proceedings which was evidenced by the document of 1896 and that the plaintiff was estopped by such mutual agreement from asserting his present claim. *Held*, by the Judicial Committee (affirming the concurrent decision of both the Courts in India on the evidence) that there was no proof of any compromise as the mutation of names by itself created no proprietary title. The document of 1896 contained no words that could be constructed as amounting to an abandonment by the plaintiff of his legal rights. It was merely a statement of the facts as they existed as to the possession of the property, and by its silence as to a compromise

ODDH LAND REVENUE ACT (XVII OF 1876)

—concl'd

—s. 74—concl'd

tended to support the conclusion that no compromise was ever made. In the partition proceedings the plaintiff made no objection to the defendants' title under s. 74 of Act XVII of 1876, but he filed an application in which he asked that "the share of Munnu Singh (the deceased) should be decided at present according to possession and a separate suit will be filed in a competent court as regards the title in respect of the property of Munnu Singh. Both the courts in India concurred in decreeing to the plaintiff the shares of the deceased in 29 of the villages but as to one village they differed, the Judicial Commissioner, holding that the plaintiff was not entitled to recover the share in it because the partition in regard to that village had dealt with the shares of other persons beside the parties to the present suit and also because the plaintiff should have raised the question of the defendants' title in the partition proceedings and was now estopped from recovering the share which had been allotted to the defendants at the partition. *Held* by the Judicial Committee that the order of the Revenue Officer in the partition proceedings should that the shares of no other parties than the parties to this suit were affected by the partition of the shares in the one village as to which the courts differed. The Revenue Court has clearly given effect to the plaintiff's application as to the question of title, for no inquiry under s. 74 of Act XVII of 1876 was made and the question of title was left to be decided by the Civil Court. The grounds of estoppel therefore failed and the plaintiff was entitled to the shares in all the villages sued for.

I. L. R. 31 All. 73

—ss. 173, 174—*Contract entered into by disqualified proprietor creating charge on his property whilst under superintendence of Court of Wards—Liability of property in execution of decree obtained in respect of such contract after property has been released—N. W. P. Land Revenue Act (XIX of 1873) s. 205B, as amended by United Provinces Court of Wards Act (LII of 1899) s. 174 of the Odh Land Revenue Act (XVII of 1876) enacts, with respect of persons whose property is under the superintendence of the Court of Wards, that, "no such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence. *Held* that the phrase, "while his property is under such superintendence" was annexed to and elucidative of the verbal expression "contract entered into by such person". Where, therefore a contract has been made during such period of time, the effect of the section is to protect the property against attachment in execution of the decree, even after the property has been released from superintendence of the Court of Wards. The *dictum* to the contrary in *Pamashur Baksh Singh v. Dhanpal Das* 11 Odh Cases 6, overruled. **DEVI BAKSH SINGH v. SHADI LAL** (1910) I. L. R. 38 All. 271*

ODDH LAWS ACT (XVIII OF 1876)

See MAHOMEDAN LAW—GIFT

I. L. R. 38 All. 627

See MAHOMEDAN LAW—MARRIAGE

I. L. R. 22 All. 477

OUDH LAWS ACT (XVII OF 1876)—*contd*

—s. 2, cl. (1), (2)—

See PRE EMPTION I. L. R. 32 ALL 351

OUDH RENT ACT (XIX OF 1868).

Under propri etor, status of, distinguished from that of tenant—Under proprietor declared by decree to be without right of transfer—*Effect*—Status of under-proprietor not affected Under a compromise agreed to in 1867 between an Oudh talukdar and a relation of his who had been claiming a half share in the taluk, the former agreed to grant to the latter the under proprietary right in village D The Settlement Officer before whom the matter came up for orders on 8th June 1869 *ex abundanti cautela* sent for the grantor to ascertain whether he intended to confer on the grantee the right to transfer The grantor did not appear but the grantee to avoid further harassment agreed to the passing of a decree declaring his status to be that of an under proprietor without right of transfer *Held*, that the Settlement Officer's order involved a contradiction in terms That the law attaches certain rights to the status of an under proprietor, which by the decree the grantee was declared to be, in accordance with the terms of the compromise, and so long as he retained that status he remained clothed with those rights and he could not be divested of them unless and until he lost that status and the words "without right of transfer" in the decree did not affect his rights as under proprietor The position of a *gajiz darman* or "under proprietor," was fully understood in Oudh before the passing of Act XIX of 1868 which definitely crystallized and gave statutory recognition to his rights and status That Act draws a sharp distinction between an "under proprietor" and a tenant. **SARFAT SINGH v. BASANT SINGH** (1918)

22 C. W. N. 935

OUDH RENT ACT (XXII OF 1886).

Civil and Revenue Courts, respective jurisdictions of, in zamindar's suit against holders of land—Suit for ejectment in Revenue Court—*Defence* that defendant proprietor or under-proprietor—Zamindar's suit for declaration in Civil Court—*Right to sue* In Oudh in cases in which Act III of 1901 applies, the Court of Revenue has the exclusive jurisdiction to determine what is the status of a tenant of lands and what are the special or other terms upon which such tenant holds, and the Civil Courts have the exclusive jurisdiction to decide whether or not a person in possession of lands holds a proprietary or under proprietary right in the lands The question whether the person in possession holds a proprietary or under proprietary right when raised and persisted in that Court and the only remedy of the zamindar is a suit in the Civil Court for a declaration that the defendant has no such right, and when in such a suit the latter fails to prove such a right, the Court cannot refuse to make such a declaration **ABUL HUSAIN v. PRAD** (1916) 21 C. W. N. 882

As amended by U. P. Act IV of 1901—"Tenant" and "thikadar," definition of, in s. 3 (10), if governs CH VII [A] subsequently added—*Object of CH. VII [A]*—*Enhancement of rent in respect of a lease given by way of maintenance*—"favourable rate of rent"

OUDH RENT ACT (XXII OF 1886)—*contd*

—*Reg. XIX of 1793*—Act XVII of 1876—Act XXII of 1886, ss 107A to 107H. The specific enactments of Chap VII [A] of Act XXII of 1886, which was added to that Act by the amending Act, U. P. Act IV of 1901, are not limited in their application by the definition of "tenant" and "thikadar" in s. 3 (10) of the Act which was part of Act XXII of 1886 as it was passed in 1886. The object of enacting Chapter VII [A] was the protection of the Government revenue assessed upon agricultural lands and as far as possible to maintain proprietors of lands in a position to enable them to pay the Government revenue and the local rates assessed upon their lands and thus to avoid losing their lands by making default in payment of revenue due to the State The question being whether the rent at which mauza Bandhwa halon was held by the defendant or the plaintiff at the date of the suit was or was not liable to be enhanced *Held*, upon a construction of the lease creating the tenancy and on a review of the relevant provisions of Reg. XIX of 1793, Act XXII of 1876 and Act XXII of 1886 that the mauza not being liable to resumption under s. 107E of Act XXII of 1886 and the provisions of s. 107H thereof not applying to the case, s. 107G applied, and not the mauza having been found to be held by the defendant at "a favourable rate of rent" within the meaning of Chapter VII [A] of the Act, the decree of the Board of Revenue for enhancement of the rent of the mauza was correct **LAKSHMI KUDWAL v. THE DEPUTY COMMISSIONER OF DHANU** (1915)

23 C. W. N. 125

—s. 3 (10), Ch. VII-A.—*Enhancement of rent*—*Lease by talukdar for collection of rents of a mauza to a thikadar*—Amendment of Act by Union Provinces Act (I) of 1901 (Oudh Rent, Act 1886, Amendment Act) since the addition to the Oudh Rent Act (XXII of 1886) by the amending Act (Oudh Rent Amendment Act, 1901) of Chap VIIA which deals (inter alia) with the enhancement of the rent of land held at a favourable rent, and contains ss 107A to 107H, the specific enactments of Chap VIIA are not limited in their application by s. 3, sub-s. (10), which must be regarded as a mere glossary defining the terms "tenant" and "thikadar" as those terms are employed in Act XXII of 1886 as it stood when it was passed. *Held*, therefore, where the defendant (applicant) was a thikadar or person to whom the collection of the rents of a mauza belonging to a talukdar had been leased in 1881 by the then talukdar at a "favourable rate of rent, the rent was liable to enhancement under Chap VIIA of Act XXII of 1886 in accordance with the provisions, and on the conditions of that Chapter suitable to the circumstances of the case **LAKSHMI KUDWAL v. DEPUTY COMMISSIONER OF DHANU** (1915).

I. L. R. 40 ALL 541

OUDH TALUKDARS.

See TALUKDAR

I. L. R. 22 ALL 92

OUSTER.

See JOINT OWNERS

I. L. R. 47 Calc. 182

See LIMITATION I. L. R. 45 L. K. 285

Joint owner—Conditions necessary for cause of action Each joint owner has the right to the possession

COUSTER—contd

of all the property held in common equal to the right of each of his copartners in interest and superior to that of all other persons. He has the same right to the use and enjoyment of the common property that he has to his sole property except in so far as it is limited by the equal right of his co-sharers. Each co-owner may at all times reasonably enjoy every part of the common property. It necessarily follows that one co-owner has no right to the exclusive possession and use of any particular portion of joint property and if he exercises such rights and excludes his co-sharers from participation in the possession, he must account to his co-sharer for his interest in the part from which he is ousted even though he takes no more than his just share. But the co-sharer out of possession cannot complain if the mere possession of the co-owner so long as he refrains from setting up any claim to share in that possession. Hence in order to give rise to a cause of action against the co-sharer it must be proved that his act has amounted to ouster or exclusion. Where there is an actual turning out or keeping excluded the party entitled to the possession there is an ouster. Any restriction preventing a co-sharer from obtaining effective possession is an actual ouster. Such a restriction must be clearly and affirmatively shown and is not presumed from equivocal facts which may or may not have been designed to operate as an exclusion. A tenant in common cannot be held liable to his co-tenant for damages for use and occupation of the joint property unless there has been an ouster. Where one tenant in common occupies part of the joint property without assertion of hostile or exclusive title and without claim by his co-tenant to be admitted into possession he is under no obligation even to account for he has a right to such occupancy. *DEVEDRA NARAYAN SINGHA v NARENDRA NARAYAN SINGHA* (1910)

23 C. W. N. 800

OUTCASTE.

See HINDU LAW—JOINT FAMILY

I. L. R. 38 Mad. 334

OVERCROWDING OF HOUSE.

See BOMBAY MUNICIPAL ACT NO. 378

379A I. L. R. 36 Bom. 81

OVER HEAD TANK.

See MACHINERY I. L. R. 46 Calc. 910

OWNER

See BOMBAY CITY MUNICIPAL ACT NO. 378

379A I. L. R. 36 Bom. 81

See MADRAS LAND REVENUE ASSASSMENT ACT (I OF 1876) s. 2

I. L. R. 38 Mad. 1128

——— liability of—

See BURDEN LAND

I. L. R. 41 Calc. 164

See MOTOR VEHICLES

I. L. R. 45 Calc. 430

See RIGGING I. L. R. 39 Calc. 834

——— rights of—

See PUBLIC DRAIN

I. L. R. 44 Calc. 680

OWNERSHIP

——— dispute as to—

See WATERSHED

I. L. R. 45 Calc. 793

——— entry of, in record-of rights—

See MAMONDHAR LAW—TAKHOWNY

I. L. R. 43 Calc. 227

——— public assertion of—

See LIMITATION.

I. L. R. 45 I. A. 197

P**PACHETE RAJ**

*Khorsesh grant resumption of—Custom—Grant of patta by Raja after Khorsesh grant in grantee's lifetime—Death of Raja if entitles patta dar to resume in grantee's lifetime—On death of grantee to resume in grantee's lifetime—Law as to—Transfer of Property Act (24 of 1882) s. 43. On the civil side that the Plaintiff had failed to establish that by custom a Khorsesh grant on her title Pachete Raj lapses in the grantee's lifetime upon the death of the grantor and the land reverts forthwith to the Raj but that there was good grounds for the view that a maintenance grant in the Pachete Raj is for the life of the grantee, but is liable to be resumed by the successor of the grantor should the latter die during the lifetime of the grantee. The cases in *Pancham Kumari v Gurnara v U. O. M. S. L. P. 156 Gurnara v U. O. M. S. L. P. 156 G. M. S. L. P. 51* and *Anand Lal Singh v Choudhary Narayan S. M. S. L. P. 182* do not establish the custom as alleged by the plaintiff. Where the grantor of a Khorsesh grant purported to resume the grant in the lifetime of the grantee and then granted a patta in respect of the subject matter to another person and on the grantor's death the patta dar sued to resume the subject matter of the grant from the grantee. Held that it was not a case where s. 43 of the Transfer of Property Act could apply since the heir of the grantor was still free to exercise his option to resume or not. If a transferor without title has once become entitled to a valid estate in the land, the transferee's equity would attach upon it in the hands of all persons claiming under the transferor other than for a legal interest by purchase for value without notice—the latter included. A suit by the patta dar brought in the lifetime of both grantor and grantee for recovery of the property was dismissed the Court expressing the opinion that the Khorsesh grant was not resumable in the grantee's lifetime. Held that the defendant did not bar the patta dar's suit to recover possession brought after the donor's death. *CHETIA BANINA SINGHA v PURVA CHANDRA CHODHURI* (1914) 19 C. W. N. 1272*

PADDY

See APPRAISEMENT

I. L. R. 48 Cal. 1036

See MORTGAGE I. L. R. 47 Calc. 125

——— suit to recover value of

See LIMITATION I. L. R. 48 Calc. 625

PAIK.

—suit to eject—

See *RYMUND I. L. R. 43 Cal 1104*

PAKKI ADAT TRANSACTIONS.

—dis'inguished from kachchi adat—

See *CONTRACT I L. R. 42 Bom. 224*See *WAGERING CONTRACTS*

I. L. R. 42 Bom 373

Incidents of—Wager

ing, defence of From about the end of June 1903 the defendant, a young man, without much experience of business, entered into *pakki adat* transactions for the sale of linseed with the plaintiffs who were a firm of Marwari shroffs and merchants, in a large way of business dealing as merchants and commission agents, largely in cotton and to a small extent in linseed. There was one transaction in cotton between the parties and the defendant entered into transactions in linseed to the extent of 4,000 tons in all with the plaintiffs, which transactions the plaintiffs passed on to various purchasers, 39 in all, between which purchasers and the defendant there was no privity whatever. In the contract made by the plaintiffs with each of the said purchasers there was a term that delivery should not be given to the firm of Narraoias Rajaram & Co., a Marwari firm, who were in the habit of insisting on delivery and of refusing to settle contracts by the payment or receipt of differences. The plaintiffs subsequently attempted to secure evidence to show that the transactions between themselves and the defendant were genuine transactions and not wagers. They endeavoured to induce the defendant to sign a draft letter prepared by the plaintiffs' attorneys in which instructions were given for the purchase of a small part of the 4,000 tons of linseed for the sale of which the defendant had entered into transactions with the plaintiffs and ultimately induced the defendant to sign a draft letter acknowledging the correctness of the statements made in a letter of the plaintiffs' attorneys to the defendant setting out the plaintiffs' version of the transactions between the parties. The plaintiffs further purchased and delivered 300 tons of linseed in part fulfilment of their contracts with the 39 purchasers, and as to the balance of 3,700 tons the contracts with these purchasers were settled by the payment of differences. It appeared, however, that the purchase of 300 tons had been effected by the plaintiffs with the view to influence the result of litigation. *Held*, that in view of the fact that the *pakki adat* was not a disinterested broker but a party to the contract whose intention to gamble or otherwise might well be known at the inception of the contract, and that there was no privity between the defendant and the 39 buyers from the plaintiffs, the existence of such purchases was only relevant as affording an indication of the plaintiffs' intention at the time of their contracts with the defendant, but in view of the condition that delivery should not be given to Narraoias Rajaram & Co. it appeared that it was not intended that delivery should be given to the 39 purchasers by the plaintiffs and accordingly the said 39 contracts were not a sufficient indication of an intention on the part of the plaintiffs to call for delivery from the defendant.

PAKKI ADAT TRANSACTIONS—*contd.*

Held, further, that on an examination of the business of the contracting parties and of the surrounding circumstances of the case it appeared that the common intention of the parties was that the plaintiffs and the defendant should deal in differences and settle that way and that accordingly the suit must fail. *Bhagwandas v. Kany, I L. R. 30 Bom. 205*, discussed. *BURJORI RUTTONJI v. BHAGWANDAS PARASHRAM (1913).* I. L. R. 33 Bom. 204

—Wager,

intention

to, not negatived—Pakka adatia, position of qua client—Transactions by Munim—Costs The existence of the *pakki adat* relationship does not of itself negative the existence of an understanding between the *adatia* and his constituent that no delivery should be given or taken under forward contracts and that only differences should be recovered. *Ques* the client the *pakka adatia* a principal and not a disinterested middleman bringing two principals together. The question which has to be decided is what on the evidence was the common intention of the parties with regard to the settlement or completion of the transactions in dispute. A defendant who has successfully pleaded a lawful defence is entitled to his costs. *Burjori Ruttonji v. Bhagwandas Parashram, I L. R. 33 Bom. 204* followed. *CHHOOGMAL-BALAKISSONDAS v. JAINA-RATAN KANAYALAL (1913)*

I. L. R. 39 Bom. 1

—PAKKA broker—

Wagering contracts—Forward contracts of sale and purchase of cotton between a PAKKA Adatia and up-country constituents—Whether such contracts are contracts of employment or as between principal and principal—Evidence showing differences only to be paid and delivery not to be given or taken—Evidence showing PAKKA ADATIA contracting to enter into wagering transactions on behalf of constituents—Difference between a PAKKA ADATIA and an ordinary broker—Proper issues in a suit between a PAKKA ADATIA and constituent—Bombay Act III of 1935, ss 30-35 and 35 Vic. Chap. 9, s 1 The plaintiffs alleged that they were employed in Bombay as 'Pakka brokers' (i.e. *Pakka Adatias*) by the defendants doing business in the Berars to enter into forward contracts of sale and purchase of cotton. Under instructions of the defendants who were advised by the plaintiffs about the state of the market from time to time the plaintiffs entered into a number of transactions of sale and purchase of cotton on defendants' behalf. The accounts between the plaintiffs and the defendants were adjusted from time to time, and according to the plaintiffs the defendants' losses at the date of the suit amounted to Rs. 20,272 7 3, the greater portion of the same relating to differences which resulted from cross-contracts. The plaintiffs having sued to recover the said amount, the defendants contended, *inter alia* that the transactions in which they employed the plaintiffs were gambling and wagering transactions and that it was well understood between the parties that no delivery was ever to be given or taken in respect of them and that the plaintiffs were to enter into such transactions only. In support of the said

PAKKI ADAT TRANSACTIONS—*contd.*

contention the defendants relied upon the surrounding circumstances and in particular upon the correspondence between the parties and the actual course of dealing which showed that the transactions were not intended to be anything more than mere debit and credit entries and were to be settled by payment of differences only. The trial court (HARMAN J.) decreed the plaintiffs to sue and directed an account to be taken holding that the transactions were not wagering contracts and that the plaintiffs merely occupied the position of middlemen or ordinary brokers. The defendants having appealed it was urged on their behalf that the trial court erroneously allowed the plaintiffs in the course of their reply to alter their case which was that of a *pakkia broker* (which is the same thing as a *pakkia adat*) into one of an ordinary broker. The appellants accordingly asked that they should be allowed inspection of the plaintiffs' ledger and to call for further evidence by cross-examining the plaintiffs' witnesses to prove that the plaintiffs in their dealings with third parties were acting as principals and not as middlemen. The appellate court (SCOTT C. J. and HEATON J.) came to the conclusion that in the interest of justice and having regard to the facts brought to their notice further evidence should be taken in the case. On fresh evidence being recorded and on further hearing of the appeal—*Held* (reversing the decision of the trial court) by MACLEOD C. J. and HANFORD J.—(1) that the correspondence between the parties in which the plaintiffs frequently referred to *adats* dealings and the need of hedging as the market turned against the defendants, and the actual course of dealings between the parties, established beyond doubt that not only the plaintiffs knew that the defendants were gambling and not speculating but that there was a secret understanding that there was to be no actual delivery of cotton and that all transactions were to be adjusted by paying and receiving differences only; (2) that the evidence in the case further established that a similar understanding prevailed between the plaintiffs and third parties (with whom the plaintiffs dealt for the same *valda* and for amounts of produce corresponding with those for which the defendants entered into contracts) that the transactions between them should be closed either before or at the *valda* by the payment of differences only; (3) that if the plaintiffs were to be regarded as employed for labour, the evidence showed that the parties had entered into transactions knowingly to further or assist the entering into or carrying out agreements by way of wager within the meaning of Bombay Act III of 1905, inasmuch as the plaintiffs were in effect employed by the defendants to make bets on the rise and fall of the cotton market and the plaintiffs having that knowledge encouraged the defendants to give them orders for bets with the result that the plaintiffs made bets in consequence of those orders with the third parties who also knew that in their own transactions they were betting with the plaintiffs; (4) that the mere circumstance that the greater part of the plaintiffs' claim related to differences resulting from cross contracts did not make the contracts less the wagering transactions, for where the Court found that when the contracts were entered into there was a secret understanding that only differences were to be paid and received, it did not matter much if the parties before the *valda*

PAKKI ADAT TRANSACTIONS—*contd.*

agreed to fix their losses or gains then wait till the *valda*. The proper issue in a suit by a *pakkia adat* against its constituent are—(1) If the contract between the parties is one of employment for reward was it lawfully made to further or assist the entering into of agreements by way of gaming or wagering? (2) If the contract between the parties was as principal and principal was it by way of wagering or gaming? In order to win on the 1st issue, the defendants must prove that there was an understanding between them and plaintiffs (i) that they were not only speculating but gambling, (ii) that if they ordered the plaintiffs to buy they would never call upon them to give delivery (iii) that if the plaintiffs incurred losses in carrying out the orders, they would indemnify them and (iv) that even if the plaintiffs did not contract with third parties in pursuance of their orders differences would be received and paid exactly as if they had. Incidentally it might be arranged that plaintiffs should only enter into wagering contracts with third parties and that would be sufficient to vitiate the contract of employment, though it might not be possible to prove that those third parties with whom the plaintiffs contracted were also wagering. On the 2nd issue the defendants would have to prove that there was a common intention only to pay differences. *Per Macleod, C. J.*—The only difference between the relationship of a *pakkia adat* and his constituent on the one hand, and that of a broker personally liable on the contract he enters into on orders received and his client on the other, is that in the latter case the broker enters into the contract as agent for the client, he being personally liable to the person with whom he contracts, while the *adat* does not make the contracts with third parties as agent, but as principal, the constituent having no right to be brought into contact with the third parties. *Bhagwandas Pararam v. Burjora Bhatnagar Bhatnagar* (1917) L. R. 45 J. A. 29, 42 Bom. 373, distinguished. *Bhagwandas v. Hanji* (1905) 30 Bom. 205, discussed. *The Universal Stock Exchange Company v. Sivasankar* [1856] 1 C. 168, *in re Ouse* [1893] 1 Q. B. 734 and *Tharler v. Hardy* (1878) 4 Q. B. D. 685, referred to. *MAHALAL RACHUVATH v. RADHAKRISHN RAMJIWAS* (1920).

L. L. R. 45 Bom. 386

“PALA” OR TURN OF WORSHIP.

See LIMITATION. L. L. R. 46 Calc. 455

*Mortgage—Transcribability of palm—Custom—Eligible Temple—Estoppel of mortgagor, even if trustee—Essential attributes of valid custom—Public policy, contravention of—Usus probans—Civil Procedure Code (Act V of 1908), O. XXVII—Chattel—Imaginable property, foreclosure of mortgage of—Pledge. Per MOOREHEAD J. (BENCHURCH J. reserving opinion.) A mortgagor, even when acting in a public capacity and not for his own benefit, is estopped to deny his title, and cannot set up as a defence for himself against the mortgagee that the property so mortgaged is trust property which he had no right to mortgage. *Doe v. Horne*, L. R. 3 Q. B. 760, 61 B. R. 337, followed. This principle is inapplicable where the mortgage is void as contrary to Statute. *Barrow v. Case*, 14 Ch. D. 432, followed.*

"PALA" OR TURN OF WORSHIP—contd

Trustees for a public purpose are not, by the nature of their office, protected from the operation of estoppel as against the assignees of the original parties to the deed in question. *Doe v Horne* L. P. 3 Q. D. 769, 61 P. R. 327, *Webb v Herns*, L. R. 5 Q. B. 612 and *Higgs v Asiam Tea Co.*, L. R. 41 r. 337, referred to. [View in *Heated by BANFEE J in Mall ka v Ratanam, 10 W. N. 493* not accepted.] Per MOORE J and BEACH J. A custom to be valid must have four essential attributes: (i) it must be immemorial, (ii) it must be reasonable; (iii) it must have continued without interruption since its immemorial origin, and (iv) it must be certain in respect of its nature generally, as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect. *Tysoe v Smith* 9 Ad. & El. 406 followed. A custom cannot be enlarged by parity of reasoning. *Arthur v Bokenham* 11 Mod. 143. *Pratipati v Gopi Krishna* J. L. R. 37 Cal. 322, referred to. A custom originating within time of memory even though existing in fact, is void at law. *Mayor of London v Cor.* L. R. 2 H. L. 239, followed. Evidence showing exercise of a right in accordance with an alleged custom as far back as living testimony can go, raises the presumption, though only a rebuttable one, as to the immemorial existence of the custom. *Richard v Smith* 2 Moo. & R. 129, *Mercer v Denno*, [1904] 2 C. 331, followed. If the existence of the custom has been proved for a long period the onus lies on the person seeking to disprove the custom to demonstrate its impossibility. If a custom be against reason (i.e., artificial and legal reason warranted by authority of law) it has no force in law. When a custom is said to be void as being unreasonable the unreasonable character of the alleged custom conclusively proves that the usage even though it may have existed from time immemorial, must have resulted from accident or indulgence and not from any rights conferred in ancient times. *Salsbery v Gladstone* 9 H. L. C. 692, followed. The period for ascertaining whether a particular custom is reasonable or not, is the time of its possible inception. *The Tanistry Case*, (1838) 10 Ir. 29, followed. In practice, the Kalghat temple palas have been transferred during at least 90 years though in a limited market which those alone can enter who are qualified to become shetit by birth or marriage, the time when this custom originated being unknown. Proof of the existence of a custom need not be carried back by direct evidence to the year 1773 when the Supreme Court was established, or even to 1793 when the first Regulations were passed by the Indian Legislature. The customary right to make a *shetit* mortgage, gift or loan of a pala in favour of persons within a limited circle (the transferee being under precisely the same obligation to the endowment as the transferor himself) is closely associated with and possibly developed out of the hantable, devisable, and partible character of a pala. *Janokee v Gopaul* 1 L. R. 2 Cal. 365 referred to. A custom of this description clearly cannot be characterised on any rational grounds as unreasonable or opposed to public policy. Foreclosure, as a remedy of the mortgagee, is not confined to mortgages of land, it is equally applicable to mortgages of chattels. *Harris v Hart*, 1 Com. 393 2 Eq. Cas. Abr. 6 followed. A mortgage of intangible property is entitled to foreclose the mortgagor quite as much

"PALA" OR TURN OF WORSHIP—contd

as a mortgage of chattels. *MAHAMATA DEBI v HARIDAS HALDER*, (1914) 1 L. R. 42 Cal. 455

—*Pala* of worship p. who ther immovable property—Limitation Act (IX of 1908) Art 130 whether governs suit to enforce mortgage of pala. A turn of worship is not an interest in immovable property. Consequently a suit to enforce a mortgage of a turn of worship is not governed by Art 132 but by Art 120 of the Limitation Act. *MAHAMATA DEBI v HARIDAS HALDER* (1914) 22 C. W. N. 994

—*Pala* alienation of, apart from the debtor's land—*Islam*, proof and validity of—*Submission of pala* validity of—*Objection taken in second appeal* Where there was an alienation of a pala or turn of worship only, apart from the debtor's land and evidence was adduced of instances of alienations along with the debtor's land—*Held* that no custom of alienating the pala or turn of worship, apart from the debtor's land, was established and that such an alienation was unreasonable. *MAHAMATA DEBI v HARIDAS HALDER* 1 L. R. 42 Cal. 455 20 C. I. J. 183, distinguished. The transfer by a shetit of his turn of worship to two persons in different shares, is unreasonable and objection to such a division may be taken for the first time in second appeal; it being a point of law and the respondent not being taken by surprise. *NITYA GOZAL BAYERJEE v NANI LAL MEKHERJEE* (1919)

1 L. R. 47 Cal. 990

PALAYAM.

See UNSETTLED PALAYAM

1 L. R. 41 Mad. 749

—*Unsettled palayam*—*Alienability*—*Land held on service tenure*—*Abolition of service*—*Palas duties of land owner*—*Effect of sanads* A palayam in the Madras district was held originally on military service tenure and subject to the payment of a tribute to the paramount power. It was contended that it was also held on condition of rendering police service to the State. In support of that contention reliance was placed upon sanads granted in 1797 and 1800, by which the palayagar was bound to protect the inhabitants from robbers and to deliver up murderers and deserters. In 1897 the palayagar mortgaged villages of the palayam for debts incurred by him prior to that date and in 1909 the villages were bought by the mortgagees at a sale under a mortgage decree. No permanent settlement had been made with the palayagar, but in 1900 one was made with the alienees. *Held*, that the palayam was not by reason of its tenure inalienable, since military service was abolished in the Madras district by a proclamation in 1801, and since even if it could be inferred from the sanads that the palayam was held on a tenure of rendering police service to the State (which it could not) such police duties by land holders were abolished before the alienation, and that the alienees obtained a good title [Judgment of the High Court approved.] *APPATASAMI NAICKER v MADHARAO ZAMINDARI COMPANY, LTD* (1921)

1 L. R. 48 I. A. 100

1 L. R. 44 Mad. (P. C.) 175

PALMYRA JUICE

lease of, whether lease of the moveable property—

See REGISTRATION ACT (III OF 1877)
s 17 (1) (c) AND (d)

I L R 38 Mad. 883

PANCHAYAT

See LIBEL

I L R 39 All. 561

PANDARASANNADHI

See MORT

I L R. 40 Mad. 177

PAPER CURRENCY ACT (II OF 1910)

s. 26—

From money note payable to a person or order or bearer legality of—Right of suit on the note. A promissory note payable to a person or order or bearer is illegal and void under s 26 of the (Indian) Paper Currency Act (II of 1910) and a bearer cannot be given any decree for money in a suit on such a note. *Jetha Parkha v Ramchandra Vithoba* I L R 16 Bom. 659 referred to. Obiter. If there is an obligation apart from the one under the note it may be enforced and the fact that the loan and the note are contemporaneous is not conclusive of the non-existence of such an obligation. *Shankmuganatha Chettiar v Srinivasa Ayyar & N L W 27*, and 31 Mad. L J 138 referred to. *CHIDAMBARAM CHETTIAR v ATYASANNI THEVAR* (1916) I L R. 40 Mad. 585

Hundi payable to bearer, validity of—Bona fide customer drawing hundi on a bank without money to his credit effect of. Where a hundi though drawn in favour of a specified person is made payable to bearer it is void as being obnoxious to s. 26 of the Indian Paper Currency Act (II of 1910) unless the hundi comes within the proviso to the section. The object of the proviso being to enable bona fide customers to operate on actual or intended deposits the fact that the drawer of the hundi had actually no money in the bank does not take the hundi out of the proviso if as a fact he intended to deposit money before presentation. *ARUVACHALAM CHETTIAR v NARAYANAN CHETTIAR* (1918) I L R. 42 Mad. 470

Hundi payable to bearer—Suit by endorsee not endorser—Invalidity of hundi—Estoppel if any. The endorsee of a hundi which was drawn payable to bearer and which was not saved by the proviso to s 26 of the Paper Currency Act sued to enforce it as against the endorser. Held that the hundi was invalid according to the section and that the endorser was not estopped from denying the validity of the hundi. *Chidambaram Chettiar v Ayyasanni Thevar* (1917) I L R 40 Mad 585 followed. The observations of SESHAGIRI AYYAR, J., to the contrary in *Aruvachalam Chettiar v Narayanann Chettiar* (1919) I L R. 42 Mad. 470 held obiter and not followed. The mere fact that a hundi is drawn on a certain person and that he endorses it to another does not make the drawer a banker within the proviso to the section. *ALAGAPPA CHETTI v ALAGAPPA CHETTI* (1921) I L R. 44 Mad. 157

PARALYSIS.

Testator suffering with—

See WILL. I L R. I Lah. 173

PARDANASHIN LADY

See ATTESTATION I L R 37 Calc 526

See CIFT I L R 39 Calc. 933

See GUARTEY I L R 38 Calc. 783

See MORTGAGE I L R 45 Calc 748

L R 48 I A 270

I L R 47 Calc 175

24 C W N 977

See PRESENTATION OF COMPLAINT

I L R 42 Calc 19

See PLOTTING I L R 39 Calc 834

See SUCCESSION ACT 1863 ss 2 AND 311

I L R 43 All. 525

examination of—

See COMPLAINT I L R. 42 Calc. 19

See EXAMINATION ON COMMISSION

I L R 45 Calc 492, 697

I L R. 43 Calc 448

execution by—necessity for—con-
tention—

See MORTGAGE 25 C W N 265, 942

hability of—

See MORTGAGE I L R 40 Calc 378

I Mortgage by, in favour of her legal adviser—Transaction to be closely scrutinised—Onus—Proof—that deed was explained to executant and she understood it—Relations cognate of execution—Inference that deed properly explained if follow—Stipulation in deed to substitute for properties mortgaged portioned share of estate under partition if inoperative—Pleader and client relationship if ceases on, passing of judgment when the time for appealing has not expired. 2 a pardanashin lady, and S her brother who had been parties in a partition suit with members of their family were represented in that suit by one R as their pleader. The suit terminated in their favour; but before the time for appeal had expired property belonging wholly to T was mortgaged in favour of R to secure an advance of Rs. 8000 of which Rs. 473 was said to have been cash and the balance went mainly if not entirely in the discharge of moneys due from S. A clause was inserted in the bond to the effect that after the partition should have been effected the property awarded to T should be substituted for the mortgaged properties and it was admitted that the effect of it would be to quadruple the amount of property. There were concurrent findings that this clause was not properly explained to the lady but the Trial Court held it to be of no consequence as the clause was inoperative. The Trial Judge upheld the deed subject to a reduction of the stipulated interest which he held to be unconscionable, being mainly influenced by the consideration that the relatives of the lady must have been aware of the transaction because her brother was a co-signatory of the deed and two of her relatives were the identifying witnesses but the brother was personally interested in carrying through the transaction by which he derived advantage at the expense of the lady and the other relatives generally were taking gross advantage of her unprotected state. Held, that this was a case of the legal adviser to a pardanashin woman acting the part of money lender to her and procuring the execution by her of a mortgage-bond to secure its repayment and it was

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difficult to conceive a case in which the Court would be entitled, and indeed obliged, to examine the transaction with closer scrutiny or to insist more sternly on the mortgagee supporting the heavy onus of showing that the client was fully aware of the meaning and effect of the deed, and that the transaction was a fair and honest one. That the Trial Judge was in error in holding that in the mortgage-bond, if otherwise valid, the clause which was clear in its language stipulating for the substitution of *T*'s partitioned properties for the property mortgaged would be inoperative. That in the circumstances, the relatives of *T* should in no way have been regarded as the defenders of her interests. **MAHABIR PRASAD v. TAJ BEGAM (1914)** 19 C. W. N. 162

2. ———— **Execution of mortgage by—Attestation by witnesses.** A mortgage executed by a *pardanashin* lady was attested by her husband and another witness. The husband actually saw the signature being made and the other witness was outside the screen in the same room with the lady and he knew her voice and heard her say "yes" when the document was explained to her. *Held*, that the document was duly attested in accordance with law. **RURMINI KOERI v. NULMONI BANDAPADHYAYA (1915)** 19 C. W. N. 1809

3. ———— **Illiterate document executed by and drawn up under her instruction.** Document is to be explained—**Presumption of knowledge—Registration—Power of attorney, scope of.** Where a *pardanashin* lady took a loan from another *pardanashin* lady on a mortgage security, had the deed drawn up by her own men under her own instruction and then got it registered through her mukhtar and husband authorised to act on her behalf by a general power of attorney. *Held*, that it was not necessary that the contents of the document should have been explained to her after the draft was made, but knowledge of the contents was to be presumed specially as the document came from the side of the executant. *Held*, also, that in second appeal, the High Court can make deductions from acts without disturbing the findings of the lower Appellate Court. *Held*, also, that authority to appear in the Registration office implied authority to appear for all purposes authorised by the Registration Act. **BRUBAV MOHINI DASIE v. GAZALAKSHMI DEBI (1915)** 19 C. W. N. 1330

4. ———— **Plea that promisor was not raised—Decree for specific performance—Court of law to raise the plea.** In a suit for specific performance of a contract of sale by the widow of a deceased Hindu and his executor, there were no pleas taken in defence other than the price agreed upon was inadequate or that one of the promisors was a *pardanashin* lady and no issue was raised or tried on either of these points. *Held*, that neither of these points could be allowed to be raised by them on appeal. The High Court having reversed the decision of the Subordinate Judge on an issue as to payment by the purchaser of a sum of Rs. 1,500 to the vendors. *Held* on the evidence that the decision of the Subordinate Judge was correct and should be restored. **NAROTTAM DAS v. KEDAR NATH SAMANTA (1916)** 21 C. W. N. 665

5. ———— **Execution of deed depriving herself of nearly all her property—Burden**

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of proof—**Requisites to be proved—Concurrent findings on facts that burden had not been discharged—First Court's decision on that point affirmed by Appellate Court—Finding sufficient to dispose of case.** A *pardanashin* lady, separated from her husband unable to read or write, and without independent legal advice, created an endowment of practically her whole property by a deed of which she appointed the appellants (plaintiffs) trustees. In a suit for a declaration that the property was *wagf* and for possession of it. *Held*, that, as they relied upon the deed, the onus was on the appellants to show that the nature and effect of it had, at the time of its execution, been explained to and understood by the executant. **Shambati Koeri v. Jago Bibi, I L R 29 Cal 749, L R 29 I A 127**, followed. Upon the question whether that onus had been discharged, the Appellate Court in India affirmed the decision of the first Court to the effect that it had not, but nevertheless allowed an appeal to His Majesty in Council under s. 596 of the Civil Procedure Code (XIV of 1822) on the ground that the judgment of the lower Court had not been wholly affirmed. *Held*, that the findings of the Courts below amounted to concurrent findings of fact which could not be disturbed on appeal, and there being no "substantial question of law" the appeal must be dismissed. **Karuppanan Serrai v. Srinivasan Chetti, I L R 25 Mad 215, L R 29 I A 38**, followed. **SAJJAD HUSSAIN v. WAZIR ALI KHAN (1912)** [I L R 34 All 455]

6. ———— **Execution of mortgage by—A mortgage deed was executed by a *Pardanashin* lady the attesting witness being on one side of the *parda* and the lady on the other. Her son took the deed to the lady behind the *parda* and came back with it signed after which it was attested. *Held* the deed was properly attested. **ISRI PRASAD v. PAI GUNGA PRASAD** 14 C. W. N. 165**

7. ———— **Suit for cancellation of deed—Nature of proof required—Independent advice not absolutely necessary—Lady of strong will and in the habit of managing her affairs with considerable capacity for business—Undue influence—Natural affection.** In the case of a deed executed by a *pardanashin* lady the law protects her by demanding that the burden of proof shall in such case rest not with those who attack, but with those who rely upon, the deed, and it must be proved affirmatively and conclusively that the deed was not only executed by, but was explained to, and really understood by, the grantor. It must also be established that it was not signed under duress, but by the free and independent exercise of her will. **Sayad Hussain v. Nazir Khan, I L R 31 All 440, L R 39 I A 156**, followed. There is no absolute rule that a deed executed by a *pardanashin* lady cannot stand unless it is proved that she had independent advice. The possession of absence of independent advice is a fact to be taken into consideration and well weighed on a review of the whole circumstances relevant to the issue of whether the grantor thoroughly comprehended, and deliberately and of her own free will carried out, the transaction, and if, upon such a review of the facts—which include the nature of the thing done, and the training and habit of mind of the grantor, as well as the proximate circumstances affecting the execution—the conclusion is

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reached that the obtaining of independent advice would not really have made any difference in the result then the deed ought to stand. In a suit for cancellation of gift executed by a pardanashin lady the facts were that her husband had long before, and her property (consisting of shares in a large number of villages) was managed by the mukhtar with whom she had formed an intimacy the result of which was the birth of two illegitimate daughters one of whom was alive at the date of the deed. The donee was the legitimate son of her mukhtar. The deed was found to be duly executed attested by just the persons who would naturally be called upon for such a purpose, and registered in the usual way by the proper officers. The property given was about one half of her estate and there was no question of her being impoverished by giving it. No undue influence was affirmatively proved. It appeared in evidence that the lady was strong minded and had long in the habit for many years of managing her affairs of entering up her accounts and of attending to business matters. *Hell* (reversing the decision of the Court of the Judicial Commissioner) that the evidence as to her strength of will and business capacity and the fact that the deed was not in the circumstances of her life in any way an unnatural disposition of her property went far, taken together with the other evidence in the case to make it conclusive that the deed was granted by her as the expression of her deliberate mind and apart from any undue influence exerted upon it and that had independent advice been obtained the lady would have acted just as she did. *Mahomed Baksh Khan v. Hossains Bibi* I L R 15 Cal 631 L R 15 I A 31 referred to *Kali Bakhsh Singh v. Ram Gopal Singh* (1913) . L. L. R. 36 All 481

8 ——— Executing mortgage for husband's benefit—Proof of intelligent execution—Explanation—Independent advice—Under a *Sharia*—Indian Contract Act (IX of 1872) s 16. Where a pardanashin lady was induced by her husband to give a mortgage by way of security at a time when she was living with her husband and the evidence was that the document was read and explained to her by the husband in the presence of the mortgagees. *Hell* that the Court would not be justified in holding that the mortgage was fairly taken or that the lady executing it was a free agent duly informed of what she was about; and the mortgage must be taken to have been aware of the influences under which the lady came to execute the document. *Hell* (without expressing any opinion as to whether s. 16 of the Contract Act requires the undue influence to proceed from a party to the suit) that the undue influence which may affect a pardanashin lady's understanding of a document may proceed from a third party. *Threeah Ch. Laborey v. Bhoolabhai Dhol* s 13 Mo I A 419 Bank of Montreal v. St art (1911) A C 120, *Jayr Coomber*, [1911] I Ch 723 730 *Kashappa Lal v. The National Bank of India* L R 17 C N 511, referred to *Badiatnnessa Binte F America Chaman Ghosh* (1914) 18 C. W. N 1133

9. ——— Deed of trust executed by—Independent advice, absence of, if invalidates deed—Free agent intelligent apprehension, nature of transaction—Bengali deed containing English words not explained. The Courts should be careful to see that deeds taken from pardanashin women

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have been fairly taken that the party executing them has been a free agent and duly informed as to what she was about. It cannot be accepted as a formula conclusive of every case of a deed taken from a pardanashin woman that the absence of advice vitiates the transaction. Advice is not in itself essential. It is merely a means to secure that which is essential, an intelligent apprehension of the transaction. The first and practically perhaps the most important question is was the transaction a righteous transaction, i.e., was it a thing which a right minded person might be expected to do? *Mahomed Baksh Khan v. Hossains Bibi* I P 15 I A 31 92 followed. Where an illiterate pardanashin woman transferred her property to her brother and his family by a deed of trust and there was evidence that the idea had originated with her that the draft was prepared according to her instructions and that the deed which was in her vernacular was read over to her and she admitted execution before the Registrar, the fact that there was no evidence as to what advice she had had in the matter was not in itself sufficient to invalidate the deed. Where the said vernacular deed contained some English words such as "trust", "commitment", "revocable" and there was no evidence that these words were explained to her. *Hell*, that though it is an infirmity in the case of those claiming under the instrument it is not destructive of their claim under the instrument. *Krishna Lall Pyar v. Ranna Ramay Nundy* (1912) 17 C. W. N 991

10 ——— Document executed by—Suit for cancellation on the ground of fraud. The plaintiff a pardanashin lady executed a conveyance in favour of the defendant the consideration for which consisted of money due on a mortgage bond previously given by her to the purchaser and an additional sum paid at the time of sale. It appeared that on the mortgage bond she wrote with her own hand "this bond executed by me is correct" and then signed her name. Similarly on the conveyance she wrote "this deed of sale which I have executed is true and correct and is admitted and ratified by me," and then affixed her signature. She brought a suit for cancellation of the conveyance on the ground of fraud. In the plaint it was alleged that the defendants who were agents of the plaintiff got the mortgage bond and the deed of sale signed by her without the document being read out and explained to her that she did not get any independent legal advice in connection with the documents and did not get any consideration for them. In her deposition the plaintiff stated that she had put her signature on blank sheets which had subsequently been filled up without her knowledge or consent by the defendant and turned into the mortgage bond and the sale deed. *Hell* that as the documents undoubtedly bore the plaintiff's signature the burden was upon her to establish that the recitals contained therein were untrue. *Bansram v. Panchami Dast* (1914) 20 C. W. N 833

11 ——— Person trusted by as manager and managing her properties—but acting adversely to her interests acts of if find her fiduciary relationship—Deferral of trust—Fraud by fiduciary when may be condoned—Nullity—Sham arbitration proceedings and award—Limitation if applies to defence—Time for recovery to run from termination of relationship—Award if may be upheld

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as family arrangement II, a Hindu, who had separated from his brothers, acquired considerable property by money lending and died in 1892 leaving a widow A and several daughters and a daughter's son P by a predeceased wife K, who was not a woman of business came under the influence of F, a separated brother of II, and F managed her properties and K believed that he was acting as her manager until he died in 1903. Shortly after II's death, F in collusion with P got up a sham arbitration proceeding which resulted in an award by which the properties left by II were divided up amongst the various members of the family, K receiving only a share. The true nature and effect of the proceedings were concealed from her and she was misled and betrayed by F and P both of whom had interests adverse to her and were acting in their own interests. In a suit by another member of the family to enforce in his right under the award a mortgage effected by F from advances made out of properties left by II, K denied the plaintiff's title altogether and claimed the entire mortgage money in her right as the widow of II. The High Court held that the arbitration was a sham, that it had not been shown that A had any independent advice or understood the effect of the so-called award on her interests and believing that she never knowingly consented to the division of her husband's estate dismissed the suit. Held, by the Judicial Committee (without dissenting from the conclusions of the High Court) that from the death of K's husband F stood to her in a fiduciary relationship which continued till he died and she was entitled to receive from him a full disclosure of all the affairs which concerned her. That F having betrayed the confidence K reposed in him, the question in the case was not whether K knew what she was doing had done or proposed to do but how her intention to act was produced, whether all that care and providence was placed round her as against those who advised her, which from their situation and relation with respect to her they were bound to exert on her behalf. That fraud, such as there was in this case could not be condoned unless there was full knowledge of the facts and of the rights arising out of those facts and the parties were at arm's length. *Huguenin v Dastley* 14 Ves Jun 273, and *Moxon v Paime*, 8 Ch App 851 referred to. That the Indian Imitation Act was no bar to her defence and even if she were suing to recover property of which she was deprived by the award, time would not run under the circumstances of the case begin to run against her until F died. That the award regarded as an award or as a document embodying a family arrangement was a nullity. **SRI KRISHN LAL v KASHMIRI** (1916). 20 C W. N. 957

12. — Deed executed by—what is proper explanation. Where in the case of a pardanashin lady the draft of a deed of English mortgage was interpreted in Bengalee to her by her legal adviser by reading two to four lines at a time and it took about three hours to do so, and ten or twelve days afterwards it was executed by her when it was again explained to her by giving out the substance it was held that the deed was duly executed. **SHYAMPARK DASIA v THE EASTERN MORTGAGE AND AGENCY CO. LD** (1917). 22 C W. N. 226

13. — Execution of document by—Lack of independent advice, effect of—Where

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a deed executed by a pardanashin lady is challenged on the ground that she had no independent advice if it found that the obtaining of independent advice would not have made any difference to the result the deed ought to stand. **Kali Baksh Singh v Ram Gopal Singh**, 18 C W N 279, referred to. This is a question of fact and in deciding it the nature of the thing done and training and habits of mind of the executant and the proximate circumstances affecting the execution should be taken into consideration. **MRSAMMAT HIRA DEVI v RAMDHAN LAL**. 6 Pat L J 465

14. — Duty of disclosure of donee to donor of character of transaction—Failure operates to nullify transaction, apart from fraud—Indian Succession Act (2 of 1905) sec 2 331—Person dying a Christian, succession to, if governed by Hindu law when he lived like a Hindu. The parties to a contract may stand in such a relation as (apart from fraud or of conduct partaking of the quality of fraud) may give rise to an obligation on the part of one towards the other, failure to fulfil which will be a ground for rescission of the contract and for the consequent remedies. **Victor v Ashburton** 1911 A C 932, referred to. The donee from a pardanashin lady stands towards her in such a relation that it is his duty to see that she fully understands the transaction. The release in question in this case was set aside as the duty of disclosure resting upon the donee had not been discharged. Succession to the estate of a person who died a Christian is governed by the Indian Succession Act, and cases such as **Abraham v Abraham** (9 M L J 195) and **Radhika Patta Maha Devi Caru v Nilamani Patta Maha Devi Caru** (14 B P P C 33) which preceded the Act cannot be relied on to modify or interpret it. **MRSAMMAT RAMALWATI v Kunwar Dighaj Singh** (P C) 28 C W. N. 490

15. — Rules by which court should be guided to determine validity of document—Rule that case of fraud must depend strictly on proof of fraud alleged, how far applicable to action brought by pardanashin lady. The plaintiff, a pardanashin lady, sought to have a deed of partition executed by her in favour of her husband's brother immediately after her husband's death cancelled. Held that it is well settled that the Court when called upon to deal with a deed executed by a pardanashin lady must satisfy itself upon the evidence first that the deed was actually executed by her or by some person duly authorised by her with a full understanding of what she was about to do, secondly that she had full knowledge of the nature and effect of the transaction into which she is said to have entered and thirdly that she had independent and disinterested advice in the matter. In cases where the person who seeks to hold the lady to the terms of her deed is one who stood towards her in a fiduciary character or in some relation of personal confidence the Court will act with great caution and will presume confidence put and influence, exerted and in cases where the person who seeks to enforce the deed was an absolute stranger and dealt with her at arm's length, the Court will require the confidence and influence to be proved intrinsically. In the former class of cases, the principle formulated in sec 111 of the Indian Evidence Act applies. **SATISH CHANDRA GHOSH v KALIDASI DAS**. 26 C. W. N 177

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16 ———— Principles which should guide court—Independent and competent advice meaning of—Necessity of greater caution in cases where person described holds fiduciary position—Misrepresentation or fraud proofs, not essential—Joint family—Survivor, if effected by deed of settlement by widow entitling reservation with management for a term—Limitation Act (IX of 1908), Art 91, applicability of, when Hindu seek possession on declaration that defendant's document of title wholly void—Time from which limitation runs when deed voidable—Hindu joint Hindu family nature and extent of its co-ownership. On the death of a member of a Hindu joint family a deed of settlement was executed by the guardian of the widow who was at the time a minor, the effect of which was to place the properties of the minor estate in her from her husband in charge of her husband's brother who was the reversioner on certain terms. After the widow had attained majority a deed of settlement for the life of the widow was executed by her in favour of the sons of her husband's brother who was now dead. The widow brought a suit for partition of the joint family properties and for other incidental reliefs on a declaration that the last deed of settlement was void and inoperative. Held that it is well settled that the Court when called upon to deal with a deed executed by a pardanashin lady must act of itself upon the evidence, first, that the deed was actually executed by her or by some person duly authorised by her with a full understanding of what she was about to do secondly that she had full knowledge of the nature and effect of the transaction into which she is said to have entered and thirdly that she had independent and disinterested advice in the matter. *NEERAN CHANDRA MEHERJI v. NITU PAMA DEUL*. 28 C. W. N. 517

PARDON.

See CRIMINAL PROCEDURE CODE (ACT V of 1893) a 337 to 339

See KING'S PREROGATIVE OF PARDON

—By Crown—If a bar to appeal.

S. C. COURT MARTIAL.

23 C W N 701

—of appellant pending appeal—

See CRIMINAL LAW I. L. R. 2 Lah. 31

1. ———— Forfeiture of pardon—Proper Court to determine the question of forfeiture—If withdrawal of pardon by the Court granting it—Power of the Special Bench to re-open the question on a plea of pardon taken at the trial for the original offence in respect of which it was granted—Criminal Procedure Code (Act V of 1923) ss 337, 339. Where an approver, to whom a pardon was granted under s 337 of the Criminal Procedure Code by the committing Magistrate, resiles, at the hearing of the case before the Special Bench, from his deposition given before such Magistrate the Special Bench can only discharge him, but cannot take any action against him for the offence in respect of which he was accorded the pardon. If he proceeded against for the original offence, the committing Magistrate who granted the pardon must determine whether he has complied with its terms or not, and thereby forfeited the same, and the question cannot be re-opened at his trial before the Special Bench for

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such offence. *Queen Empress v. Manik Chandra Sarkar*, 1 L. P. 34 Case 492, approved of *Emperor v. Kothia*, 1 L. R. 30 Bom. 611, and *Kallan v. Emperor*, 1 L. J. 32 Mad 173, referred to. *Fing Emperor v. Lala*, 1 L. P. 251 Com. 675, distinguished. *Emperor v. Asani Bhatnagar Chatterbatty* (1910) 1 L. R. 27 Cal. 845

2. ———— Withdrawal by Magistrate not granting the pardon—Omission to state grounds of forfeiture—Necessity of formal withdrawal or declaration of forfeiture—Plea of pardon to be raised at the trial—Trial of accused of forfeiture of pardon and guilt of offence—Criminal Procedure Code (Act V of 1923) ss 337, 339. Under the present law no formal withdrawal of pardon nor formal declaration of its forfeiture are required. If the approver be subsequently proceeded against, it is open to him to plea at his trial that the pardon has not, in fact, been forfeited, that is, that he has not violated its conditions. The two questions of forfeiture of pardon and of his guilt of the offence in respect of which he received the same, may be heard and determined together, under the circumstances. *Emperor v. Kallan*, 1 L. R. 30 Bom. 611, *Kallan v. Emperor*, 1 L. J. 32 Mad 173, and *Emperor v. Asani Bhatnagar Chatterbatty*, 1 L. R. 27 Cal. 845, referred to. *Emperor v. Sarak Azeem* (1914) 1 L. R. 42 Cal. 768

3. ———— Failure of approver to comply with terms of the pardon on examination at the preliminary enquiry—Forfeiture of pardon—Commitment of approver along with other accused—Joint trial of approver and others—Plea of pardon taken in the Sessions Court—Proper procedure thereon—Trial of question of forfeiture as a preliminary issue—Power of Jury to determine the point—Criminal Procedure Code (Act V of 1923), ss 293 (1)(c), 337. Where an approver has forfeited his pardon, on his examination at the preliminary enquiry, the Magistrate may put him in the dock, recommence the enquiry and commit him for trial along with the other accused. *Queen Empress v. Nala* 1 L. P. 27 Cal. 137, disapproved. *Queen Empress v. Brij Saran Man*, 1 L. R. 20 All. 523, *Emperor v. Budhan*, 1 L. P. 29 All. 261, *Sultan Khan v. King Emperor*, 6 All. L. J. 961, and *King Emperor v. Lala*, 1 L. R. 25 Bom. 675, followed. When an approver has been committed to the Court of Sessions as an accused he may plead his pardon in bar at the trial and the Judge must first try the issue of forfeiture and take the verdict of the Jury thereon and then proceed with the trial of accused for the offences charged. *Emperor v. Asani Bhatnagar Chatterbatty*, 1 L. R. 27 Cal. 845, disapproved. *Kallan v. Emperor*, 1 L. J. 32 Mad 173, *Diagunam Sankar v. Emperor*, 1 L. P. 33 Mad 614, *King Emperor v. Lala*, 1 L. P. 25 Bom. 675, *Emperor v. Asani*, 1 L. R. 20 Bom. 611, and *Emperor v. Nala*, 31 Law. Rec. 1564, approved. *PER DRACHBERRY J.* Under the old law the pardon remained in force until its withdrawal by the authority granting it, in consequence of the approver failing to observe the conditions of the pardon, but under the present law the result of such failure is that the approver may be put on trial without any formal order of withdrawal or cancellation of the pardon. The plea should be taken at the commencement of the preliminary enquiry and considered by the Magistrate. If he decides against it or it is not taken before him, the approver

PARDON—*could*

er may raise the plea in the Sessions Court. The Judge ought to try the question of forfeiture as a preliminary issue, on evidence limited to the point and take the verdict of the Jury on it before proceeding to try the general issue of the guilt of the accused. The onus of proof of forfeiture is on the Crown. *Queen Empress v. Manik Chandra Sarkar*, 1 L. R. 21 Cal. 492, declared obsolete. Where, however, the Judge tried the question of forfeiture with the Jury after some evidence on the general issue had been recorded—*Held*, that the irregularity had not prejudiced the approver of the other accused. *Semble*. When the approver deviates from the conditions of his pardon in the Sessions Court, he cannot be removed from the witness box and placed in the dock as an accused. *SHASHI RAJBANSHI v. EMPEROR* (1914)

I. L. R. 42, Cal. 858

PARLIAMENT, MEMBER OF.

*Making contract with Secretary of State for India in Council, if forfeits seat—Public service, for or on account of which such contract made, if comprises public service of the Crown anywhere—Place where such contract made if material—22 Geo. III, c. 45 (1782), s. 1—41 Geo. III, c. 52 (1801), s. 4—Secretary of State for India, if a British Officer and if may discharge duties of His Majesty's other Secretaries of State—21 & 22 Vict., c. 106, Government of India Act, 1858, s. 65—Secretary of State in Council, if a corporation or a legal personality—3 & 4 Will. IV, c. 41 Judicial Committee Act, 1833, s. 4—Construction of Statute ejusdem generis, latter Act if a surplage or ex abundante cautela—Sir Stuart Samuel, being a member of the House of Commons, was partner of a firm which made contracts with the Secretary of State for India in Council for borrowing money on short loans, for purchasing India Council Bills and India Treasury Bills, for subscribing to India Government loans and for purchasing silver for the purposes of the Indian currency. *Held*, that Sir Stuart Samuel forfeited his seat in the House of Commons, the contract having been made for the public service of the Crown in India and with one of His Majesty's Secretaries of State. S. 1 of 22 Geo. III, c. 45, must be taken to extend to such service and to the Secretary of State for India. The public service required by the Statute need not be either executed or required within Great Britain or paid for out of any particular fund. The Secretary of State for India is in the fullest sense an officer of British Government. A contract is none the less made with the Secretary of State for India and he does to obtain the concurrence of his Council before making it and that he and his Council are designated by s. 65 of the Government of India Act of 1858 (21 & 22 Vict., c. 105) as liable to be sued or to sue on it as a corporate body. Neither the personality of the Secretary of State nor that of his Council is merged in any Corporation by the Statute. Their responsibilities and duties there under are separate and sometimes conflicting, and it is only for purposes of litigation that they can be treated as though they were but one legal personality. *In the matter of Sir Stuart Samuel* (1913) . . . 17 C. W. N. 735*

PARLIAMENT, PROCEEDINGS IN

See LABEL . . . I. L. R. 37 Cal. 760

PAROL ACCEPTANCE.

See STAMP ACT (II of 1850), s. 57

I. L. R. 38 Mad. 349

PARSI MARRIAGE AND DIVORCE ACT (XV OF 1865).

— ss. 3, 8, 9, 14—

See PARSIS . . . I. L. R. 45 Bom. 146

— s. 31—

See PARSIS . . . I. L. R. 38 Bom. 615

PARSIS.

*Maintenance—The Parsi Marriage and Divorce Act (X) of 1865, s. 31—Suit by a Parsi wife for permanent maintenance without claim for judicial separation—The High Court on its Original Side has no jurisdiction in such suit to pass an order for maintenance. The Bombay High Court on its Original Side has no jurisdiction in a suit between a Parsi husband and a Parsi wife to make an order for permanent alimony whether accompanied or not by any order for judicial separation. The only way in which a Parsi wife is entitled to get a decree for permanent alimony is to file a petition in the Parsi Matrimonial Court and there establish facts coming within s. 31 of the Parsi Marriage and Divorce Act. *GOOLBAI v. BEHRANSHA* (1914) . . . I. L. R. 38 Bom. 615*

*— Requires to validity of a Parsi marriage—Certificate not a requisite of the marriage—Entry of certificate in the marriage register is merely for securing record of marriages duly solemnized—Absence of entry in the register does not affect validity of marriage—Proof of factum of marriage by any relevant evidence in the absence of entry of certificate in the register—Admission of secondary evidence. S. 3 of the Parsi Marriage and Divorce Act exhausts all requisites to the validity of a Parsi marriage. The certificate which is to be given under s. 6 of the Act by the Officiating Priest after the marriage has been contracted and solemnized is not in itself one of the requisites for a valid marriage under the Act. The provisions about entering the certificate in the marriage register being merely intended to secure a proper record of marriages duly solemnized between the Parsees, the absence of any entry in register would not affect the validity of the marriage. Where there is no certificate and no entry in the register any other relevant evidence is admissible to prove the factum of marriage. *BAI AWARAI v. KESHPAD ARIKSHER* (1920) . . . I. L. R. 45 Bom. 146*

PART-HEARD SUIT.

See PART DEGREE.

I. L. R. 41 Cal. 656

See TRANSFER . . . I. L. R. 39 Cal. 146

PART-PAYMENT.

See CHEQUE, PAYMENT BY

I. L. R. 42 Cal. 1043

— In satisfaction of decree—

See LIMITATION . . . I. L. R. 46 Cal. 22

PARTIAL DECREE.

See REFUND OF COURT FEE

I. L. R. 40 Cal. 365

PARTIES—contd

order granting or refusing applications for adding parties. *Held*, that the High Court ought to set aside the order in the present case refusing the transferor's application to be made a party, as otherwise the result would be a needless multiplicity of suits and possible injustice to the petitioner. *Scope and operation of s. 115, Civil Procedure Code considered with reference to authorities.* **DWARAK NATH SINGH v KESORY LAL GOSWAMY (1910)** 14 C. W. N. 703

3 ————— **Civil Procedure Code (Act V of 1908) O XXIII r 1**—*Suit allowed to be withdrawn, with liberty to bring fresh suit on payment of defendant's costs added plaintiff's if found by order—Deposit of costs after institution but before trial of fresh suit if valid.* Where the Judge having held that the plaintiff who was a member of a joint Hindu family should have joined all the other members also as co plaintiffs the plaintiff asked for and was allowed leave to withdraw from the suit with liberty to bring a fresh suit subject to limitation and on condition that he must pay or deposit the defendant's costs before bringing a fresh suit or else the suit shall stand dismissed with costs* and the coparceners together instituted a fresh suit but did not deposit the defendant's costs till some time afterwards. *Held* that the suit was not liable to be dismissed so far as any rate as the added plaintiffs were concerned. That as regards the original plaintiff the suit should have been treated as instituted on the date on which the costs were deposited. That the deposit of the costs before the trial of the suit was sufficient compliance with the order in this case. *Add: AIR v Ebrahim I L R 31 Cal. 985 followed. Harekath v Syed Hossain I O C W N 8 distinguished. Gori Lal v Lala Nagov Lal (1911)* 15 C W N 993

4. ————— **Manager, Joint Hindu Family**
—*Managing members—Suit to recover debt due to members of family in family business—Power of managers to sue alone—Limitation Act (XV of 1877), s. 22—Part set added after expiry of period of limitation.* Where a joint family business has to be carried on in the interests of the joint family as a whole, the managing members may properly be entrusted with the power of making contracts, giving receipts, and compromising or discharging claims ordinarily incidental to the business, and where they are so entrusted and empowered they are entitled as the sole managers of the family business to make in their own names contracts in the course of that business, and to maintain suits brought to enforce those contracts without joining in the suit with them either as plaintiffs or defendants the other members of the family. *Arumachala Pillai v Vythialingam Mudaliar, I L R 6 Mad 27, approved. R P Kanna Piskorody v M Narayanan Samayyappad, I L R 3 Mad. 234, Pamechuk v Ramallu Nondan, I L R 6 Cal. 315, Imamuddin v Laladhar, I L R 14 All 524, and Alagappa Chetti v Velhan Chetti, I L R 13 Mad 33, distinguished.* In this case the original plaintiffs were the managing members of a joint family business of money lending, entrusted with the regular exercise of the power of doing everything necessary to carry on the business. In the course of such business they contracted in their own names with the defendants for a loan, and on the account a balance was struck between the parties on the 9th August 1901. In a suit brought by the managing members on the

PARTIES—contd

3rd June 1904 and therefore within the period of limitation, to recover the amount due, the other members of the family were, on an objection by the defendants that the suit was improperly constituted joined as plaintiffs on the 22nd August 1904 after the period of limitation for the suit had expired and the defence was set up that under s. 22 of the Limitation Act (XV of 1877) the whole suit was barred. *Held* (reversing the decision of the High Court), that the suit as originally brought was properly constituted that the members of the family subsequently added were unnecessary parties, and that the suit was consequently not barred. **KISHAN PRASAD v HAN NARAY SINGH (1911)** I L R. 23 All. 272

5 ————— **Execution sale—Reversal of sale—Execution purchaser—Transfers from the purchaser—Civil Procedure Code (Act XIV of 1882), s. 311** A transferee from the execution purchaser is a necessary party to a proceeding for reversal of the execution sale, when such proceeding is commenced after the transfer has been effected. *Bibi Sharfin v Mahomed Habibuddin I O L J 533 and In re Hausermanth Rent charge 4 Erch. 87, referred to. MEVAJUDDI BISWAS v TOAM MANDAL (1911)* I L R. 39 Cal. 831

6 ————— **Religious Endowment—Suit against the sole surviving member of the committee and the superintendent of a temple—Death of the sole surviving member—Substitution of the adopted son—New committee added as party—Cause of action, abatement of—Civil Procedure Code (Act V of 1908) O XLI r 20 O XVII, r 10, O I, r 10 Religious Endowments Act (XX of 1863), s. 14** A suit brought against the sole surviving members of a committee of management appointed under s. 3 of the Religious Endowments Act, 1863, and against the superintendent of a temple for their removal from the committee and from the office of superintendent respectively, was dismissed by the District Judge. Pending the appeal, the 1st defendant died, and his adopted son was brought on the record as a party by the plaintiffs. Subsequently, a new committee was appointed and added also as a party, and the appeal was proceeded with against the adopted son, the superintendent and the new committee. *Held*, that the relief against the 1st defendant was purely personal, and that the cause of action did not survive against his adopted son. *Held*, also, that the members of the new committee should not have been added as parties respondents. *Kashi v Sadash Sakharam Shet, I L R 21 Bom. 229, referred to. Held* further, that the suit could not be maintained as against the 2nd defendant alone, and that the appeal as now constituted, was incompetent. **DEENA ROU v DABARATY DASS (1912)** I L R. 40 Cal. 323

7. ————— **Suit to Recover Trust Property—Civil Procedure Code (Act V of 1908) s. 92 O I r 3—Public Religious Trust—Suit to remove a trustee and to recover possession of trust property in the hands of a third party—Joinder of parties—Alienation of trustee. Where in a suit under s. 92 of the Civil Procedure Code (Act V of 1908), the second defendant who was the alienee of the trust property, the subject of the suit, contended that the suit should be dismissed as against him on the ground that he was not a necessary party to it—*Held*, that there is no reason why having regard to the provisions of**

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O. I. r. 3 of the Civil Procedure Code, the second defendant should not be made a party to the suit nor why. If the decision of the Court is against him he should not be declared to be a trustee of the trust property and be directed to convey the property. *Bidh Singh Dhilloria v. Nandran Roy*, 2 C. L. J. 471, and *Bidra Das Mokim v. Channy Lal Joharry*, I L. R. 15 Cal. 739, distinguished—*Compania Sannassa de Cornes Congeladas v. Houlder Brothers* [1910] 2 R. B. 351, referred to. *ALI HAFIZ v. ABDUR RAHMAN* (1915) . . . I L. R. 42 Cal. 1135

8. — **Admission of one of the parties to a suit**—When such admission is receivable against other defendants—Identity—A document put so not inadmissible—Objection to its admission in appeal for the first time. When several persons are jointly interested in the subject matter of a suit, an admission of any one of these persons is receivable not only against himself but also against the other defendants, whether they be all jointly suing or sued, provided that the admission relates to the subject matter in dispute and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered. The requirement of the identity in the legal interest between the joint owners is of fundamental importance. *Kanakkiah Sundari v. Malia Sundari*, I L. R. 11 Cal. 558. *Chaita Singh v. Jhara Singh*, I L. R. 19 Cal. 995. *Meeyan Maiba v. Alimuddi*, I L. R. 44 Cal. 130, *Blenkinsopp v. Blenkinsopp*, 11 Nev. 151. 2 Phillip 607 referred to. The admission of one co-plaintiff or co-defendant is not receivable against another merely by virtue of his position as a co-party in the litigation. If the rule were otherwise it would in practice permit a litigant to discredit an opponent's claim merely, by joining any person as the opponent's co-party, and then employing that person's statements as admissions. Consequently, it is not by virtue of the person's relation to the litigation that the admission of one can be used against the other, it must be because of some priority of title or of obligation. *Morse v. Royal*, 12 Ves. 355. *King v. the Inhabitants of Hardwick*, 11 East. 578 referred to. The Court will not entertain for the first time, in appeal an objection that a document which per se is not inadmissible in evidence has been improperly admitted in evidence. *Girivada Chandra Ganguli v. Rajendra Nath Chatterjee*, 1 C. W. N. 530, *Preonath Macumdar v. Durga Tarini Bhoor*, 14 C. L. J. 578, referred to. *AMBAR ALI v. LUTFE ALI* (1917)

I L. R. 45 Cal. 159

B. — **Her or Residuary legatee**—Right to sue—Cause of action, survival of—Abatement of suit—Letters of Administration, application by residuary legatee, for grant of—Death of residuary legatee—Substitution of heir of residuary legatee—Contentious matter—Civil Procedure Code (Act V of 1908) O. XXI. The right to a grant of administration is a personal right derived from the Court. If on the death of the testatrix, the residuary legatee under her will had obtained a grant of administration to her estate with a copy of the will annexed, his title would have been derived from the Court and would not devolve on his heir. The heir of the residuary legatee may be the proper person to obtain a grant of administration with a copy of the will annexed but this is not by virtue of any right to administration which he inherited

PARTIES—contd

from the residuary legatee, but by virtue of the fact that as heir of the residuary legatee, he is the person most interested in the estate of the testatrix. *Sarat Chandra Banerjee v. Dasi Mohan Banerjee*, I L. R. 36 Cal. 799 referred to. *HANISHYAN DATTA v. MANMATHA NATH DATTA* (1918)

I L. R. 45 Cal. 862

10. — **Tenants-in-common—Lands in possession of 1 acres—Sue by a tenant in common to recover his share by partition from the lessees direct—Other tenants-in-common not necessary parties**. A piece of land was held in common by several persons, of whom those owning 11 12ths share leased out their share to defendants Nos. 1 and 2 on permanent tenure. The plaintiff and defendants Nos. 3 and 4 who owned the remaining 1 12th share leased their share to the same defendants on a yearly tenancy. The plaintiff sued defendants Nos. 1 and 2 to recover the 1 12th share by partition and also to recover its rent, without making the other tenants-in-common parties to the suit. *Held*, that the tenants in common were not necessary parties and that the plaintiff was entitled to recover by partition the 1 12th share and also the rent. *NARAYAN BALKRISHNA v. FAKRU MOU* (1917)

I L. R. 42 Bom. 87

11. — **Procedure and Practice—Civil Procedure Code (Act V of 1908) s. 128 (2) (c), O. I. r. 10 (2)**. The second defendant in a suit applied for leave to add a third party as defendant. The plaintiff objected—*Held*, that the power to add a third party is discretionary, but is widely exercised even though the addition may add new issues if however, serious embarrassment or inconvenience be caused to the plaintiff the addition is not effected. *Held*, also, that although in this case new issues arose between the added defendant and the original defendants, serious inconvenience would not be caused to the plaintiff if his position was safeguarded by the following provisions—(i) that the issues between the plaintiff and the original defendant should be tried first, (ii) that no delay should take place in the determination of those issues, (iii) that if the plaintiff succeeded in obtaining a decree against the original defendants such decree was not to be stayed pending the determination of the issues between the defendants. *BATMURUN ROJA v. BISSENDOLAL* (1918)

I L. R. 46 Cal. 48

12. — **Shibahi, suit against—Duty, if always a necessary party—co-shibahis, if and when all of them necessary parties in a suit under O. XXI, r. 65, Civil Procedure Code—Former addition of—Limitation—Civil Procedure Code (V of 1908), O. VII, r. 9, sub r. (2)**. A suit can be properly maintained in the name of the shibahi only, without making the duty a party thereto, where the right to sue is vested in the shibahi and it is clear on the plaint that the shibahi is sued in his representative capacity. *Jagadindra Nath Roy v. Hemanta Kumari Devi*, I L. R. 32 Cal. 129, I L. R. 31 I. A. 203, and *Aswamoni Singh Mandhata v. Wanji Ali Meera*, 19 C. W. N. 1193, referred to. In such a case, the failure to make a statement that the defendant was being sued as shibahi would not be a defect of party, but would merely be a matter which the Court might amend by adding a statement to the plaint that the defendant was being sued in that parti-

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ular capacity. It would not be adding a new party. It would be merely rectifying a simple omission to state the representative character of the defendant *Jodai Ba v. Bando Prasad* I L R 33 All 35 referred to. Where one of several *shetis* is preferred a claim and Order XXI r 58 of the Code without any mention of the other *co-shetis* is and succeeded in it, all the co-shetis are not necessary parties defendants in a suit under Order XXI r 53 to set aside the order in the claim case *Biddu Sekhar Baverjee v. Kuladhrasud Debnoria* (1919) I L R 46 Cal. 877

PARTITION

See ADMINISTRATION OF ESTATE—LIFE.
I L R 41 Cal. 771

See DARUANA UPATY.
I L R 42 Cal. 582

See CIVIL PROCEDURE CODE 1859 s 396.
I L R 30 All 370

See CIVIL PROCEDURE CODE, 1908

s 47 I L R 35 All 243

ss 96-97 I L R 39 All 532

s 141 I L R 42 All 568

O II s 2 I L R 38 All 217

O VII s 7 I L R 43 All 318

O XX s 18 I L R 35 All 159

I L R 38 All 481

O XLV s 13 I L R 42 All 170

See COMMISSIONER OF PARTITION
13 C W N 221

See COSTS I L R 42 Cal. 451

See DECREE I L R 40 Bom. 118

See ESTATES PARTITION ACT (BENGAL OF 1897) s 7 14 C W N 632

See EVIDENCE ACT (1 of 1872)—
s 44 I L R 33 All 143

s 91 I L P 41 Bom 466

See EXECUTION OF DECREE.
I L R 37 All 120

See HINDU LAW—ALLEGATION
I L R 40 Cal. 966

See HINDU LAW—JOINT FAMILY
14 C W N 221

I L R 35 All 543

I L R 43 Cal. 1021

I L R 39 Mad 169

I L R 45 Cal. 723

I L R 43 Bom 17

See HINDU LAW—PARTITION
I L R 32 All 305

See HINDU LAW—SELF ACQUISITION
I L R 33 All 443

See HINDU LAW—WIDOW
I L R 34 All 113

See LIMITATION
I L R 42 Cal. 776

See LIMITATION ACT (IX of 1908) Sch.,
I Arts 6^o 1^o
I L R 37 All 318

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See MAHOMEDAN LAW—GIFT
I L R 36 All 333

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I L R 42 Mad 232

See MORTGAGE I L R 35 Bom 371
I L R 42 All 596

See PARTITION BY COLLECTOR.
See PARTITION ACT (11 of 1893)

See PARTITION AND POSSESSION
See PRE-EMPTION I L R 32 All 567

I L R 33 All 23

I L R 37 All 123

I L R 41 All 426

See PERS JUDICATA
I L R 36 Bom 127

See STAMP ACT (11 of 1899), s 2(15)
Sch I Art 45 (c)
I L R 36 All 137

See TITLE SUIT FOR
I L R 37 Cal. 662

See TRANSFER OF PROPERTY ACT (11 of 1882), s 62 I L R 37 Bom. 427

See UNITED PROVINCES LAND REVENUE
ACT III of 1901—

s 4 I L R 43 All 45

ss 106 AND 233 I L R 43 All 454

ss 107 111 I L R 35 All 527

ss 107 111 112 I L R 35 All 548

ss 110 111 112 I L R 38 All 115

ss 111 112 I L R 32 All 523

ss 111 (1) (b) I L R 38 All 70

I L R 41 All 211

ss 111 112 113 (1) I L R 35 All 126

I L R 38 All 302

s 118 I L R 39 All 707

s 233 I L R 42 All 309

I L R 43 All 88

s 113 (1) I L R 33 All 169 440

I L R 39 All 243

I L R 39 All 469

I L R 41 All 626

See VENDOR AND PURCHASER
I L R 42 Cal. 56

— between an adopted son and an
aurasa son of a Sudra—
See HINDU LAW—PARTITION
I L R 40 Mad. 632

— by Collector—
See CIVIL PROCEDURE CODE (ACT 1 of
1908) s 54 I L R 42 Bom. 689

See PARTITION BY COLLECTOR.
— by grandsons—
See HINDU LAW—PARTITION
I L R 39 Bom 373

— Conversion of suit for ejectment
into one for Partition—
See HINDU LAW—ADOPTION
I L R 33 Mad 52

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not in accordance with decree—
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See DECREE

I. L. R. 40 Bom. 118

mother's share on partition after
father's death—

See HINDU LAW—INHERITANCE

I. L. R. 34 All. 234

of Mines and Minerals—Lease

See LEASE . . . 1 Pat. L. J. 441

of Tenancy—

See ESTATES PARTITION ACT, 1870.

1 Pat. L. J. 270

of Joint Family Property—Manager's
liability to account for mesne profits—

See HINDU LAW—JOINT FAMILY

I. L. R. 44 Bom. 179

of Joint Family Property purchased
from a co-partner—Part profits not allow-
able—

See HINDU LAW—JOINT FAMILY.

I. L. R. 44 Bom. 621

of Joint Family Property of Sudras—

See HINDU LAW—JOINT FAMILY

I. L. R. 44 Bom. 166

Oral Evidence—when admissible
to prove—

See EVIDENCE ACT, 1872, s 91

I. L. R. 41 Bom. 488

subsequent suit for entire estate—
whether barred—

See SANTAL PARAGANAS SETTLEMENT

REGULATION, 1872

6 Pat. L. J. 373

unregistered receipts acknowledging
acceptance of shares—admissibility of, to prove
partition—

See REGISTRATION ACT, 1908 ss 17 AND
49 . . . I. L. R. 44 Bom. 881

right to—

See HINDU LAW—PARTITION.

I. L. R. 43 Calc. 1118

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I. L. R. 39 Mad. 317

Right to water and wells—

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I. L. R. 36 Bom. 275

subsequent suit for entire estate—

See SANTAL PARAGANAS SETTLEMENT REGU-
LATION, 1872 . . . 6 Pat. L. J. 373

Property left undivided at the time of
partition—Presumption that there has been
a complete partition—

See HINDU LAW . . . I. L. R. 45 Bom. 614

suit for—

See REVAMANDAR I. L. R. 43 Calc. 504

See CIVIL PROCEDURE CODE, ACT V OF
1908, s 11 . . . I. L. R. 37 Bom. 307

See COURT FEES ACT (VII OF 1870),
SCH. II, ART 17 (iv)

I. L. R. 34 All. 182

PARTITION—contd

suit for—contd

See HUSBAND AND WIFE

I. L. R. 38 Calc. 629

See PARTITION SUIT

See U. P. LAND REVENUE ACT, s 273 (1)

I. L. R. 41 All. 182

suit for, on behalf of a minor—

See HINDU LAW—PARTITION

I. L. R. 41 Mad. 442

Whether widow of a Joint Owner
can claim—

See SECOND APPEAL

I. L. R. 2 Lah. 348

Appeal—Appeal against prelimi-
nary decree after passing of the final decree. After
the passing of the final decree in a suit for partition,
no appeal will lie which does not challenge the final
as well as the preliminary decree. *MacKenzie v*
Nar Singh Sahai, I. L. R. 36 Calc. 762, followed.
Uman Kuntari v Jarandhan, I. L. R. 30 All.
479, distinguished. *KCHIA MAL v BISHAMBHAR*
Das (1910) . . . I. L. R. 32 All. 225

BUT SEE CIVIL PROCEDURE CODE, 1908 ss 96
AND 97 . . . I. L. R. 38 All. 532

Right to—Partition
between owner of fractional share in zemindari
interest, and mokararidars in joint possession—
Interest not less permanent because the mokarars
lease was liable, in certain events, to forfeiture. The
right of partition exists when two parties are in
joint possession of land under permanent titles,
although their titles may not be identical. *Hemadri*
Nath Khan v Ramans Kanta Roy, I. L. R. 24 Calc.
575, cited with approval. The appellants, plain-
tiffs in a suit for partition, were proprietors of a
mokarars interest in the property, partition of which
was sought, and the respondents, defendants in the
suit, were owners of a fractional share in the
zemindari interest in the same property. The
mokarars lease was, in certain contingencies, liable
to forfeiture, and the High Court held that the
appellants' tenure was on that account not suffi-
ciently permanent to support their claim to parti-
tion to which they would otherwise have been
entitled. —Held, by the Judicial Committee (re-
versing that decision), that the distinction drawn
by the High Court could not be supported. The
appellants' title was a permanent one though
liable to forfeiture in events which had not occurred
and the rights incidental to that title must be
those that attached to it as it existed, without
reference to what might be lost in the future under
changed circumstances. *BHAGWAT SAHAJ v BIPIN*
BEHARI MITTAR (1910) . . . I. L. R. 37 Calc. 918

Res Judicata. Where
a suit for partition, to which all the members of the
family are parties, has once been finally decided,
it is not competent to a party defendant to such
suit to re-open the questions thereby determined
in a fresh suit for a declaration of right as against a
co-defendant. *Sheikh Khoorshed Hossein v Nab-*
bee Fatima, I. L. R. 3 Calc. 651, *Dost Muhammad*
Khan v Sant Begum, I. L. R. 20 All. 31, *Assan*
v Pathumma, I. L. R. 22 Mad. 491, and *Ashidha*
v Abdulla Haj, *Mahomed* I. L. R. 31 Bom. 271,
referred to. *PARSOTAM RAO TANTIA v RADHA*
BAI (1910) . . . I. L. R. 32 All. 469

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a stranger and owned only a $\frac{1}{4}$ th share in it and in an adjoining plot of 1 bigha 8 cottahs. The lower Appellate Court finding that it would be very inconvenient for all parties concerned if these plots were divided by metes and bounds allowed the defendants to buy up the plaintiff's shares at a proper valuation. *Held*, that whether s. 4 of Act IV of 1893 applied to the case or not it is a well known principle of equity which must be adopted in all partition cases that when it is inconvenient to divide a property that property must be left in the possession of the person in occupation and the other person who cannot conveniently get actual possession, compensated. A tank covering one bigha in which plaintiff owned a $\frac{1}{4}$ th share was left joint the lower Appellate Court holding that it was not convenient to divide it. The High Court affirmed that decision. *BASUNTA KUMAR GHOSH v MOTI LAL GHOSH* (1907)

15 C. W. N. 555

Private partition—Estate
Partition Act (Beng V of 1897), s. 99—Private partition amongst proprietors—Tenancy in common—Cessation of—Putnadar of separated share, if bound by subsequent butwara by Collector S. 99 of the Estates Partition Act (Beng V of 1897) does not apply when the estate partitioned by the Collector had already been privately partitioned amongst the proprietors and the proprietors were holding their shares of the lands in severalty and not in common tenancy as contemplated in that section. A putnadar in possession of a separately allotted portion of such estate is not therefore affected by the subsequent partition by the Collector. *Hriday Nath Saha v Mohabattannessa Bibee*, 1 L R 20 Cal 235, applied. The fact that the Government was not bound to recognise the private partition for purposes of revenue does not affect the question. *ABDUL LATIF MIAN v AMANUDDIN PATWARI* (1911) 15 C. W. N. 428

Appeal—Appeal against preliminary decree—Final decree passed since the appeal—No appeal against final decree *Held*, that an appeal against the preliminary decree in a suit for partition cannot be heard if after the filing of such appeal the final decree has been passed and no appeal is preferred against that decree. *Kuriya Mal v Bishambar Das*, 1 L R 33 All 225, referred to. *NARAIN DAS v. BALGOOND* (1911)

I. L. R. 33 All. 528

See ALSO DECREE I. L. R. 37 All. 29

Partition suit, abatement of
Civil Procedure Code (Act V of 1908), O. 1, r. 10—Limitation (Act IX of 1908), Art. 112—Death of a party—Abatement—Application to set aside the abatement—Limitation of sixty days—In a partition suit all parties should be before the Court—Inherent power of the Court to add a party at any stage of the suit for the ends of justice On the 6th April 1892 the plaintiff obtained a decree for partition and died in October 1893, leaving him surviving a minor son, who attained majority in February 1907. At a very late stage of the execution proceedings, the son made an application on the 16th April 1910 for the issue of a commission to effect partition according to the rights declared in the partition decree. *Held* that as soon as the Civil Procedure Code (Act V of 1908) came into force the suit abated so far as regarded the applicant's father who was a party,

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and the application to set aside the abatement by adding the applicant as the legal representative of the deceased not having been made within sixty days under Art. 171 of the Limitation Act (IX of 1908), the application was time barred. *Held*, further, that in a partition suit all the parties should be before the Court, and that there was nothing in the Civil Procedure Code (Act V of 1908) limiting or affecting the inherent power of the Court to make such orders as might be necessary for the ends of justice. *LAHMICHAND REXA-CHAND v. KACHUBHAI GYADCHAND* (1911)

I. L. R. 35 Bom. 393

"Instruments of partition," meaning of—Undivided brothers—Instruments whereby co-owners divide property in severalty—Release—Partition—Stamp Instruments whereby co-owners of any property divide or agree to divide it in severalty are instruments of partition. One of three undivided brothers agreed to take from the eldest brother, the manager of the family, as his share in the family property, moveable and immovable, a certain cash and bonds for debts due to the family and passed to the eldest brother a document in the form of a release. Subsequently one of the two brothers passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining family property by the latter handing over to the former securities for money. A question having arisen as to whether for the purpose of stamp duty, the said two documents were to be treated as releases or instruments of partition. *Held*, that the documents were instruments of partition. *In re GOVIND PANDURANG KAMAT* (1910)

I. L. R. 35 Bom. 75

Final decree passed during pendency of appeal—Cross object ons filed against final decree—Appeal against preliminary decree maintainable Where the plaintiffs in a suit for partition had preferred an appeal from the preliminary decree, and had also, in the defendant's appeal from the final decree, filed cross objections, it was held that there was no bar to the hearing of the plaintiffs' appeal against the preliminary decree. *Kuriya Mal v Bishambar Das*, 1 L R 33 All 225, and *Narain Das v Balgoond*, 8 All L J 604, distinguished. *MURAHMAD AHMED v HUSAIN KHAN v TASHADDUQ HUSAIN* (1912)

I. L. R. 34 All. 493

Decree awarding shares, effect of Appeal—Death of a sharer leaving daughters—Decree for partition final—Severance effected by the decree can be displaced only by a legal decree in appeal. In a suit for partition the first Court passed a decree awarding to the sharers their respective shares. While an appeal against the decree was pending, one of the sharers died leaving two daughters. Thereupon a question having arisen as to whether the shares of the surviving sharers were liable to be increased owing to the death of the sharer pending the appeal. *Held*, that the pendency of the undecided appeal did not detract anything from the vitality or the force of the existing decree. Although the decree was under appeal, it was not the less a final decree of a competent Court. The decree, once made, there and then determined the legal status or relation of the parties and the severance of interest so effected by the decree at the moment it was

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pronounced could be displaced only by a legal decision in appeal. *Salkaram Mahadev Dange v Hari Krishna Dange*, 1 L R 6 Bom 113, explained. *MAHADEV LAXMAN v GOVIND PARASH RAM* (1912) 1 L R. 36 Bom. 550

Agreement for — Consideration—
Dand fide claim for separate allotment for marriages of one brother's daughters—Agreement at or before partition to allot—Execution of promissory notes by each brother for his share of the amount—Previous suit for partition—Subsequent suit on promissory notes—S 43 Civil Procedure Code (Act VII of 1852), no bar—Cause of action distinct An agreement made between parties to a partition by which one brother was to pay money for the marriages of his brothers' daughters: whether it is made before the partition and subsequently embodied in the deed of partition or made at the time of partition is an enforceable contract as the agreement by the father of the daughters to other terms of the partition is sufficient consideration. A claim at the time of partition for the allotment of a separate sum of money out of the general funds for the performance of marriages of the daughters of one of the brothers to a partition is not altogether unfounded according to Hindu law. Even otherwise an agreement so to allot would be binding on the persons agreeing as one of the terms of a *bond fide* compromise constituting a settlement between the members of a family if there was a *bond fide* claim for the same at the time of partition. If an agreement so to pay a certain sum made by the other brothers at the time of partition becomes split up into various agreements by the execution of separate promissory notes by the other brothers, each for his share the obligation to pay the amounts of the promissory notes is distinct from the obligation to observe the other terms of the partition, so that a suit first brought for partition against all the brothers (s. 43, Civil Procedure Code Act XIV of 1852), does not bar the institution of a subsequent suit for the sum due from one of the brothers under the promissory note. "Cause of action," meaning of, explained. *Venu v Raman*, 1 L R 16 Mad 335, *Seetha Ayyar v Krishna Ayyangar*, 1 L R 24 Mad 96, *Unad Dholechind v Pir Sahib Jinn Mijra* 1 L R 7 Bom 131, *Sunder Singh v. Bhola*, 1 L R 29 All 323 and *Moro Raghunath v Balaji Trimbal*, 1 L R 17 Pom. 45, followed. *Apparant v Ramasami*, 1 L R 9 Mad 279, and *Sakrangan Pillai v Syed Gulam Ghos*, 1 L R 27 Mad 118, distinguished. *Pranath Haskery v Bhadrath Prasad* 1 L R 27 All 255 distinguished from. *Per Curiam*: If several promissory notes are executed for portions of the same debt, each promissory note creates a cause of action, and this would be as even if it be assumed that a suit might be instituted for the whole debt on the original cause of action. *ANANTASARATHA IYER v SAVITHRI AMMAL* (1913) 1 L R. 36 Mad. 151

Partition suit—Misjoinder of causes of action and parties—Prejudice—Res judicata amongst co-defendants—Civil Procedure Code (Act V of 1908) s. 11 A suit for partition determines the shares of the co-sharers amongst themselves, and each co-sharer whether plaintiff or defendant, demanding a separate block for himself may prove his share and get a block for himself. Where the causes of action in respect of different items of property, the subject-

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matter of a suit for partition, appeared to be different, and the parties concerned in the claim to one such item appeared to be less numerous than those concerned in the claim for the other item the joining of them in one suit caused misjoinder of parties and causes of action. But such misjoinder of causes of action and parties did not entitle the appellant (who raised this point in his written statement) to have the decree set aside, particularly as the misjoinder had not prejudiced him and as, if the two separate suits had been brought on the separate causes of action, they would probably have had to be tried together. Where a co-sharer of the present plaintiff had sued to have his title declared to a taluk and the plaintiff and the defendant appellants had been made co-defendants, and the decision was that there had been a binding private partition confining the interests of each co-sharer to the allotment received by his or her predecessor and that that was not merely an informal division for convenience of possession. *Held* that, though the question of a previous partition was one which not only might and ought to have been, but actually was made the ground of defence in the former suit within the meaning of s. 11, Explan. IV, Civil Procedure Code, and though the present plaintiff was acting in that suit in the same interest as her cousin, it was impossible to hold that in the suit in which she and the appellants were co-defendants there was a conflict of interest between them, and that the judgment defined their rights and obligation *inter se*. The case accordingly did not come under the rule relating to *res judicata* among the defendants as laid down in *Gurdeo Singh v Chandrika Singh*, 1 L R 38 Calc. 193. *SARODA PRASAD ROY CHAUDHURY v KAILASH BASHINI GUHA* (1912)

17 C. W. K. 123

Leasehold interest purchased in execution, allotted to one co-owner—Tenancy of the others, if subtenants—Bengal Tenancy Act (VIII of 1885), s. 12—Registration and notice if necessary Where, upon partition amongst co-owners, a share of a taluk purchased in execution on behalf of all the co-owners fell into the share of one of them. *Held*, that the liability of the other co-owners to pay rent to the landlord of the taluk ceased. *Prasanna Coomra Sinka v Ram Coomra Ghose*, 1 L R 16 Calc. 610, *R D Mehla v Godadkar Rai*, 1 L R 37 Calc. 633; 14 C W N 83, *Pranatha Nath v Kall Prasnana*, 1 L R 25 Calc. 711, referred to. S. 12 of the Bengal Tenancy Act, the operation of which is confined to transfers by sale, gift, or mortgage, does not apply to a case of transfer by partition which does not therefore require to be registered and notified as contemplated by s. 12. *RAM DROVE DHUK v SARDI CHANDRA SET* (1912)

17 C. W. N. 313

Intrusion with for partition no bar to a second suit for the same purpose—In the year 1903 the plaintiff brought a suit for partition of a house held in joint tenancy. The suit was compromised, the defendant agreeing to transfer his rights to the plaintiff for a consideration, and was accordingly dismissed. The compromise, however, was not given effect to, and thereafter the plaintiff brought a second suit for partition. *Held*, that as soon as the defendant failed to carry out the compromise, the parties were relegated to their rights as they

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existed prior to the compromise. The right to bring a suit for partition, unlike other suits, is a continuing right incidental to the ownership of joint property and the second suit was, therefore, not barred. *Nasratullah v Mujib-ullah*, 1 L. R. 13 All 369, *Bahadur Das v Lam Prasad* 1 L. R. 28 All 627, and *Mada v Mohan Mondul v Baidania Nath Mondul*, 19 C. W. N. 539 followed. *Gullandi Lal v Manna Lal*, 1 L. R. 23 All 219 not followed. **MURKHI v ARZAL Beg** (1914). I. L. R. 37 All 155

Suit for, if lies without including the whole of the joint properties in the suit—Principle for Courts to follow in such cases—Bengal, Agra and Assam Civil Courts Act (VII of 1887), s. 37 The plaintiffs and the defendants were the joint proprietors of a certain pargana which was partitioned by the Collector. At the time of the partition certain lands which were jungle or submerged were excluded from the partition, and kept joint. The plaintiff brought three suits to have the joint lands partitioned. *Held*, that it cannot be said that the general rule is that a joint owner cannot claim a partition of the joint property without bringing the whole of it under partition. The rule to be applied is much more elastic and what the Court has to consider in cases of this kind under s. 37 of the Bengal, Agra and Assam Civil Courts Act, 1887, is justice, equity and good conscience. **HEM CHANDRA CHOWDHURY v HEMANTA KUMARI DEBI** (1914)

19 C. W. N. 356

Suit for—If maintainable, without proof of actual or constructive possession—Possession by co-sharer when may be adverse—

Evidence necessary to establish adverse possession by co-tenant—Ouster of co-tenant how may be effected to create adverse possession—Land Registration Act, registration of name under effect of, if necessarily implies possession—Partition as distinguished from ejectment—Costs in partition suit before preliminary decree when defendant successfully contends plaintiff's claim for partition The plaintiff sought partition of an estate of which he claimed to own one anna share by purchase. He alleged that after his purchase he had his name registered under the Land Acquisition Act in place of his vendor and was in possession since the date of his purchase. The lower Court found that the plaintiff was in possession of his share and made a preliminary decree for partition. The defendants appealed. *Held* that although as a general rule the possession of one co-tenant is not deemed adverse to the other co-tenants the existence of the relation of co-tenancy does not preclude one co-tenant from establishing an adverse possession in fact as against the other co-tenants and though the co-tenant enters in the first instance without claiming adversely his possession afterwards may become adverse. In order to render the possession of one co-tenant adverse to the others not only must the occupancy be under an exclusive claim of ownership in denial of the rights of the other co-tenants but such occupancy must have been made known to the other co-tenants either by express notice or by such open and notorious acts as must have brought home to the other co-tenants knowledge of the denial of their rights. The evidence to show adverse possession by one co-tenant must be much clearer than between

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strangers to the title and the hostile intent of the co-tenant in possession must be shown by unequivocal conduct. The ouster of the other co-tenants in order to render the possession adverse need not be by violent or intimidating expulsion or repulsion, nor need notice of the adverse holding be actually brought home to the other co-tenant by personal or formal communication, but it is sufficient, if the contrary is not proved, that the circumstances show that such knowledge may reasonably be presumed. *Held*, that the registration of the name of a person under the Land Registration Act is some evidence of possession but the weight to be attached to this fact must depend upon the circumstances of each case. The fact that the plaintiff was able to get his name substituted in the place of his vendor does not necessarily show that he is in possession of any share of the estate. That the plaintiff having failed to prove that he had possession actual or constructive of any share of the disputed property was not entitled to maintain a suit for partition. That the remedy of the plaintiff was by a suit for joint possession and partition and on the plaintiff in a suit so framed court fees must be paid *ad valorem*. That partition is not a substitute for ejectment because partition implies an existing joint possession and enjoyment to be converted into possession in severalty. That although ordinarily in a suit for partition pure and simple the parties have to bear their own costs of the suit up to the stage of the preliminary decree, the plaintiff must in this case pay the costs of the defendants who have successfully contested his claim for partition. **LOKE NATH SINGH v DHAKESWAR PRASAD NARAIN SINGH** (1914)

20 C. W. N. 51

Suit for, if maintainable by a lessee of mining rights against lessor's co-owners—Partition of underground Mines and minerals if possible—Partition (Act IV of 1893), s. 2 According to the English authorities, it is clear that a lessee for a term of years must maintain a claim for partition. There is no reason for holding that a different rule prevails in India. The authority of *Mulunda Lal Pal Chaudhary v Lekhwaraz*, 1 L. R. 20 Cal 379, has been much shaken by the decision of the Full Bench in *Hemadri Nath Thakur v Ramana Kanta Roy*, 1 L. R. 24 Cal 575, s. c. 1 C. W. N. 406, *Heaton v Dearden*, 21 Bea 147 *Bhagwat Sahai v Bepin Behari Mitter*, 1 L. R. 37 Cal 318, s. c. 14 C. W. N. 962, and *Baring v Vash* 1 V & B 551 referred to. There may be no special difficulty in effecting a partition of the underground mines and minerals but in case any such difficulty arises the power to order a sale of under s. 2 of the Partition Act of 1893 may be exercised. **LALIT KISHORE MITRA v THAKUR GIRDHARI SINGH** (1916)

20 C. W. N. 1308

Previous partition suit instituted by third parties against present defendants and the vendor of the plaintiff—Issue regarding the share of the plaintiff's vendor being subject to other defendants' mokurari raised but expunged—Final decree in the previous partition suit passed on the basis of the mokurari interest and allocation made thereunder—Bar of res judicata to present suit—Explanation IV of s. 11, Civil Procedure Code (Act V of 1908) In a previous partition suit instituted by Y against the present plaintiff's vendor T and the present defendants, an issue

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was raised as to the share of T being subject to the mokurars' interest of the other defendants but was expunged by the order of the Court. But when the partition was actually carried into effect the present defendants were allotted possession not only of their proprietary share but also the mokurars of the share which they claimed to hold under the daughter of T. In a subsequent partition suit instituted by the vendees of T against the defendants for a declaration that T's share was not subject to any mokurars and for allotting to the plaintiffs a separate *takha* out of the *takha* which was allotted to the defendants in the previous suit, *Held* that the question was not expressly decided in the previous suit and it was impossible to hold that a decision might and ought to have been obtained in the previous partition suit by T or the present plaintiffs, and that the defendants failed to make out that the plaintiffs were barred by the rule of *res judicata*. LATIF MUHAMMAD & BASDOK SINGH (1916).

20 C W N 1177

Partition suit—Preliminary decree appeal preferred against, after final decree passed if lies. Where a preliminary decree for partition passed by a Munsif who affirmed by the Subordinate Judge and a second appeal therefrom was not filed until after the first Court had passed the final decree for partition and no appeal was preferred against this latter decree *Held* that the preliminary decree having been affirmed by the final decree and the final decree itself not being the subject of any appeal, no second appeal lay against the preliminary decree. *Khirodamoyi Das v Adhar Chandra Ghose, 18 C L J 321, followed. Pam Nath Singh v Basanta Narain Singh, 17 C W N 858, distinguished. SADHU CHARAN DUTTA v HARANATH DUTTA (1914).*

20 C W N 281

Partition suit—Preliminary decree, appeal against—Final decree passed pending the appeal against preliminary decree—No appeal filed against final decree—Whether appeal against preliminary decree can proceed. Where in a partition suit a preliminary decree was passed on 29th May 1913 and an appeal was filed against it on 3rd July 1913, but a final decree was passed on 27th September 1913 despite the objection of the appellant that the final decree should not be passed until the appeal has been disposed of, and no appeal was filed against the final decree and the hearing of the appeal against the preliminary decree was objected to on the ground that the appeal could not proceed inasmuch as a final decree had been passed in the case and no appeal had been preferred against that decree *Held* on a review authority, that the preliminary objection should be overruled. The appeal could be heard although a final decree had been passed in the case and no appeal had been filed against that decree. *Kanahya Lal v Turben Sahai, 1 L P 36 All 639, Pam Nath Singh v Basanta Narain Singh, 17 C W N 858 n. c 13 C L J 209, Anisatini Deb v Rai Mohun Bhowas 18 C L J 214, Abdul Jalil v Amar Chand Paul, 13 C L J 223, Atul Chandra Singh v Kunja Behari Singh, 22 C L J 98, and Lakshmi v Marna Devi, 1 L B 27, Mad. 29 followed. Khirodamoyi Das v Adhar Chandra Ghose 18 C L J 321, Sadhu Charan Dutta v Hara Nath Dutta, 27 I. C 135,*

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distinguished. WANDUCKINA v DEEP NARAIN PRASAD (1916)

20 C W N 1174

1 Pat. L. J. 405

Temple—Rights of management of—Joint Hindu family Held, that no suit will lie by a member of a joint Hindu family for partition of the right of management and superintendence of worship in a temple, such right, being in respect of property with regard to which none of the parties claim to have any personal pecuniary interest. *Sri Ram Lalji Maharaj v Sri Gopal Lalji Maharaj, 1 L. R. 19 All 428, and Ramasathan Chetty v Marugappa Chetty 1 I R 27 Mad 192, and, in appeal, 1 L R 29 Mad 253, referred to. PURAN MAL v BIRJ LAL (1917).*

1 L. R. 39 All 651

Jurisdiction—Partition Act (IV of 1893), s. 4—"Court"—"dwelling-house." A, B and C were the joint owners of a property. A sold his share to Z, Z instituted a suit for partition. B and C claimed to purchase Z's share under s. 4 of the Partition Act. The Court of first instance made a preliminary decree and appointed a Commissioner and subsequently made a final decree. B and C appealed. The Lower Appellate Court remanded the case for the determination of the suit under s. 4 of the said Act. *Held*, that the word 'Court' in s. 4 of the Partition Act included the Appellate Court. The latter like the trial Court was bound upon any member of the family who was a shareholder undertaking to buy the share of the transferee to make an appropriate order in pursuance of which the steps necessary to carry out the provisions of the section would be taken either in the one Court or in the other. *Held*, also, that in connection with a conveyance or a partition of a "dwelling house" the word would generally mean not only the house itself but also the land and appurtenances which were ordinarily and reasonably necessary for its enjoyment. *Kehrodar Chander Ghosal v Sarada Prasad Mitra, 12 C L J 525, referred to. PRAN KRISHNA BHASDARI v SURATH CHANDRA ROY (1918).*

1 L. R. 45 Cal. 873

Talukhs situate in different mousahs—Separation of interest in lands of a taluk appertaining to one mousah—"Imperfect" partition—Proceedings in Revenue Court—Jurisdiction of Civil Court—Assam Land and Revenue Regulation (I of 1886), ss. 96, 97, 154 (c). The plaintiffs brought a suit for declaration that certain partition proceedings instituted in the Revenue Court were *ultra vires* and contrary to the provisions of the Assam Land and Revenue Regulation. The defendant, who was the applicant in those proceedings had applied for partition of his 5 annas 15 gandas share in the lands of a certain taluk named Alam Raja, to which a 6 annas 15 gandas share was specifically allotted, as appertaining to mousah Dhal. This mousah also comprised 5 other talukhs. Besides the lands contained in mousah Dhal, these 5 talukhs had also lands situate in various other mousahs. Plaintiff No. 1 was the owner of 1 anna share in the said taluk Alam Raja in respect of the abovementioned specifically allotted share and he, together with plaintiffs Nos. 2, 3 and 4, was co-sharer in the other 5 talukhs in mousah Dhal. *Held* that the defendant was entitled to obtain from the Revenue Authorities the separation and allotment to his estate of its proportionate share in lands common

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to that estate and the 5 other estates *Abdul Khaliq Ahmed v Abdul Khaliq Chowdhury*, 1 L. R. 23 Calc 514, and *Sarat Chandra Purkayastha v. Prokash Chandra Das*, 1 L. J. 24 Calc 751, referred to *Held*, also, that s 97 (1) (b) of the Assam Land and Revenue Regulation did not appear to require that the applicant and those consenting to his application should have a preponderating interest in each parcel of land sought to be divided, and it seemed sufficient that the applicant should hold, as he did, a share which was more than half of the estate Alam Raja, whose proportionate share in the common lands was to be carved out *Per TRIVON J* The special objection taken here by the plaintiff No 1 (that the defendant could not obtain a partition of the lands appertaining to *taluk* Alam Raja in *mouza* Dhal, without partitioning the lands of that estate in other *mouzas*) may be taken before them (the Revenue Authorities) and will doubtless be decided with due regard to the provisions contained, for instance, in ss 100 and ss 105 to 109 *BRJENDRA KISHORE ROY CHOWDHURY v HARI KUMAR CHOWDHURY* (1915)

L. L. R. 46 Calc 236

Property assessed for Revenue—Civil Procedure Code (1908), O XX, r 18 (1), s 54—Suit for declaration of share in family property, being immoveable property assessed to land revenue—Specific Relief Act (1 of 1877), s 42—Consequential relief Where the whole of the property which is the subject matter of a suit for partition consists of landed property assessed to revenue, the suit would be governed by the provisions of O XX, r 18, cl (1) and s 54 of the Code of Civil Procedure, and all that a Civil Court can do is to give a decree declaring the amount of the plaintiff's share as against the defendant and leaving the plaintiff to take any steps he may think proper for the actual partition of his share in the Revenue Court *RUFAN RAI v SUBH KARAN RAI* (1918)

L. L. R. 41 All. 207

Mesne Profits—Suit for partition—Preliminary decree—Omission to direct an inquiry as to—Final decree, whether can award or direct inquiry—Civil Procedure Code (Act 1 of 1908), O XX, rr 12 and 20 Where a preliminary decree in a partition suit has either intentionally or inadvertently omitted to direct an inquiry into mesne profits the final decree cannot award mesne profits or direct an inquiry regarding the same *Rules 12 and 18 of O XX of the Civil Procedure Code, compared Venkameswari Maha Lalakumamma v Venkameswari Rajamma*, 43 I C 453, and *Maimod Routh v Duraisami Natchai* (A. A. O 277 of 1917—unreported), dissenting from *Duraisami v Subramania* 1 L R 41 Mad. 188 referred to *GUGULAM BIVIA AHAMAD SA FOWLER* (1918) . 1 L R 42 Mad. 296

Private partition, whether a bar to subsequent revenue partition—Suit for declaration that order of Board of Revenue directing revenue partition is bad, maintainability of—Private partition proceedings lost in antiquity, effect of—Devolution of interest of original partitioners—Estates Partition Act (Ben Act V of 1897) ss 15 and 22 The existence of a private partition is a bar to the re partition of property s 25 of the Estates Partition Act, 1897, does not bar a suit for a declaration that by reason of a former

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partition an order of the Board of Revenue directing a revenue partition to proceed is bad, and for an injunction restraining the defendants from proceeding further with the partition on the strength of that order Where parties have for a number of years acquiesced in the result of a partition it must be presumed that they or their predecessors in interest were parties to the original partition It must also be presumed that all interests created subsequently to the original partition amount merely to devolutions of the interests of the parties who made the original partition, and that the holders of the new interests are representatives of the original partitioners and are bound by their acts *MAHMO CHAUDHRY v MUKESI CHAUDHRY*

3 Pat. L. J. 183

Res judicata—Whether partition effected by a Civil Court decree can be re opened in a subsequent suit—Estates Partition Act (Ben Act V of 1897), s 12 A partition effected by Civil Court decree cannot be re opened in a subsequent suit in a Civil Court The law does not provide for a suit in a Civil Court in which separated estates can be divested and a co tenancy re created for the purpose of making a fresh partition s 12 of the Estates Partition Act, 1897, confirms the view that existed previous to that enactment that a Civil Court has jurisdiction to execute a decree for partition of a revenue paying estate, provided that it does not assume jurisdiction to partition the liability for the land revenue *Smble* that in the event of a party applying to the Collector for a partition of the land revenue after partition has been effected by the Civil Court it would be open to the Collector to reconsider the allotment of the shares granted in Civil Court proceedings *DEVI SARAN SINGH v RAJAKAN NATH DUFFY*

4 Pat. L. J. 19

“Imperfect” partition—Civil Court, jurisdiction of—Assam Land and Revenue Regulation (1 of 1888), ss 3 (b) 86, 87, 154—Regulation VIII of 1890, s 11—Regulation XIX of 1814, s 4—Ben Act VIII of 1876 s 112—Ben Act V of 1897, s 24 The Revenue Court has jurisdiction under the Assam Land and Revenue Regulation of 1888 to effect partition of an estate even when the lands of that estate, in whole or in part are joint within the lands of other estates *Abdul Khaliq Ahmed v Abdul Khaliq Chowdhury*, 1 L. R. 23 Calc 514, and *Sarat Chandra Purkayastha v Prokash Chandra Das Chowdhury*, 1 L. J. 24 Calc 751, approved *Cowri Krishna v Sabananda Sarma*, 1 L. R. 32 Calc 1036, and *Brjendra Kishore Roy Chowdhury v Koli Kumar Chowdhury* 1 L R 46 Calc 236 commented on *Doorga Kant Lakshy v Radha Mohan Choh Neogy*, 7 W P 51, and *Oomah Chunder Shaha v Manik Bonick* 8 W R 128, referred to *YASIN ALI MIRDHA v RADHAGOBINDA CHAUDHRY* (1910) 1 L R 47 Calc 354

PARTITION ACT (IV OF 1893).

ss 1, 2, 3—Partition—Mortgagee rights in a revenue paying mahal—Application for sale by owners of less than 1 moiety—United Provinces Land Revenue Act (111 of 1907), s 107 Mortgagee rights merely in a revenue paying mahal do not fall within the jurisdiction of the United Provinces Land Revenue Act, 1901, for the purposes of partition consequently the pro-

PARTITION ACT (IV OF 1893)—contd.**—ss. 1, 2, 3—contd.**

visions of the Partition Act, 1893, apply to the partition amongst co-owners of such rights. But an order for sale of the mortgage rights under s. 2 of the Partition Act will not be valid unless based upon the request of a party or parties interested to the extent of one moiety or upwards. *HANU LAL v. BHANTI PRASAD* (1913)

I. L. R. 35 All. 337

—s. 4—

See **PARTITION** I. L. R. 45 Calc. 873

Suit for partition—Undertaking by defendants to purchase plaintiff's share in the subject matter of the suit. Where the defendant to a suit for partition by metes and bounds has definitely undertaken, according to the provisions of s. 4 of the Partition Act, 1893, to purchase the share of the plaintiffs in the property sought to be partitioned, he cannot be permitted to rescind from his undertaking, and the court is bound to direct a sale. *ILIAS AHMAD v. BELAQI CHAND* (1917)

I. L. R. 39 All. 672

PARTITION AND POSSESSION.**—suit for—**

See **CIVIL PROCEDURE CODE (ACT V OF 1908)**, O. V, R. 3

I. L. R. 40 Mad. 365

PARTITION BY COLLECTOR.

See **JOINT ESTATE** I. L. R. 43 Calc. 103

See **PARTITION**

PARTITION DECREE.

See **NUISANCE** 14 C. W. N. 637

PARTITION DEED.

See **STAMP ACT (II OF 1899)**, SCH. I, ART. 53 I. L. R. 38 All. 58

PARTITION SUIT.

See **COSTS FEES**

3 Pat. L. J. 863

See **PARTITION**

See **PRACITION (23)** I. L. R. 44 Calc. 28

—claim for future profits—

See **MENS PROFITS**

I. L. R. 44 Bom. 954

Plaintiff a purchaser from minor co-parcener—Fresh sale-deed subsequently obtained after attainment of majority—Whether defect is title cured—Practice and procedure. The plaintiff who was a purchaser from a minor co-parcener, sued for partition of the family property. The minor co-parcener, who was made a party defendant after the attainment of his majority, passed a fresh sale-deed in plaintiff's favour during the progress of the suit. It was contended that the plaintiff, being a purchaser from a minor, had no right to sue and that the defect in title was not cured by the new sale-deed obtained. *Held*, the suit was maintainable. *PER MACLEOD, C. J.* "It seems to me, therefore, this is purely a matter of form which could have been cured equally well by the trial Judge by

PARTITION SUIT—contd.

making Waman [See the minor] a party plaintiff instead of continuing him as a defendant, and by then directing partition of the property. *VISHNU NARAYAN v. SHIVRAM RAONCHWAT* (1920)

I. L. R. 45 Bom. 883

PARTNER.**—Death of—**

See **PARTNERSHIP BUSINESS**

I. L. R. 43 Calc. 906

—Liability of incoming partner—

See **TRADE MARK** I. L. R. 40 Calc. 814

—Payment by—

See **LIMITATION ACT (1908)**, ss. 19 AND

20 I. L. R. 37 Mad. 146

I. L. R. 41 Mad. 427

—Suit by for partial settlement of accounts—

See **PARTNERSHIP**

I. L. R. 2 Lah. 331

PARTNERSHIP.

See **ANSARI ACT (BOM. V OF 1878)** s. 16, 43 I. L. R. 37 Bom. 320

See **APPEAL**

I. L. R. 42 Calc. 914

See **CIVIL PROCEDURE CODE (1908)**, O. XVII, R. 4 I. L. R. 39 All. 531

See **CONTRACT ACT (IX OF 1872)—**

s. 47 I. L. R. 32 All. 638

s. 261, 263 I. L. R. 42 Mad. 15

See **HINDU LAW—JOINT FAMILY**

I. L. R. 43 All. 116

See **PARTNERSHIP ACT**

—acknowledgment of liability or payment by partner—

See **LIMITATION ACT (IX OF 1908)**, ss. 21, (2), 19 AND 20 I. L. R. 37 Mad. 146

I. L. R. 41 Mad. 427

—agreement to enter into—

See **CONTRACT ACT (IX OF 1872)**, s. 23

I. L. R. 40 Bom. 64

—dissolution of—

See **CIVIL PROCEDURE CODE (1908)**, s. 16 (a), (d) I. L. R. 41 All. 513

See **COSTS FEES ACT (VII OF 1870)**, s. 7, SCH. II, CLS. 3, 4

I. L. R. 32 All. 517

See **MINOR** I. L. R. 42 Calc. 225

See **SOLICITOR'S LIEN FOR COSTS**

I. L. R. 34 Bom. 434

—Suit for dissolution in British Indian Courts—Partnership business carried on outside Jurisdiction of court—

See **CIVIL PROCEDURE CODE (ACT V OF 1908)**, s. 20 I. L. R. 45 Bom. 128

—Suit for dissolution of, by a partner who has been guilty of misconduct—

See **CONTRACT ACT, 1872**, s. 254

I. L. R. 1 Lah. 3

PARTNERSHIP—contd.**winding-up of—**See **APPEAL** . I. L. R. 42 Cal. 914

1. — **Arbitration—Accounts—Managing partners, liability of—Onus—Reference to arbitration of claim of firm against customers by one partner, when binds firm—Reference after suit for dissolution** One partner is not competent without special authority to bind the firm by a submission to arbitration *Administrator General v. Official Assignee*, I. L. R. 32 Mad 462, distinguished. *Rambharose v. Kallu Mal*, I. L. R. 22 All 135, *Duttachoy v. Vallu*, 1 Bom. L. R. 528, approved. The liability of co partners to account, and how and to what extent it arises, discussed. **HAKI MAHAMMAD AKBAR v. DWARKA NATH SIKHAR** (1910) 14 C. W. N. 1108

ON APPEAL, 18 C. W. N. 1025

2. — **Accounts—Money received after dissolution—Partner whose remedy for general account is barred may sue to recover share of item received after dissolution** A partner whose remedy against his co partner for a general account is barred, can recover his share of a particular item of assets received after the dissolution of the partnership, if it be open to the defendant co partner to ask the Court to take accounts with a view to show that the plaintiff had received more than his share in the partnership assets. *Sokkanadha Vanni Mundar v. Sokkanadha Vanni Mundar*, I. L. R. 23 Mad 344, followed. **THIRUVENGADA MEDALIAR v. SADAGORA MEDALIAR** (1910) . . . I. L. R. 34 Mad. 112

3. — **Adjusted account—Settlement of basis of account—Final adjustment not signed—Pleadings, want of precision in, if material—Limitation—Cross demands in partnership account—New cause of action from adjustment—Limitation Act (IX of 1908), Sec. 1, Arts. 64, 115 and 120** When parties had agreed on the 2nd April 1905 that a settlement of partnership accounts between them should be made upon a certain basis and the final adjustment took place on the 20th August 1906 and entries to that effect were made in the books on that date but not signed by the parties, in a suit brought on the 16th April to recover the amount due on such adjustment—*Held*, that it was an adjustment which gave rise to a fresh cause of action as from date, and whether it was Art. 115 or Art. 120 of the Limitation Act that applied, the suit was not barred. When the plaint did not specify the day on which the adjustment took place but approximately indicated the time and proof was furnished of exact date at the hearing—*Held*, that there was nothing in the pleadings which should prevent the Judge from arriving at any conclusion on the evidence adduced as to the date. **JALIM SINGH SRIMAL v. CROOKER LALL JOURNEY** (1911) . . . 15 C. W. N. 882

4. — **Representative carrying after partner's death—Contract Act (IX of 1872), s. 253 (10)—Partnership business carried on after death of partner on the assumption of representative continuing as partner—Widow of deceased, a pardawashin lady, not taking any part in business and not examining accounts—Accountability of working partners—Accounts to commence from beginning of partnership, if accounts not settled—Partnership money, diversion of—Accounting with interest or profits—Remuneration to working**

PARTNERSHIP—contd

partner—Balancing of accounts, effect of. Where on the death of a partner the business was carried on on the assumption that his widow was a partner: *Held*, that the conduct of the parties showed that there must have been a contract between the original parties that the partnership would not be dissolved by the death of a partner within the meaning of cl. (10) of s. 253 of the Indian Contract Act, but should be continued with the representative of the deceased as a partner. The mere balancing of account in a book of account does not itself constitute an account stated, much less does it constitute an account settled which the parties cannot reopen. In a general account of partnership dealings, the time from which the account is to be in the commencement of the partnership unless some account has since that time been settled by the partners in which case the last settled account will be the point of departure. Where one of the partners having the right to examine the partnership accounts did not for a long time exercise the right. *Held*, that unless fraud was established purchases and sales in respect of the business by the working partners should not be challenged, but they were bound to account for sums withdrawn from the partnership business and applied for purposes unconnected therewith with the profits realised therefrom or with interest at the option of the partner demanding the account. Where one of the partners wilfully leaves the others to carry on the partnership business unaided, the Court may upon dissolution decree an allowance in favour of the partner who had carried on the business alone. **GOKUL KRISHNA DAS v. SASHIMUKHI DAS** (1911)

16 C. W. N. 299

5. — **Accounts—Partnership accounts—Banking concern, joint—Deposit by a partner payable with interest—Suit to recover deposit if maintainable—Suit if maintainable when suit for dissolution and accounts previously instituted—Civil Procedure Code (Act V of 1908), s. 10** Where it was arranged between the mortgagor and guardian of plaintiff, a minor partner of a banking concern, and his co partners that each of the partners would be entitled to draw a certain fixed monthly allowance from the bank for personal expenses, but the minor's allowance was by arrangement not taken out but permitted to accumulate with interest in the bank, and in a suit for dissolution and accounts by the plaintiff he applied for an order on the Receiver appointed in the suit to pay the amount of the deposit with interest, but the decision of the Court being adverse, he instituted a fresh suit for the recovery of deposits with interest less one third, the proportion recoverable from himself as a partner, but the suit was dismissed, and pending an appeal from the order of dismissal the plaintiff obtained an order of the High Court in revision directing an account to be taken of the amount alleged to be in deposit if plaintiff's appeal should fail. *Held*, that the suit was rightly dismissed as barred by the provisions of s. 10 of the Civil Procedure Code, as the matter in issue in the suit was directly and substantially in issue in the previously instituted suit. To stay the suit according to the strict language of s. 10 until by the decision of the previous suit the matter would be *res judicata* was needless. *Obiter*—Though, in general principle, the claim of a partner against a joint banking

PARTNERSHIP—contd.

concern must, in course of winding up proceedings, be postponed to those of outsiders, there may be cases in which the complete solvency of the bank is admitted and a partner might sue, like any other customer, for the taking separately of his private account as a customer and for the recovery of the balance found standing to his credit. Relief in such a case will only be refused when a partial account will work in justice to the other partners. *Landlay on Partnership*, p 532 and *Karris Venkata Reddy v Kollu Narasayya*, 7 L R 32 Mad. 76, 80, relied on. **MONADEO PRASAD SAHU v GADADHAR PRASAD SAHU (1912)**

16 C. W. N. 887

6. ——— **Novation—Suit for an account on the footing of continuance of original partnership—Suit not maintainable.** A testator appointed his widow as the guardian of his minor children and executrix (by tenor) of his will. On his death the widow consented to the retention of the testator's share in a partnership business by the surviving partners and subsequently to a transfer of the same to another business. In an action brought by one of the testator's sons as administrator against the surviving partners for an account of all the assets of the testator at the time of his death retained, and employed by the defendants in their business. *Held* dismissing the suit that the testator's widow was perfectly competent as his executrix to enter into the arrangement, which was a novation with the surviving partners so as to bind the estate, and the suit against the partners on the footing of a continuance of the original partnership was not maintainable. **JAMNATHJI NARAYANJI v HIRJIJIJI NAOROLI (1912)**

I. L. R. 37 Bom. 158

7. ——— **Accounts—Suit for accounts of—Necessary parties—Representative of deceased partner, admission of one after period of limitation—Whole suit, if barred—Limitation Act (IX of 1908) s 22.** Art 106. The plaintiff brought a suit for the accounts of a partnership making parties thereto his other partners and one only of the two sons of a deceased partner who died after the partnership business came to an end but before the suit was instituted. On the objection being taken the other son of the deceased partner was brought on the record after the expiration of the period of limitation. *Held*, that inasmuch as all the partners or their representatives were necessary parties and inasmuch as under s 22 of the Limitation Act the suit must as regards the added defendant, be deemed to have been instituted when he was made a party the whole suit was barred by limitation. That in a partnership suit the partners must be made parties or the suit will fail. **AMBIKA CHABAN GUHA v. TAJIB CHABAN CHANDA (1913)**

18 C. W. N. 464

8. ——— **What constitutes—Agreement for joint venture in business—Contract Act (IX of 1872) s 239, illustration (a) 249, 251, 252—Liability of co-adventurers against whom there is no document of debt binding on its face—Operations of buying and selling natural to a partnership, and for the partnership—Liability of both defendants on hundis drawn separately by each for payment of his own share of goods—Criterion as to transaction being or not being a partnership transaction.** The respondents carrying on business in Mauritius and having separate offices in Bombay made an agreement for one year "for the purpose of doing business

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in partnership" in brown sugar to be shipped from Mauritius to Hongkong and there disposed of on commission sale by the appellant, a Bombay merchant with an agency at Hongkong, the profits of the joint venture to be shared by the respondents equally. The shipments were to be made jointly in Mauritius, a half share by each of the respondents, each one drawing hundis against his own half share, and separate account sales of their respective shares to be rendered to them by the appellant who undertook to arrange for the necessary credit if the Banks in Mauritius would not discount the hundis drawn by the respondents, and an endorsement to that effect was made on the agreement and signed by the appellant. The terms of the agreement were carried out and shipments of sugar were made, but in respect of the hundis drawn by each respondent against his half share recourse was not had first to the Banks in Mauritius, but the hundis were at once drawn on and accepted by the appellant at Bombay. The shipments resulted in a loss. The first respondent had, when the hundis drawn by him became due, retired them, but the second respondent who had become insolvent, had not retired the hundis of which he was the drawer with the result that the appellant whose name was on the hundis as acceptor had to retire them. In a suit by the appellant against the respondents and the Official Assignee for the money advanced to pay the hundis, the first respondent alone defended it, his defence being that he had paid all the hundis drawn by him, and was not liable for those drawn by the second respondent. *Held* (reversing the decision of the Court of Appeal in India), that the agreement created a "partnership" between the respondents within the definition in s 239 of the Contract Act (IX of 1872) which governed the case. But it was a partnership of a limited character, and consequently liability to be enforced against one partner, when there was no document of debt which on its face bound him, could only be justified if it was shown that what he did was within the operations natural to the partnership and for the partnership. On the terms of the agreement the purchase of the sugar under it became a purchase for the partnership and any one who sold the sugar or advanced money by which the sugar was bought was crediting the partnership with goods or money. If either party in the case bought sugar and then re-sold it under the provision in the agreement for re-sale in Mauritius he could not refuse his co-adventurer a share of the profit he made. The joint adventure began not when the goods were shipped, but from the moment the sugar was bought. The appellants too was acquainted with the whole terms and conditions of the agreement, and knew therefore that by advance of credit he was helping the partnership in its purchase of sugar. That credit was not given in the precise way contemplated by the agreement; but that the respondents availed themselves of the appellant's credit appeared on the hundis themselves. When a drawer discounts an acceptance which is given at a time when the acceptor owes no money to the drawer, it is idle to say that the drawer does not avail himself of the acceptor's credit. Moreover on the evidence of the first respondent himself in cross examination "the sugar purchased was all paid for by the hundis accepted by the appellant." As to the criterion to be applied to the particular facts of

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each case in order to see whether the transaction is or is not a partnership transaction, the cases of *Gouthwaite v Duckworth*, 12 East 421, 426, *Saville v. Robertson*, 4 T. R 720, and *Heap v Dobson*, 15 C. B. N. S. 469, in the English Courts; and *Cunningham v. Kinnear*, 2 Pat. App. Cas 114, *British Linen Company v. Alexander*, 15 D 277, and *White v. McIntyre*, 3 D 334, in the Scottish Courts; and Bell's Commentaries on the Principles of Mercantile Jurisprudence, s. 395, were referred to. **KARMALI ABDULLA v KARANJI JIWANJI** (1914)

L. L. R. 39 Bom. 281

9. ——— Partition on dissolution—Disputes as to whether a mortgage bound one or both partners—Compromise admitting debt to be in part payable by each—Suit by Mortgagee decreed against one partner only—Other partner if relieved from paying his admitted share of debt—Payment of whole debt by other partner—Contribution. Following on a dissolution of partnership between L and B L sued B for partition, and one of the questions in dispute was whether a mortgage of the partnership property by B in favour of N was payable by B alone or by both partners equally. A decree was passed on compromise by which L undertook to pay Rs 8,200 to the mortgagee and B that he should free L's portion of the property from the mortgage. L paid only Rs 200 to N, who thereafter to enforce his mortgage brought a suit in which it was eventually decided that the mortgage bound only B's share, and N was paid off by sale of B's share. B's representatives then sued L for Rs 8,000. *Held*, that by the compromise L admitted that the debt due to N was a partnership debt whereof L was liable to pay Rs 8,200, and from that moment Rs 8,200 became a debt due by L to N for the purpose of adjustment between the ex partners, and it was not open to L's representatives to get out of the compromise by which L was bound, by saying that if N's suit had been then decided, L would have found himself free of the liability without entering into the undertaking to pay Rs 8,200. B having had to pay what L should have, to make good the terms of the compromise L was bound to pay it too. **PAMMAL V NARSING DAS** (1914)

19 C. W. N. 193

10. ——— Contribution—In satisfaction of debt incurred jointly for partnership purposes, if lies. The plaintiff and the defendants borrowed money for carrying on a joint business. The creditor obtained a decree against them but executed it against the plaintiff alone and realised the entire amount from him. The plaintiff brought a suit for contribution against each of the defendants for the sum payable by him in respect of the debt. *The finding* was that the money was borrowed by the plaintiff and the defendants jointly and was applied for the partnership business that there had been no adjustment of accounts as alleged by the defendants and the plaintiff had not been paid the sum due to him. *Held*, that a suit for contribution was obviously maintainable. That s. 43 of the Contract Act in the absence of a contrary intention appearing from the contract between the parties did not stand in the way of the plaintiff. **LABAN SARKAR v CHOYEN MALLIK** (1914) . 19 C. W. N. 783

11. ——— Suit against other partners for damages for use of partnership property—maintainability of G, the owner of a mill, entered

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into a partnership agreement with two other persons in respect of the mill business. The mill was placed at the disposal of and used by the firm thus constituted. Cash was to be supplied by one of the partners and the profits were to be distributed in certain proportions. A suit for dissolution of partnership was instituted, and while this was pending the plaintiff purchased the right, title and interest of G in the mill and subsequently sued the members of the partnership firm for recovery of damages for use and occupation of the mill. *Held*, that whether the mill became part of the partnership assets by the deed of partnership, or continued to be the private property of G, the plaintiff's suit was in either case not maintainable. **MAHENDRAN v JAYAKANDAR NATH RAO** (1914) . L. L. R. 42 Calc. 1179

19 C. W. N. 1115

12. ——— What constitutes—Partner purchasing partnership property—When permissible—Contract Act (IX of 1872), s. 180—Bailor and bailee—Either may maintain an action against a wrong doer—What constitutes partnership—Partner entitled to purchase partnership property—Action for settled account. A partnership is constituted whenever the parties have agreed to carry on business or to share the profits in some way in common. *Mellors, March v Court of Wards*, 10 B. L. R. 312, *Poolley v Druer*, 5 C. B. D. 458 referred to. A partner is entitled to purchase partnership property provided there is full disclosure and the parties are at arm's length. It is only where the real truth is concealed and the facts are not disclosed that one partner has legitimate grievance against another. *Dunne v English*, L. R. 18 Eq. 524 *Imperial Mercantile Credit Association v Coleman*, L. R. 6 H. L. 182, referred to. An action for the balance of a settled account would not be restrained merely because there were other unsettled accounts between the parties. *Hawson v Samuel*, (1833) Cr. & Ph. 161 *Preston v Strutton*, 1 Anst. 50, referred to. S. 180 of the Contract Act provides that if a third person deprives the bailee of the use or possession of the goods bailed or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case, if no bailment had been made, and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury. *Giles v Grover*, 6 Blyth N. S. 277, *Jefferies v G. W. Railway Co.*, 5 El. & Bl. 802, *Manders v Williams*, 4 Exch. 339, referred to. **RAMNATH GAGOI v PITAMBAR DEB GOSWAMI** (1915) . L. L. R. 43 Calc. 733

13. ——— Partner, if entitled to interest on advance made. The appellant and the respondent were partners who agreed to contribute an equal amount of capital but in fact the appellant contributed a much larger amount than the respondent. *Held* (in a suit for dissolution of partnership and adjustment of accounts), that, upon the general rule that interest between partners is not allowed unless there is express stipulation or a particular course of dealing between the parties as shown by the partnership books or a trade custom to the contrary, has been engrafted an important qualification, namely, that an advance by a partner to the firm is treated not as an increase of its capital but rather as a loan on which interest should be paid and that

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subject to any agreement between the parties interest is payable on money paid or advanced by one partner for partnership purposes beyond the amount of capital which he had agreed to subscribe. That the respondent who claimed the benefit of the profits which accrued from the sums advanced to the partnership business by the defendant was bound in justice to make an allowance for interest on those sums to the partner.

GOBINDA CHANDRA BASAK v HARIDAS BASAK (1915) 20 C. W. N. 634

14. — Partner borrowing for partnership purposes.—Promissory note, executed by two of three partners—No indication in promissory note of execution on behalf of partnership—Liability of the partner who was not a party to the note. A promissory note was executed by two out of three partners of a firm for money then advanced to the executants for purposes of the firm. The promissory note did not contain any indication that it was executed on behalf of the firm. In a suit on the note by the promisee. Held, that even the third partner who did not execute the note was liable. *Per* SRIVATSA AYYANGAR, J. (dissent). An endorsee of the note cannot recover against the partner not executing the note. *As-mah* *Abdulla v Karimji Jitaji*, 1 L. R. 39 Bom. 261 followed. *Somasundaram v Krishnamurthi*, 17 Mad. L. J. 126, and *Muthu Sastry v Viswanatha Pandhara Sannadhi*, 26 Mad. L. J. 79, distinguished.

SHANMUGAYYA CHETTIAR v SRIVATSA AYYAR (1916) I. L. R. 40 Mad. 727

15. — By manager of joint Hindu family with strangers.—Right of other members of family to institute suits in respect of partnership. A contract of partnership entered into by the manager of a joint Hindu family with strangers does not ipso facto make the other members of the family partners, and not being partners, the other members whether divided or undivided cannot institute any suit in respect of partnership (e. g.) a suit for dissolution of partnership. *Sokkanadha Vennimundar v Sollenadha Vennimundar*, 1 L. R. 28 Mad. 344, and *Ramanathan Chetty v Yegappa Chetty*, 30 Mad. L. J. 211, applied. *Jacpoody Sarayya v Lakshmanaswamy*, 1 L. R. 36 Mad. 135, distinguished. *GARGATTA v VEN. KATARAMAN* (1917) I. L. R. 41 Mad. 454

16. — Boat-co-owners of—Employment of boat to earn freight—Partnership in freight.—Suit for dissolution, whether maintainable. S. 329, Indian Contract Act (IX of 1872). Where the co-owners of a boat employ it to earn freight, they become partners in respect of such earnings and a suit for dissolution of such partnership is maintainable although the plaintiff being only a co-owner is not entitled to a decree for the sale of the boat employed by the partnership. *VARADATI SATTIRAJU v BOLLAPRAGADA PALLAN* (1913) I. L. R. 42 Mad. 693

17. — Death of one partner leaving a minor son.—Suit by surviving partner against minor for rendition of accounts—Procedure. One of two partners in a specific business who was alleged to have been the managing partner, died, leaving him surviving a minor son. The other partner used the minor, as his father's representative, for rendition of accounts and for payment of what might be found due to him (the plaintiff). Held, that suit was maintainable, but the proper

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procedure was for the Court to direct both sides to produce their accounts and thereafter to pass a decree for whatever sum might appear to be due from one party to the other. **SHANKAR LAL v RAM BABU** (1918) I. L. R. 40 All. 448

18. — Dissolution—Right to sue for where it cannot be carried on except at a loss.—Clause in partnership agreement stating date agreed upon for termination of partnership—Contract Act (IX of 1872), ss. 252, 254, sub s. (6)—Right to protection of Court on equitable grounds—Discretion of Court to grant dissolution. The defendants (respondents) a firm of contractors had undertaken the construction of the new Alexandra Dock in Bombay and they required for the work a large supply of granite and other stone. For that purpose they formed a partnership with the plaintiff (now represented by the appellants) for the quarrying and supplying the required materials. By cl. 4 of the deed of partnership it was agreed that "the working of the quarries, and the partnership should continue until the supply of granite or other stone for the construction of the dock was completed, and that the partnership should then terminate and be wound up." The plaintiff, finding after a time that the partnership could not be carried on except at a loss brought a suit for its dissolution and for an account before the supply of granite and stone had been completed, and the defendants contended that the suit was premature. Held (reversing on this point the decision of the appellate High Court which had set aside that of the trial Judge), that, notwithstanding the terms of cl. 4, the plaintiff was entitled on the ground alleged, and under the circumstances of the case, to have a dissolution under sub s. (6) of s. 254 of the Contract Act (IX of 1872). There was nothing in s. 252 of that Act to constitute a bar to such a suit. A partner's claim to a decree for dissolution rested, in its origin not on contract, but on his inherent right to invoke the Court's protection on equitable grounds, in spite of the terms on which the rights and obligations of the partners might have been regulated and defined by the partnership contract. There was no ground for questioning or disturbing the discretion given by the Act and exercised by the original Court in making a decree for dissolution in the plaintiff's favour. **REINMATHCHESIA BEGLI v PRICE** (1917) I. L. R. 42 Bom. 330

19. — Contract whether one of partnership or service—Grounds for dissolution.—Accounts. Upon the construction of the document in question the relation between the parties was held to be that of partners and not master and servants. Refusal and neglect on the part of any one to perform the duties undertaken by him would give to any other partner the right to apply for dissolution but for dissolution by agreement the consent of all is necessary. The fact however that certain partners deliberately ceased to perform their duties would be taken into consideration in taking accounts. **W. KRISHNAYA CHARIAR v. A. SANKARA SAH** I. L. R. 25 C. W. N. 314

20. — Death of one partner—Liability of surviving Partner for profits made in the business subsequent to the death of the deceased partner. Where on the death of one partner, the surviving partner continued the business. Held, that he was liable to give to the representative of the deceased partner a share in the profits of the business which may have accrued subsequent to the

PARTNERSHIP—concl'd

death of the deceased partner *Brown v Tastet*, (1521) Jacob 281 late *v Finn*, 13 Ch D 829
Crawley v Collins, 15 Ves 218 1 Jac & Wa 267,
Heathcote v Hulme, 1 Jac & Wa 122, *Ahmed Musaj, Salehy v Hashim Ebrahim Salehy*, 1 L R 42 Cal 914, referred to *MAHOMED KAMEL v HAJI HEDAS ETYLA*, (1921) 1 L R 48 Cal. 808

21. — *Suit by a partner for a partial settlement of account during the continuance of the partnership* Plaintiff, one of the partners of a press pool, entered into on 20th October 1913 for 3 years, sued on 13th October 1915 for a settlement of the partnership accounts from 15th June 1914 to the 15th June 1915, alleging that the partnership had been put an end to on the latter date by defendant's conduct. It was found by the High Court that the partnership had not been dissolved and the question was whether the plaintiff was competent to sue for a partial settlement of accounts for the season 1914-15. *Held*, that the general rule, as applied in India, is that if the account is sought in respect of a matter which, though arising out of a partnership business or connected with it, does not involve the taking of general accounts the Court will, as a rule, give the relief applied for. It will be for the Court to determine under what circumstances it will be equitable to order a partial account having regard to the rights of the parties under the contract *Fairthorne v Weston* (3 Hares Report 387) followed *Korrs Venkata Reddi v Kollu Narasayya* (1 L R 32 Mad 76), *Raghubar Dayal v Sheoram Das* (1 All L J R 94) and *J P Singhal's Law of Partnership in British India*, pages 344-346, referred to. *Held* also, that considering that prior to the 15th June 1914 the accounts were rendered daily and dividends distributed daily but after that date the defendant's agent stopped giving of the accounts daily and the payment of dividends, and that written demands sent by plaintiff to the latter were left unheeded the plaintiff was justified in bringing the present suit for partial settlement of accounts. *HARJI MAL MEELA RAM v KIRPA RAM BIRJ LAL*.
 1 L R. 2 Lah. 351

22. — *Limitation—Dis-solution—Assets received by partner—Right to sue for share—Taking accounts—Indian Limitation Act (XI of 1903) Sch. I, art 106—Indian Contract Act (I.A. of 1872), sec 265* If a partnership has been dissolved and accounts have been wound up, the mutual rights and obligations of the partners therein being discharged, and an asset which has been forgotten or treated as valueless afterwards falls in it ought to be divided between the partners in proportion to their shares in the partnership. But if no account has been taken, the proper remedy of a partner in respect of an asset so received is to have an account taken if his right to sue for an account is barred by limitation, he cannot sue the partner who has received the asset for a share of it. *Murwanji Hormusji v Rudonji Burjorji* (1882) 1 L R, 6 Bom., 628 *Sokkanadha Vannamundar v Soklanadha Vannamundar* (1903) 1 L R. 28 Mad. 344 and decisions following them, disapproved. *Observations in Knox v Gye* (1871) L R. 5 H. L. 650, explained. *GOPIALA CHETTY v V. VIJAYANATHACHARIAR* (1922) 1 L R. 45 Mad. (F.C.), 378

PARTNERSHIP ACCOUNT*See PARTNERSHIP*— *suit for* —*See LIMITATION ACT (XV of 1877)*

1 L R. 39 Mad. 185

Duty of each partner to discover all documents—Arbitration, reference of dispute with customer to, by one partner—Others, if bound—Question of one of law—Agreement to refer not originally binding becoming binding by acquiescence or acceptance of benefit—Question if should be allowed to be taken for the first time on appeal—Partner charged with entering into agreement to refer negligently and improperly—Measure of damages—Onus of proof For the purpose of working out a partnership decree, each party to the action is bound to produce and discover all documents in his possession relating to the partnership and an application by the plaintiff for discovery of documents in the possession of a defendant in such an action ought not to have been refused. *Held*, that the decision of the High Court in so far as it was of opinion that the accounts taken by the Commissioner (and affirmed by the trying Court) were not properly taken or supported by evidence and must be investigated afresh was correct. A sum of money, paid by a customer as the result of a reference to arbitration in which the legal personal representatives of a deceased partner were parties, having been brought into the partnership accounts the latter who did not dispute the item in the first Court for the first time on appeal contended that not being parties to the reference they were not bound by it. *Held* that the question whether the legal personal representatives of the deceased partner were bound by the agreement to refer and by the award was not a simple question of law to be decided without reference to the facts of the case or any evidence which might have been available if it had been raised at the proper time, and the contention should have been rejected as having been put forward at too late a stage. An agreement to refer not originally binding might become binding later on by the acquiescence of the party or his acceptance of benefits thereunder. *Held* further, that if the legal personal representatives of the deceased partner were not bound by the award they would not be entitled to relief on the footing that it was binding but had been negligently and improperly entered into. That if relief could be given on this footing the difference between the amount originally claimed against the customer and the amount paid by him under the award would not necessarily be the measure of damages, nor could the onus of proving that it was any less sum be thrown on the person accused of negligent and improper conduct. *Haji Mahomed Akbar v Diwana Nath Sarkar*, 14 C W N 1106, reversed in part. *DWANKA NATH SARKAR v HAJI MAHOMED AKBAR* (1914) 18 C. W. N. 1025

Suit for partnership accounts—Limitation Act (IX of 1903) Art 106—Specific assets realised within period of limitation If a suit for general partnership accounts and a share in partnership profits is itself barred, the plaintiff in such a suit cannot be allowed to proceed speculatively against any and every partner ship asset which may have been realised by the defendant after dissolution and within the period of limitation. *Murwanji Hormusji v Rudonji*

PARTNERSHIP ACCOUNT—contd.

Burjori, I L R 6 Bom. 823, distinguished. ANNEK SOLEMAN v BHAGWANDAS VISRAM AND CO. (1909)
I. L. R. 34 Bom. 515

Limitation Act (IX of 1908), Sch. I, Art 106—Money received by partner after dissolution of partnership—Suit by other partner for recovery of share therein, if maintainable after suit for general accounts barred—Position where an item falls in after accounts squared off—Fresh cause of action It is contrary to the policy of the Legislature to allow a partner, whose right to sue for a general partnership accounts has been barred by limitation, to sue for his share of specific payments received from debtors by one partner subsequently to the dissolution of the partnership, permitting the latter by way of set off to claim what may be found due to him upon taking the partnership accounts. If a partnership has been dissolved and the accounts have been wound up and each partner has paid what he has to contribute to the debts of the partnership and received his share of the profits the mutual rights and obligations having been thus all discharged, and then it turns out afterwards that there was some item to the credit of the partnership which was either forgotten or treated as valueless by reason of the supposed insolvency of the debtor or for any other cause, which item afterwards becomes of value and falls in, it ought to be divided between the partners in proportion to their shares in the original partnership. If on the other hand no accounts have been taken and there is no constant that the partners have squared up then the proper remedy when such an item falls in is to have the accounts of the partnership taken, and if it is too late to have recourse to this remedy then it is also too late to claim a share in an item as part of the partnership assets. **K GOPALA CHETTI v T G VINAYAGRA ACHARYAR**

26 C. W. N. 977

PARTNERSHIP PROPERTY.

See PARTNERSHIP I L R. 43 Cal. 733

PARTY.

See RES JUDICATA

I. L. R. 35 Bom. 189

PART-PAYMENT.

See LIMITATION ACT (IX of 1908) s. 20

PART PERFORMANCE

See AGREEMENT TO TRANSFER

24 C. W. N. 463

See COMPROMISE I. L. R. 42 Cal. 801

See ESTOPPEL

See TRANSFER OF PROPERTY ACT 1882, ss. 54 and 48 I. L. R. 40 All. 197

See UNIVERSITY LECTURESHIP

I. L. R. 41 Cal. 518

Doctrine of applicability of. Plaintiff sued for joint possession of land on declaration of her title. She claimed it as heir to her father. The defence to the effect that the Plaintiff's father had exchanged the land in suit for some other land with the defendant's vendor was found to be established. *Held*, that on the equitable doctrine of part performance the Plaintiff could not question the validity of the exchange

PART PERFORMANCE—contd.

on the ground that it had not been effected by a registered document. That this doctrine has been applied by the Courts in recent judicial decisions without reference to the question whether the right to claim specific performance was or was not subsisting. **23 C. W. N. 905**

PASSENGER.

See CONTRIBUTORY NEGLIGENCE

I. L. R. 34 Bom. 427

PASSING-OFF ACTION.

See TRADE MARK I. L. R. 37 Cal. 204

PASTURE LAND.

See Pasturage

See MADRAS ESTATES LAND ACT (I of 1908), s. 3 I. L. R. 33 Mad. 733

Tenancy if permanent—Character: hold ngn—Occupancy right, acquisition of, in—Using land for purposes of cultivation, if waste—Remedy of landlord—Forfeiture—Landlord and Tenant Act (X of 1859) s. 6—Bengal Tenancy Act (VIII of 1885) s. 5 (2)—Notice—*See* TRANSFER OF PROPERTY ACT (II of 1882), ss. 106, 108 (c) 111 (g). The question being whether certain holdings situated in the tract known as *charuvaras* or pasture lands in Mouzah Bassant par in Zillah Purnea were permanent tenancies, it was proved that sales by private treaty and by auction through Court of such holdings were frequent, that cases of ejectment were uncommon, that such holdings frequently passed to the heirs of the deceased tenants and that mutation of names in the zamindars *sharia* had been frequently allowed sometimes on payment of *nazrana* and sometimes without: *Held*, that the proper inference to be drawn from these circumstances was that the tenants had a permanent right in the holdings and were not liable to ejectment on notice. *Per Doss, J.*—That assuming that the lands were settled with the tenants only for the purpose of grazing cattle, the tenants had acquired a right of occupancy in the lands before the Bengal Tenancy Act came into force under s. 6 of Act X of 1859, *Fitz Patrick v Wallace*, 11 W. R. 231, followed.

That it was not reasonable to hold that at the inception of the tenancies it was intended by the parties that the lands were never to be used for cultivation, and the tenants were ryots within the meaning of s. 5, sub-a. (2) of the Bengal Tenancy Act. *Per RICHARDSON J.*—The tenants had failed to prove that the lands were left for purposes of cultivation or that they had acquired occupancy right therein. That by using the lands intended for grazing for purposes of cultivation the tenants did not incur forfeiture. **SHIEKH LATIFAR HANAMAN v. A H FORBES (1909) 14 C. W. N. 372**

PASTURE RENT.

—recovery of—

See MADRAS ESTATES LAND ACT (I of 1908) s. 3 I. L. R. 33 Mad. 733

PASTURAGE.

—Right of—Unassessed Government Waste—Right of pasture on, not to exclude owner's right to possession—Acts necessary to obtain prescriptive title. There are no statutory provisions

PASTURAGE—contd.

in the Madras Presidency as in Bombay with reference to the grazing rights of villagers over adjoining Government waste. The right of pasture on unenclosed waste cannot exclude the owner's right to possession and enjoyment of the property over which such a right may exist. *Ram Saran Singh v. Birga Singh*, 1 L. R. 19 All. 172, referred to. *Secretary of State for India v. Mahababhai*, 1 L. R. 14 Bom. 213, 221, distinguished. *GORJALA PICHU NAIDU v. VALLUR VENERIAN* (1910) . . . 1 L. R. 31 Mad. 68

— *Suit for declaration of, and for injunction—Here thirty years' uninterrupted user, if enough—Presumption of right* In a suit for declaration that the plaintiffs who were cultivating tenants had a right of pasturage over certain lands and for an injunction on the landlord to remove fences, etc., therefrom, the finding of the lower Appellate Court in decreeing the suit was: "The land has been lying unoccupied from time immemorial and the villagers have been grazing their cattle here for more than 30 years. Their user was open and peaceful, without interruption and should be, in the circumstances of this case, presumed to be as of right also." Held, that this finding was not sufficient to establish the plaintiffs' right of pasturage over the land in suit. It being a customary right, it must be reasonable, and it would be unreasonable to hold that no land over which cattle had grazed should ever be brought under the plough. *SYED ALI v. SARAY ALI* (1913) 18 C. W. N. 735

PATELKI SERVICE.

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879), s. 202
1 L. R. 45 Bom. 894

PATENT.

See INVENTION: AND DESIGNS ACT (V OF 1889), s. 29 . . . 1 L. R. 41 All. 68

PATENTS AND DESIGNS ACT (II OF 1911).

See INVENTIONS AND DESIGNS ACT
See PATENT . . .

— ss. 62, 64, 67—

See DESIGN . . . 1 L. R. 45 Calc. 606

PATERNAL AUNT.

See HINDU LAW—GUARDIAN
1 L. R. 38 Mad. 1123

PATILKI VATAN.

See VATAN . . . 1 L. R. 37 Bom. 81

PATRUM PARGANAS—

See BENJADI PATTA
6 Pat. L. J. 687

PATNA HIGH COURT.

— *Calcutta High Court, decision of, binding upon Patna High Court, until disented from by Full Bench.* The decision by a Divisional Bench of the Calcutta High Court is binding upon the Patna High Court until disented from by a Full Bench. *HANMAN MISHRA v. SYED MOHAMED* (1916) . . . 20 C. W. N. 583

PATNA HIGH COURT RULES.

See HIGH COURT RULES AND ORDERS
— *Legality of—Letters Patent of the Patna High Court, ch. 29—Code of*

PATNA HIGH COURT RULES—contd.

Civil Procedure (Act V of 1908), ss. 122, 123, 124 and 125—*Failure to furnish list of papers to be inserted in paper book, whether order dismissing appeal for default is appealable to His Majesty in Council.* The rules of the Patna High Court, 1916, are not *ultra vires*. No appeal lies to His Majesty in Council from an order of the High Court dismissing an appeal on failure of the appellant to prepare and deliver a list of the papers to be inserted in the paper book in accordance with rule 8 of Chapter IX of the Patna High Court Rules, 1916. *RAJENDRA KISHORE v. RAJKUMAR KAMAKHTA NARAIN SINGH* 5 Pat. L. J. 719

— CH. IV, r. 15—

See PRIVY COUNCIL, APPEAL TO
6 Pat. L. J. 114

— CH. V, r. 3—*Held that a question as to convenience of procedure is not a question of law within the meaning of this rule.* *HITENDRA SINGH v. MAHARAJA SRI RAMESHWAR SINGH*

6 Pat. L. J. 293

— CH. VI, rr. 2 and 16—

See LETTER PATENT 4 Pat. L. J. 695

— CH. VI, r. 5—

See SUBSTITUTION OF PARTIES
5 Pat. L. J. 256

— *Appeal by person not a party to the suit. Held that r. 5 applied only to a person who seeks to appeal in order to establish his claim as a Beneficiary and not to any other claim.* *SYED AHMAD NAVAT v. SYED ABAS HUSSAIN* . . . 8 Pat. L. J. 43

— CH. VII, r. 2—*Limitation, extension of time—Limitation Act (IX of 1908), s. 12.* An absolute period of limitation of 30 days having been prescribed by Ch. VII, r. 2, of the Patna High Court Rules, 1916, that period cannot be extended by virtue of any of the provisions of the Limitation Act, 1908, relating to the extension of the periods of limitation prescribed by that Act. *DEDEKI LAL v. RAMACHAND LAL*

6 Pat. L. J. 701

— CH. VIII, rr. 34—

See LETTER PATENT (PAT)
4 Pat. L. J. 693

— CH. IX, r. 8—

See ANNE . . . 5 Pat. L. J. 719

PATNI.

See PATNI.

PATNI LEASE.

See PATNI.

PATNI TALUQ.

See PATNI TALUQ.

— *Patni Tenure—*

See PATNI TENURE.

— *Patnidar—*

See PUTNIDAR

PATTA.

See MADRAS ESTATES LAND ACT (I OF 1909), ss. 54 AND 78, CL. (2)
1 L. R. 39 Mad. 626

PATTA—contd.

See UNDER RAIYAT

I. L. R. 39 Calc 278

—tender of—

See MADRAS ESTATES LAND ACT (I OF 1908)

I. L. R. 37 Mad. 540

—Suit to enforce acceptance of—Zamindari land converted into wet with Government water—Consideration, failure of—Enhancement—Rent Recovery Act (VIII of 1865), s 11 Certain dry zamindari lands were converted into wet by the use of water from a channel constructed and maintained solely by Government. Held that there was no consideration for the zamindar to levy enhanced rent notwithstanding a stipulation for enhancement, should the land be cultivated as wet. The conditions laid down in the Rent Recovery Act (Mad. VIII of 1865), s 11, not being present, the zamindar was precluded from levying enhanced rent. *Srinivas Rajan Mallikarjuna Prasada Naidu v Subbatta* (1913)

I. L. R. 36 Mad. 4

PAUPER.

See CIVIL PROCEDURE CODE 1908 SCH. I

O XXV, R 1 I. L. R. 36 Bom 415

See PAUPER SUIT

—appeal by—

See CIVIL PROCEDURE CODE 1908, O 44, R 1

—suit by—

See CIVIL PROCEDURE CODE, 1908 R. 47, AND O XXX. 4 Pat. L. J. 166

—Next friend of a pauper minor, if to prove his own pauperism. *Amirson v Secretary of State* (1919)

23 C. W. N. 935

PAUPER PLAINT.

See STAMP DUTY I. L. R. 38 All. 469

PAUPER SUIT.

See CIVIL PROCEDURE CODE (1882), s 411. I. L. R. 34 All. 223

See CIVIL PROCEDURE CODE, 1908—

s 115 I. L. R. 32 All. 623

O, XXXIII

—Second application—where the previous one was rejected for want of schedule of property—

See CIVIL PROCEDURE CODE, 1908 O 33 R. 25 AND 155 I. L. R. 1 Lah. 151

—Application to sue as—Disqualification—Subject matter of suit—Cause of action—Civil Procedure Code (Act V of 1908), O XXXIII, rr 1, 2 and 6 A mortgagor applied for permission to institute a suit as a pauper for the setting aside of a sale of the mortgaged property by the mortgagee, with an alternative claim for damages. The mortgagee admitting there was a surplus due to the applicant after the mortgage-debt had been satisfied, paid Rs. 101 into Court, and contended that the applicant was not a pauper, and further that the applicant disclosed no cause of action. Held, that the applicant was a "pauper" within the meaning of the Explanation to

PAUPER SUIT—contd.

O XXXIII r 1, of the Civil Procedure Code (Act V of 1908), but that the allegations contained in the application did not disclose a cause of action. *Durakanath v Madhucray* I. L. R. 10 Bom. 207, not followed. *Fatmabai v Dossa* *Broty Rustumji Umrekar* (1909)

I. L. R. 34 Bom. 638

—Application for leave to sue in forma pauperis—Civil Procedure Code (Act V of 1908) O XXXIII, rr 4 5, 7—Scope of enquiry—Power of the Court under r 4—If it seems to be examined on the question of pauperism only—No evidence, except evidence of the applicant on the merits of the claim permissible. In an enquiry under O XXXIII of the Civil Procedure Code, the Court cannot take evidence (except the evidence of the applicant himself) on the merits of the claim. R. 4 expressly gives power to the Court to examine the applicant regarding the merits of the claim and the property of the applicant so that there is no doubt that the applicant himself can be examined not only with reference to the question of his pauperism but also with reference to the merits of his claim. It is open to the Court to consider not only the statements made in the plaint but also the statements made in his examination by the applicant before determining whether his allegations disclose a cause of action as laid down in cl (d) of r 5 of O XXXIII. But the Court cannot examine other witnesses for deciding the question of limitation or any other question than the pauperism of the applicant. The evidence to be taken under r 7 is confined to the evidence which may be adduced by the applicant in proof of his pauperism and any evidence which may be adduced in disprof thereof as laid down in r 6. *Kamraji Nath v Sunder Nath* I. L. R. 20 All. 229, *Dulari v Vallabhadra Pragn*, I. L. R. 13 Bom. 126, and *Nawab Bahadur of Moorsheedabad v Harish Chandra Acharye* 13 C. L. J. 593, followed. *Jogendra Narain Ray v Durga Charan Guha Thakurta* (1918)

I. L. R. 46 Calc. 651

PAY AND PENSION.

See SECRETARY OF STATE FOR INDIA.

I. L. R. 38 Calc. 378

PAYMENT.

See BILL OF COSTS

I. L. R. 48 Calc. 817

See SALE OF GOODS.

I. L. R. 45 Calc. 28

I. L. R. 42 Bom. 16

—By Debtor—

See ACCOUNT—

I. L. R. 48 Calc. 839

—plea of—

See MORTGAGE I. L. R. 37 All. 426

—to some only of the Trustees—

See TRUST I. L. R. 38 Mad. 597

—under compulsion of law—

See DEPOSIT IN COURT

I. L. R. 43 Calc. 299

PAYMENT INTO COURT.

See CIVIL PROCEDURE CODE, 1908—

ss. 47, 73, O XXI R 55

I. L. R. 36 Bom. 156

PAYMENT INTO COURT—contd

See CIVIL PROCEDURE CODE, 1902—
O XXI, BB 80 AND 82

I. L. R. 45 Bom. 1034

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 83 . I. L. R. 32 ALL 142

*Sale—Suit to set aside sale—Suit decreed on plaintiff paying into Court certain amount—Mortgagee from plaintiff paying the money to save the suit from being dismissed—Assignment of plaintiff's interest—Mortgagee paid off—Application by mortgagee to withdraw the money paid into Court—Mortgagee cannot be allowed to withdraw unless on an application by one of the parties One Banubai for herself and as guardian of her son Banemiya and daughter Pullabai sold the property in suit to one Mahomed Banemiya and Pullabai brought a suit to set aside the sale and it was decreed that the plaintiffs should on paying into Court a certain sum of money within six months, take into possession their shares of the property on partition and that in default of payment the suit should be dismissed One Dattatraya, who was a mortgagee from Banemiya, paid the decretal amount into Court on the 22nd August 1918 to save the suit from being dismissed On the 16th September 1918 Banemiya sold the remaining interest in the property to one Ismail. Subsequently, on the 3rd October 1918 Dattatraya's mortgage was redeemed and on the 4th October 1918 he applied to the Court to withdraw the amount This application was opposed by Ismail. The Subordinate Judge made an order allowing Dattatraya to withdraw the money paid into Court *Held*, setting aside the order, that though the money was produced by Dattatraya, it was paid into the credit of the proceedings and could only be dealt with an application made in the regular course by one of the parties and that Ismail could be heard as he was the person in whose favour interest was created by the plaintiffs ESMAIL ALLARAKHIA v. DATTATRAYA RAMCHANDRA (1920) . I. L. R. 45 Bom. 967*

PAYMENT TOWARDS DEBT

See LIMITATION I. L. R. 44 Calc. 567

PECUNIARY SUFFICIENCY.

See SURETY . I. L. R. 44 Calc 737

PEDIGREE.

See EVIDENCE ACT (I OF 1872), s 32

I. L. R. 37 ALL 600

Question of pedigree—Plaintiff and his witnesses, not directly cross examined on the case raised by defendant—Court is should accept each case—Plaintiff's case believed by trial Court—Reversed by High Court on such basis, if correct. Where the question was whether plaintiff A was the legitimate son of Muhammad Sher Khan by his wife Musammatt Munne, and A himself and his witnesses gave evidence that he was, but the only question put to them in cross-examination was whether Muhammad Sher Khan had a woman named Sundara in his keeping as a mistress, and when witnesses for the defendants were being examined, some attempt was made to prove that A was the son of another person of the name of Muhammad Sher Khan who had a mistress named Sundara, and the trial Court believed A's case which was supported by strong and straightforward evidence on the record,

PEDIGREE—contd

and as to the case of the defendants held "that the whole story was a pure concoction and was unworthy of credit." *Held*, agreeing with the trial Court, that the High Court on appeal was not justified in dismissing the plaintiff's suit on the view that "it was quite possible that the real truth was that the claimant was the son of Musammatt Sundara who was kept by Muhammad Sher Khan," having been influenced thereby by the fact that the suit was being financed by a co-plaintiff in whose favour A had executed a deed of sale in respect of a property of the property claimed and in accordance with which the litigation was being financed ABUL AZIZ v. TASADDUQ HUSSAIN (1917)

21 C. W. N. 873

PENAL ASSESSMENT.

levy of—

See MADRAS LAND ENCROACHMENT ACT (III OF 1904), ss 3 & 14

I. L. R. 38 Mad. 674

Right of Government to levy—Interference with possession—Possession short of the statutory period is sufficient basis for a suit for a declaration of title—Specific Relief Act (I of 1877), s 42 Per CRANIN The Government has no right to collect penal assessment from a person in possession of land simply on the ground that he is not the legal owner of the land, but such right is conditional on the land being communal Per ABDUL RAHIM, J (ALYING, J dissentante)—A person in possession of land even though for less than 12 years would, under s 42 of the Specific Relief Act, be entitled to a declaration that he is in lawful possession as against a wrong doer who interferes with his possession ISMAIL AHY v. MAHOMED GHOS, I L R 20 Cal 834, applied Hanmantara v Secretary of State for India, I L R 25 Bom 237, distinguished Rasonada Rayar v Sitharama, Pillai, 2 Mad II C 171, referred to The levying of penal assessment on land if not justified amounts to unlawful interference with possession ATYAPARAJU v SECRETARY OF STATE (1912)

I L. R. 37 Mad 298

PENAL CODE (ACT XLV OF 1860)

Effect of on previous Penal Laws

See CONTEMPT OF COURT

I. L. R. 41 Calc. 173

Preamble and ss 1, 2, 3, 499—

See DEFAMATION I. L. R. 43 Calc 338

Chaps XII and XVII—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 318

I L. R. 38 Mad. 552

ss. 7, 27, 243—

See COUNTERFEIT COIN

I. L. R. 44 Calc. 477

s 8—

See PLEADER . I. L. R. 44 Calc. 290

s. 21—Illegal gratification, taking of by a public servant—Public servant, unpaid apprentice of. An unpaid apprentice of Government is not a public servant within the meaning of s. 21 of the Indian Penal Code MAHENDRA PRASAD v. EMPEROR (1910) . 15 C. W. N. 319

ss. 22, 403—Criminal misappropriation—"Movable property"—Letter addressed to one

PENAL CODE (ACT XLV 1860)—*contd*ss. 22, 403—*contd*

person retained by another. A letter addressed to H was handed by a postman to H, who was at the time in a room in the occupation of H. W read the letter and put it on a table in the room and left it there. H took the letter and subsequently attempted to file it as an exhibit attached to an affidavit made by him in a suit for judicial separation between H and his wife, for the purpose as he afterwards stated of strengthening *his case and of improving his own position*. The Court however refused to receive the letter: *Held* that in the circumstances H could not be convicted of dishonest misappropriation of property with respect to his retention of the letter. *Quare* Whether the letter could be regarded as movable property within the meaning of s. 22 of the Indian Penal Code. *EMERSON v. HARRIS* (1917) I L R. 40 All 119

ss. 23, 24, 463 to 465—

See FORGERY I L R. 43 Calc. 421

ss. 24, 25, 463, 464, 471—

See FORGERY I L R. 38 Calc. 75

s. 27—

See COUNTERFEIT COIN

I L R. 44 Calc. 477

ss. 29, 30, 464, 467 and 474—*Forgery*—*Document, meaning of*—*Valuable security*—*In complete document*—*Material alteration of incomplete document*—*Effect of an agreement in writing which purported to be entered into between five persons, was signed by only two of them, it was altered by the addition of some material terms by the accused who was one of the two executants without the consent or knowledge of the other executant and was not signed by the other parties to the agreement. The accused was in possession of the instrument which was altered by him. Held by OLIVER J. (on a reference under s. 420 Criminal Procedure Code, owing to difference of opinion between SADASIVA AYYAR and PHILLIPS JJ.) that the accused was guilty of the offence of forgery of a valuable security under s. 467 or of being in possession of a forged document under s. 474 of the Indian Penal Code. The instrument, though not signed by all the parties thereto, fulfilled the requirements of the definition of a 'document' in s. 29 of the Code. The document was a valuable security because it imposed an obligation on the actual executants and an option on the others and there was no express or implied condition precedent to be found in the document or established by independent evidence that the document was to be inoperative against the executants until all the parties executed it. It is open to the accused to plead and to prove that the alterations were not made fraudulently or dishonestly because they represented what occurred in good faith believed to be the truth and intended to be used to support what in good faith he claimed or might claim. *Queen Empress v. Syed Hussain*, I L R. 7 All 403. *Queen Empress v. Sheo Dyal*, I L R. 7 All 459. *Queen v. Arjun Pershad*, 2 N. W. P. H. C. R. 297. and *Manicko Achar v. Emperor* (1915) Mad W. V. 273 referred to. *Reg. v. Turpin*, 2 C. & K. 870 disapproved. *R. v. Rangley* (1932) R. & R. 419, referred to. *R. v. Ler*, 3 Cox 89 and *Reg. v. Harper*, 7 Q. B. D. 78 followed. *RAMASWAMI AYYAR v. THE KING* *EMERSON* (1917) I L R. 41 Mad 589*

PENAL CODE (ACT XLV OF 1860)—*contd*

s. 30—

See MAGISTRATE POWER OF

I L R. 33 Calc. 58

ss. 30, 467—*Valuable security*—*Forgery*—*Incomplete documents bearing forged signature of executant*—Two documents were found in the possession of the accused each bearing a signature which purported to be that of one Bindhyachal but which in fact was a forged signature. One document was intended to be filled up as a promissory note, the other as a receipt, but the spaces for particulars of the amount, the name of the person in whose favour the document was executed, the date and place of execution and the rate of interest were not filled in. An anna stamp was affixed to each but it was not cancelled in any way. *Held* that these documents nevertheless purported to be valuable securities within the meaning of the definition contained in s. 30 of the Indian Penal Code. *Queen Empress v. Ramaswami*, I L R. 12 Mad 49 referred to. *EMERSON v. JAWAHIR THAKUR* (1916) I L R. 33 All 430

ss. 30 and 471—*Forged document*—

User whether filing with plaintiff amounts to—*Valuable security whether paper on which an account is written*—The filing of forged documents with a plaintiff is user of them within the meaning of s. 471 of the Penal Code. A document whereby a person acknowledges himself to be under a legal liability is a valuable security within the meaning of s. 31. *Indu Lalaha v. THE GOVT.* 3 Pat. L. J. 385

s. 34—*Several persons acting with a common intention*—S. 34 does not create a distinct offence but lays down a principle of liability and when two or more persons join act rely in and assault on a 3rd person they are jointly responsible for the injuries caused to the extent to which they had a common intention to cause those injuries and what their common intention was must be gathered from the circumstances. *FOR* *ELLAN v. THE KING* *EMERSON*

25 C. W. N. 24

ss. 34, 109, 114—

See ACCUSED'S ACCUSEE

I L R. 41 Calc. 1072

ss. 34, 109, 467—*Forgery*—*Abetment of forgery*—*Abetment by conspiracy*—*Conspiracy at Calcutta foreign territory*—*Consequent forgery committed in British India*—*Trial in British India of the fore-jury who conspired to forge at Calcutta and who was in Calcutta when the forgery was committed in British India*—*Jurisdiction*—The accused was a subject of the Calcutta State. He lived there and traded with his business partner A. He conspired with A at Calcutta and sent A to a professional forger at Umreth (a place in British India) with instructions to instigate the latter to forge a valuable security. To facilitate the forgery the accused sent his khata book with him. In pursuance of A's instigation the forgery was committed at Umreth. On these facts the accused was charged in a Court in British India, with the offence of abetment of forgery under ss. 467 and 109 of the Indian Penal Code. The trying Judge referred to the High Court the question whether the accused not being a British subject was amenable to the jurisdiction of his Court. *Held* that the Court in British India had jurisdiction to try the accused for the accused's offence was not wholly complete.

PENAL CODE (ACT XLV OF 1860)—*contd.*ss. 34, 109, 487—*contd.*

within Cambay limits, but having been initiated there, was conditioned and completed within the British territory of Unreth. Where a foreigner strikes the train of his crime in foreign territory, and perfects and completes his offence within British limits, he is triable by the British Court when found within its jurisdiction. S. 31 of the Indian Penal Code provides not only for liability to punishment but also for subjection of a conspirator to the jurisdiction of a Court, though he conspires at a place beyond the jurisdiction. *EMPEROR v. CHHOTALAL BABA* (1912).

I. L. R. 36 Bom 524

ss. 37, 302, 304—

1. — *Murder—Culpable homicide not amounting to murder—Fatal assault with lathis by three persons acting in concert.* Three persons, brothers, attacked with lathis a fourth against whom they bore a grudge, and beat him with great severity, so that he died shortly afterwards. His skull was badly fractured, and numerous other injuries were inflicted upon him. It did not appear which injuries were caused by which of the assailants, but the evidence showed that they were acting in concert and intended to cause such bodily injury as was likely to cause death. *Held*, that all three assailants were guilty of murder. *King Emperor v. Subbappa Channappa*, 15 Bom. L. R. 303, and *King Emperor v. Kanhas* 7 L. R. 35 42 329; followed *Emperor v. Dhana Singh*, 1 L. R. 29 All 282 *Queen Empress v. Bhoja Baidya*, 1 L. R. 19 Mad 493, *Gowindas Namastubai v. Emperor*, 1 L. R. 38 Cal 652, *Emperor v. Dharam Rai*, 18 Weekly Notes, (1937), 236, *Dhans Singh v. King Emperor*, 9 All L. J. 180, distinguished. *EMPEROR v. RAM NEWAZ* (1913). I. L. R. 35 All. 506

2. — *Murder—Culpable homicide not amounting to murder—Fatal assault with lathis by several persons acting in concert.* Five men—members of the same family—assaulted an unarmed man and beat him with their lathis. They knocked him down and continued beating him, with the result that he died then and there. Another man, who came to the rescue of the first, was also knocked down and beaten by the same five men with a similar result. *Held*, that all five men were in each case guilty of the offence of murder. *Dhans Singh v. King Emperor*, 9 All L. J. 180, dissenting from *EMPEROR v. HANUMAN* (1913).

I. L. R. 35 All. 560

s. 39—

See s. 290. I. L. R. 34 Mad 82

ss. 40 and 79—*Madras Forest Act (V of 1882), offence under—Justification, plea of, not available.* The plea of justification provided by s. 79 of the Indian Penal Code (XLV of 1860) is available only for an offence punishable by the Penal Code and not for offences punishable by any special or local law and hence the belief of the accused that he was justified in his act does not exculpate him from punishment for his guilt under s. 21 of the Madras Forest Act. *Emperor v. Ananias*, 14 Bom. L. R. 365, dissenting from *In re Penchul Reddy*, 9 Mad. J. T. 218 followed *Re Lewis* (1913). I. L. R. 38 Mad. 773

ss. 52, 191, 193—*Perjury—Verification of application for execution containing statements in*

PENAL CODE (ACT XLV 1860)—*contd.*ss. 52, 191, 193—*contd.*

fact untrue—"Good faith." A man cannot be convicted of perjury under s. 193 of the Indian Penal Code for having acted rashly, or for having failed to make reasonable inquiry with regard to the facts alleged by him to be true. It must be found that he made some statement which he knew to be false, or which he believed to be false, or which he did not believe to be true and this finding should be arrived at independently of the definition of "good faith" in s. 52 of the Code. *EMPEROR v. MENAMAD INAQ* (1914). I. L. R. 36 All. 362

ss. 58, 304 (1)—*Culpable homicide not amounting to murder—Sentence of transportation for fourteen years, if legal—Sentence by High Court—Interference by Privy Council—Substantial injustice.* Whilst s. 304 (1) and s. 59 of the Indian Penal Code authorise a sentence of transportation for life, they do not empower a Court to impose a sentence of transportation for a term of years exceeding the maximum term for which a sentence of imprisonment can be imposed, namely, ten years. Where the High Court passed a sentence of transportation for fourteen years upon the accused who had been convicted under s. 304 (1) of the Penal Code. *Held*, that the sentence not being authorised by law, the Privy Council must hold that there was substantial injustice, for the sentence might involve the incarceration of the accused during many years without legal authority. *Re Dillet* L. R. 12 App. Cas. 459 467 (1837), referred to *SAYYAPUREDDI CHIVVAYTA DHORA v. THE KING EMPEROR* 25 C. W. N. 514

s. 62—*Sentence—Forfeiture of property—Offences in respect of which forfeiture is a suitable penalty.* *Held* that s. 62 of the Indian Penal Code which empowers a Court to order in certain cases the property of a convicted person to be forfeited to the Crown should ordinarily be applied in cases of crimes against the State or affecting the safety of the public generally. *EMPEROR v. GAYA PRASAD* (1914).

I. L. R. 36 All. 395

See ACT XVI OF 1921, s. 4

s. 64—

See CALCUTTA MUNICIPAL ACT, ss. 374 376 15 C. W. N. 906

ss. 71, 147, 149 and 325—

See CRIMINAL PROCEDURE CODE s. 106(3)

I. L. R. 33 All. 48

ss. 71, 147, 149 and 325—

See SENTENCE 3 Pat. L. J. 641

ss. 71, 353—

one act constituting two offences—

See GENERAL CLAUSES ACT, 1897, s. 26

1 Pat. L. J. 373

ss. 71, 147, 321—*Criminal Procedure Code, ss. 35 and 235—Separate convictions for rioting and causing hurt.* Where, several persons being on their trial on a charge of rioting, it appears that some of them have also committed the offence of causing simple hurt under s. 323 of the Indian Penal Code, there is no legal objection to charging each person under that section and convicting them of, and sentencing them for such offence as well as for the offence of rioting. *EMPEROR v. KATWARDI RAI* (1917). I. L. R. 39 All. 623

PENAL CODE (ACT XLV 1860)—*contd.*

s. 75—

See PRACTICE I. L. R. 24 Bom. 325

Criminal Procedure Code (Act V of 1898), s. 565—Whipping Act (IV of 1903), s. 3—Sentence of whipping only passed on accused—Order to accused to notify his residence—Validity of the order S. 363 of the Criminal Procedure Code (Act V of 1898) must be strictly construed. The order contemplated by the section can only be made at the time of passing sentence of transportation or imprisonment upon a convict. It cannot be made where the Court instead of passing that sentence, passes a sentence of whipping. *EMPEROR v. FULAI DITTA* (1910)

I. L. R. 35 Bom. 137

Previous conviction on by a court in a Native State Held that the provisions of s. 75 of the Indian Penal Code cannot be applied when the previous conviction is one passed by a Criminal Court in a Native State. *Bahawal v. King Emperor* 45 *Punjab Rec.* 61 Cr. J., followed. *EMPEROR v. BILAWAR* I. L. R. 42 All. 136

s. 76—Evidence Act (I of 1872), s. 105—Question whether act done by accused falls within general exceptions—Evidence—Presumption—Pleading. Where an accused person has raised a plea in consistent with a defence which would bring his case within one of the general exceptions in the Indian Penal Code he cannot, in appeal set up a case, based upon the evidence taken at his trial, that his act came within such general exception. Circumstances which would bring the case of an accused person within any of the general exceptions in the Indian Penal Code, can and may be proved from the evidence given for the prosecution or to be found elsewhere in the record, but there must be evidence upon which such circumstances can be found to exist, and when they are not shown to exist, the Court is not competent to assume, more particularly when the plea taken are inconsistent with such assumption, that such circumstances might have existed or that doubt may arise in consequence of such assumption and the accused ought to be given the benefit of the doubt. *Queen Empress v. Tammal*, I. L. R. 21 All. 122, referred to. *EMPEROR v. WAJID HUSSAIN* (1910)

I. L. R. 32 All. 451

ss. 78, 79, 342—

See WRONGFUL CONFINEMENT

I. L. R. 47 Calc. 818

s. 79—

See s. 40 I. L. R. 33 Mad. 773

See s. 107 I. L. R. 5 Pat. L. J. 129

See WRONGFUL CONFINEMENT

I. L. R. 47 Calc. 818

ss. 79, 141, 147, 342—

See RIOTING I. L. R. 43 Calc. 78

s. 80—Plan of accident—Onus pro accused—Criminal case—Motive for committing offence—Criminal Procedure Code (Act V of 1898), s. 342—Written statement filed by accused—Examination of accused by Court Per CURRIE J. If the accused puts forward a substantive defence of accident within the purview of s. 80, Indian Penal Code, it is incumbent upon him to prove it. Where the evidence as to the deed is sufficiently convincing, it is immaterial to consider with what motive it was done. Per BRACKENRIDGE, J. There

PENAL CODE (ACT XLV 1860)—*contd.*s. 80—*contd.*

is no provision in the Code of Criminal Procedure for the making of a written statement by an accused in the Sessions Court and the practice of refusing to answer questions and of putting in a written statement is a pernicious one. *HARJO EMPEROR v. DWILENDRA CHANDRA MUKHERJEE* (1915)

19 C. W. N. 1043

ss. 82, 83—Offence of rape committed by a boy under fourteen—Presumption Held, that the presumption of English law against the possibility of the commission of the offence of rape by a boy under the age of years 14 has no application to India. *EMPEROR v. PARAS RAM DUBE* (1915)

I. L. R. 37 All. 197

s. 84—Exemption from criminal responsibility on account of unsoundness of mind A person whose cognitive faculties are not so impaired as to make it impossible for him to know the nature of his act or that he was doing what was wrong or contrary to law is not exempted from Criminal responsibility under s. 84 Indian Penal Code. *Queen Empress v. Aader Nasser Khan*, I. L. R. 23 Cal. 604, referred to. The burden of proving unsoundness of mind rests on the accused. *KING EMPEROR v. RAM SUNDAR DAS* (1919)

23 C. W. N. 621

s. 86—Interpretation of—Drunkenness—Knowledge and intent Per AYLING, J. Ordinary drunkenness makes no difference to the knowledge with which a man is credited and if an accused knew what the natural consequences of his act were he must be presumed to have intended to cause them. Per TRAYN, J.—S. 86, Indian Penal Code, must be construed strictly. It provides that the intoxicated person shall be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, but it does not provide that he shall be dealt with as if he had the same intent. *Re BHANDRU QANARA* (1914)

I. L. R. 38 Mad. 479

s. 90—

See s. 360

I. L. R. 42 Bom. 391

'Consent' obtained on misrepresentation, illegal—Penal Code (Act XLV of 1860), s. 366—Kidnapping a girl with such consent obtained from guardian. The offence of kidnapping consists in taking or enticing a minor out of the keeping of the lawful guardian of such minor without the consent of such guardian. If a minor is taken with the consent of the guardian and subsequently married improperly without the consent of the guardian to any person, such improper marriage would not by itself amount to kidnapping. A consent given on a misrepresentation of a fact is one given under a misconception of fact within the meaning of s. 90, Indian Penal Code, and as such is not useful as a consent under the Penal Code. A misrepresentation as to intention of a person (in stating the purpose on which the consent is asked) is a misrepresentation of a 'fact' within the meaning of s. 3 of the Evidence Act. Per CURRIE, J. Equally useless as a defence is a consent obtained by a fraud or coercion. *R v. Hopkins, Car & Star* 214 followed. *Re JALABADDU* (1913)

I. L. R. 38 Mad. 453

s. 95—

See CRIMINAL PROCEDURE CODE ss. 433

AND 439

I. L. R. 43 All. 497

PENAL CODE (ACT XLV 1860)—*cont'd*

s. 97—

See EVIDENCE ACT (I OF 1872), s. 105
I L. R. 40 ALL 284

ss 97, 99—*House search by Police officer—General search—Search for specific article—Criminal trespass—Right of private defence—Code of Criminal Procedure (Act V of 1893), ss 433, 437, 165 and 94—District Magistrate, power of, to order further enquiry after discharge. Every person has a right subject to the restrictions contained in s 99 of the Indian Penal Code to defend property, whether moveable or immoveable, of himself or of any other person against any act which is an offence falling within the definition of criminal trespass. The law does not empower a police officer to search an accused person's house for anything but the specific article which have been or can be made the subject of summons or warrant to produce. A general search for stolen property is not authorised and the law cannot be got over by using such an expression as "stolen property relevant to the case" as the law requires the mention of specific things. Where one of the accused in resisting such a search pushed the Sub Inspector and the latter ordered two constables to climb on his roof and break into the house, whereupon the villagers assumed a threatening attitude and threatened to cut them to pieces if they entered the house and thus empty threat was sufficient to prevent the Police from committing the trespass. Held, that the accused had not exceeded the right of private defence and were rightly discharged and there was no ground for further enquiry. FRANKHO v KING EMPEROR (1912) 18 C. W. N 1078*

See SEARCH BY POLICE OFFICERS

I L. R. 41 Calc 261

ss 93, 147—*Right of private defence—Rioting—Trespass—Wrongful possession for 14 hours—Repelling trespass by force if any offence. Where the opposite party erected some huts stealthily at night on a plot of land of which the petitioners were in peaceful possession and it was alleged that the opposite party were in possession of the land for about 14 hours and the petitioners at break of day on coming to know of this took the earliest opportunity to exercise their own right of private defence and came to the spot armed to turn out the opposite party who were found by them still engaged in erecting more huts and there was a free fight between the parties and the petitioners did not inflict more hurt than was necessary for defending themselves. Held, that the petitioners were not guilty of rioting and that in the circumstances of the case the petitioners had no time to have recourse to the public authorities, and they were entitled to their right of private defence. CHANDULLA SINGH v THE KING EMPEROR (1912) 18 C. W. N. 275*

ss. 99, 147, 148 and 323—

See PRIVATE DEFENCE.

3 Pat. L. J. 653

ss. 99, 103—

See PRIVATE DEFENCE—RIGHT OF

The resistance must only be sufficient to overcome the force employed by the attacker. PAM PRASAD MATHUR v KING EMPEROR. 4 Pat. L. J. 259

PENAL CODE (ACT XLV OF 1860)—*cont'd.*

ss. 99, 147, 323—

See RIOTING. I. L. R. 39 Calc. 896

ss 99, 147, 323, 353—

See SEARCH WITHOUT WARRANT

I L. R. 38 Calc 304

ss 99, 353—*Assault—Public servant acting under colour of office and in good faith—Right of private defence. Where the petitioner was convicted under s 353 of the Penal Code, of having assaulted a Civil Court peon when executing a writ of delivery of possession of a share in a tank by ordering some fishermen to cast their nets in the tank and catch fish for the decree-holder as provided in the writ. Held, that whatever mistake there might be in the procedure of the Munsif in giving the direction in the writ, the petitioner had no right of private defence under s 99 of the Penal Code, against the peon who was a public servant acting under colour of his office and in good faith. PRHO LAL MUKHERJI v THE KING EMPEROR (1913) 18 C. W. N. 543*

ss 100, 325—*Grievous hurt—Private defence—Plea cannot be set up in cases of deliberate fight. The right of private defence cannot be successfully invoked by men who voluntarily and deliberately engage in fighting with their enemies for the sake of fighting, as opposed to the case where men are reluctantly forced to use violence in order to protect themselves from violence offered to them. EMPEROR v BACHUR ANOR (1915) I L. R. 40 Bom 105*

ss 107, 108, 109, 116, 161—

See ABETMENT OF AN ABETMENT

I L. R. 46 Calc 607

ss 107, 108, 121, 124A—*Waging of war, abetment of—Sedition. The accused published a book containing eighteen poems, of which four were the subject matter of the charge. The general trend of the poems charged, as well as the remaining ones in the book evinced a spirit of blood thirstiness and murderous eagerness directed against the Government, conveyed the urgency of taking up the sword and made an appeal of blood thirsty incitement to the people to take up the sword, form secret societies, and adopt guerilla warfare for the purpose of rooting out the British rule. Held, that the accused committed the offence of abetting the waging of war (s 121 of the Indian Penal Code) by the publication of the poems charged. Held further, that the Court was not tied to look into the poems other than those forming the subject matter of the charge for the purpose of finding out the intention of a writer and the design of the publication. Per CHANDAVAKAR, J. Under the Indian Penal Code, the waging or levying of war and the abetting of it are put upon the same footing by s 121; that is, the abetting of waging of war is under the Code as much an offence of treason as the waging of war itself. The word "abetment" is defined in s 107 of the Code and one of its meanings, as given there, is "instigating any person to do anything". This meaning is not excluded by anything that occurs in s 121. The general law is laid down in ss 107-120 of the Code. According to it, "to constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused". This applies to the abetment of the waging of war*

PENAL CODE (ACT XLV OF 1860)—*contd*— ss 107, 108, 121, 124A.—*contd*

against the King as much as to the abetment of any other offence under the Code. The only difference created between the former offence and other offences is that, while under the general law as to abetment a distinction is made for the purposes of punishment between abetment which has succeeded and abetment which has failed s 121 does away with that distinction so far as the offence of waging war is concerned and deals equally with an abettor whose instigation has led to a war and one whose instigation has taken no effect whatever. And that for this simple reason that such a crime more than any other must be sharply and severely dealt with at its very first appearance and nipped in the bud with a strong hand. *Per HEATON, J* Under s 107 of the Indian Penal Code there may be an instigation of an unknown person. The word abet as used in s 121 of the Code has the same meaning as is given to it by s 107. The abetment meant by s 121 is not necessarily confined to abetment of some war in progress. There may be and usually is, instigation of rebellion before rebellion actually begins that kind of instigation is under the Code abetting waging war against the King. So long as a man only tries to inflame feeling to excite a state of mind he is not guilty of anything more than sedition. It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore abetting the waging of war. *EMPEROR v GANESH DAMODAR SAVARKAR* (1910) I L R 34 Bom. 294

— ss. 107, 342 and 79.—*Wrongful confinement—Abetment whether advice amounts to—Code of Criminal Procedure (Act I of 1893) s 53—bona fide arrest by private person—Prisoner not taken to nearest police station effect of Advice per se does not necessarily amount to instigation within the meaning of the first clause to s 107 of the Penal Code. Instigation necessarily connotes some active suggestion or support or stimulation to the commission of the act itself. Advice amounts to instigation only if it was meant actively to suggest or stimulate the commission of an offence. A bare finding that the accused "must have advised the arrest" of the complainant is not sufficient to support a conviction for abetting the offence of wrongful confinement. Where a constable went into a shop and demanded the loans of a certain cooking utensil and, on being refused, beat the shopkeeper and another constable stood outside throughout the proceeding and shouted "maro, maro" held that the latter was guilty of abetting not only the beating but also the attempt to extort and was therefore liable to arrest under s 59 of the Code of Criminal Procedure 1898. Where a private person bona fide makes an arrest under s 59 of the Code of Criminal Procedure, 1898 but takes the prisoner to the Magistrate instead of to the nearest police station he is protected from a charge of wrongful confinement by the provisions of s 79 of the Penal Code. *RAGHUVATH DAS v THE KING EMPEROR**

5 Pat L. J. 129

— ss. 103—

Ses B 107 . I L R 34 Bom. 394
I L R 48 Cal. 607

— s. 103, Expl. 4, ss. 109 and 116—

Abetment of an abetment—Instigating another to en-

PENAL CODE (ACT XLV OF 1860)—*contd*— s 103, Expl 4, ss 109, and 116—*contd*

instigate a Magistrate to accept a bribe—s 161 The words when the abetment of an offence is an offence in Expl. 4 s. 103 Ind an Penal Code, do not mean when an abetment of an offence is actually committed. They mean when the abetment of an offence is by definition or description an offence under the Code that is when an abetment of an offence is punishable under s 109 or s 116 or some other provision of the Code then the abetment of such abetment is also an offence. *SHILAI (HAMARIA v KING EMPEROR)* (1918)

22 C W N 1045

— s. 109—

Ses S 34 I L R 36 Bom. 524
Ses S 341 I L R 43 Bom. 531
Ses S 361 I L R 83 All. 664
Ses S 494 I L R 39 Cal. 409

See ARREST BY PRIVATE PERSON
I L R 41 Cal. 17

See AUTREFOIS ACQUIT
I L R 41 Cal. 1072

See CRIMINAL PROCEDURE CODE s 403.
I L R 40 Bom. 97

— ss 109, 116, 120B—

See MISJOINDER OF CHARGES
I L R 42 Cal. 1153

— ss. 109, 120B, 420.—*Abetment by conspiracy—Indian Evidence Act (I of 1872) s 16* The accused M was a leader of the E I Railway Company. The case for the prosecution was that when making out the weights in the consignment notes he entered a weight less than the actual with the result that the railway company received a sum less than they were entitled to and the other accused who were a firm of merchants paid, as consignees of goods, illegal gratification to M for this fraudulent work. It appeared that the name of M signed by himself appeared in one of the note books of the firm of D and J and the *jama-kharach* of the firm showed the payment of certain sums to accused M. The accused were tried and convicted by the Deputy Magistrate under ss 120B 420 109 101, 101 109 Ind an Penal Code but the Sessions Judge in appeal being of opinion that the conviction under s 120B could not stand on the ground that the offences were committed before that section came into force took into consideration only the direct evidence against M of making the enforcement of false weight and finding this to be insufficient acquitted all the accused. *Held*, that the Sessions Judge rightly held that the conviction under s 120B Ind an Penal Code, could not stand by reason of the fact that the offences were committed before that section came into force but he entirely overlooked to notice that this was immaterial as the law of abetment includes abetment by conspiracy which was distinctly charged before the Magistrate under ss 420 109 Ind an Penal Code. That being so the circumstantial evidence of conspiracy to defraud the railway company was to be considered. That under s 10 of the Evidence Act the note books and *jama-kharach* of the firm of D and J could be used as evidence of abetment by conspiracy against M. *KING EMPEROR v MANMOHAN ROY* (1916) . 20 C W. N. 292

PENAL CODE (ACT XLV OF 1860)—*contd.*

s. 114—

See S 233 . I. L. R. 35 Bom. 368

See S 494 . I. L. R. 2 Lah. 287

See *AUTREVOIS ACQUIT*

I. L. R. 41 Calc. 1072

See *PUBLIC PROSECUTOR, DUTY OF.*

I. L. R. 42 Calc. 422

ss. 114, 148, 328 and 379—

See *PRIVATE DEFENCE*

4 Pat. L. J. 230

ss. 114, 328—*Grievous hurt—Abetment by conspiracy* *Held*, that when the evidence against the co accused was that they themselves came with the first accused and joined in beating the deceased, they could not be convicted of abetting the causing of grievous hurt by their presence because they would have been guilty of abetment had they been absent. If it be found that they all joined in the beating and that the specific act which caused the grievous hurt was not brought home to any particular individual, they would be held liable under s. 34 of the Indian Penal Code, if they aided and abetted or abetted by intentionally aiding the first accused in beating the deceased, then they would be liable under s. 326 read with s. 109 of the Indian Penal Code. *JAMIR UDDI BISWAS v KING EMPEROR* (1912)

16 C. W. N. 909

s. 116—

See S 109 . I. L. R. 42 Calc. 1153

See *ABETMENT OF AN AGREEMENT*

I. L. R. 48 Calc. 607

ss. 120, 120A, 120B, 121A—

See *CHARGE* . I. L. R. 42 Calc. 957

s. 120B—

1. *Conspiracy* *FLETCHER, J.* In cases of conspiracy the agreement between the conspirators cannot generally be directly proved but only inferred from other facts proved in the case. *BEACHROFF, J.* That on a conviction under s. 120B, Indian Penal Code, if an offence has been committed the punishment is provided by s. 109, Indian Penal Code, and if an offence has not been committed the punishment is limited to the extent provided by s. 116. *Semble*. Strictly speaking in cases where an offence has been committed in pursuance of a conspiracy there should not be any conviction for conspiracy but for abetment of the offence; for conspiracy followed by an act done to carry out the purpose of conspiracy amounts to abetment. *KHAGENDRA NATH CHAUDHURI v. KING EMPEROR* (1914)

I. L. R. 42 Calc. 1153

19 C. W. N. 706

2. *Criminal Procedure Code, s. 196A—Conspiracy—Authority for prosecution for conspiracy—Complaint* S 196A of the Criminal Procedure Code provides that no Court shall take cognizance of the offence of criminal conspiracy punishable under s. 120B of the Indian Penal Code "in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards unless the Local Government or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 120B—*contd.*

Local Government has, by order in writing, consented to the initiation of the proceedings" *Held*, that the words "not punishable with death, etc.", relate only to the term "cognizable offence". Three persons presented a petition to the Magistrate and Collector of a district stating that a tahsildar was guilty of various offences under the Indian Penal Code, the principle offence being one under s. 181. The Magistrate treated the petition as a complaint, took the evidence of the person presenting it, and finally dismissed it under s. 203 of the Code of Criminal Procedure and gave sanction for the prosecution of the persons responsible for the petition. *Held* that the Magistrate's procedure was not open to objection. *EMPEROR v. THAKUR DAS* (1917) . I. L. R. 40 All. 41

ss. 120B, 420—

See *WITNESS* . I. L. R. 46 Calc. 700

See S 109 . 20 C. W. N. 292

ss. 121, 121A—

See *JURY, RIGHT OF TRIAL BY*

I. L. R. 37 Calc. 467

s. 121A—

See *CHARGE* . I. L. R. 42 Calc. 957See *CONSPIRACY TO WAGE WAR*

I. L. R. 38 Calc. 169, 559

15 C. W. N. 646

1. *Conspiracy—Abandonment of charge of duceity, if a bar to trial for conspiracy* *Association in lathi play of evidence of intention to wage war*. The fact that proceedings for participation in a duceity against certain individuals were dropped owing to insufficiency of evidence, does not preclude a charge for conspiracy in respect of that duceity from being brought against the same persons and others, for the criminality of a conspiracy is distinct from and independent of the criminality of overt acts. *Emperor v. Nani Gopal, 15 C. W. N. 593, distinguished*. Lathi play by itself is perfectly harmless, and standing alone cannot be treated as evidence of a conspiracy to wage war. To attach sinister significance to the mere association in play or pastime of those that live in the same village or attend the same school would be dangerous especially when those exercises were undertaken with a complete absence of secrecy and rather with a covering of publicity. *Emperor v. Nani Gopal, 15 C. W. N. 593, followed*. *PERMOORE, J.* Intention of a joint design a joint combination "are association could not be held to be a branch of another association proved to have had revolutionary designs. *PULIN BEHARI DAS v. KING EMPEROR* (1911) . 16 C. W. N. 1105

2. *Letter written by a stranger to a conspirator is sufficient to establish former's connection with conspiracy*. A letter written by a stranger to a conspirator which is not shown to have been received or replied to or otherwise acted upon by the latter is not sufficient to establish the former's connection with the conspiracy so as to make his acts done in pursuance of the conspiracy. *R. v. Doulton, 12 Cor. C. C. 87, 92, relied on*. *PULIN BEHARI DAS v. KING EMPEROR* (1911) . 16 C. W. N. 1105

3. *Conspiracy crime of, essence of—Overt acts, bearing of—Proof of*

PENAL CODE (ACT XLV OF 1860)—*contd.*s 121A—*contd.*

conspiracy indirect—Acts of co-conspirators before and after entry into conspiracy if admissible and for what purpose—Members of revolutionary society not a guarantee with its real object if guilty of conspiracy—Arms, find of, after arrest and pending prosecution of conspirator, if evidence Overt acts may properly be looked at as evidence of the existence of a concerted intention and in many cases it is only by means of overt acts that the existence of the conspiracy can be made out. But the criminality of the conspiracy is independent of the criminality of the overt act. *Heymann v R, L R 8 Q B 302, 12 Cox, C C 353; O'Connell v R, 11 Cl & F 155, 1 Cox C C 413, and R v Duffield, 5 Cox, C C 404, 431, referred to.* The prosecution is not obliged to prove a conspiracy by direct evidence of the agreement to do an unlawful act. If the facts proved are such that the jury, as reasonable men can say that there was a common design and the prisoners were acting in concert to do what is wrong, that is evidence from which the jury may suppose that a conspiracy was actually formed. *R v Brown, 7 Cox, C C 412, followed.* Where it appeared that certain members of a society found to be revolutionary were not acquainted with the real object of the society, not having been admitted to its secrets it was held that it would not be proper to convict such members under s 121A of the Indian Penal Code. The criminality of a conspiracy lying in the concerted intention, once reasonable grounds are made out for belief in the existence of the conspiracy amongst the accused, the acts of each conspirator in furtherance of the object are evidence against each of the others, and this whether such acts were done before or after his entry into the combination, in his presence or in his absence. Conspirators are not thereby necessarily subjected to punishment for everything done by their fellows, but acts done prior to the entry of a particular person into the combination are evidence to show the nature of the concert to which he becomes a party, whilst subsequent acts of the other members would indicate further the character of the common design in which all are presumed to be equally concerned. *R v Murphy, 8 C & P 297, 310, R v Reads 6 Cox, C C 131; R v Stenson, 12 Cox, C C 111, O'Keefe v Walsh, 2 I R 681, relied on.* If arms were collected and secreted in furtherance of a conspiracy before the activities of the associates had been brought to an end by their arrest, the fact that they were discovered after the arrest and after prosecution had been started against them would not make the evidence of the find inadmissible at the trial. *PULIN BEHARY DAS v KING EMPEROR (1911)*

18 C. W. N. 1105

4. *Position of objectionable books if proof of guilty intention.* The mere circumstances that a book of an objectionable character is present in the library of an individual or an association does not justify the inference that the teachings of the books are approved and adopted by persons who have access to it. The mere fact that books of a distinctly revolutionary character were found in the library of an association and were now and then read by some of its members, would not conclusively show that the object of the society was revolutionary. *Emperor v. Nani Gopal, 18 C W N 394, followed.*

PENAL CODE (ACT XLV OF 1860)—*contd.*s 121A—*contd.*

R v Watson, 2 Clarke 116, 147, 32 Howell St Tr. 351, East on pleas of the Crown, p 119, referred to. The presence of seditious literature of this description written by members of the society would however, be an important element in furnishing a clue to their tendencies and designs. *Per HARRINGTON, J.* The utmost that can be said of persons in whose library are found books which are calculated to excite hatred against the English is that they approved of literature of that nature and even that assumption would not in all cases be a just one. But the presence in the library of a Society of violently revolutionary literature (some of them written in the hands of a member of the Society) urging the destruction of the English and exulting persons who had murdered English people justified the inference that the members of the Society were imbued with the sentiments those documents expressed. *PULIN BEHARY DAS v KING EMPEROR (1911)*

18 C. W. N. 1105

s. 121A, 123—*Conspiracy to wage war against the King and concealing existence of conspiracy in furtherance thereof—Joint trial for both offences if legal.* *Per CURRIE.* When persons, engaged in a conspiracy within the meaning of s 121A of the Penal Code, in furtherance of their object conceal the existence of the conspiracy from the authorities a charge under s 123 of the Penal Code may be legally joined with one under s 121A. *Barindra Kumar Ghose v King Emperor, 1 L R 37 Cal 467, 14 C W N 1114, followed.* *PULIN BEHARY DAS v KING EMPEROR (1911)*

18 C. W. N. 1105

ss. 121 and 124A—

See S 107 I. L. R. 34 Bom. 373, 394

s. 124A—

See S 511 F. I. L. R. 34 Bom. 373

See CRIMINAL LAW I L. R. 2 Lab 31

See PRESS ACT, 1910 s 3

I. L. R. 43 Mad. 143

See SEDITION I L. R. 38 Cal 214, 253

I. L. R. 39 Cal. 522, 606

Press Act (XXV of 1867), ss 4 and 5—Declaration made by owner who took no part in managing a printing press—Publication of a seditious book at the press—Sedition—Intention. The accused made a declaration under Act XXV of 1867, s 4, that he was the owner of a press called "The Atmaram Press." Beyond this, he took no part in the management of the press, which was carried on by another person. A book styled "Ek Shloki Gita" was printed at this press. It was a book that dealt to a large extent with metaphysics, philosophy and religion. It also contained seditious passages scattered among discussions of religious matters. It was not shown that the accused ever read the book or was aware of the seditious passages it contained. The accused was convicted of the offence punishable under s 124A of the Indian Penal Code, 1860 as publisher of the book. On appeal *Held*, by CHANDAVARAN, J., that the cumulative effect of the surrounding circumstances was such as to make it improbable that the accused had read the book or that he had known its seditious object; and that the evidence having thus been evenly balanced and equivocal, reasonable doubt arose as to the guilt of the accused, the benefit of which should be given to

PENAL CODE (ACT XLV OF 1860)—*contd*—s. 124A—*contd.*

Hum v. Held, by HEATON, J., that before the accused could be convicted under s. 124A of the Indian Penal Code it must be found that he had an intention of exciting disaffection, and that the evidence fell very short of proving the intention. *Per CHANDAVAREKAR, J.* A declaration made under s. 4 of the Press Act is intended by the legislature to have a certain effect, namely, that of fastening responsibility for the conduct of the press on a person declaring in respect of matters where public interests are involved. Hence where a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption, however, is not conclusive, it is not one of law, but of fact, and it is open to the accused to rebut it. *EMPEROR v. SHANKAR SHRIKRISHNA DEV* (1910)

I. L. R. 35 Bom. 55

—s. 141—

See RIOTING . I. L. R. 43 Cal. 78

—ss. 141, 143, 148, 326—*Rioting—Maintaining a right, lawful common object—Enforcing a right, meaning of* The complainant's party without the permission of the petitioners constructed a dam across a pyne exclusively belonging to the petitioners who had obtained an injunction from the Civil Court restraining the complainant's party from interfering with the petitioners in their use and occupation of the pyne. The petitioners in attempting to cut the dam were opposed by the complainant's party two of whom were struck by the petitioners, and the petitioners were convicted of rioting and of causing grievous hurt. *Held*, that after the Civil Court decree and injunction the petitioners could not be held to be enforcing a right within the meaning of s. 141 (f) and the presence of the complainant's party in opposing the petitioners, was a criminal trespass which entitled the petitioners to a right of private defence. The phrase 'to enforce a right' can only apply when the party claiming the right has not possession over the subject of the right and therein lies the distinction between 'enforcing a right' and 'maintaining a right'. A party in possession is entitled to resist and repel an aggression and his action in so doing would be in the maintenance of his right. *RAMNANDAN PROSAD SINGH v. THE EMPEROR* (1913)

17 C. W. N. 1132

—ss. 141, 147 and 148—

See PRIVATE DEFENCE

3 Pat. L. J. 653

—s. 143, conviction under—

See SECURITY TO KEEP THE PEACE.

I. L. R. 43 Cal. 671

—ss. 143, 148, 447—*Unlawful assembly and criminal trespass—Lone side belief in the existence of right to land and assertion of such right* In consequence of a dispute between two landlords, the disputed property was attached under s. 148, Criminal Procedure Code, in a proceeding under s. 145, Criminal Procedure Code, and a receiver appointed, but the Magistrate appointing the Receiver omitted to give any direction as regards

PENAL CODE (ACT XLV OF 1860)—*contd*—ss. 143, 148, 447—*contd*

the management of the property. There was a dispute between the tenants on both sides as regards the grazing rights over the property, but it appeared that the zemindar of the petitioners gave them the grazing rights over the land and they objected to a tenant of the rival zemindar ploughing up a portion of the land over which they alleged they had grazing rights under colour of a lease from the Receiver. The petitioners were convicted under ss. 143, 147 of the Penal Code. *Held*, that the petitioners could not be convicted of criminal trespass when they were asserting a right which had never been declared against them, which they bona fide believed they had, and for the same reason they could not be said to have formed an unlawful assembly because they went and protested against the land being ploughed up. *REAJUPPUN MOLLA v. KING EMPEROR* (1914)

18 C. W. N. 1245

—s. 148—*Rioting—Dispute regarding possession of land—Title with accused—Lawful common object—Propriety of conviction—Right by private defence—Hurt* Where the petitioners were convicted under ss. 148, 323, 326, 329 149, Penal Code, some under one, some under all of the sections, the riot relating to a dispute in respect of possession of a plot of land, and the Sessions Judge in appeal found that the occurrence did take place on the land in dispute and the accused took part in it, but that they were in fact entitled to harvest and remove the crops grown on the disputed land, but the District Magistrate in his explanation pointed out that the findings of the Judge were not in accordance with the weight of the evidence, the High Court refused to go behind the findings of the Sessions Judge, and *held* that the conviction under ss. 148, 326 149, Penal Code, could not stand and so far as the offence under s. 323 was concerned the accused did not in the circumstances of the case exceed their right of private defence. *JHALKY TEWARI v. KING EMPEROR* (1913)

17 C. W. N. 1091

—ss. 146, 147—

See JURY, TRIAL BY

I. L. R. 40 Cal. 367

—s. 147—

See S. 71 . I. L. R. 39 All. 623

See S. 99 . 18 C. W. N. 275

See S. 143 . 18 C. W. N. 1245

See ATTACHMENT.

I. L. R. 40 Cal. 549

See CRIMINAL PROCEDURE CODE, s. 106

I. L. R. 33 All. 48

See CUMULATIVE SENTENCE.

I. L. R. 43 Cal. 511

See JURY, TRIAL BY

I. L. R. 40 Cal. 367

See RIOTING . I. L. R. 43 Cal. 78

—Right of Private Defence—

See ASSESSORS, EXAMINATION OF.

I. L. R. 40 Cal. 183

—*Rioting* There may be an unlawful assembly and riot in respect of a right which the rioters desire to enforce. *DEPUTY LEGAL REMEMBRANCER, BHAR AND ORISA v. MATKEDHARI SINGH* (1915)

20 C. W. N. 123

PENAL CODE (ACT XLV OF 1860)—*contd*

Out of six accused persons three found to have a common object different from that set out in the charge—*Legality of conviction of any of the six accused*—*Court's duty in cases where near relatives want to compound cases* Six accused persons were convicted under s 147, Indian Penal Code and sentenced to 10 days' imprisonment. In the charge the common object was stated to be to assault the complainant. During the pendency of the case the complainant wanted to compound the case but the Magistrate did not allow him to do so. In his judgment he found that three of the accused assaulted the complainant and the other three accused went to snatch away the cattle of the complainant in common object with that of the other accused persons. *Held*, that there being a difference between the common object found by the Magistrate in the case of three of the accused persons, there were not five persons that shared in the common object set out in the charge and the ingredient of an offence under s 147 I P C was wanting. Therefore the conviction under s 147 against all the accused must fail. *ANIVULLA v FRYER* 28 C. W. N 534

ss. 147, 148—*Rioting with common object of obstructing measurement of khas mahal land*—*Acquittal in the absence of affirmative proof of Government's possession of the disputed land*—*Onus of proof of prosecution in criminal case* The petitioners were convicted of rioting with the common object of causing obstruction to measurement and demarcation of khas mahal land by a Kanungo and a khas mahal Tahsildar. *Held* (on a consideration of the evidence) that the question of possession of the disputed land was not one upon which a definite opinion could be expressed on the materials on the record but was eminently one for the Civil Court to determine. That the burden of proving the charge substantially as drawn lay on the prosecution and if it was not established affirmatively that the land on which the alleged riot took place was in the actual possession of the Government, the charge as alleged was not proved and the petitioners were not guilty of rioting with the common object stated in the charge. *PANCHANAN BOSE v KING EMPEROR* (1919)

23 C. W. N 693

ss. 147, 149 and 353—

See BENGAL SURVEY ACT, 1875

2 Pat. L. J. 18

ss. 147, 323—

See APPELLATE COURT

I L. R. 33 Calc. 293

See CUMULATIVE SENTENCES.

I L. R. 40 Calc. 511

ss. 147, 323 and 353—

See CRIMINAL PROCEDURE CODE, 1898, s 423 . . . 3 Pat. L. J. 565

ss. 147, 323 and 149—

See RIOTING . I L. R. 41 Calc. 43

ss. 147, 332—

See MAGISTRATE, JURISDICTION OF
I L. R. 39 Calc. 377PENAL CODE (ACT XLV OF 1860)—*contd*

ss. 147, 353—

See RIOTING . I L. R. 41 Calc. 636

ss. 147, 426, 447—*Obstruction to public way by building a wall*—*Pulling down the wall in bona fide exercise of the right of public way, no offence* The complainant built a wall obstructing a public way. Immediately after this, the accused, who were members of the public, in the bona fide exercise of their right of way, pulled down the wall. *Held*, that the accused were not guilty either of rioting, or of mischief, or of criminal trespass (ss. 147, 426 and 447 of the Penal Code). *Re DHARMALINGA MUDALI* (1914)

I L. R. 39 Mad. 57

ss. 147, 447—*Rioting*—*Criminal trespass*—*Charge of rioting with common object of taking forcible possession of complainant's land and assaulting him*—*Absence of charge under s 447 of the Penal Code*—*Conviction of criminal trespass, propriety of*—*Criminal Procedure Code (Act V of 1895), s 235* When the petitioners who were charged under s 147 of the Penal Code, with rioting with the common object of taking forcible possession of complainant's land and of assaulting him and others were convicted of criminal trespass under s 447 of the Penal Code, without any charge being framed against them or without being called upon to plead to a case of trespass. *Held*, that the conviction was illegal. If the common object had been to commit criminal trespass, the conviction under s 447 of the Penal Code, without a charge having been framed against the accused might have been legally valid but the common object stated in the charge did not make out a case of trespass. In a case of trespass, before a conviction is obtained, the prosecution must establish on the part of the trespasser an intention to commit an offence or to intimidate, insult or annoy any person in possession of the property on which trespass has been committed. *QUEEN v SALAMATI* (1913) 23 W. R. 59, referred to. *ASAF MUHAMMAD EMPEROR* (1913).

13 C. W. N. 992

s. 148—

See s. 141 . . . 17 C. W. N. 1132

See s. 147 . . . 18 C. W. N. 275

23 C. W. N. 693

See PRIVATE DEFENCE.

3 Pat. L. J. 653

4 Pat. L. J. 299

ss. 148, 149, 304, 326

See CRIMINAL TRESPASS.

I L. R. 41 Calc. 682

ss. 148, 324 and 326—

See COMMON OBJECT . 2 Pat. L. J. 541

s. 149—

See s. 71 . . . I L. R. 33 All. 49

See BENGAL SURVEY ACT, 1875

2 Pat. L. J. 18

See CRIMINAL TRESPASS.

I L. R. 41 Calc. 682

See RIOTING . I L. R. 41 Calc. 43

See SENTENCE . 3 Pat. L. J. 641

1. ———— Charge under s. 325, read with s. 149 Conviction under s. 325 of legal—S. 35, when applicable Where the accused were charged and convicted by the Magistrate

PENAL CODE (ACT XLV OF 1860)—*contd*

under s 147, Indian Penal Code, and s 300 read with s 149, Indian Penal Code, and the Sessions Judge in appeal set aside the conviction under s 147, Indian Penal Code, and altered the conviction under s 325 read with s 149, Indian Penal Code, to one under s 305 Indian Penal Code. *Held*, when a person is charged by implication under s 149 Indian Penal Code, he cannot be convicted of the substantive offence. When a Court draws up a charge under s 325 read with s 149, Indian Penal Code, it clearly intimates to the accused persons that they did not cause grievous hurt to anybody themselves but that they are guilty by implication of such offence inasmuch as somebody else in prosecution of the common object of the riot in which they were engaged did cause such grievous hurt. When these accused persons are acquitted of rioting obviously all the offences which they are said to have committed by implication disappear, and the defence cannot be called upon to answer to the specific act of causing grievous hurt simply because it may have appeared in the evidence. S 34 Indian Penal Code can only come into operation when there is a substantive charge. The considerations which govern s 34 Indian Penal Code are entirely different from and in many respects the opposite of those which govern s 149 Indian Penal Code. *REAZUDDIN v KING EMPEROR* (1912) 18 C W N 1077

2. *Existence of common object before commencement of fight not necessary to constitute offence—Criminal Procedure Code ss 237, 238, 423 (b)—Appellate Court has power to convict accused of an offence of which he is acquitted in cases not falling under ss 237, 238.* To constitute an offence under s 149 the existence of a common object before the commencement of the fight is not necessary. It is enough if the common object is adopted by all the accused. The power of an Appellate Court under s 423 (b) of the Criminal Procedure Code to alter the finding while maintaining the sentence is not confined to cases falling under ss 237 and 238 of the Code. The finding which an Appellate Court may alter under s 423 (b) may relate either to an offence with which the accused is apparently charged in the lower Court, or to one of which he might be convicted under ss 237 and 238 without a distinct charge. In cases not falling under ss 237 and 238, he cannot be convicted of an offence with which he was not charged in the lower Court. Where, however, he has been charged and the lower Court has recorded a finding on such charge the Appellate Court can alter the finding. *COLLA HANUMAPPA v EMPEROR* (1911) 1 L R 35 Mad. 243

s. 183A—

See SEDITION. 1 L R 38 Cal. 214

See FORFEITURE 1 L R 41 Cal. 466

See SECURITY FOR GOOD BEHAVIOUR
1 L R. 43 Cal. 591

s. 154—

See PLOTTING 1 L R. 39 Cal. 834

ss. 154 and 155—The accused was convicted under ss 154 and 155 of the Penal Code in respect of a riot which took place in his *dhanyan*. It was found that the riot took place not in respect of the *dhanyan* itself but with respect to the right to collect rent from the tenants. *Held*, that the

PENAL CODE (ACT XLV OF 1860)—*contd*ss 154 and 155—*contd*

accused had been rightly convicted under ss 154 and 155. *DOMA SARTU v THE KING EMPEROR*
2 Pat. L. J. 83

s. 155—

See S 154

2 Pat. L. J. 83

Person not having property in land not claiming interest therein if liable—Record of riot case if admissible. Where the petitioners were convicted under s 155 Penal Code, and they had admittedly no property in the land in respect of which the riot took place, but their mother and the wife of one of them had interest therein, and the Sessions Judge in appeal relying on the evidence that the petitioners demanded *kobutiyats* from tenants, found that they were claiming an interest in the land although there was no evidence to prove that the petitioners demanded the *kobutiyats* for themselves. *Held*, that the finding that the petitioners were claiming an interest in the land could not be supported and the conviction under s 155 Penal Code must be set aside. That in the case under s 155 Penal Code, the Magistrate should have excluded the record of the riot case. *PRANOTHA NATH PATEL CROWDERY v KING EMPEROR* (1913)

17 C W N 1247

s. 161—

See ARRESTMENT OF ABETMENT

1 L R 46 Cal. 607

Illegal gratification to a public servant—Elements necessary for conviction. It is not enough for a conviction under s 161 Indian Penal Code that the accused merely took a certain sum of money but it must be proved that he took the amount as a motive or reward for any of the purposes mentioned in the section. *UPAS DRA NATH CHOWDHURY v KING EMPEROR* (1916)

21 C. W. N. 552

s. 170—The mere assumption of a false character without any attempt to do an official act is not sufficient to bring the offender within the section. *SANDEO PATHAK v KING EMPEROR*
3 Pat. L. J. 339

s. 173—*Summons—Refusal to receive summons when tendered no offence.* Under the Code of Criminal Procedure the mere tender to a person of a summons is sufficient and a refusal by him to receive it does not constitute the offence of intentionally preventing service thereof on himself under s 173 of the Indian Penal Code. *173 EMPEROR v SANDEO RAI* (1918) 1 L. R. 40 All. 577

s. 176—

See CRIMINAL PROCEDURE CODE (ACT I OF 1898) s. 56.

1 L. R. 40 Mad. 789

s. 180—

See CRIMINAL PROCEDURE CODE s. 361
1 L. R. 39 All. 399

s. 182—

See S 211 1 L. R. 39 All. 715

See ACQUITTAL 1 L. R. 37 Cal. 604

See CIVIL PROCEDURE CODE (1908), ss 63 AND 70, SCR. 111

1 L. R. 37 All. 334

See FALSE INFORMATION

14 C. W. N. 765

PENAL CODE (ACT XLV OF 1860)—*contd.*s 182—*contd.*

1. — *Transfer*—*Unfounded allegations against the trying Magistrate made by an accused person in an application for transfer of his case*—*Held* that an accused person, who in support of an application for the transfer of the case against him to some other Magistrate makes unfounded and defamatory allegations against the trying Magistrate cannot be prosecuted in respect of such allegations under s 182 of the Indian Penal Code. *Queen v Daria Khan 2 N W P H C Rep 128 and Queen Empress v Subbaya 1 L R 12 Mad 451*, referred to. *PEROOR v MATAN (1910) 1 L R 33 All 167*

Information to police that informant suspected the persons named as offenders, of amounts to giving false information. Where a person in whose house a theft took place informed the police that he suspected two persons whom he named as the perpetrators of the crime. *Held* that it did not amount to giving false information within the meaning of a 182 Indian Penal Code. *ASANGA MOHAN DUTTA v KING FARRER (1917) 22 C W N 478*

3. — *Giving false information to the Deputy Superintendent of Police in the course of a departmental inquiry in reply to questions*—The petitioner sent a letter to the Deputy Inspector-General of Police alleging that the Sub Inspector of Sadlaura and other persons were looting the people and that he was ready to prove it. This was sent on to the Superintendent of Police for recording the petitioner's statement and for necessary action, and the Superintendent passed it on to the Deputy Superintendent for taking statements. The latter recorded the statement of the petitioner, who made allegations as to bribes having been taken by the Sub Inspector and mentioned among others a bribe of Rs 500 taken from one M. S. In respect of this statement the petitioner was convicted by the Lower Courts of an offence under s 182 of the Penal Code. *Held* that the statement of the petitioner to the Deputy Superintendent of Police in the departmental inquiry was information within the meaning of s 182 of the Penal Code notwithstanding that it was made in answer to questions. *Queen-Empress v Ramji Soybarao (1 L P 10 Bom 124)*, followed. *Mangru v Crown (227 P L R 1914)* distinguished and partly disapproved. *Chinna Ramana v Emperor (1 L R 31 Mad 506)* distinguished. *Rayon Kuit v Emperor (1 L R 28 Mad 640)* referred to. *Held* also that as the Deputy Superintendent of Police was competent to make an inquiry into the petitioner's allegations against the Sub Inspector and the petitioner knew that his allegations were likely to lead the Deputy Superintendent to make such an inquiry which would be calculated to cause annoyance to the Sub Inspector, his conviction under s 182 was justified. *Queen v Perannan (1 L P 4 Mad 241)* distinguished. *PANNA LAL v CROWN 1 L R 1 Lah 410*

ss. 182, 193—*Complaint—Statement made to the Magistrate as head of the police and not as a Magistrate*—P appeared before a District Magistrate and made a statement in which he accused a certain police officer of having beaten him, demanded a bribe of him and locked him up in the police *lockup*. He stated however that he did not wish to make a complaint but only desired that an inquiry should be made. Never

PENAL CODE (ACT XLV OF 1860)—*contd.*ss 182, 193—*contd.*

theless the Magistrate examined P on oath, and subsequently the charge having been found to be baseless, P was convicted under ss 182 and 193 of the Indian Penal Code. *Held*, that inasmuch as P had expressly stated that he did not wish to make a complaint the statement must be taken to have been made to the District Magistrate not as Magistrate but as head of the district police and the conviction under s 193 of the Code could not be upheld. *PEROOR v PUTHAL (1912) 1 L R 35 All 102*

ss. 182, 211—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 403(1)

1 L R 36 Mad 309

1. — *Sanction to prosecute—Criminal Procedure Code s 195*—*H* made a report against several persons; including one S, at a police station charging them with robbing and voluntarily causing hurt. The police made inquiry and sent up several persons for trial, but not S. Some of these were convicted by the Magistrate but acquitted by the Sessions Judge. Thereupon S made a complaint to the Magistrate charging H with having made a false report in respect of himself to the police. The Magistrate took cognizance of the complaint. *Held* that the Magistrate had no power to take cognizance of the complaint by reason of the absence of sanction. *EMPEROR v HARDWAN PAL (1912) 1 L R 31 All 522*

2. — *Sanction to prosecute—Jurisdiction—Application by insolvent to District Judge alleging misappropriation of property of insolvent*—A person who had been declared an insolvent and in respect of whose property a Receiver had been appointed by the District Judge, applied to the Court representing that one Bhikhi Ram had misappropriated certain property belonging to him and asking that Bhikhi Ram's house might be searched. The District Judge forwarded this application to the Magistrate and Bhikhi Ram was arrested and his house searched. Subsequently however proceedings against Bhikhi Ram were dropped there being no evidence against him. Bhikhi Ram then applied to the District Judge for sanction to prosecute the applicant under ss 182 and 211 of the Indian Penal Code. The sanction asked for was granted. *Held* that as regards s 182 there was no objection to the order; but as regards s 211 the criminal proceedings taken against Bhikhi Ram were not taken in the Court of the District Judge and it was at any rate doubtful whether it could be said that the offence committed by the applicant was committed in relation to any proceeding pending in that Court. *MUHAMMAD FAHAR UD DIN v BHUKHT RAM (1914) 1 L R 38 All 212*

ss. 183, 186 and 353—*Resistance to execution of warrant—no duty specified for arrestant*—*Resistance to Nazir executing warrant addressed to peon*—Resistance to the execution of a warrant directing the attachment of property, where the warrant does not specify the date on, or before which it is to be executed is not illegal. Where such a warrant was addressed to a peon of the court for execution. *Held* that resistance to the war who endeavoured to execute it was not illegal. *MONTVI MOHAN BAYARJI v KING EMPEROR 1 Pat. L J 550*

PENAL CODE (ACT XLV OF 1860)—*contd.*

— s. 185—"Property"—*Exclusion right to sell drugs* *Held*, that a person who bid at an auction of the right to sell drugs within a certain area under a false name, and when the sale was confirmed in his favour, denied that he had ever made any bids at all, was rightly convicted of an offence under s. 185 of the Indian Penal Code *Queen v. Resooddeen, 3 W. R. Cr. R. 31*, referred to *EMPEROR v. BISHAN PRASAD (1914)*
I L. R. 37 ALL. 123

— s. 186—

See S. 193 . . . I Pat. L. J. 550

1 ———— *Voluntarily obstructing Public Servants in the discharge of their public functions—Releasing property attached by Civil Court pawns under distress warrants issued under the Public Demands Recovery Act (Peng. I of 1895) and the Village Chaudhari Act (Peng. I of 1879), s. 45—Legality of Warrant—Omission to specify date of extension on the face of it—Civil Procedure Code (Act V of 1908), O XXI, r. 21(2)—Execution by person not named in the warrant—Delegation of powers by Nazir* A distress warrant issued under the Public Demands Recovery Act which has been extended beyond the original date of return, but does not bear on the face of it the altered date, is not a legal warrant under O XXI, r. 21(2) of the Civil Procedure Code. A warrant under s. 45 of the Village Chaudhari Act must contain the name of the person charged with the execution thereof and cannot be legally executed by any other person delegated by the former for that purpose. Where the accused released certain buffaloes attached by the Civil Court pawns, on the 2nd August, under two warrants addressed to the nazir, but endorsed by him to them, the one issued under the Public Demands Recovery Act, which was originally returnable by the 26th July but had been extended to the 8th August, without the alteration of the date appearing thereon, and the other under s. 45 of the Village Chaudhari Act directed to the nazir but without naming any person therein as charged with the execution of it. *Held*, that they were not guilty of an offence under s. 186 of the Penal Code, as the pawns were not lawfully executing the warrants. *SURESH NATH v. EMPEROR (1900)* . . . I L. R. 37 CALC. 122

2. ———— *Obstructing a public servant in the discharge of his public functions—Local inspection by Munsif—Water-ways* In a suit in which a public right of way was claimed there was a dispute not only as to whether the public right of way claimed existed but also as to whether there were not certain other public ways the existence of which would discredit the plaintiffs' allegations in the suit. The Munsif trying the case went to the spot to hold a local inspection; he wanted to pass in a boat along a water way but was not allowed to do so by the petitioners who claimed it as their private property. It was found that it was a water way used at least by the people of a particular locality. None of the petitioners were parties to the suit pending before the Munsif in which the local inspection was held. The petitioners were convicted under s. 146, Indian Penal Code. *Held*, that no offence under s. 186, Indian Penal Code, was committed. *NIHAI DAS v. PATIL v. EMPEROR (1916)*
20 C. W. N. 837

3. ———— *Obstruction to public servant—Devotee, form of—Execution—Warr.*

PENAL CODE (ACT XLV OF 1860)—*contd.*— s. 186—*contd.*

rant, not in form, validity of—Execution of invalid warrant of arrest, obstruction to, effect of—Procedure In an application for execution of a decree for restitution of conjugal rights a warrant was issued directing the executing peon to seize the wife and deliver her bodily to her husband, failing which to bring her under arrest before the executing Court. The peon seized the woman in execution of the warrant but he was resisted and the woman was snatched away. *Held*, that the warrant, the execution of which was resisted, was illegal and therefore no offence was committed under s. 186 of the Penal Code. *GAHAR MUHAMMAD SARKAR v. PITAM BAP DAS (1918)* . . . 22 C. W. N. 814

— ss. 186 and 225B—*Obstructing public servant—Penal Code—Failure to obey order to furnish accounts—Code of Civil Procedure (Act V of 1908), O XXI, r. 30—'injunction'* Where in a suit for an account a preliminary decree was passed ordering the defendant to furnish an account within a specified time, and he failed to do so and together with two companions resisted a peon sent by the Court to arrest him under the provisions of O XXI, r. 32, of the Code of Civil Procedure 1908. *Held*, that the defendant's arrest was unlawful, and that the conviction of himself and his two companions of offences under ss. 186 and 225B of the Penal Code could not stand. *Held*, also, that the order to furnish an account, which was contained in a preliminary decree was not an injunction within the meaning of O XXI, r. 32. The word "injunction" as used in O XXI, r. 32 has a more extended meaning than it has in the Specific Relief Act 1877. The decisions in *Deviander Majumdar v. Auloyanath Roy and Rajlu Nath v. Gangpat*, on the effect of s. 260 of the Code of Civil Procedure 1882 have been overruled by the provisions of O XXI, r. 32, of the Code of 1908. It is not every order of a Court directing a person to do a certain act that is an injunction. In its essence an injunction is a rel of consequential upon an infringement of a legal right. *ANURUP SUTR v. KINU EMPEROR* . . . 8 Pat. L. J. 106

— s. 187—

See CRIMINAL PROCEDURE CODE, s. 42.
I L. R. 42 ALL. 314

— s. 188—

See APPREHENSION
I L. R. 43 CALC. 1086See SANCTION FOR PROSECUTION
14 C. W. N. 234
I L. R. 41 CALC. 144

1 ———— *Order duly promulgated by public servant—Order of public servant to enter railway premises except for travelling* *Held*, that the public servant has a right to enter upon railway premises for many purposes other than travelling, and an order forbidding persons to enter a railway station except for bona fide purposes of travelling would be an illegal order. In the particular instance, however, it did not appear that the order in question was issued by any authority to which, supposing it to be otherwise legal, would have had power to issue it. *EMPEROR v. PANA (1913)*
I L. R. 33 ALL. 139

2. ———— *'Promulgated,' meaning of—Injunction, double case law—offence under Penal Code* The word "promulgated"

PENAL CODE (ACT XLV OF 1860)—*contd*s. 188—*contd*

under s. 188 of the Penal Code refers to orders issued under the Code of Criminal Procedure and not to judgments and orders of Civil Courts. *MAHABALI v KUTTI AMMU* (1915)

I. L. R. 39 Mad. 543

3. ————— *Prohibition order under s. 144 Criminal Procedure Code, passed without any evidence—Prosecution for disobedience of order not properly passed—Cognizance of case under s. 188 by the same Magistrate who passed the order disobeyed* A servant of the first party filed a petition before the Sub divisional Magistrate complaining that the second party were about to construct a drain and if the first party opposed them there was a likelihood of a breach of the peace, whereupon the Magistrate without taking any evidence issued an injunction under s. 144, Criminal Procedure Code against the second party. On the next day on the complaint of the same man the Magistrate summoned the second party under s. 188, Indian Penal Code. Subsequently he transferred the case to a Magistrate with second class powers and again withdrew it from his file and sent it to the Additional District Magistrate. Held that the proceedings were wholly irregular. That the order under s. 144, Criminal Procedure Code, should never have been made. That in summoning the second party under s. 188, Indian Penal Code, the Sub-divisional Magistrate was taking cognizance of the offence under s. 188, Indian Penal Code, which he had no power to do. Further action by the Magistrate under s. 476, Criminal Procedure Code, or an application for sanction under s. 195, Criminal Procedure Code, was necessary. The High Court quashed the proceedings under s. 188, Indian Penal Code, and also set aside the order under s. 144 Criminal Procedure Code, which was the foundation of those proceedings although that order had expired. *CHANDRA KANTO KANJILAL v KING EMPEROR* (1916)

20 C. W. N. 981

4. ————— *Criminal Procedure Code (Act V of 1898), s. 144—Prosecution for disobedience of order prohibiting disturbance* By an order under s. 144, Criminal Procedure Code, the petitioners were directed not to make any disturbance over a certain person's rights of a ferry and thereafter the petitioners being found plying another ferry at the site in question but not causing any disturbance were ordered to be prosecuted under s. 188, Indian Penal Code. Held that the order for prosecution was infructuous. *SOJAL BISWAS v SAMIRUDDIN MANDAL* (1917)

22 C. W. N. 599

5. ————— *Disobedience of order under s. 144, Criminal Procedure Code—Criminal Procedure Code (Act V of 1898) s. 195, 497* Cognizance of a case under s. 188, Indian Penal Code, cannot be taken except in accordance with the provisions of s. 195, Criminal Procedure Code, and under s. 487, Criminal Procedure Code, the Magistrate whose order is disobeyed is not competent to try the case. *BRITANNIC GOV v CHRISTIAN MULLICK* (1919) 23 C. W. N. 520

— ss. 188, 209—*Epizootic Diseases Act (1911 of 1917), sec. 2 and 3—Local Government—Delegation of powers to—Regulations under the Act—R 104 of the Regulations ultra vires of the Local Government* A delegation under r 104 by the

PENAL CODE (ACT XLV OF 1860)—*contd.*ss. 188, 209—*contd*

Collector to a Divisional Officer of the power to call upon people to evacuate houses is illegal and an omission to comply with the order of such officer acting under such delegated authority is not an illegal omission. *Re NAGAPPA TATVAN* (1913)

I. L. R. 38 Mad. 602

s. 189—

CRIMINAL PROCEDURE CODE. s. 435

I. L. R. 39 Mad. 561

— ss. 191, 193—

See s. 52. I. L. R. 36 All. 362

See FALSE EVIDENCE

I. L. R. 83 Calc. 363

— s. 192—“Fabricating false evidence”

— *Document helping Court to form a correct opinion* Certain cattle were sold in a market on the 21st of March, 1917. A clerk whose duty it was to register sales of cattle held at that market and give receipts to the purchasers, gave a receipt on the 27th March, most probably, and dated it the 27th March, 1917, but subsequently altered the date to the 21st, the actual date of sale. Held, that there was no case of fabricating false evidence, for the alteration of the date was not intended to lead anyone to form an erroneous opinion touching the date of sale, but the contrary. *EMPEROR v BADEE PRASAD* (1917)

I. L. R. 40 All. 35

— ss. 192 and 193—False evidence—

Fabrication—Judicial proceedings—Execution proceedings—Criminal Procedure Code (Act V of 1898), s. 195 (b)—Sanction to prosecute—Pending proceedings For the purpose of ss. 192 and 193 of the Indian Penal Code 1860, execution proceedings are judicial proceedings. It is not essential for the purpose of these sections that the judicial proceedings in which the person intends to use the false evidence must be pending at the date of the fabrication. In the absence of any proceeding pending or disposed of, in which or in relation to which the offence under s. 193 of the Indian Penal Code is said to have been committed, no sanction under s. 195 (b) of the Criminal Procedure Code is necessary. *In re GOVIND PANDURANG* (1920)

I. L. R. 45 Bom. 668

— ss. 192, 193, 423—

See FABRICATING FALSE EVIDENCE.

I. L. R. 46 Calc. 986

— s. 193—

See S 182. I. L. R. 35 All. 102

See S 102. I. L. R. 45 Bom. 168

I. L. R. 48 Calc. 996

See CRIMINAL PROCEDURE CODE—

Ss. 157, 159, 476.

I. L. R. 32 All. 30

S 105. I. L. R. 39 Mad. 677

5 Pat. L. J. 23

Ss. 236, 195, 537

I. L. R. 45 Bom. 834

S. 239. I. L. R. 42 Mad. 561

See JUDICIAL PROCEEDING

I. L. R. 37 Calc. 52

See TRUCE IMPRESSION

I. L. R. 39 Calc. 348

PENAL CODE (ACT XLV OF 1860)—*contd*

Perjury arising from contradictory statements—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss 236, 193, 537 (b) AND 184

I. L. R. 45 Bom. 834

1. *Order to prosecute*
—*Case pending before Court of S. M. on—Alleged perjury—Property of prosecution by Committing Magistrate* Where a Committing Magistrate had ordered the prosecution of a witness under s 193 of the Penal Code, while the case in which he had deposed was pending before the Court of Sessions, the High Court set aside the order. The impropriety of taking proceedings against a witness while the case is still pending, commented on BURENDRA NATH DAS GUPTA v THE EMPEROR (1914) 18 C. W. N. 1342

2. *Perjury in a deposition before a Civil Court, not read out to the deponent*
—*Civil Procedure Code Act I of 1908, O 18, r 5—whether secondary evidence is admissible to prove the deposition—Indian Evidence Act, I of 1872, s 91* The petitioner was accused of having made a false statement on oath in the Court of a Munsif. The Munsif stated in evidence in the present trial that this statement was not read out to the witness. The question before this Court was whether secondary evidence could be admitted to prove the making of the statement. *Held*, that secondary evidence cannot be admitted in the trial of the petitioner for perjury to prove the making of the statement in the Munsif's Court. *Empress v Mayadeb Goswami* (1 L. R. 6 Calc 762), *Mohendra Nath v Emperor* (12 Calc. W. N. 845, 847), *Kamatchinathan Chetty v Emperor* (1 L. R. 28 Mad 308 (310)), and *Nalluri Chunchab v Emperor* (1 L. R. 42 Mad. 561) followed. *Ramesh Chandra Das v Emperor* (23 Calc. W. N. 661) and *Crown v Jagat Ram* (23 P. R. (Cr) 1918), distinguished. *Kahn Singh v Empress* (25 P. R. (Cr) 1890), not followed. *IMAN DIT v NIAMAT ULLAH*

I. L. R. 1 Lah. 361

ss. 192, 196, 199, 471—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 192, cls. (b) AND (c)

I. L. R. 38 Bom. 642

ss. 193 and 210—

See SANCTION FOR PROSECUTION

2 Pat. L. J. 688

ss. 193, 471—

See SANCTION FOR PROSECUTION

I. L. R. 40 Calc. 584

ss. 193 and 423—

See FABRICATING FALSE DOCUMENT,

I. L. R. 48 Calc. 911

ss. 193, 511—*Court—District Judge hearing election petition under s 22 of the Bombay District Municipalities Act (Bom. Act III of 1901) is a Court—False evidence before the District Judge*
—*Sanction for prosecution—Criminal Procedure Code (Act V of 1898) s 195* A District Judge hearing an election petition under the provisions of s. 22 of the Bombay District Municipalities Act (Bombay Act III of 1901) is a "Court" within the meaning of s. 193 cl. (b) of the Criminal Procedure Code, 1898. No prosecution for attempting to fabricate false evidence (ss. 193 and 11 of

PENAL CODE (ACT XLV OF 1830)—*contd*

ss 193, 511—*contd*

the Indian Penal Code) before the District Judge can be instituted without having obtained sanction as required by s. 195 of the Criminal Procedure Code, 1898. *Raghuburn Sahay v Kold Singh*, 1 L. R. 17 Calc. 872, followed. *In re NANCHAND SHIVCHAND* (1912) I. L. R. 37 Bom. 365

s. 196—

See CRIMINAL PROCEDURE CODE 1898, s 193 I. L. R. 38 Bom. 642

ss. 197, 198—*Issuing or signing a false certificate—“Certificate” meaning of—Civil Procedure Code (Act V of 1908), O XXI, r 2—Petition in Court stating satisfaction of decree, if a certificate within the meaning of the sections* The two petitioners were convicted under ss 197 and 198 and ss 197 109 and 198 109, respectively, the charge being that one of the petitioners purporting to represent the decree holder in a certain suit signed and filed a petition in the Court of the Subordinate Judge stating contrary to fact, that the other petitioner who was the judgment debtor had paid off the decretal amount to the decree holder through him. *Her Ammuktcar Held*, that the petition in question filed before the Subordinate Judge was not a certificate within the purview of ss. 197 and 198 Indian Penal Code, neither of the requirements of a "certificate" within the meaning of the sections being satisfied in the case. That there is no provision of law which requires a decree holder or his agent to give or sign a certificate of payment or adjustment, nor is there any provision of law which makes the statement of the decree holder or his agent as to payment or satisfaction admissible in evidence as such certificate that is, without further proof. That the word "certificate" may be used as synonymous with certification but that is clearly not its meaning in ss 197 and 198 of the Penal Code. *MAHABIR THAKUR v KING EMPEROR* (1916)

20 C. W. N. 520

s 199—

See CRIMINAL PROCEDURE CODE, s. 193
I. L. R. 38 Bom. 642
23 C. W. N. 886

Sanction to prosecute—

Prosecution based on alleged false declaration—Declaration inadmissible in evidence A declaration, before it can be made the foundation of a prosecution under s. 199 of the Indian Penal Code, must be one which is admissible in evidence and which the Court before which it is filed is bound or authorized by law to receive in evidence. *EMPEROR v RAM PRASAD* (1912)

I. L. R. 35 All. 88

ss. 201, 203—

See FALSE INFORMATION
I. L. R. 46 Calc. 427

ss. 201, 202—*Murder—Causing evi-
dence of murder to disappear—Property of alterna-
tive indictments—Principal and accessory after the
fact—Principal, if can be convicted under s. 201.*
The accused were committed to the Court of Sessions under ss. 302 and 201, Indian Penal Code. In that Court the charge under s. 201, Indian Penal Code, was first investigated, the other charge being postponed for future consideration. The Sessions Judge found that the accused had a

PENAL CODE (ACT XLV OF 1890)—*contd*ss. 201, 302—*contd.*

sufficient motive for committing murder, that they disposed of the body of the deceased and were loitering near his house at the exact hour of murder. On these facts the accused were convicted under s. 201, Indian Penal Code. *Held*, that s. 201 Indian Penal Code, is an attempt to define the position known in England as that of an accessory after the fact. It is settled law that a principal cannot be convicted as an accessory. Where it is impossible to say definitely however strongly it might be suspected, that an accused was guilty of murder, mere suspicion is no bar to a conviction under s. 201. But if it be accepted as a proved fact that the accused before the Court disposed of a dead body and if the acceptance of that fact completes the chain of circumstantial evidence which proves beyond doubt that the accused were actual principals present at the murder and taking part in the murder, they cannot be convicted of the minor offence of causing evidence of the murder to disappear even though by an error of the Judge or by a misconception of the position by the Public Prosecutor the charge of murder is subsequently withdrawn. That on the facts found the accused were principals and the conviction under s. 201 could not stand. *Per CHAPMAN J.* It is unsatisfactory to have an alternative indictment one count charging the accused as principal and the other as accessory after the fact. *Queen Empress v. Lamba*, unreported Criminal Case, Bom. H. C. 1895 at page 799, and *Torap Ali v. Queen Empress*, 1 L. R. 22 Cal. 635, relied on. *SUMANTA DRUPA v. KING EMPEROR* (1915). 20 C. W. N. 186

s. 203—

See FALSE INFORMATION

I. L. R. 46 Cal. 427

s. 210—

See SANCTION TO PROSECUTE.

2 Pat. L. J. 683

s. 211—

See s. 183. I. L. R. 34 All. 522

I. L. R. 38 All. 212

See COMPLAINT, DISMISSAL OF

I. L. R. 40 Cal. 444

See CRIMINAL PROCEDURE CODE—

ss. 4 AND 476 I. L. R. 33 All. 32

S. 250. I. L. R. 37 Bom. 376

S. 493. I. L. R. 38 Mad. 308

See JURISDICTION OF CRIMINAL COURT

I. L. R. 40 Cal. 360

See SANCTION FOR PROSECUTION

4 Pat. L. J. 374

I. — *Laying false information before police—Duty of prosecution—Onus of proof—Elements necessary to be proved—Failure of defence to examine witness, effect of.* Where the petitioner was convicted under s. 211 of the Penal Code of having laid a false information of theft before the police, and the petitioner's case was that he had heard from his wife that the persons named in the information had disappeared and the properties named therein were missing, and his information was based on this statement of the wife, and the prosecution did not prove that there was

PENAL CODE (ACT XLV OF 1890)—*contd.*s. 211—*contd.*

no such statement by the wife who was not examined as a witness for the prosecution nor did the petitioner examine her as a witness on his side. *Held*, that the duty of the prosecution in a case under s. 211 of the Penal Code, is to prove by satisfactory evidence that the charge was wilfully false to the knowledge of the maker of the charge. That it is for the prosecution to establish their case and if they fail to supply that proof which is required to secure the conviction of the accused, the failure on the part of the latter to examine any particular witness or witnesses will not imply the guilt of the accused. That the case against the petitioner being that no theft took place, the obligation of proving it rested on the prosecution. In the present case the prosecution not having established that there was, as a matter of fact, no theft and the petitioner knew that there was no theft, the High Court set aside the conviction and sentence under s. 211 of the Penal Code. *HASSAN MIRZA v. MAHMOUD* (1913). 18 C. W. N. 391

2. — *False charge—*

Necessary constituents of offence under s. 211—Report to a police officer causing suspicion on certain persons. In order to constitute an offence defined by s. 211 of the Indian Penal Code, the "charge" therein alluded to must be made to an officer or to a court who has power to investigate and send it for trial, and must be an accusation made, with the intention to set the law in motion. *Chenna Malli Gowda v. Emperor*, 1 L. R. 27 Mad. 129, *Chinna Ramana Goud v. Emperor*, 1 L. R. 31 Mad. 506, and *Zorawar Singh v. King Emperor*, 11 All. L. J. 1109, followed. The following statement was made to a police officer:—"I find there has been a theft. I suspect the persons named and I want an inquiry to be made." *Held*, that if the statement was false, the offence committed fell under s. 183 of the Indian Penal Code and not under s. 211. *EMPEROR v. MATHURA PRASAD* (1917). I. L. R. 39 All. 715

3. — *Complaint, under*

s. 1 of the Breach of Contract Act (XIII of 1859), withdrawn before passing of any order under a 2—Whether a 'criminal proceeding' within s. 211, Indian Penal Code. A complaint under s. 1 of the Breach of Contract Act (XIII of 1859) which is withdrawn before any order is made by the Magistrate under s. 2 of the Act, either for a refund of the advances paid or for specific performance of the contract, is not a "criminal proceeding" within the meaning of s. 211, Indian Penal Code. *In the matter of Anusoori Sanyasi* (1905) 1 L. R. 28 Mad. 37, and *Derby Corporation v. Derbyshire County Council* (1897) A. C. 550, referred to *HUSSAINA BEXARI v. KING-EMPEROR* (1920).

I. L. R. 43 Mad. 443

s. 211, 500—

See SANCTION FOR PROSECUTION

I. L. R. 44 Cal. 870

s. 213, 214—*Screening offence—Res-*

titution of property for screening offence—The offence screened must be shown to have been committed before the screening could be punished. G gave certain jewellery to M by way of jagad. M pledged the same with A under circumstances which constituted such pledging an offence of criminal breach of trust. The jewellery was later

PENAL CODE (ACT XLV OF 1860)—*contd.*ss 213, 214—*contd.*

returned by S to O on the latter undertaking not to prosecute M for the offence of criminal breach of trust. M was tried for the offence of criminal breach of trust with regard to the jewellery and was acquitted. S and O were next tried for offences under ss 213 and 214 of the Indian Penal Code, in that they offered and took restitution of property in consideration of screening an offence. The trying Magistrate convicted them of the offences charged, holding that for the purposes of their case M must be deemed to be guilty of the offence of criminal breach of trust. On appeal—*Held*, acquitting the accused, that they could not be convicted of screening of the offence of criminal breach of trust, when the offence of criminal breach of trust had not been proved. *Held*, also, that under the circumstances the trying Magistrate was bound to proceed on the footing that no criminal breach of trust had been committed. *EMPEROR v SANJAL LALLUBHAI* (1913)

I. L. R. 37 Bom. 658

s. 216—*Harbouring an offender—*

"Assistance" coming within meaning of the section, nature of. To the knowledge of the petitioner warrants for the arrest of the petitioner's brother and a proclamation under s. 87, Criminal Procedure Code, were issued the proclamation being duly published at the house in which the two brothers as joint owners used to reside. On information received the police interviewed the petitioner at his house and in answer to enquiries he replied that his brother was in the house and promised to produce him. He then went inside the house and after some delay returned with his brother's son and said that he had made a mistake and that it was the son who had come to the house the preceding evening. On search the petitioner's brother was found hiding in the house. The petitioner was convicted under s. 216, Indian Penal Code. *Held*, that the petitioner was rightly convicted. The ways in which assistance may be rendered need not for the purposes of s. 216 be restricted to methods which may properly be regarded as *evadendi generis* or of a like nature with supplies of food or of other necessary articles. *MUCHI MIYAN v EMPEROR* (1917)

21 C. W. N 1082

s. 222—

See CRIMINAL PROCEDURE CODE, s 214

I. L. R. 41 All. 454

s. 224—*Village Chowkidar if a police officer—Escape from custody—Abetment.* A Chowkidar cannot be properly regarded as a police officer within the terms of s. 59, Criminal Procedure Code, and escape from his custody is not an offence under s. 224, Penal Code. *PURNA CHANDRA KUNDU v HACHANALI CHOWKIDAR*

17 C. W. N. 978

ss. 224, 109—

See ARREST BY PRIVATE PERSON

I. L. R. 41 Calo. 17

ss. 224, 225—

See RESCUE FROM LAWFUL CUSTODY

I. L. R. 43 Calo. 1161

ss. 224, 225 and 353—

See WARRANT . 3 Pat. L. J. 493

PENAL CODE (ACT XLV OF 1860)—*contd.*

ss. 225, 332—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 54

I. L. R. 40 Mad. 1028

s. 225B—

See s 186

3 Pat. L. J. 103

See WARRANT . I. L. R. 38 Calo. 789

I. L. R. 42 Calo. 709

1. *Escape from lawful custody—Defaulting co-sharer arrested under warrant of Tahsildar—Rules of Board of Revenue, r 9 cl (2) Act (Local) No. 111 of 1901 (United Provinces Land Revenue Act), ss 142, 143, 146.* Where a Tahsildar issued a warrant under s. 146 of the United Provinces Land Revenue Act against certain defaulting co-sharers, and they were arrested, but subsequently escaped from detention. *Held*, that this was an escape from lawful custody within the meaning of s. 225B of the Indian Penal Code. The Tahsildar's warrant was not illegal because the Board had directed that process should 'ordinarily' issue in the first instance against the landholder. *EMPEROR v GULAB SINGH* (1909)

I. L. R. 32 All. 118

2. *Warrant of arrest—Actual resistance necessary.* In order to constitute an offence under s. 225B of the Indian Penal Code, something more is required than an evasion of arrest or a mere assertion by the person sought to be arrested that he would not like to be arrested or that a fight would be the result of such arrest. There must be positive evidence to show that the officer armed with a warrant of arrest produced the warrant and that the person sought to be arrested resisted such arrest. *EMPEROR v AJAZ HUSAIN* (1916)

I. L. R. 38 All. 506

3. *Escape from jail of a person imprisoned for failure to furnish security to be of good behaviour.* Where a person escapes from jail in which he was confined, under s. 123 of the Code of Criminal Procedure, by reason of his having failed to furnish security to be of good behaviour, his conviction should be recorded under s. 225B, and not under s. 224 of the Indian Penal Code. *Queen Empress v Kandhala I L R 7 All 67*, referred to. *EMPEROR v MULI*

I. L. R. 43 All. 185

4. *Execution of warrant of Civil Court and resistance thereto.* It is not necessary that a bailiff executing a Civil Court warrant should in the first instance show the warrant. It is sufficient that he should apprise the person to be arrested of the contents of the warrant and show it if desired. *THE SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS v. BARODA KANTA MAJUMDAR*

25 C. W. N. 815

s. 223—

Insult to Court—Exact words to be given—

See JUDGMENT I. L. R. 2 Lah. 308

Intentional insult to an officer sitting judicially—Application for transfer. An accused person in an application for transfer of the case pending against him made an assertion to the effect that the persons who caused the proceedings to be instituted were on terms of intimacy with the

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PENAL CODE (ACT XLV OF 1860)—*contd.*s. 228—*contd.*

officer trying the case and that therefore he did not expect a fair and impartial trial. *Held*, that there being no intention on the part of the applicant to insult the Court but merely to procure a transfer of his case he was not guilty of an offence under s. 228 of the Indian Penal Code. *Queen-Empress v Abdulla Khan*, 1398, II A 115 followed. *EMERSON v MORLI DASS* (1916)

I L. R. 33 ALL 284

—s. 235 and 243—*Counterfeit coins*—*Father and son presumption as to possession*. It is not essential for coins to be counterfeit that they should be exact resemblances of genuine coins. It is sufficient that they are such as to cause deception and may be passed for genuine. Where father and son were accused of being in possession of moulds for the purpose of using the same for making counterfeit coins and of being in possession of such coins and there was evidence to show that the father looked after the family cultivation while the son exclusively attended to the shop in the verandah of which the moulds and coins were discovered and it was also shown that the father was never seen in possession of the moulds or of the counterfeit coins. *Held*, that the ordinary presumption that the things in the house of a joint Hindu family were in the possession of or under the control of the manager member had been rebutted. *AMRIT SONAR v KINO EMERSON*

4 Pat. L. J. 525

s. 243—

See s. 235. 4 Pat. L. J. 525

See COUNTERFEIT COIN

{I L. R. 44 Calc. 477

—s. 268—*Possession of false measure*—*Intent*—*Acquittal*—*Criminal Procedure Code s. 438*—*Practice*. It being in evidence that in the village where accused carried on the business of a cloth seller the usual standard of measurement was 35½ inches it was *held*, that a conviction under s. 268 of the Indian Penal Code in respect of the possession of such a measure of length could not be sustained. *Held*, also that the High Court will not as a rule entertain a reference by a Sessions Judge having for its object the reversal of an acquittal, when the Government has right of appeal, more particularly when the matter is one, such as a question of correct weights and measures, in which the Government may be considered to be particularly interested. *EMERSON v HARAK CHAND MARWARI* (1917).

I L. R. 49 ALL 84

s. 268, 290—

See PUBLIC NUISANCE.

I L. R. 46 Calc. 515

s. 280—

See s. 188. I L. R. 33 Mad 602

See MADRAS CITY MUNICIPAL ACT (III of 1904), s. 386. I L. R. 43 Mad. 344

—s. 280—*Rash and negligent act proof and degree of—Contributory negligence, how far is an element for consideration—Evidence, consideration of—* by the High Court in revision. The accused was in charge of a steam launch which was coming up the river in a moonlight night. In the river at deep water some country boats were moored having no lights in them. The accused on

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 280—*contd.*

account of mist could not make out whether boats were stationary or moving but he thought they were moving. He gave whistles but before he could stop the launch, it came into collision with two of the boats with the result that the launch almost immediately sank. The accused then in a jolly boat to rescue the drowning passengers of the sunken boats. *Held*, that under the circumstances of the case the accused was not guilty of the offence under s. 280 Indian Penal Code, as conduct was not rash or negligent within the meaning of that section. To support conviction under s. 280 Indian Penal Code it must be proved that the immediate cause of the accident was rashness or negligence on the part of the navigator considering the question of degree, the question contributory negligence has also to be taken in account not as a defence to the indictment, but for the purpose of determining causation and fix a measure of the liability of the navigator. When the accused navigator did all he could to save the situation but could not avoid the collision would not be guilty under s. 280, Indian Penal Code. The High Court in revision went through the evidence to decide whether the rashness or negligence was proved. *KAMDAR ALI SERANI EMERSON* (1911).

15 C. W. N. 8

—s. 233—*Obstruction, causing of—* If the necessary to prove any particular individuals obstructed. Where the evidence showed that an obstruction placed on a road must necessarily prevent vehicles from passing at all and foot passengers from passing without inconvenience. *Held*, that it is a necessary inference that persons were obstructed and that it is not necessary to express prove that any specific individual was actually obstructed. *The Queen v Khadr Moidin I L. 4 Mad 235* not followed. *Queen-Empress v Verrappa Chetti I L. R. 20 Mad 413* comment on. *Re VENKATPA* (1913) I L. R. 33 Mad. 31

—ss. 283, 114—*Obstruction in public way—Toy shop on a street—Exhibition of toys in the shop windows—Collection of crowd of persons in street—Obstruction*. The accused who had a toy shop in a public street exhibited in the window the shop overlooking the street certain clockwork toys during a Diwali festival. The result of the exhibition was that thousands of people collected on the road to witness the toys; there were dangerous rushes in consequence people were knocked down and great obstruction and damage were caused to those using the road. On the facts the accused were convicted of offences punishable under ss. 283 and 114 of the Indian Penal Code. *Held*, upholding the conviction, that the mere obstruction, danger and injury to the persons using the public way which amounted to a public nuisance, and that the efficient cause of the nuisance was the act of the accused. Ordinarily, every shopkeeper has a right to exhibit his wares in any way he likes in this shop but he must exercise this right so as not to cause annoyance or nuisance to the public. *Attorney General v Brighton and Hove Co-operative Supply Association [1909] 1 C. 27* followed. *EMERSON v NOON MAHOMED* (1911).

I L. R. 35 Bom 36

s. 290—

See s. 268. I L. R. 43 Calc. 515

Public nuisance—*Liability of principal for act of agent*. The propri-

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 293—*contd.*

tors and the manager of a mill were prosecuted and convicted under s. 290, Indian Penal Code, on a complaint that the working of the mill was a nuisance. It appeared that the proprietors were not residents in the locality and there was no allegation of any abatement by them. *Held*, that the general rule is that a principal is not criminally answerable for the acts of his agent. Speaking generally the person liable where the user of premises gives rise to a nuisance is the occupier for the time being whoever he may be and the conviction of the proprietors was bad in law. **BRUNTI BHUBAN BISWAS v. BRUNYAN PAM** (1918)

22 C. W. N. 1032

s. 292—

See ORSCHEVE PUBLICATION

I. L. R. 39 Calc. 377

s. 295—"Defile" meaning of—*Moothans, presence of, inside a temple, whether defilement*. The presence of Moothans, a sub caste of Sudras, whose status is equal to if not higher than, that of Nairs, in such portions of a Hindu temple as are open to non Brahmins, is not a "defilement" within s. 295, Indian Penal Code. **KUTTICHAMI MOOTHAN v. RAMA PATTAR** (1918)

I. L. R. 41 Mad. 980

s. 296—*Disturbing a religious assembly*

—*Religious procession on a highway—Carrying of flags to a temple*. Where certain Lodhas, who, with the sanction of the public authorities, had been carrying flags to a temple in procession through a public street, were attacked by persons who objected to the procession. *Held*, that such attack constituted a disturbance of the performance of a religious ceremony punishable under s. 296 of the Penal Code. **EMPEROR v. MASRI** (1911) . . . I. L. R. 34 All. 78

s. 296, 39—*Public worship, disturbance of*—"Voluntarily," meaning of. It is not necessary for the purpose of s. 296 Indian Penal Code, that the accused should have an active intention to disturb religious worship. It is sufficient, if knowing they were likely to disturb it by their music they took the risk and did actually cause disturbance. It is an offence under s. 296, Indian Penal Code, to pass a mosque with music so as to disturb religious worship carried on during hours notified therefor. S. 79, Penal Code, cannot be pleaded in such a case. **MUTHIAL CHETTI v. HANAN SAIB, I. L. P. 2 Mad. 140**, followed. **Sundaram v. The Queen and Ponnusawmy v. The Queen, I. L. R. 5 Mad. 203**, followed. **PUBLIC PROSECUTOR v. SANKU SETHUAN** (1910) I. L. R. 34 Mad. 92

s. 297—

See GRAVE YARD.

I. L. R. 40 Calc. 548

—*Trespass on a burial ground—Ploughing up burial ground—Joint owner*. Where a person entered upon a grove for the purpose of demarcating his share therein and in doing so dug up certain graves and exposed the bones of the persons buried there in spite of the remonstrances of the relations of the buried persons. *Held*, that he was properly convicted of an offence under s. 297 of the Penal Code, and none the less because he happened to be part owner of the grove.

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 297—*contd.*

Queen-Empress v. Subhan, I. L. R. 15 All. 395, referred to. **EMPEROR v. RAM PRASAD** (1911)

I. L. R. 33 All. 773

s. 299—

See s. 304 . I. L. R. 42 All. 302

s. 299, 300—*Grievous hurt causing unconsciousness—Hanging an unconscious person believing him to be dead to screen an offence—Death in consequence, whether culpable homicide*. Where an accused struck his wife a blow on her head with a ploughshare which, though not shown to be a blow likely to cause death, did in fact render her unconscious and believing her to be dead in order to lay the foundation of a false defence of suicide by hanging the accused hanged her on a beam by a rope and thereby caused her death by strangulation. *Held* by the Full Bench, that the accused was not guilty either of murder or culpable homicide not amounting to murder. *The Emperor v. Datt Sardar 15 C. W. N. 1279*, followed. **PALANI GOUNDAN v. EMPEROR** (1919)

I. L. R. 42 Mad. 547

s. 299, 301—*Murder—Intention to kill one person, but death of another actually caused*. Where a person intending to kill one person kills another person by mistake, he is as much guilty of murder as if he had killed the person whom he intended to kill. *Public Prosecutor v. Muthumoru Suryanarayana Moorthy 13 Indian Cases 533*, and *Agnes Gore v. Caesar 77 English Rep. 553* referred to. **EMPEROR v. JZOLI** (1916) I. L. R. 39 All. 161

s. 300—

See s. 299 I. L. R. 42 Mad. 547

s. 300(3)—*Causing death—Single blow by an iron shod stick—Culpable homicide not amounting to murder*. The accused and the deceased having quarrelled, the accused took an iron shod stick and struck one blow on the head of the deceased which caused his death. The accused having been convicted of murder, appealed to the High Court. *Held* that the offence committed by the accused was not murder but culpable homicide not amounting to murder, because it was possible that the blow he struck exceeded in violence the injury he had in view at the moment of striking it. **EMPEROR v. SARDARHAN** (1910)

I. L. R. 41 Bom. 27

s. 300 (1), 302—

See MURDER I. L. R. 37 Calc. 315

s. 300 and 325—

—*Grievous Hurt—Murder—Culpable homicide not amounting to murder—Fatal assault committed by three persons acting in concert*. A dispute having suddenly arisen concerning the cutting of a sugarcane crop, three men armed with lathis attacked one of the men who was engaged in cutting the crop and beat him so severely that he died, his skull being broken in three places. A nephew of the man attacked, having his lathi with him attempted to rescue his uncle, and also received considerable injuries. *Held*, that the offence of which the assailants were guilty was not the mere causing of grievous hurt, but culpable homicide, which, however, might in the circumstances be considered as not amounting to murder by the application of excep. 4 of s. 300 of the Indian Penal Code. **EMPEROR v. Chandu Singh**,

PENAL CODE (ACT XLV OF 1860)—*contd.*ss. 304 and 323—*contd.*

otherwise, do not terminate or abate merely by reason of the death of the complainant or the person injured. S. 89 of the Probate and Administration Act has no application to a criminal prosecution and there is nothing in the Criminal Procedure Code in support of the proposition that the death of the person injured or of the complainant of itself causes the proceedings to abate. It is a mistake to speak of an offence as a purely personal one. *Emperor v. Sultan Singh* (I L R 31 All 606) and *Arakha Pehru Sen v. Corporation of Calcutta* (I L R 31 Cal 993 (F B)) referred to, also Halsbury's Laws of England, Volume IX, page 232. *HAZARA SINGH v. CROW* I L R. 2 Lah. 27

ss. 304, 323—*Assault committed by three persons armed with lathis—Intention—Culpable homicide—(recounts hurt)* Three persons attacked a fourth with lathis and death ensued through a fracture of the skull of the person so attacked. There was, however, no evidence to show that the common intention of the assailants was to cause death or which of them actually struck the blow which fractured the skull of the deceased. Held that the offence of which the assailants were guilty was that of causing grievous hurt and not that of culpable homicide not amounting to murder. *Emperor v. Holi Singh*, I L R 29 All 282, followed. *EMPEROR v. CHANDAN SINGH* (1917) I L R. 40 All 103

s. 304A—

See CAUSING DEATH BY PISH OR VELLI-
GENT ACT I L R 39 Cal 855

Criminal negligence

Carelessness of compounder in dealing with poisonous drug An unqualified person who was in charge of a dispensary attached to a mill at Agra had to make up a quantity of quinine mixture for cases of fever. He went to a cupboard where non-poisonous medicines were supposed to be kept and took therefrom a bottle with an orange wrapper marked "poison". This wrapper he took off and threw away. The bottle itself was labelled "strychnine hydrochloride" but without regard to this and apparently because there was a resemblance between this bottle and another in which quinine hydrochloride was kept he made up the entire contents of the bottle as if it had been quinine. The result was that seven patients died. Held, that the compounder was rightly convicted under s. 304A of the Indian Penal Code. *EMPEROR v. IMBOLZA* I L R. 42 All 272

s. 300—*Attempt of suicide—Falsely*

Held, that persons actively assisting a Hindu widow in becoming a *sati* are guilty of the offence of abetment of suicide as defined in s. 300 of the Indian Penal Code. *EMPEROR v. LAM DATAL* (1913)

I L R. 35 All 28

s. 317—*Exposure or abandonment of a*

child by a person having care of it—*Person entrusted with a child for abandonment has the care of it* Accused No. 1, having given birth to an illegitimate child, gave it to her mother, accused No. 2, with a view to dispose of it secretly. Accused No. 2 accordingly carried it by a railway train and abandoned it in a second class compartment. On these facts accused No. 2 was charged with an offence under s. 317 of the Indian Penal Code; and accused No. 1 with having abetted the offence

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 317—*contd.*

under ss. 317 and 109 of the Code. The Sessions Judge acquitted them both, the accused No. 2 on the ground that she had not the care of the child, and accused No. 1 on the ground that as no principal offence had been committed she would not be guilty of abetment. The Government having appealed, Held, reversing the order of acquittal that both the accused had committed the offences with which they had been charged. *EMPEROR v. CHITTS* (1916) I L R. 41 Bom. 152

s. 323—

See s. 71 I L R. 39 All 623

See s. 304 I L R. 2 Lah. 27

See s. 332 I L R. 37 All 353

See BAILIFF I L R. 42 Cal 313

See APPELLATE COURT

I L R. 33 Cal 293

See CRIMINAL PROCEDURE CODE, 1899,

s. 423 S Pat. L. J. 585

Death of person injured—Statement of proceedings—Probate and Administration Act (of 1881), s. 89 A criminal prosecution under s. 323 of the Indian Penal Code does not abate by reason of the death of the person injured. The words to prosecute any proceeding in s. 89 of the Probate and Administration Act do not refer to criminal prosecutions but to civil actions only. *Rama Nand v. Emperor* (1917) 40 I L R 1008 (Punjab) and *Laldu v. Emperor* (1919) 52 I L R 797 (Punjab), dissented from. *MUHAMMAD IBRAHIM SANI v. SHAIK DAVOOD* (1921) I L R. 44 Mad 417

The petitioner, a Bailiff of the Small Cause Court Calcutta, was entrusted with the execution of a writ of possession which required and authorized him to give possession to the decree holder of certain premises in the occupation of the judgment debtor. On the complaint of the judgment debtor's wife the petitioner was placed on his trial on the allegation that he had held her by the hand, roughly dragged her out of the house and pushed her and when in consequence of the push she fell the petitioner kicked her. Sometime after the occurrence the complainant sent through her husband a letter of complaint to the thana and subsequently a complaint made either by the complainant or her husband was lodged against the petitioner at the thana. The Magistrate in convicting the petitioner under s. 323, Indian Penal Code, found that in pulling or dragging the complainant out of the house, he pushed or jerked her from him in such a manner as to cause her to fall and to receive the injuries found on her elbows and knee. He further found that the petitioner did not deliberately kick the complainant but nevertheless held as follows:—"I think it quite possible that on seeing her fall, he went up to ascertain what had happened to her and pushed her more than once with his foot to make her rise. Held (without deciding whether the provisions of the English Common Law or the Code of Civil Procedure were applicable to the writ in question)—That under the provisions of either law in the execution of a writ of possession a reasonable degree of force may be used in order to effect the removal of persons bound by the decree and refusing to vacate. That on

PENAL CODE (ACT XLV OF 1860)—*contd*— s 323—*contd*

the Magistrate's own finding the petitioner should not have been convicted. That is to say that a thing may possibly have happened is not to find that it did happen, and there was no finding by the Magistrate that after the complainant had fallen the petitioner touched or pushed her with his foot. That the Magistrate should not have relied on the letter sent by the complainant to the thana previous to the lodging of the complaint. That the witnesses having been disbelieved with regard to the graver charges brought against the petitioner could not be safely believed with regard to the small residuum of what the Magistrate conceived to be truth. *H. MURKUTHU v. SANKARAN DAS*. 19 C. W. N. 273

— s 323, 332—*Criminal Procedure Code s 144*—Public servant in the execution of his duty as such—Police constable assaulted whilst attempting to enforce an order which in fact had become obsolete. A police constable was assaulted whilst endeavouring to enforce an order passed by the District Magistrate as to the carrying of *lathis* by *Pragwals* which order, if originally lawful had in any case become obsolete. *Held*, that in the circumstances the persons who assaulted the constable could not be convicted under s 332 of the Indian Penal Code, but they were liable to conviction under s 323. *Queen Empress v. Dalip I. L. R. 18 All 246*, referred to. *EMPEROR v. MADHO* (1917).

I. L. R. 40 All. 28

— s 324—

See COMMON OBJECT 2 Pat. L. J. 541

— s 325—

See s 114 16 C. W. N. 809

See s 300 I. L. R. 35 All. 329

I. L. R. 40 All. 686

18 C. W. N. 1279

See s 304 I. L. R. 42 All. 302

See CRIMINAL PROCEDURE CODE s 106

I. L. R. 33 All. 48

See *REVENUE* I. L. R. 41 Cris. 43

See *SENTENCE* 3 Pat. L. J. 641

— s 326—

See s 114 4 Pat. L. J. 239

See s 141 17 C. W. N. 1132

See COMMON OBJECT 2 Pat. L. J. 541

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 307

I. L. R. 37 Mad. 236

See CRIMINAL TRAFFIC

I. L. R. 41 Cal. 662

See PRIVATE DEFENCE 3 Pat. L. J. 653

4 Pat. L. J. 283

— s 329—

See CRIMINAL PROCEDURE CODE ss 109, 123, 397 I. L. R. 34 Bom. 328

— s 332—

See s 323 I. L. R. 40 All. 28

See CRIMINAL PROCEDURE CODE s 54

I. L. R. 40 Mad. 1028

See MAGISTRATE, JURISDICTION OF

I. L. R. 39 Cal. 377

PENAL CODE (ACT XLV OF 1860)—*contd*

— ss 332, 323—Public servant in the execution of his duty as such—House search by Excise Inspector without a warrant—Assault on Inspector. An Excise Inspector in searching the house of a person, under the suspicion that he would find cocaine there, committed many irregularities. He had no warrant authorising him to make the search, he had brought only one search witness and he directed a constable to scale the outer wall of the house. The accused assaulted and beat him. *Held*, that the Inspector and the constables were not acting in the discharge of their duties as public servants and the accused were not guilty of an offence under s 332 of the Indian Penal Code, but were guilty of an offence punishable under s 323 of the said Code. *Queen Empress v. Dalip I. L. R. 18 All 246*, followed. *EMPEROR v. MUKHTAR AHMAD* (1917) I. L. R. 37 All. 353

— ss 332 and 503—

See CRIMINAL PROCEDURE CODE, s 103

I. L. R. 42 All. 67

— s 336—

1. — *Doing an act endangering human life or the safety of others*—Temple resorted to by pilgrims on festive occasions—Duty of person in charge to ensure safety of pilgrims attending by license and invitation. The petitioner was the lessee of a certain temple from some of the *st-chans* and was the general manager of all of them. It appeared that on a certain day in the year pilgrims and others in large numbers visited this temple. Close by the gate, leading from an outer courtyard into the inner temple, there was a well which was surrounded by a masonry platform 1½ to 2 feet high and the ring or parapet of the well stood again about 1 foot above the platform. Early at night on the day of the congregation of pilgrims, an accident having occurred the petitioner at the instance of the Police Officer in charge had a light placed on or near the one foot parapet, but at a later hour the petitioner, had the light removed and thereafter between 1 and 2 A.M., while the people were again entering into the inner temple a boy who had no previous knowledge of the well and in the darkness could not see it fell into it. *Held* that the facts constituted an offence within the meaning of s 336 of the Penal Code. That on the occasion of the festival in question the temple becomes a place of public resort, and it was the bounden duty of the petitioner as the person in charge to take all reasonable precautions necessary to ensure the safety of those crowding thither by his license and invitation. *NARAYAN CHARAN MAHAPATRA v. KING EMPEROR* (1914).

18 C. W. N. 1178

2. — *Doing a rash or negligent act endangering human life or personal safety of others*—Licensed taxi-cab driver asked to wear spectacles at the time of driving—Driver using no spectacles at the time of driving—Liability. The accused was at the time he took out a license to drive taxi-cabs, asked to use spectacles at the time of driving owing to his defective eyesight. Still, he was one night driving his taxi-cab without wearing spectacles, when his car collided with another car, but it appeared that he was not liable for the accident. He was tried for an offence punishable under s 336 of the Indian Penal Code, for doing an act so rashly or negligently as to endanger

PENAL CODE (ACT XLV OF 1830)—*contd*s 336—*contd.*

human life or the personal safety of others. The medical evidence adduced at the trial showed that the defect in the eyesight of the accused was not very much and that it would not appreciably interfere with his efficiency as a driver. The Magistrate having convicted him of the offence charged the accused applied to the High Court. *Held* setting aside the conviction and sentence that it was not made out that the accused if he drove his car without wearing spectacles would be acting so rashly or negligently as to endanger human life or the personal safety of others. **EMPEROR v ABAS MINZA (1918)** L L R 42 Bom 396

s 337, 338—*Hurt caused by rashness or negligence—Hakim—Performance of eye operation with ordinary scissors—Neglect of ordinary precautions—Partial loss of eye-sight* The accused a Hakim performed an operation with an ordinary pair of scissors on the outer side of the upper lid of the complainant's right eye. The operation was needless and performed in a primitive way, the most ordinary precautions being entirely neglected. The wound was sutured with an ordinary thread. The result was that the complainant's eye sight was permanently damaged to a certain extent. The accused was on these facts convicted of an offence punishable under s 338 of the Indian Penal Code. He having applied to the High Court. *Held* that the accused had acted rashly and negligently so as to endanger human life or the personal safety of others. *Held* also that the act of the accused amounted to an offence punishable under s 337 of the Indian Penal Code since there was no permanent privation of the sight of either eye in consequence of the operation. Where a Hakim gives out that he is a skilled operator and charges considerable fees the public are entitled to the ordinary precautions which surgical knowledge regards as imperative. To neglect such precautions and rely in negligence such as is contemplated by the criminal law. **EMPEROR v GULAM HYDER PUJARI (1915)** I L R 39 Bom 523

s 339—*Wrongful restraint what necessary to constitute* The accused placed a lock on the outer door of complainant's house intending to prevent and thereby prevent his ingress. *Held* that the offence of wrongful restraint was established although the accused were not physically present to enforce the obstruction. There is nothing in s 339, Criminal Procedure Code which requires the physical presence of the obstructor at the moment of prevention. **ABIMUGAKADAE v EMPEROR (1910)** I L R 34 Mad. 547

s 341—*Restraint upon a drunken and disorderly person—Common Law of England—Applicability to India* A private citizen has the right to arrest under the Common Law any person as to whom there is reasonable apprehension that he will commit a breach of the peace. *Timothy v Simpson, (1835)*, s L J (Ex), 81 and *Queen v Light (1857)* 27 L J (M C), 1 referred to. In re RAMASWAMI AYYAR (1921)

I L R 44 Mad. 913

s 341, 109—*Wrongful restraint—Tenant holding over—Landlord preventing the tenant from going to the demised premises* The accused having prevented a tenant of his who was holding over from entering the demised premises, was convicted of wrongful restraint (s 341

PENAL CODE (ACT XLV OF 1830)—*contd*s 341, 109—*contd*

and 109 of the Indian Penal Code). On application to the High Court under criminal revisional jurisdiction. *Held* that the accused was rightly convicted inasmuch as the tenant holding over had, in India a position recognised by the law and had a right to retain possession of the premises he occupied even against the landlord himself until dispossessed in due course of law. **EMPEROR v HAJI GULAM MAHOMED (1918)**

L L R 43 Bom 531

s 342—

See s 107 5 Pat L J 129

See RIOTING L L R 43 Calc 78

See WRONGFUL CONFINEMENT
L L R 47 Calc 818

s 343—*Wrongful confinement—Detention of prostitutes in brothel* Accused No 1 who had a woman in his keeping at Kolhapur brought her from Kolhapur to Bombay where he kept her in the brothel of accused No 2. There she led the life of a prostitute her movements were watched and a guard was kept at the entrance of the house. She was occasionally allowed to go out of the house under surveillance. It appeared that accused No 1 had on previous occasions supplied women to accused No 2. *Held* that on these facts accused Nos 1 and 2 were both guilty of the offence of wrongfully confining the woman. **EMPEROR v BAYDU EBBANIM (1917)** I L R 42 Bom 181

s 353—

See s 99 18 C W N 543

See s 183 1 Pat L J 550

See BENGAL SURVEY ACT 1873
2 Pat. L J 18

See CRIMINAL PROCEDURE CODE—

s 54 (1) 1 L R 36 All. 6

s 70 2 Pat L J 487

See PIOTING L L R 41 Calc 836

See SEARCH BY POLICE OFFICERS
I L R 41 Calc 261See WARRANT OF ARREST
3 Pat L J 493

one act constituting two offences—

See GENERAL CLAUSES ACT 1897, s 20

1 Pat L J 373

s 360—

See s 368 I L R 42 Bom. 391

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 423 439

L L R 37 Mad. 119

s 361—*Law of guardians—Hindu law—Nearest major male relative is not necessarily the lawful guardian of a female minor* The only persons having an absolute right to the custody of a Hindu minor are the father and the mother of the minor. No such right exists in the person who happens to be the nearest major male relative of the minor and such a relationship would not in law be a defence to a charge of kidnapping a minor from the custody of a *de facto* guardian. **EMPEROR v SITAI PRASAD**

I L R 42 All. 146

PENAL CODE (ACT XLV OF 1860)—contd

ss. 368, 368—*Kidnapping—Lawful guardianship* A Jat girl under the age of 16 years was sent by her father to carry food to the bullocks. She never returned home. Shortly afterwards she was found in a village not far from her home in the company of two men of the same caste. She was then dressed in boy's clothes and had her hair cut short. The two men offered no explanation as to how the girl came to be with them or why she was disguised. *Held*, that both the men in whose custody the girl was found were properly convicted under s. 360 of the Indian Penal Code. *Emperor v. Jetha Nathoo*, 6 Bom. L. R. 785, followed. *EMPEROR v. HABKEEN* (1918).

I L. R. 40 All. 507

ss. 366, 372—*Kidnapping—Buying or selling minor girls for the purpose of prostitution* A low caste girl left her lawful guardian of her own free will and subsequently met the accused Ewaz Ali and lived with him for some time. Later he made her over to certain persons who, representing that she was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in full belief that such representation was true. *Held*, that Ewaz Ali was neither guilty of an offence under s. 366 of the Indian Penal Code inasmuch as he did not take or entice her away from her legal custody nor of an offence under s. 372 of the said Code. *King Emperor v. Ram Chander*, 12 All. J. 265, *Empress of India v. Sri Lal*, 1 L. R. 2 All. 694, followed. *King Emperor v. Jetha Nathoo*, 6 Bom. L. R. 785, referred to. *EMPEROR v. EWAZ ALI* (1915). I L. R. 37 All. 624

s. 370—*Buying and selling as a slave, what amounts to* The appellants in these cases were convicted by Sessions Court of North Malabar under a 370, Penal Code, the second appellant having been found to have sold, and the first to have bought, a Pulayan named Vellian as a slave. The document recording the above transaction ran as follows:—'I execute to you and give you this day this jennam deed giving you Velandia a son Pulayan Vellian with his heirs. The sum that I received from you in cash to day is ten rupees. For this sum of ten rupees you should get work done for you by the said Vellian and his offspring that may come into being as your jennam, and act as you please.' On a difference of opinion between ABOLAH RAHM and NAIR JJ., as to whether the said transaction amounted to an offence under s. 370, Indian Penal Code. *Held*, by AYLING, J., that the transaction in question was a sale of Vellian and his offspring as mere chattels and that the appellants were guilty of an offence under s. 370 Penal Code. *Empress of India v. Ram Awar*, 1 L. R. 2 All. 723, and *Amaru v. Queen-Empress* 1 L. R. 1 Mad. 277, referred to. *KOROTH MAMMAD v. THE KING EMPEROR* (1917). I L. R. 41 Mad. 334

s. 372—

See s. 300. I L. R. 37 All. 621

s. 373—*Obtaining possession of a minor girl for purposes of prostitution—Third party need not necessarily dispose of a minor girl* To constitute an offence punishable under s. 373 of the Indian Penal Code, 1860, it is not necessary that the possession of the minor should be obtained from a third person. It is enough if it is established that the accused in fact obtained possession of the minor with intent that the minor shall be used for

PENAL CODE (ACT XLV OF 1860)—contd

s. 373—contd

the purpose of prostitution. *Queen Empress v. Shaikh Ali* (1870), 5 Mad. H. C. 473, referred to. *EMPEROR v. SHAMSUNDARBAI*.

I L. R. 45 Bom. 529

ss. 378, 380, 411—

See *CONVICTION* 3 Pat. L. J. 354

s. 379—

See *AGRA TENANCY ACT* (II OF 1910), s. 124. I L. R. 38 All. 40See *BENGAL TENANCY ACT*, 1885, s. 71

1 Pat. L. J. 230

See *CRIMINAL PROCEDURE CODE* (ACT V OF 1860), ss. 397, 123

I L. R. 37 Bom. 178

1. *Servant's removal of things at master's bidding when theft* In order to convict a servant of theft under s. 379, Indian Penal Code, for having cut away some bamboos at the order of his master, it must be clearly shown that he (the servant) knew of the dishonest intention of his master. *Hare Bhainsmal v. The Emperor*, 9 C. W. N. 974, followed. *RADHA MADHAB PARAKI v. THE KING EMPEROR* (1910) 15 C. W. N. 414

2. *Theft—Removal of goods from a person's custody—Larceny* In order to constitute larceny there must be an intention to take entire dominion over the property i.e., the taker must intend to appropriate the property to his own use, but there may be theft without an intention to deprive the owner of the property permanently. Hence, where a person snatched away some books from a boy as he came out of school and told him that they would be returned when he came to his house. *Held* that the offence of theft had been committed. *R. v. Dickinson*, 1 R. & R. 420. *Prossono Kumar Patra v. Uday Sanki*, 1 L. R. 22 Cal. 663, and *Queen Empress v. Akha Muhammad Feroz* 1 L. R. 18 All. 88, referred to. *EMPEROR v. NAUREE ALI KHAN* (1911). I L. R. 34 All. 89

3. *Theft—Elements necessary to constitute offence—Removal of property in assertion of bona fide claim of right* To sustain a conviction under s. 379 it is necessary to prove dishonest intention to take property out of the possession of another person. Consequently when property is removed in the assertion of a bona fide claim of right the removal does not constitute theft. The claim of right must be an honest one though it may be unfounded in law or in fact. If the claim is not made in good faith but is a mere colourable pretence to obtain or to keep possession, it is of no avail as a defence. *ANWAR ALI v. KING EMPEROR* (1916). I L. R. 44 Cal. 66

20 C. W. N. 1270

4. *Theft—Bombay Land Revenue Code (Bombay Act 1 of 1879), s. 154—Attachment of buffaloes for non payment of land revenue—No actual seizure of buffaloes—Removal of buffaloes by their owners—Offence* On default in the payment of land revenue by accused Nos. 2 and 3, the Mamlatdar went to their houses, made a *panchnama*, declared that their buffaloes were attached, and forbade the accused to remove them. Notwithstanding this, accused Nos. 2 and 3 removed the buffaloes at the instigation of accused No. 1. For this act, accused Nos. 2 and 3 were convicted.

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 223—*contd.*

officer trying the case and that therefore he did not expect a fair and impartial trial. *Held*, that there being no intention on the part of the applicant to insult the Court but merely to procure a transfer of his case, he was not guilty of an offence under s. 223 of the Indian Penal Code. *Queen-Empress v Abdulla Khan, 1898, 17 N 145, followed* *EMPEROR v MURLI DHAR (1916)*

I. L. R. 38 ALL. 284

ss 225 and 243—Counterfeit coins—

Father and son, presumption as to possession. It is not essential for coins to be counterfeit that they should be exact resemblances of genuine coins. It is sufficient that they are such as to cause deception and may be passed for genuine. Where father and son were accused of being in possession of moulds for the purpose of using the same for making counterfeit coins and of being in possession of such coins, and there was evidence to show that the father looked after the family cultivation while the son exclusively attended to the shop, in the verandah of which the moulds and coins were discovered, and it was also shown that the father was never seen in possession of the moulds or of the counterfeit coins. *Held*, that the ordinary presumption that the things in the house of a joint Hindu family were in the possession of, or under the control of the managing member, had been rebutted. *AMRIT SOVAR v KING EMPEROR*

4 PA. L. J. 525

s. 243—

See s. 235 . . . 4 PA. L. J. 525

See COUNTERFEIT COIN

{I. L. R. 44 CALC. 477

s. 266—Possession of false measures—

Intent—Acquittal—Criminal Procedure Code, s. 435—Fraud. It being in evidence that in the village where accused carried on the business of a cloth seller the usual standard of measurement was 3½ inches, it was *held*, that a conviction under s. 266 of the Indian Penal Code in respect of the possession of such a measure of length could not be sustained. *Held*, also, that the High Court will not as a rule entertain a reference by a Sessions Judge having for its object the reversal of an acquittal, when the Government has right of appeal, more particularly when the matter is one, such as a question of correct weights and measures, in which the Government may be considered to be peculiarly interested. *EMPEROR v. HARAR CHAND MAHWARI (1917)* . . . I. L. R. 40 ALL. 84

ss. 268, 290—

See PUBLIC NUISANCE.

I. L. R. 746 CALC. 515

s. 280—

See s. 183 . . . I. L. R. 33 MAD. 602

See MADRAS CITY MUNICIPAL ACT (111 of 1904), s. 306 I. L. R. 43 MAD. 344

s. 280—Rash and negligent act, proof

and degree of—Contributory negligence, how far is an element for consideration—Evidence, consideration of, by the High Court in revision. The accused was in charge of a steam launch which was coming up the river in a moonlight night. In the river at deep water some country boats were moored having no lights in them. The accused on

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 280—*contd.*

account of mist could not make out whether the boats were stationary or moving but he thought they were moving. He gave whistles but before he could stop the launch, it came into collision with two of the boats with the result that they sank almost immediately. The accused then sent a jolly-boat to rescue the drowning passengers of the sunken boats. *Held*, that under the circumstances of the case the accused was not guilty of the offence under s. 280, Indian Penal Code, as his conduct was not rash or negligent within the meaning of that section. To support conviction under s. 280, Indian Penal Code, it must be proved that the immediate cause of the accident was rashness, or negligence on the part of the navigator. In considering the question of degree, the question of contributory negligence has also to be taken into account, not as a defence to the indictment, but for the purpose of determining causation and fixing a measure of the liability of the navigator. When the accused navigator did all he could to save the situation but could not avoid the collision, he would not be guilty under s. 280, Indian Penal Code. The High Court in revision went through the evidence to decide whether the rashness or negligence was proved. *KAMDAR ALI SERRAO v. EMPEROR (1911)* . . . 15 C. W. N. 835

s. 283—Obstruction, causing of—Whether necessary to prove any particular individual obstructed. Where the evidence showed that an obstruction placed on a road must necessarily prevent vehicles from passing at all and foot passengers from passing without inconvenience. *Held*, that it is a necessary inference that persons were obstructed and that it is not necessary to expressly prove that any specific individual was actually obstructed. *The Queen v. Khader Moidin, 1 L. R. 4 Mad. 235* not followed. *Queen-Empress v. Veerappa Chetti, 1 L. R. 20 Mad. 433* commented on. *RE VENKATAPPA (1913)* I. L. R. 38 MAD. 305

ss 283, 114—Obstruction in public way—Toy shop on a street—Exhibition of toys in the shop window—Collection of crowd of persons in street—Obstruction. The accused who had a toy shop in a public street, exhibited in the window of the shop overlooking the street certain clockwork toys during a Diwali festival. The result of the exhibition was that thousands of people collected on the road to witness the toys; there were dangerous rushes in consequence, people were knocked down and great obstruction and danger were caused to those using the road. On these facts the accused were convicted of offences punishable under ss. 283 and 114 of the Indian Penal Code. *Held*, upholding the conviction, that there was obstruction, danger and injury to the persons using the public way, which amounted to a public nuisance, and that the efficient cause of the nuisance was the act of the accused. Ordinarily, every shop keeper has a right to exhibit his wares in any way he likes in his shop, but he must exercise the right so as not to cause annoyance or nuisance to the public. *Attorney General v. Brighton and Hove Co-operative Supply Association, [1900] 1 CA. 276, followed.* *EMPEROR v. NOOS MANOHAR (1911)*

I. L. R. 35 BOM. 388

s. 290—

See s. 268 . . . I. L. R. 46 CALC. 515

Public nuisance—

Liability of principal for act of agent. The principal.

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 293—*contd.*

tors and the manager of a mill were prosecuted and convicted under s. 290, Indian Penal Code, on a complaint that the working of the mill was a nuisance. It appeared that the proprietors were not residents in the locality and there was no allegation of any abetment by them. *Held*, that the general rule is that a principal is not criminally answerable for the acts of his agent. Speaking generally the person liable where the user of premises gives rise to a nuisance is the occupier for the time being whoever he may be and the conviction of the proprietors was bad in law. *BIRCHIT BACHAN v BISWAS v BACHAN RAM* (1918)

22 C. W. N. 1062

s. 292—

See OBSCENE PUBLICATION

I. L. R. 39 Calc. 377

s. 295—"Defile" meaning of—*Moothas presence of, inside a temple, whether defilement*. The presence of Moothans, a sub-caste of Sudras, whose status is equal to, if not higher than, that of Nairs, in such portions of a Hindu temple as are open to non Brahmins, is not a 'defilement' within s. 293, Indian Penal Code. *KUTTICHAMI MOOTHAN v RAMA PATTAN* (1918)

I. L. R. 41 Mad. 980

s. 296—*Disturbing a religious assembly*—*Religious procession on a highway—Carrying of flags to a temple*. Where certain Lodhas, who, with the sanction of the public authorities, had been carrying flags to a temple in procession through a public street, were attacked by persons who objected to the procession. *Held*, that such attack constituted a disturbance of the performance of a religious ceremony punishable under s. 296 of the Penal Code. *EMPEROR v MASIR* (1911)

I. L. R. 34 All. 78

s. 296, 39—*Public worship disturb*—*ance of*—"Voluntarily," meaning of. It is not necessary for the purpose of s. 296, Indian Penal Code, that the accused should have an active intention to disturb religious worship. It is sufficient, if knowing they were likely to disturb it by their music they took the risk and did actually cause disturbance. It is an offence under s. 296, Indian Penal Code, to pass a mosque with music so as to disturb religious worship carried on during hours notified therefor. S. 79, Penal Code, cannot be pleaded in such a case. *Muthial Chetti v Bapan Saib*, I. L. R. 2 Mad. 140, followed. *Sundaram v The Queen and Ponnusamy v The Queen*, I. L. R. 5 Mad. 203, followed. *PUBLIC PROSECUTOR v SANKU SEETHIAN* (1910)

I. L. R. 34 Mad. 92

s. 297—

See GRAVE YARD

I. L. R. 40 Calc. 543

Trespass on a burial ground—*Ploughing up burial ground—Joint owner*. Where a person entered upon a grove for the purpose of demarcating his share therein and in doing so dug up certain graves and exposed the bones of the persons buried there in spite of the remonstrances of the relations of the buried persons. *Held*, that he was properly convicted of an offence under s. 297 of the Penal Code, and none the less because he happened to be part owner of the grove.

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 297—*contd.*

Queen-Empress v Subhan, I. L. R. 18 All. 395, referred to. *EMPEROR v RAM PRASAD* (1911)

I. L. R. 33 All. 773

s. 299—

See s. 304 I. L. R. 42 All. 302

ss. 299, 300—*Grievous hurt causing unconsciousness—Hanging an unconscious person believing him to be dead to screen an offence—Death in consequence, whether culpable homicide*. Where an accused struck his wife a blow on her head with a ploughshare which, though not shown to be a blow likely to cause death, did in fact render her unconscious and, believing her to be dead, in order to lay the foundation of a false defence of suicide by hanging, the accused hanged her on a beam by a rope and thereby caused her death by strangulation. *Held* by the Full Bench, that the accused was not guilty either of murder or culpable homicide not amounting to murder. *The Emperor v Dalu Sardar*, 13 C. W. N. 1273, followed. *PALANI GOVINDAN v EMPEROR* (1919)

I. L. R. 42 Mad. 547

ss. 299, 301—*Murder—Intention to kill one person but death of another actually caused*. Where a person intending to kill one person kills another person by mistake, he is as much guilty of murder as if he had killed the person whom he intended to kill. *Public Prosecutor v Mushunooru Suryanarayana Moorty*, 13 Indian Cases 833, and *Agnes Gore v Case*, 77 English Rep. 853 referred to. *EMPEROR v JEOLI* (1916)

I. L. R. 39 All. 161

s. 300—

* See s. 299 I. L. R. 42 Mad. 547

s. 300(3)—*Causing death—Single blow by an iron-shod stick—Culpable homicide not amounting to murder*. The accused and the deceased having quarrelled, the accused took an iron shod stick, and struck one blow on the head of the deceased which caused his death. The accused having been convicted of murder, appealed to the High Court. *Held*, that the offence committed by the accused was not murder but culpable homicide not amounting to murder because it was possible that the blow he struck exceeded in violence the injury he had in view at the moment of striking it. *EMPEROR v SARDAR KHAN* (1910)

I. L. R. 41 Bom. 27

ss. 300 (1), 302—

See MURDER I. L. R. 37 Calc. 315

ss. 300 and 325—

Grievous hurt—Murder—Culpable homicide not amounting to murder—Fatal assault committed by three persons acting in concert. A dispute having suddenly arisen concerning the cutting of a sugarcane crop three men armed with lathis attacked one of the men who was engaged in cutting the crop and beat him so severely that he died, his skull being broken in three places. A nephew of the man attacked, having his lathi with him, attempted to rescue his uncle, and also received considerable injuries. *Held*, that the offence of which the assailants were guilty was not the mere causing of grievous hurt, but culpable homicide, which, however, might in the circumstances, be considered as not amounting to murder by the application of excep. 4 of s. 309 of the Indian Penal Code. *Emperor v Chandan Singh*,

PENAL CODE (ACT XLV OF 1860)—*contd*ss. 300 and 325—*contd*

I L R 40 All 103, disarmed from King Emperor v Hanuman *I L R 35 All 590*, and Emperor v Pam Nawa. *I L R 35 All 506*, referred to. EMPEROR v GULAB (1918)

I L R 40 All 636

Murder—Grievous hurt

Common intention—Deadly assault with lathis on an unarmed person—Presumption Four persons armed with lathis attacked and severely beat a fifth, who was unarmed over a dispute about irrigation. The person attacked died in consequence of this beating and it was found that he had received several severe blows on the head, the result of which was that the bones of the skull were broken to pieces and also other injuries about the body, most of the injuries having probably been inflicted whilst the person attacked was on the ground, but the evidence did not disclose which of the assailants caused which of the injuries. *Held* that all four assailants were properly convicted of murder under the fourth clause of s. 300 of the Indian Penal Code, and that the inference was not justified that the common intention of the assailants was not more than the causing of grievous hurt. EMPEROR v KASHAL (1912)

I L R 35 All 329

Murder—Grievous hurt

Hanging a human body believing the person to be dead and thereby causing death, if murder—Intention to kill The accused assaulted his wife and gave her kicks, blows and slaps. The kicks were given below the navel. The woman fell down and became unconscious. In order to create an appearance that the woman had committed suicide, the accused took up the unconscious body of his wife thinking it to be a dead body and hung it by a rope. The post mortem examination showed that death was due to hanging. *Held*, that the accused could not have intended to kill his wife if he thought that she was already dead and he could not be convicted of murder. The offence that the accused committed was an offence under s. 325 of the Penal Code for having given her kicks, blows and slaps before she fell down. EMPEROR v DALL SIKHAN (1914)

18 C. W. N. 1279

s. 301—

See s. 293 I L R. 39 All 161

s. 302—

See s. 37 I L R. 35 All 506 and 560

See s. 201 20 C. W. N. 186

See MURPHY I L R. 37 Calc. 315

I L R. 44 Mad. 443

Criminal Procedure

Code (Act I of 1898), ss 374-376—Accused charged with murder—Duty of presiding Judge as to emergency for his defence—Trial on the same charge The accused who was undertried in the Sessions Court was convicted under s. 302 Indian Penal Code. The case came up to the High Court for confirmation of the sentence of death under s. 374, Criminal Procedure Code, and also on appeal. *Held* that accused persons charged with murder should not go undertried. The respective duties of the Judge and the Bar as to the defence of such accused persons pointed out. The High Court held that on the evidence as it stood the sentence of death could not be confirmed and directed under

PENAL CODE (ACT XLV OF 1860)—*contd*s. 302—*contd*

s. 376, cl. (5), a re-trial of the accused on the same charge after arrangement being made for his defence KING EMPEROR v MOHAR ALT SIKHAN (1915)

19 C. W. N. 556

Murder—Poisoning by

arsenic—Intention—Knowledge A person who administers a well known poison like arsenic to another must be taken to know that his act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and if death ensue he is guilty of murder, notwithstanding that his intention may not have been to cause death. QUEEN EMPRESS v TALHA, *I L R 20 All 113*, KING EMPEROR v BHAWANA DIX *I L R 30 All 508*, and KING EMPEROR v GULABI, *I L R 31 All 148*, referred to. EMPEROR v GAURI SHANKAR (1918) *I L R 40 All 360*

s. 304—

See s. 37 I L R. 35 All 506 and 560

See s. 59 25 C. W. N. 514

See CRIMINAL TRIALS

I L R 41 Calc 662

Offering a child to crocodiles in the superstitious belief of ultimate good to the child The accused who were husband and wife had lost several children and they offered their next born to the crocodiles to a particular tank on the belief that the child's life would be ultimately saved but it was decreed the parents were convicted under this section KING EMPEROR v BHARAT DEPAUL AND ANOTHER

25 C. W. N. 678

ss. 304, 325 and 299—Culpable homicide—Grievous hurt—Injury caused by a lathi resulting in death from gangrene A struck G three blows with a lathi. One blow fractured the bones of the left forearm, another fractured a bone in the right hand while the third fractured both bones of the left leg. In the case of the third injury gangrene supervened and G died in consequence. *Held* that R was guilty of either culpable homicide not amounting to murder under s. 304 of the Indian Penal Code or causing of grievous hurt under s. 325 of the Code. EMPEROR v PAMA BIVON

I L R. 42 All 302

ss. 304 and 323—Accused challenged under a 301 convicted under s. 323—whether proceedings abate on account of death of person assaulted—Probate and Administration Act, V of 1891, s. 89 The 2 petitioners and 2 other persons were challenged by the police under s. 304, Penal Code for causing the death of one J. S. The trial Court convicted the 2 latter under s. 304 and the 2 petitioners under s. 325. They appealed to the Sessions Judge, who altered the conviction of all 4 accused to s. 323 under s. 323. The two petitioners then filed a revision in the High Court and urged inter alia that as the Appellate Court had held that only an offence under s. 323 had been committed, and as the person injured had died, the proceedings abated and the accused should have been acquitted. The Single Judge, who heard the revision, referred this point for consideration to a Division Bench. The bench, for the causing of which the petitioners were convicted, did not cause the death of J. S. *Held*, by the Division Bench, that criminal proceedings once legally instituted, whether upon a complaint or

PENAL CODE (ACT XLV OF 1860)—*contd*— ss. 304 and 323—*contd*

otherwise, do not terminate or abate merely by reason of the death of the complainant or the person injured. *S. 89 of the Probate and Administration Act has no application to a criminal prosecution and there is nothing in the Criminal Procedure Code in support of the proposition that the death of the person injured or of the complainant of itself causes the proceedings to abate.* It is a mistake to speak of an offence as a purely personal one. *Emperor v. Sultan Singh* (I. L. R. 31 All. 806) and *Krishna Behari Sen v. Corporation of Calcutta* (I. L. R. 31 Cal. 993 (F.B.) referred to, also Halsbury's Laws of England, Volume IX, page 232. *HAZARA SINGH v. CROWN* I. L. R. 2 Lah. 27

— ss. 304, 325—*Assault committed by three persons armed with lathis—Intention—Culpable homicide—Grievous hurt* Three persons attacked a fourth with lathis and death ensued through a fracture of the skull of the person so attacked. There was, however, no evidence to show that the common intention of the assailants was to cause death, or which of them actually struck the blow which fractured the skull of the deceased. *Held*, that the offence of which the assailants were guilty was that of causing grievous hurt and not that of culpable homicide not amounting to murder. *Emperor v. Lila Singh*, I. L. R. 29 All. 282, followed. *EMPEROR v. CHANDAN SINGH* (1917) I. L. R. 40 All. 103

— s. 304A—

See CAUSING DEATH BY RASH OR NEGLIGENT ACT I. L. R. 39 Calc. 855

— Criminal negligence—

Carelessness of compounder in dealing with poisonous drug An unqualified person who was in charge of a dispensary attached to a mill at Agra had to make up a quantity of quinine mixture for cases of fever. He went to a cupboard where non-poisonous medicines were supposed to be kept and took therefrom a bottle with an outside wrapper marked "poison." This wrapper he tore off and threw away. The bottle itself was labelled "strychnine hydrochloride" but without regarding this, and apparently because there was a resemblance between this bottle and another in which quinine hydrochloride was kept, he made up the entire contents of the bottle as if it had been quinine. The result was that seven patients died. *Held*, that the compounder was rightly convicted under s. 304A of the Indian Penal Code. *EMPEROR v. DE SOUZA* I. L. R. 42 All. 272

— s. 306—*Abetment of suicide—Sati* *Held*, that persons actively assisting a Hindu widow in becoming a sati are guilty of the offence of abetment of suicide as defined in s. 306 of the Indian Penal Code. *EMPEROR v. RAM DAYAL* (1913) I. L. R. 36 All. 26

— s. 317—*Exposure or abandonment of a child by a person having care of it—Person entrusted with a child for abandoning it has the care of it* Accused No. 1 having given birth to an illegitimate child gave it to her sister, accused No. 2, with a view to dispose of it secretly. Accused No. 2 accordingly carried it by a railway train and abandoned it in a second class compartment. On these facts, accused No. 2 was charged with an offence under s. 317 of the Indian Penal Code; and accused No. 1 with having abetted the offence

PENAL CODE (ACT XLV OF 1860)—*contd*— s. 317—*contd*

under ss. 317 and 109 of the Code. The Sessions Judge acquitted them both, the accused No. 2 on the ground that she had not the care of the child, and accused No. 1 on the ground that as no principal offence had been committed she would not be guilty of abetment. The Government having appealed. *Held*, reversing the order of acquittal that both the accused had committed the offences with which they had been charged. *EMPEROR v. CRIPPS* (1916) I. L. R. 41 Bom. 152

— s. 323—

See s. 71 I. L. R. 39 All. 623

See s. 304 I. L. R. 2 Lah. 27

See s. 332 I. L. R. 37 All. 353

See BAILIFF I. L. R. 42 Calc. 313

See APPELLATE COURT

I. L. R. 38 Calc. 293

See CRIMINAL PROCEDURE CODE, 1896,

s. 423 3 Pat. L. J. 565

— *Death of person injured* — *Statement of proceedings—Probate and Administration Act (of 1881), s. 89* A criminal prosecution under s. 323 of the Indian Penal Code does not abate by reason of the death of the person injured. The words "to prosecute" any proceeding in s. 89 of the Probate and Administration Act do not refer to criminal prosecutions but to civil actions only. *Rama Nand v. Emperor* (1917), 40 I. C. 1003 (Punjab) and *Lobhu v. Emperor* (1919), 52 I. C. 797 (Punjab), dissented from. *MHAMMAD IBRAHIM SAHIB v. SHAIK DAWOOD* (1921) I. L. R. 44 Mad. 417

— The petitioner, a Bailiff of the Small Cause Court, Calcutta, was entrusted with the execution of a writ of possession which required and authorised him to give possession to the decree holder of certain premises in the occupation of the judgment debtor. On the complaint of the judgment debtor's wife the petitioner was placed on his trial on the allegation that he caught hold of her by the hand, forcibly dragged her out of the house and pushed her and when, in consequence of the push, she fell, the petitioner kicked her. Sometime after the occurrence the complainant sent through her husband a letter of complaint to the thana and subsequently a complaint made either by the complainant or her husband was lodged against the petitioner at the thana. The Magistrate in convicting the petitioner under s. 323, Indian Penal Code, found that in pulling or dragging the complainant out of the house, he pushed or jerked her from him in such a manner as to cause her to fall and to receive the injuries found on her elbows and knee. He further found that the petitioner did not deliberately kick the complainant, but nevertheless held as follows:—"I think it quite possible that on seeing her fall, he went up to ascertain what had happened to her and pushed her more than once with his foot to make her rise." *Held* (without deciding whether the provisions of the English Common Law or the Code of Civil Procedure were applicable to the writ in question)—That under the provisions of either law in the execution of a writ of possession a reasonable degree of force may be used in order to effect the removal of persons bound by the decree and refusing to vacate. That on

PENAL CODE (ACT XLV OF 1880)—*contd*s. 323—*contd.*

the Magistrate's own finding the petitioner should not have been convicted. That is to say that a thing may possibly have happened is not to find that it did happen, and there was no finding by the Magistrate that after the complainant had fallen the petitioner touched or pushed her with his foot. That the Magistrate should not have relied on the letter sent by the complainant to the thana previous to the lodging of the complaint. That the witnesses having been disbelieved with regard to the graver charges brought against the petitioner could not be safely believed with regard to the small residuum of what the Magistrate conceived to be truth. *H. MENDITH v. SANJIBANI DAS.* 19 C. W. N. 273

s. 323, 332—*Criminal Procedure Code, s. 144*—Public servant in the execution of his duty as such—Police constable assaulted whilst attempting to enforce an order which in fact had become obsolete. A police constable was assaulted whilst endeavouring to enforce an order passed by the District Magistrate as to the carrying of *dhais* by *Pragwals* which order, if originally lawful, had in any case become obsolete. *Held*, that in the circumstances the persons who assaulted the constable could not be convicted under s. 332 of the Indian Penal Code, but they were liable to conviction under s. 323. *Queen-Emperor v. Dalip I. L. R. 18 All 246.* referred to. *FARROW v. MADHO* (1917). I. L. R. 40 All. 23

s. 324—

See COMMON OBJECT 2 Pat. L. J. 541

s. 325—

See s. 114 . . . 16 C. W. N. 909

See s. 300 . . . I. L. R. 35 All. 329

I. L. R. 40 All. 630

18 C. W. N. 1279

See s. 331 . . . I. L. R. 42 All. 302

See CRIMINAL PROCEDURE CODE, s. 106

I. L. R. 33 All. 48

See RIOTING I. L. R. 41 Calc. 43

See SENTENCE . . . 3 Pat. L. J. 641

s. 326—

See s. 114 . . . 4 Pat. L. J. 233

See s. 111 . . . 17 C. W. N. 1132

See COMMON OBJECT 2 Pat. L. J. 541

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 307.

I. L. R. 37 Mad. 230

See CRIMINAL TRIALS

I. L. R. 41 Calc. 682

See PRIVATE DEFENCE 3 Pat. L. J. 653

4 Pat. L. J. 623

s. 329—

See CRIMINAL PROCEDURE CODE, s. 109-123, 397 . . . I. L. R. 34 Bom. 326

s. 332—

See s. 323 . . . I. L. R. 40 All. 28

See CRIMINAL PROCEDURE CODE, s. 54

I. L. R. 40 Mad. 1023

See MAGISTRATE, JURISDICTION OF

I. L. R. 39 Calc. 377

PENAL CODE (ACT XLV OF 1880)—*contd*

s. 332, 323—Public servant in the execution of his duty as such—House search by Excise Inspector without a warrant—Assault on Inspector. An Excise Inspector in searching the house of a person, under the suspicion that he would find cocaine there, committed many irregularities. He had no warrant authorising him to make the search, he had brought only one search witness and he directed a constable to scale the outer wall of the house. The accused assaulted and beat him. *Held*, that the Inspector and the constables were not acting in the discharge of their duties as public servants and the accused were not guilty of an offence under s. 332 of the Indian Penal Code, but were guilty of an offence punishable under s. 323 of the said Code. *Queen-Emperor v. Dalip, I. L. R. 18 All. 246.* followed. *EMPEROR v. MUKHTAR AHMAD* (1915) . . . I. L. R. 37 All. 353

s. 332 and 503—

See CRIMINAL PROCEDURE CODE, s. 103

I. L. R. 42 All. 67

s. 336—

1. —Doing an act endangering human life or the safety of others—Temple resorted to by pilgrims on festive occasions—Duty of person in charge to ensure safety of pilgrims attending by license and invitation. The petitioner was the lessee of a certain temple from some of the *shikats* and was the general manager of all of them. It appeared that on a certain day in the year pilgrims and others in large numbers visited this temple. Close by the gate, leading from an outer courtyard into the inner temple, there was a well which was surrounded by a masonry platform 1½ to 2 feet high and the ring or parapet of the well stood again about 1 foot above the platform. Early at night on the day of the congregation of pilgrims, an accident having occurred, the petitioner at the instance of the Police Officer in charge had a light placed on or near the one-foot parapet, but at a later hour the petitioner, had the light removed and thereafter between 1 and 2 A.M., while the people were again entering into the inner temple, a boy who had no previous knowledge of the well and in the darkness could not see it fell into it. *Held*, that the facts constituted an offence within the meaning of s. 336 of the Penal Code. That on the occasion of the festival in question, the temple becomes a place of public resort, and it was the bounden duty of the petitioner as the person in charge to take all reasonable precautions necessary to ensure the safety of those crowding thither by his license and invitation. *NARISING CHARAY MANAPATRA v. KING-EMPEROR* (1914). 18 C. W. N. 1176

2. —Doing a rash or negligent act endangering human life or personal safety of others—Licensed taxi-cab driver asked to wear spectacles at the time of driving—Driver using no spectacles at the time of driving—Liability. The accused was, at the time he took out a license to drive taxi cabs, asked to use spectacles at the time of driving owing to his defective eyesight. Still, he was one night driving his taxi-cab without wearing spectacles, when his car collided with another car, but it appeared that he was not liable for the accident. He was tried for an offence punishable under s. 336 of the Indian Penal Code, for doing an act so rashly or negligently as to endanger

PENAL CODE (ACT XLV OF 1850)—*contd*s. 336—*contd.*

human life or the personal safety of others. The medical evidence adduced at the trial showed that the defect in the eyesight of the accused was not very much, and that it would not appreciably interfere with his efficiency as a driver. The Magistrate having convicted him of the offence charged, the accused applied to the High Court. *Held*, setting aside the conviction and sentence, that it was not made out that the accused if he drove his car without wearing spectacles would be acting so rashly or negligently as to endanger human life or the personal safety of others. **EMPEROR v. ABAY MIRZA (1918)** . . . I. L. R. 42 Bom. 396

s. 337, 338—Hurt caused by rashness or negligence—Hakim—Performance of eye operation with ordinary scissors—Neglect of ordinary precautions—Partial loss of eye-sight. The accused, a Hakim, performed an operation with an ordinary pair of scissors, on the outer side of the upper lid of the complainant's right eye. The operation was needless and performed in a primitive way, the most ordinary precautions being entirely neglected. The wound was sutured with an ordinary thread. The result was that the complainant's eye sight was permanently damaged to a certain extent. The accused was on these facts convicted of an offence punishable under s. 333 of the Indian Penal Code. He having applied to the High Court. *Held*, that the accused had acted rashly and negligently so as to endanger human life or the personal safety of others. *Held*, also, that the act of the accused amounted to an offence punishable under s. 337 of the Indian Penal Code, since there was no permanent privation of the sight of either eye in consequence of the operation. Where a Hakim gives out that he is a skilled operator and charges considerable fees, the public are entitled to the ordinary precautions which surgical knowledge regards as imperative. To neglect such precautions entirely is negligence such as is contemplated by the criminal law. **EMPEROR v. GULAM HYDER PUNJANI (1915)**

I. L. R. 39 Bom. 523

s. 339—Wrongful restraint, what necessary to constitute. The accused placed a lock on the outer door of complainant's house intending to prevent and thereby preventing his ingress. *Held*, that the offence of wrongful restraint was established although the accused were not physically present to enforce the obstruction. There is nothing in s. 339, Criminal Procedure Code, which requires the physical presence of the obstructor at the moment of prevention. **ABULGAKAR v. EMPEROR (1910)** . . . I. L. R. 34 Mad. 547

s. 341—Restraint upon a drunken and disorderly person—Common Law of England—Applicability to India. A private citizen has the right to arrest under the Common Law any person as to whom there is reasonable apprehension that he will commit a breach of the peace. *Timothy v. Simpson, (1833), 5 L. J. (12), 81, and Queen v. Light, (1857), 27 L. J. (3), 1* referred to. *In re RAMASWAMI AYYAR (1921)*

I. L. R. 44 Mad. 913

s. 341, 109—Wrongful restraint—Tenant holding over—Landlord preventing the tenant from going to the demised premises. The accused having prevented a tenant of his who was holding over from entering the demised premises, was convicted of wrongful restraint (s. 341

PENAL CODE (ACT XLV OF 1850)—*contd*s. 341, 109—*contd*

and 109 of the Indian Penal Code). On application to the High Court under criminal revisional jurisdiction. *Held*, that the accused was rightly convicted inasmuch as the tenant holding over had, in India, a position recognised by the law and had a right to retain possession of the premises he occupied even against the landlord himself until dispossessed in due course of law. **EMPEROR v. HAJI GULAM MAHOMED (1918)**

I. L. R. 43 Bom. 531

s. 342—

See s. 107 . . . 5 Pat. L. J. 129

See RIOTING . . . I. L. R. 48 Calc. 78

See WRONGFUL CONFINEMENT

I. L. R. 47 Calc. 818

s. 343—Wrongful confinement—Detention of prostitutes in brothel. Accused No 1, who had a woman in his keeping at Kolhapur, brought her from Kolhapur to Bombay where he kept her in the brothel of accused No 2. There she led the life of a prostitute, her movements were watched, and a guard was kept at the entrance of the house. She was occasionally allowed to go out of the house under surveillance. It appeared that accused No 1 had on previous occasions supplied women to accused No 2. *Held*, that on these facts accused Nos 1 and 2 were both guilty of the offence of wrongfully confining the woman. **EMPEROR v. BANDU EBRARIM (1917)** . . . I. L. R. 42 Bom. 181

s. 353—

See s. 99 . . . 18 C. W. N. 543

See s. 183 . . . 1 Pat. L. J. 559

See BENGAL SUPPLY ACT, 1875

2 Pat. L. J. 18

See CRIMINAL PROCEDURE CODE—

s. 54 (1) . . . I. L. R. 36 All. 6

s. 75 . . . 2 Pat. L. J. 487

See RIOTING . . . I. L. R. 41 Calc. 838

See SEARCH BY POLICE OFFICERS

I. L. R. 41 Calc. 281

See WARRANT OF ARREST

3 Pat. L. J. 493

— one act constituting two offences—

See GENERAL CLAUSES ACT, 1897, s. 26

1 Pat. L. J. 373

s. 360—

See s. 360 . . . I. L. R. 42 Bom. 391

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 423, 439

I. L. R. 37 Mad. 119

s. 361—"Lawful guardian"—Hindu law—Arrest major male relative not necessarily the lawful guardian of a female minor. The only persons having an absolute right to the custody of a Hindu minor are the father and the mother of the minor. No such right exists in the person who happens to be the nearest major male relative of the minor, and such a relationship would not in law be a defence to a charge of kidnapping a minor from the custody of a *de facto* guardian. **EMPEROR v. SITAL PRASAD**

I. L. R. 42 All. 146

PENAL CODE (ACT XLV OF 1860)—*contd.*

— ss. 361, 368, 109—*Kidnapping from lawful guardianship—Completion of offence—Continuous offence—Abetment* The offence of kidnapping is completed the moment a girl under sixteen years of age is taken out of the custody of her lawful guardian and is not an offence continuing as long as the minor is kept out of such guardianship. There can be no abetment of the offence by conduct which commences only after the minor has once been completely taken out of the keeping of the guardian and the guardian's keeping of the minor is completely at an end. *Pegana v Samia Raundan, I L R 1 Mad 173, Queen Empress v Ram Das, I L R 18 All 350, Queen Empress v Ram Sundar, I L R 19 All 109, Chakrity v Emperor, I L R 26 Mad 451, Nemas Chatteraj v Queen Empress, I L R 27, Cal 1911, Chanda v Queen Empress (1904), Punj Rec Cr J 19, referred to EMPEROR v. ANAND RAYMAV (1916) I L R 38 All 664*

— ss. 361, 366 and 368—*Abduction and kidnapping—Lawful guardian—Lawfully entrusted—Evidence, duty of Crown to produce the best available—Charge, necessity for precision as—Guardianship, proof of—Construction of Statutes* In s. 361 of the Indian Penal Code the word "lawful" does not necessarily mean that the person who entrusts a minor to the care or custody of another must stand in the position of a person having a legal duty or obligation to the minor. It is a sufficient compliance with the section and its Explanation if the entrusting of the minor to the care or custody of another is effected without illegality or the commission of any unlawful act by a person legally competent to do so. Entrusted means the giving, handing over or confiding of something by one person to another. It involves the idea of active power and motive by the person reposing the confidence towards the person in whom the confidence is reposed. For an entrusting, within the meaning of the Explanation to s. 361, there must be necessarily three persons viz., (1) the person imposing the confidence or trust, (2) the person in whom the trust is imposed, and (3) the person constituting the subject matter of the trust. The Explanation contemplates a declaration of trust by a person competent to make such a declaration, conveying, handing over and confiding a minor to the care and custody of another in whom a confidence and trust is imposed. It is necessary for the person accepting the trust to do so either by express assent, or by necessary implication arising from tacit acquiescence in the performance of the trust. Neither the declaration of trust nor its acceptance need be necessarily in writing. It is sufficient if the declaration is verbally made and given, or if it arises from a course of conduct consistent only with the existence of such antecedent declaration, and accepted verbally or by necessary implication arising from the conduct of the person so entrusted with the duty imposed. In a criminal trial the onus is upon the Crown to prove by the best evidence procurable the guilt of the accused. Where, therefore, it was alleged that a girl had been abducted from the guardianship of a certain person, and that person was not called to prove the guardianship, held, that the Crown had not tendered the best available evidence of the guardianship. Courts of Law ought not lightly to infer that a person is a lawful guardian for one purpose only, and not for all purposes, if the obligation of guardianship is once established, whether

PENAL CODE (ACT XLV OF 1860)—*contd.*

— ss. 361, 366 and 368—*contd.*
expressly or by inference. The mere relationship *per se* of master and servant does not constitute a master the lawful guardian of a minor servant within the meaning of s. 361, nor can such master, in the absence of proper proof, be deemed a person lawfully entrusted with the care and custody of such minor. It is the duty of a Sessions Court, in framing charges, to see that they are precise in their scope and particular in their details. *Held*, therefore, that in a case under s. 366 of the Indian Penal Code the charge should state the time at, and date on, which the alleged kidnapping or abduction took place. The words of a statute must be construed in their ordinary grammatical and natural sense, and not in a forced and artificial sense, unless such conclusion would give rise to an obvious absurdity which could never have been contemplated. A court of justice is not permitted to relax the construction of a statute in a manner at variance with its express provisions and which might operate unfairly to the prejudice of an accused person. No court in the administration of criminal justice, ought to dispense with the statutory requirements of the law as to the proof necessary to establish a fact. *MUSAMMAR HESSAN v THE KING-EMPEROR* 4 Pat. L. J. 74

— s. 363—
See CRIMINAL PROCEDURE CODE s. 183.
I L R. 41 Cal 452
See KIDNAPPING I L R. 49 Cal. 714

— *Kidnapping from lawful guardianship—Minority of Mahomedan, when to cease for the purpose of s. 363—Majority Act (IX of 1875), s. 3* According to Mahomedan Law the occurrence of puberty determines minority and the mother's right to custody, but for the purpose of s. 363 of the Penal Code, regard must be had only to the definition of minority in s. 3, of the Majority Act (IX of 1875). In the matter of *Khatija Bibi, 5 B L R 557*, distinguished *Re Metab Ismail (1913) I L R. 37 Mad. 587*

— s. 368—
See s. 361 I L R. 33 All. 634
4 Pat. L. J. 74
See ABDUCTION I L R. 45 Cal. 641

— *Kidnapping—Taking out of custody* Where two girls under the age of 16 years ran away from their houses and remained for nearly one or two days in the house of a woman, who belonged to the cast of *Joaks* in human and no report was made to the *padan* or the *patwari*. *Held*, that the woman in whose house the girls stayed was properly convicted of an offence under s. 366 of the Penal Code. *Queen v Gundur Singh, 17 R Cr G, dismissed from FURENDA JAALI (1912) I L R. 34 All 340*

— ss. 366, 360, 90—*Kidnapping a girl out of British India to seduce her to illicit intercourse—Consent of the girl aged fifteen years* The accused kidnapped a girl fifteen years of age out of British India, with her consent, in order that she might be seduced to illicit intercourse. He was convicted of an offence under s. 366 of the Indian Penal Code. On appeal *Held*, reversing the conviction, that the accused had committed no offence under s. 366 of the Indian Penal Code, inasmuch as the girl who was over twelve years of age was kidnapped with her consent. *EMPEROR v HANUMAI (1915) I L R. 42 Bom. 331*

PENAL CODE (ACT XLV OF 1860)—*contd*

— ss. 366, 368—*Kidnapping—Lawful guardianship* A Jat girl under the age of 16 years was sent by her father to carry food to the bullocks. She never returned home. Shortly afterwards she was found in a village not far from her home in the company of two men of the same caste. She was then dressed in boy's clothes and had her hair cut short. The two men offered no explanation as to how the girl came to be with them or why she was disguised. *Held*, that both the men in whose custody the girl was found were properly convicted under s. 366 of the Indian Penal Code. *Emperor v. Jetha Nathoo, 6 Bom. L. R. 785, followed. EMPEROR v. HARKESH (1918)*

I. L. R. 40 All. 507

— ss. 366, 372—*Kidnapping—Buying or selling minor girls for the purpose of prostitution* A low caste girl left her lawful guardian of her own free will and subsequently met the accused Ewaz Ali and lived with him for some time. Later he made her over to certain persons who, representing that she was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in full belief that such representation was true. *Held*, that Ewaz Ali was neither guilty of an offence under s. 366 of the Indian Penal Code inasmuch as he did not take or entice her away from her legal custody nor of an offence under s. 372 of the said Code. *King Emperor v. Ram Chander, 12 All. L. J. 265, Empress of India v. Sri Lal, 1 L. R. 2 All. 694, followed. Anna Emperor v. Jetha Nathoo, 6 Bom. L. R. 785 referred to. EMPEROR v. EWAZ ALI (1915)*

I. L. R. 37 All. 624

— s. 370—*Buying and selling as a slave, what amounts to* The appellants in these cases were convicted by Sessions Court of North Malabar under s. 370, Penal Code, the second appellant having been found to have sold, and the first to have bought a Pulayan named Vellan as a slave. The document recording the above transaction ran as follows:— 'I execute to you and give you this day this jennam deed giving you Vellanda's son Pulayan Vellan with his heirs. The sum that I received from you in cash to-day is ten rupees. For this sum of ten rupees, you should get work done for you by the said Vellan and his offspring that may come into being as your jennam, and act as you please.' On a difference of opinion between ABDEL RAHIM and NAPIER, JJ., as to whether the said transaction amounted to an offence under s. 370, Indian Penal Code. *Held*, by AYLING, J., that the transaction in question was a sale of Vellan and his offspring as mere chatties and that the appellants were guilty of an offence under s. 370, Penal Code. *Empress of India v. Ram Anar, 1 L. R. 2 All. 723, and Amiya v. Queen Empress 1 L. R. 7 Mad. 277, referred to. KOBOTH MAHMAD v. THE KING EMPEROR (1917)*

I. L. R. 41 Mad. 334

— s. 372—

See s. 368. I. L. R. 37 All. 624

— s. 373—*Obtaining possession of a minor girl for purposes of prostitution—Third party need not necessarily dispose of a minor girl* To constitute an offence punishable under s. 373 of the Indian Penal Code, 1860, it is not necessary that the possession of the minor should be obtained from a third person. It is enough if it is established that the accused in fact obtained possession of the minor with intent that the minor shall be used for

PENAL CODE (ACT XLV OF 1860)—*contd*— s. 373—*contd.*

the purpose of prostitution. *Queen Empress v. Shaikh Ali (1870), 5 Mad. H. C. 473, referred to. EMPEROR v. SHAMSUNDARBAI*

I. L. R. 45 Bom. 529

— ss. 378, 380, 411—

See CONVICTION 3 Pat. L. J. 354

— s. 379—

See AGRA TENANCY ACT (II OF 1910),

s. 124. I. L. R. 38 All. 40

See BENGAL TENANCY ACT, 1885, s. 71

1 Pat. L. J. 230

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 397, 123

I. L. R. 37 Bom. 178

1 ———— *Servant's removing things at master's bidding when theft* In order to convict a servant of theft under s. 379, Indian Penal Code, for having cut away some bamboos at the order of his master, it must be clearly shown that he (the servant) knew of the dishonest intention of his master. *Hari Bhushan v. The Emperor, 9 C. W. N. 974, followed. RADHA MADHAB PARAKI v. THE KING EMPEROR (1910) 15 C. W. N. 414*

2 ———— *Theft—Removal of goods from a person's custody—Larceny* In order to constitute larceny there must be an intention to take entire dominion over the property, i. e., the taker must intend to appropriate the property to his own use but there may be theft without an intention to deprive the owner of the property permanently. Hence, where a person snatched away some books from a boy as he came out of school and told him that they would be returned when he came to his house. *Held*, that the offence of theft had been committed. *R v. Dickinson, R. & R. 420, Prosonno Kumar Patra v. Ldoy Sant, 1 L. R. 22 Cal. 669 and Queen Empress v. Agha Muhammad Yusuf, 1 L. R. 18 All. 88, referred to. EMPEROR v. NARSHE ALI KHAN (1911) I. L. R. 34 All. 89*

3. ———— *Theft—Elements necessary to constitute offence—Removal of property in assertion of bona fide claim of right* To sustain a conviction under s. 379 it is necessary to prove dishonest intention to take property out of the possession of another person. Consequently when property is removed in the assertion of a bona fide claim of right the removal does not constitute theft. The claim of right must be an honest one though it may be unfounded in law or in fact. If the claim is not made in good faith but is a mere colourable pretence to obtain or to keep possession, it is of no avail as a defence. *ANAN ALI v. KING EMPEROR (1916) I. L. R. 44 Cal. 66*

20 C. W. N. 1270

4 ———— *Theft—Bombay*

Land Revenue Code (Bombay Act 3 of 1879) s. 154—Attachment of buffaloes for non payment of land revenue—No actual seizure of buffaloes—Removal of buffaloes by their owners—Offence On default in the payment of land revenue by accused Nos. 2 and 3, the Mamlatdar went to their houses, made a *panchnama*, declared that their buffaloes were attached, and forbade the accused to remove them. Notwithstanding this, accused Nos. 2 and 3 removed the buffaloes at the instigation of accused No. 1. For this act, accused Nos. 2 and 3 were convicted

PENAL CODE (ACT XLV OF 1860)—contd

— s. 379—

of the offence of theft and accused No. 1 of abetment of the same. The Sessions Judge was of opinion that inasmuch as the Mamlatdar had not taken actual possession of the buffaloes nor seized them the accused had committed no offence in removing them. He therefore referred the case to the High Court. *Held*, that the offence of theft was constituted by the removal of buffaloes inasmuch as on the proved facts the Mamlatdar was in possession of them. *EMPEROR v. ILLU WAGHJI* (1918) I L R 43 Bom 550

5 — Removal of paddy grown by trespasser from land in which in possession of rightful owner of theft. A person who grows paddy on lands as trespasser has no right to go upon the land after the rightful owner has obtained possession and remove the paddy and a plea of *bona fide* civil dispute cannot be successfully raised on such facts in answer to a charge of theft. *ABINASH CHANDRA BARKAN v. KING EMPEROR* (1918) 23 C W N 385

6 — Theft—Appropriation on by tenant of fallen trees belong to the zamindar. Certain trees the property of the zamindar of the village in which they were situated were blown down bodily by a dust storm. Some of the tenants of the village thereupon removed and appropriated the trees. The zamindar laid a complaint against the tenants charging them with theft. The tenants pleaded but were unable to substantiate the plea that they had a customary right to trees thus uprooted by a storm. *Held*, that the action of the tenants in appropriating the trees *prima facie* amounted to the offence of theft. It lays on them to establish the title which they set up and in the circumstances their conviction was right. *EMPEROR v. DUNJAVAT*

I L R 42 All 53

— ss. 379 to 381—

See THEFT

— ss. 379 and 457—

See CRIMINAL PROCEDURE CODE 1908 s. 200 3 Pat. L. J 346

— s. 380—

See CONVICTION 3 Pat. L. J 354

See LURKING HOUSE TRESPASS

I L R 44 Cal 358

Circumstantial evidence necessary for conviction—nature and character of. The petitioner was convicted under s. 380 of the Penal Code for theft of a number of currency notes and the findings were that he as well as five other persons entered the room at or about the time the notes were stolen that his brother-in-law was present when two of the stolen notes were cashed in Calcutta that shortly after the theft he was in possession of a large sum of money for which he could not satisfactorily account. *Held*, that circumstantial evidence must be exhaustive and exclude the possibility of guilt of any other person, or must point conclusively to the complicity of the accused. That in the present case the evidence did not fulfil the conditions of circumstantial proof at all. *CHIRAGUDIN v. EMPEROR* (1914)

18 C. W. N 1144

PENAL CODE (ACT XLV OF 1860)—contd

— ss. 391, 396—Dacoity—one of the dacoits killing two persons while the dacoits made good their escape with their booty—whether his comrades liable for the consequences of his act. The house of one K. was raided by a gang of five dacoits, one of whom was armed with a gun and the rest with *chhalas*. The dacoits ransacked the house and made good their escape with their booty. A number of villagers had assembled outside the house and in fighting their way through the crowd one of the dacoits shot one man dead and inflicted fatal wounds upon another who died shortly afterwards. The question before the Court was whether under these circumstances every dacoit was equally liable for the consequences of this act of one of them. *Held*, that murder committed by dacoits while carrying away the stolen property is murder committed in the commission of dacoity, vide s. 399 of the Indian Penal Code, and every offender was therefore liable for the murder committed by one of them. *Queen Empress v. Sallaram Khandu (2 Bori, L. R. 395)* and *Litt. Theeran v. Litt. Theeran* (11 Mad. L. J 118) followed. *Ex parte v. Chandor* (1900, 44 W. N. 47), distinguished. *LASHKAR v. CROWN*

I L R. 2 Lah 274

— s. 392—Charge, amended by Sessions Judge before hearing evidence—Criminal Procedure Code, s. 227. Where the appellants were committed to the Court of Sessions on a charge of dacoity and the Sessions Judge will not assign any reason at the commencement of the trial amended the charge to one of robbery. *Held*, that it was improper for the Sessions Judge to thus alter the character of the charge before hearing evidence. That under the circumstances of the case the fact that the appellants pointed out the places where some of the articles stolen in a robbery were found was not sufficient evidence to convict them under s. 392. *Ind. and Penal Code or even under s. 411 Indian Penal Code*. *Queen Empress v. Gobinda* I L R 17 All 576 followed. *PAIMULLAN v. KING EMPEROR* (1911)

16 C. W. N. 238

— s. 395—

See DACOITY 15 C. W. N. 434

— s. 399—

See MAGISTRATE I L R 39 Cal 119

— ss. 399, 402—

See DACOITY I L R. 41 Cal 350

— s. 400—Section to be strictly construed—Association for dacoity—List of offence—Kind of evidence sufficient to convict—Appraiser's testimony—Corroboration—Proof that accused members of a criminal tribe—Previous conviction—Value of when no association established—Accusatorial effect of. The offence contemplated in s. 400 of the Penal Code is one of a very special character and entirely the creature of statute and should therefore be strictly construed. *The Queen v. Mooktarom Sirdar* 23 W. R. Cr 13 referred to Association for the habitual pursuit of dacoity is the gist of the offence punishable under the section. Although the evidence need not show the same degree of particularity as to the commission of each dacoity as is required to support a substantive charge of that crime it must be established for the purpose of conviction under the section that

PENAL CODE (ACT XLV OF 1860)—*contd*s. 400—*contd*

the accused belong to a gang whose business is the habitual commission of dacoity. The special conspiracy must be proved *Empress v. Kure, All W. N. (1886) 65, 66, King Emperor v. Tirumal Reddi, 1 L. R. 24 Mad 523, The Public Prosecutor v. Doragiri Poltagadu, 1 L. R. 32 Mad 179*, referred to. Corroboration of the testimony of an approver in a trial under s. 400, must connect the accused with the offence, viz, the association of a gang or persons for the business of habitually committing dacoity. The general criminality of a tribe or caste cannot be imputed to individual members operating in gangs where the prosecution is under s. 400, and the fact that members of the tribe generally were alleged to have been implicated in several dacoities within a period of ten years preceding the trial was not sufficient proof against the persons under trial when it appeared that the tribe contained within it thousands of human beings. Where association for the purpose of habitually committing dacoity had not been made out, the mere fact that some of the accused had been previously convicted of dacoity or theft or had been bound down to be of good behaviour under s. 110, Criminal Procedure Code, was of no consequence. The fact that some of the persons undergoing trial for an offence under s. 400 had once been sent up on a charge of dacoity of which they were acquitted, could not be relied on to prove that they were habitual dacoits. No adverse inference can be drawn against accused persons after their acquittal. *The Emperor v. Nani Gopal Gupta, 15 C. W. N. 593, Rex v. Plumber [1902] 2 K. B. 339, followed. Bonas v. The King Emperor, 15 C. W. N. 461, distinguished. KADER SUNDAR v. THE EMPEROR (1911)*

18 C. W. N. 69

s. 401—

See CHARGE. I. L. R. 47 Calc. 154

See PREVIOUS CONVICTIONS, EVIDENCE OF. I. L. R. 38 Calc. 408

s. 402—

See DACOITY. I. L. R. 41 Calc. 350

s. 403—

See s. 22. I. L. R. 40 All. 119

s. 405—Criminal Procedure Code (Act V of 1898), ss. 179 and 182—Criminal breach of trust—Hundis sent from Dharaparam—Cashied in Bombay—Jurisdiction. The offence of criminal breach of trust is completed by the misappropriation or the conversion of the property dishonestly. It is only the intention which is essential whether wrongful gain or loss actually results is immaterial, it is a consequence, but no essential part of the offence, and a person is not accused of the offence by reason of it. Where, therefore, the accused, brokers in Bombay, were charged in the Court of the Sub-Divisional Magistrate of Erode with the offence of having committed criminal breach of trust in respect of the proceeds of certain hundis, entrusted to them by the complainants merchants at Dharaparam, for encashment at Bombay. Held, that the hundis having been cashied and the proceeds misappropriated by the accused in Bombay the Erode Court had no jurisdiction to try the case. *Ganeshi Lal v. Nand Kishore, 1 L. R. 34 All. 487, approved. Assistant Sessions Judge*

PENAL CODE (ACT XLV OF 1860)—*contd*s. 405—*contd*

of North Arcot v. Ramaswami Asari, 26 Mad. L. J. 235, distinguished. *Queen Empress v. O'Brien, 1 L. R. 19 All. 111, and Emperor v. Mahadeo, 1 L. R. 32 All. 397*, commented on. Held, also, that, where, as in this case, the complaint clearly charged dishonest misappropriation to accused's own use and not use or disposal in violation of law or contract, the offence fell under the first part of s. 405 of the Indian Penal Code and not under the second. And secondly, if it were otherwise, the offence would be committed where the dishonest use or disposal took place, not where the contract was made, or should have been performed. *PER RANDELLS (1914) 1 L. R. 38 Mad. 639*

ss. 405, 409—

See CRIMINAL BREACH OF TRUST

I. L. R. 41 Calc. 844

s. 406—

See CRIMINAL PROCEDURE CODE, s. 179. I. L. R. 35 All. 29

See RECEIVER. I. L. R. 46 Calc. 432

1. —Criminal breach

of trust—Necessary elements to constitute the offence. The complainant owed money to the accused on a mortgage bond and on a certain day went to their house and paid the amount settled as due in full satisfaction of the bond. An endorsement of payment was made on the back of the bond by one of the witnesses for the prosecution and the accused went inside their house with the bond and the money saying that they would keep the money and return the bond, but they did not come back that day and afterwards denied the receipt of the money. Held, that on the facts there was no trust which could bring the case within the terms of s. 406, Indian Penal Code. *GOLAM HOSSAIN v. EMPEROR (1917)*

22 C. W. N. 1005

2. —Criminal breach

of trust—Prosecution bound to prove entrusting. In a case of criminal breach of trust if the prosecution could not prove how the accused came by the money they did not establish one of the first essentials of the offence charged, viz, that accused was entrusted with the money. *GOURI NARAYAN BARRUA v. TILKIPAN CHETRI*

25 C. W. N. 838

ss. 406, 408—Criminal breach of trust—

Water works inspector misappropriating water—Money realized as water tax not credited to the municipality. Where a municipal water works inspector being the lessor of a house within municipal limits had such house connected with a municipal water main and accepted a yearly payment as water tax from his tenants, but neither informed the municipal board that the connection had been made nor credited to the board the money which he received as water tax from his tenants, it was held that he was properly convicted under ss. 406 and 408 of the Indian Penal Code, whether or not he might have been punishable under the United Provinces Water Works Act, 1891. *EMPEROR v. BIMALA CHARAN POI (1913)*

I. L. R. 35 All. 361

s. 408—

See CRIMINAL PROCEDURE CODE—

ss. 182 AND 531

I. L. R. 32 All. 397

PENAL CODE (ACT XLV OF 1860)—*contd.*s 408—*contd.*

ss 233, 230, 239

1 L. R. 32 All. 219

Lal Bahadur Sahai v. The State—A station master on the East Indian Railway, under an arrangement with the Company received a fixed allowance in respect of the marking, loading and unloading work at his station and used to engage his own men for that purpose. One of such men engaged as a markman was first allowed to keep certain registers, which it was the duty of the station master to maintain and next allowed to receive cash payments and make entries in the cash register. Whilst so employed he received a sum of Rs 5 10 as an over-hire or demurrage in respect of certain goods which passed through his hands, and appropriated the same. To allow him to recover the Railway Company made a claim. He was also alleged to have received and appropriated to his own use two other sums of money, under a somewhat similar circumstance. In respect of these three sums he was tried and convicted in three counts under s 408 of the Indian Penal Code. *Held* that the offence of an offence committed with regard to the sum of Rs 5 10 did not fall within s 408 at all, and this being so the jointer of the three clauses in one trial was illegal. *Emperor v. Harnilal Dix* (1918) 1 L. R. 40 All. 685

ss 408, 477A—

See *Chandra* 1 L. R. 40 Cal. 318

s 409—

s 409—CRIMINAL BREACH OF TRUST

1 L. R. 41 Cal. 344

See CRIMINAL PROCEDURE CODE, 1908—

s 223 and 231

1 L. R. 33 All. 42

ss 233, 234

3 Pat. L. J. 124

1. *Criminal misappropriation*—*Proven*—If it is proven that a person has taken a charge under s 409 of the Indian Penal Code it is not necessary for the prosecution to prove in what manner or for what purpose the property has actually been disposed of by the accused. It is shown that money entrusted to the accused was not accounted for nor returned by him in accordance with his duty. It is up to the accused to prove his defence. *Emperor v. Kadir Hussain* (1910) 1 L. R. 33 All. 249

2. *Criminal breach of trust*—

Charge—*Criminal Procedure Code* s 232 (3). An accused person was charged under s 409 of the Indian Penal Code with having embezzled an aggregate sum of Rs 208 12 0 in various dates between the 1st July and the 1st November 1909. *Held*, that the charge so framed was not open to objection, notwithstanding that evidence was available as to the various items of which the aggregate sum charged was composed. *Emperor v. Gulam Lal* 1 L. R. 24 All. 251, *Emperor v. Ishak Ali* 1 L. R. 28 All. 63, *Samirul Haq Sarkar v. Ashraf Chandra Ghose*, 1 L. R. 31 Cal. 924, *Raj Narain Tewari v. Emperor* 1 L. R. 32 Cal. 1055, and *Thomas v. Emperor*, 1 L. R. 29 Mad. 555, followed. *Subramanyam Ayyar v. King Emperor*, 1 L. R. 23 Mad. 61 distinguished. *Emperor v. Ibrahim Khan* (1910)

1 L. R. 33 All. 38

PENAL CODE (ACT XLV OF 1860)—*contd.*s 409—*contd.*

3

A Postmaster whose duty it was to pay over to the holders of certain cash certificates the money due thereon at a certain rate in fact paid the holders at a lower rate and misappropriated the difference. *Held*, that he thereby committed an offence of criminal breach of trust by a Public Servant. *Emperor v. Sita Ram* 1 L. R. 42 All. 201

s 411—

See CONVICTION

3 Pat. L. J. 105

See DISTRICT RECYCLING STORES

PROPERTY 1 L. R. 40 Cal. 990

See JURY, TRIAL BY

24 C. W. N. 619

Presumption as to knowledge of property in whose possession stolen property found after certain lapse of time—*Criminal Procedure Code* (Act 5 of 1908) s 45—*Concurrent sentences*—Where in a case under s 411 and an offence of the stolen property was found in the possession of the accused more than three months after the theft, *Held*, that having regard to the length of time there was no presumption that the accused knew or had reason to believe the property to be stolen. An order directing sentences passed in two separate trials against the same accused to run concurrently is illegal. *Joshi v. State* 1 L. R. 40 Cal. 990

ss 411, 414—*Disonestly receiving stolen property*—*Assaulting in the concealment of stolen property*—*Government currency note received in the course of business*—*Sanctioned*—Where a Government currency note (the value of Rs 1000) was traced seven months after the loss to a shroff who carried on business in Bombay and through whose hands the currency notes would find their way in the course of business though he could not name the person from whom he had received the currency note. *Held* on a complaint under ss 411, 414 of the Indian Penal Code, that the Chief District Magistrate was right in refusing to issue process. *1st* *Chandra Sahu v. Haji Mehar Haji Abdulhamid* (1917)

17 C. W. N. 1129

s 415—

See EVIDENCE ACT (1 of 1872), ss. 14

15

1 L. R. 34 All. 93

Cheating—*Deceit*—*Shopkeeper receiving currency notes in exchange for goods sold*—*Intention by shopkeeper of small amount from change on ground that not worth face value*—*Intention of guilty*—The accused who had sold goods worth Rs 2 13 0 to a customer, received from him two currency notes, one of Rs 2 8 0 and the other of Rs 1, but tendered as change only Rs 0 9 3 saying that the notes were not worth their face value, and that Rs 0 1 9 were charged on that account. The accused pleaded guilty and was convicted of the offence of cheating. On application to the High Court: *Held*, (i) that whether on the admitted facts the accused ought to be held to have committed the offence of cheating was a question of law, as to which the plea of the accused was immaterial, (ii) that he had not committed the offence of cheating, for there was no deceit at all, since the customer

PENAL CODE (ACT XLV OF 1860)—*contd*s. 415—*contd*

was not induced to hand over the notes by any representation on the part of the shopkeeper that he would get change calculated on the face value of the notes, but handed them to the accused in the ordinary course of the sale and purchase transaction. **EMERSON v. MURARI RAOHICATHI** (1919). . . . I. L. R. 43 Bom. 842

ss. 415, 417—

1. *Attempt to cheat*—*Dishonest intention*—*Facts proved not sufficient to support conviction*—*Evidence gone into in revision*. Where according to the Rules regulating the levy of octroi on certain goods brought within the Sambalpur Municipality, the goods had to be presented in bulk at the exit station out post with an application for a pass in a prescribed form, such application being in the ordinary course handed by the applicant or his agent to the out post mohurer who made it over to the daroga whose duty it was to check the application and to certify the description and quantity of the goods actually presented and then to make out the *chalan* or pass which had to be signed by the mohurer, and one of the Rules provided that a municipal member must attest the check at the exit station out post and in the absence of such attestation the exit mohurer shall not sign the *chalan*, and another Rule provided that the absence of the mohurer's signature on the *chalan* is one of the reasons for which an application for a refund of duty allowed in certain cases should be rejected; and where on a certain day the petitioner at the request of the daroga consented to act as Municipal member at the out post in respect of goods brought there to be passed through and among such goods brought to the out post were some cartloads of goods belonging to the petitioner's firm, and in the application for a pass in respect of these goods which was not signed by the petitioner himself but in which his name was written by a gomasta (which application according to the case for the prosecution the petitioner himself handed to the daroga with whom he was in collusion), the goods were entered as 460 bags of linseed and 40 bags of rice but as a matter of fact only 230 bags of linseed were actually brought to the out post and according to the evidence of the daroga the petitioner assured him that he would make good the deficiency on the following day, and it was found that the petitioner was cognisant of the application, of the details therein entered and of the number of bags brought to and passed through the out post but the petitioner did not attest the check in respect of his own goods and did not attempt to induce the mohurer to sign the *chalan* (which the mohurer in fact did never sign), nor did he do anything further to carry out the purpose imputed to him, and made no attempt to obtain a receipt for 500 bags as representing the number actually passed through the out-post, and on the next day when he tried to send goods to the railway station some of his carts were intercepted and prevented from reaching the railway station by the municipal authorities. *Held*, that the facts proved were not sufficient to support the conviction of the petitioner for an offence of cheating. The evidence on the record fell short of the evidence required to prove dishonest mind or dishonest purpose on the part of the petitioner. **BRUNJA MAHWAR v. THE KING-EMERSON** (1912). . . . 17 C. W. N. 294

PENAL CODE (ACT XLV OF 1860)—*contd*ss. 415, 417—*contd*

2. *Cheating*. The petitioner proposed to the father of a girl for the hand of his daughter and obtained his consent and was admitted into his house. Subsequently, information was received by the father that the petitioner was a married man, thus the petitioner admitted to be true. Shortly after the daughter who was major left the father's protection of her own accord and went to the petitioner. On the complaint of the parents the petitioner was convicted of cheating under s. 417, Indian Penal Code. *Held*, that the facts did not bring the case within s. 417 read with s. 415, Indian Penal Code. That looking at the natural result of the deception that had been undoubtedly practised and that only, between the date the father gave his consent and the date when it became known to him that the petitioner was a married man, and on the facts and circumstances of the case, it could not be said that any damage or harm was done to the mind or reputation of the parents and consequently the charge failed. **MILTON v. SHYAMAN** (1918).

22 C. W. N. 1001

3. *Cheating complaint of—Proceeding quashed as prima facie case not made out—Pleader a promise to persuade client to give undertaking—Undertaking not given—Pleader, if may be proceeded against for cheating*. In a proceeding under s. 197, Criminal Procedure Code, the opposite party undertook not to go to the property, the subject matter in dispute, or to do any act that was likely to involve a breach of the peace, on the pleader for the complainant agreeing to persuade complainant's master to file an undertaking that he would protect the property from sale. The undertaking which the latter offered to file, not having been approved of by the opposite party, was not filed whereupon the opposite party started proceedings against the pleader under s. 417 of the Penal Code. *Held*, that the proceedings should be quashed as no prima facie case of cheating had been made out. **KRISHNA KUMAR MUKERJI v. KENDRANT MUKERJI** (1916).

20 C. W. N. 1112

ss. 417, 420 and 511—

See **FOROZAY** . . . 4 Pat. L. J. 16

"Valuable security", *whether acknowledgment of receipt of insured parcel is*. Where the accused, in order to create false evidence that he had paid off a sum of Rs. 650 which he owed to complainant, filed a registered envelope with blank sheets of paper and posted it to the complainant after insuring it for Rs. 650 and the complainant gave an acknowledgment of receipt of the parcel to the Post Office on receiving the same. *Held*, that these facts amounted to an attempt to cheat. An acknowledgment of receipt of an insured parcel is not a 'valuable security'. It is merely evidence that a parcel of some sort was delivered to the addressee and it cannot operate as a discharge of any liability. Under s. 237 (2) of the Code of Criminal Procedure an accused who is charged with an offence may be convicted of having attempted to commit that offence, although the attempt is not separately charged. **SABHO LALL v. KIVO EMERSON** . . . 1 Pat. L. J. 391

s. 420—

See s. 120B . . . 20 C. W. N. 292

PENAL CODE (ACT XLV OF 1860)—contd.

s. 420—contd.

See s. 417 1 Pat. L. J. 331

See CRIMINAL PROCEDURE CODE ACT (V OF 1898) s. 562

1 L. R. 41 Mad. 533

See EVIDENCE ACT (I OF 1872) ss. 11, 14, 15

1 L. R. 39 All. 273

Chao ag arising out of a tempt to enforce all pd unfulfilled contract
Two contracts were entered into between the complainant and accused, one for sale by the complainant of a certain number of shares of a particular kind and the other for the purchase by the complainant of another kind. Subsequently when the purchase by the complainant was disputed a civil suit induced complainant to part with shares promising to give him back cash for it but instead offered to credit the value against the share due to him under the other contract and subsequently tendered the amount less the loss sustained by him by the non fulfilment of the other contract. Held that the action of the accused was fraudulent and he was rightly convicted under s. 470. *ASWINI KUMAR CHATTERJEE v THE KING EMPEROR* 25 C. W. N. 818

Whether contract can be made under a 56th Criminal Procedure Code?
It was contended by a first class Magistrate under s. 470 Indian Penal Code that his call of acting him to impoundment the Magistrate issued an order against him under s. 56th Criminal Procedure Code releasing him on probation of good conduct. Held that s. 56th Criminal Procedure Code applies only to a case of simple default and not s. 417 Indian Penal Code and not to aggravated form of cheating falling under ss. 418 to 420. *The Crown v A. K. Ram (J. P. W. R.)* 1903 followed. *THE CROWN v RAB NAWAS* 1 L. R. 1 Lahore. 812

s. 421—Criminal proceedings against insolvent—Presidency Towns Insolvency Act (III of 1900) ss. 17, 103 and 104—Adj. dpt insolvent—Sanction of insolvent's Court not obtained—Sanction of Magistrate—Suit or other legal proceeding started on of a person insolvent—A remittance applied to the Insolvent Debtors Court at Bombay for relief under the provisions of the Presidency Towns Insolvency Act 1900 and was adjudged an insolvent. Ten days later a creditor of the insolvent without having obtained any sanction from the Insolvent Debtors Court filed a complaint against the insolvent in the Presidency Magistrate's Court for an offence punishable under s. 421 of the Indian Penal Code 1860. It was contended that the Magistrate had no jurisdiction to entertain the complaint. Held that the Magistrate jurisdiction to try the insolvent for an offence under s. 421 of the Indian Penal Code 1860 was not taken away by anything contained in the Presidency Towns Insolvency Act 1900. The expression or other legal proceeding in s. 17 of the Presidency Towns Insolvency Act 1900 coming after the word suit, a word of more limited application, must be construed on the principle of *ejusdem generis*. It, therefore, includes only proceedings of a civil nature. *EMPEROR v MULSHANKAR HARTMUND BHAT* (1910)

1 L. R. 35 Bom. 63

PENAL CODE (ACT XLV OF 1860)—contd.

s. 423—

See FABRICATING FALSE EVIDENCE

1 L. R. 48 Cal. 986

Consideration means
The word consideration in s. 423 of the Penal Code cannot mean the property transferred. Therefore an untrue statement in a transfer deed that the whole of a plot of land belonged to the transferor is not a statement relating to the consideration for the transfer and is not an offence under the section. *MARIA GOUDAN v R* (1911)

1 L. R. 37 Mad. 47

s. 424—

s. 5 BENGAL TENANT ACT 1885

1 Pat. L. J. 353

See s. 71

See s. 121

25 C. W. N. 209

Conversion of a ryot and Madras Estate Land Act (I of 1904) for dishonest concealment and removal of crops & quality of—Madras Estates Land Act (I of 1901) ss. 73 and 712, no bar to conviction
The accused who was a ryot under the Madras Estates Land Act and who was bound under the conditions of his tenure to share the produce of his land with the landholder in a certain proportion dishonestly concealed and removed the produce thus preventing the landholder from taking his due share. Held that the provisions of ss. 73 and 212 of the Madras Estates Land Act were no bar to a conviction of a ryot under s. 474, Indian Penal Code for the dishonest concealment and removal. *PERUVANPANDIA THEVAR (1914)*

1 L. R. 38 Mad. 793

s. 426—

See s. 147

1 L. R. 39 Mad. 57

See NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1833) ss. 7 AND 9.

1 L. R. 34 All. 210

ss. 476 417—

s. 427 CRIMINAL TRESPASS.

1 L. R. 38 Cal. 180

Where the accused a peash of one R. acting solely in the interests of his Master removed and damaged some bamboos and the Estate was under Court of Wards. Held no offence was committed. *PURANDEVI SINGH v KING EMPEROR*

25 C. W. N. 224

Cutting off the ears of a horse is maiming as well as laceration. The cutting off the ears of a horse is maiming as well as the meaning of s. 473 of the Indian Penal Code. *MARIKOWDA v KRIVIVARA RANGAPPAH (1911)*

1 L. R. 35 Mad. 594

s. 430—If act of injury to works of art go on
There cannot be a conviction under s. 430 of the Penal Code where there is a right or a bona fide claim of right. *DEPUTY LEGAL MEMBERSHAWER, BILAL AND ORS. v MATTEDHARI SINGH* (1913)

20 C. W. N. 128

s. 430—Much of Northern India Canal and Drainage Act (VIII of 1873), s. 70
Where the foundation of the charge against an accused person is that he cut the bank of a canal for the purpose of unlawfully obtaining water for his own field in order to sustain a con-

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 430—*contd.*

violation under s. 430 of the Indian Penal Code, it is necessary for the prosecution to show that the act of the accused in fact caused, or, but for prompt intervention, would have caused diminution in the ordinary supply of water for agricultural purposes. If this cannot be shown, the accused should be convicted under s. 70 of the Northern India Canal and Drainage Act, 1873. *Taj ud din v. Emperor*, 5 A L J 159, followed. *EMPEROR v. HAN NARAIN* (1919). I. L. R. 41 All. 599

s. 434—

See CRIMINAL PROCEDURE CODE s. 106
I. L. R. 33 All. 771

s. 436—*Arson—Evidence of previous fires unconnected with the charge under enquiry—Conviction on inadmissible evidence.* The accused was convicted of arson. During the trial, the Sessions Judge admitted the evidence of previous fires in the locality with which, however, there was nothing to connect the accused and relying amongst others on that evidence convicted the accused. *Held* that the Sessions Judge was wrong in admitting the evidence in question. The High Court set aside the conviction and sentence. *ABDUL KADIR v. KING EMPEROR* (1916). 20 C. W. N. 1267

s. 441—

1. *Distinguished from civil trespass—Placing hay-stacks and manure on another man's land—Intention to cause annoyance, must be found.* The placing of hay stacks and manure on another man's land may be civil trespass. It may cause annoyance in fact, but the act cannot be treated as criminal trespass unless it is found that it was intended by the accused to be annoyance. The distinction between civil and criminal trespass is one which is lost sight of by too many of the Subordinate Magistrates. *MEJAN v. SHARAFULLAH KHAN* (1912). 18 C. W. N. 1007

2. *Placing on another man's land.* A man may be guilty of criminal trespass on the land of another without ever personally setting foot on the land. If, for example, he causes others to build on the land against the wishes and in spite of the protest of the owner of the land. *EMPEROR v. GHAST* (1917). I. L. R. 39 All. 722

3. *Necessary constituents of offence.* Where a person is found in the house of another in circumstances which would *prima facie* indicate that the offence of criminal trespass as defined in s. 441 of the Indian Penal Code had been committed and sets up the defence that he did not enter the house with any of the intents referred to in the section but in pursuance of an intrigue with a female living there, it is the duty of the trying Court to give accused an opportunity of substantiating such defence. If the accused succeeds in showing that his presence in the house was in consequence of an invitation from or by the connivance of a female living in the house with whom he was carrying on an intrigue, and that he desired that his presence there should not be known to the person in possession, then he cannot be convicted of criminal trespass. If, however, it is shown that the person in possession of the house has expressly prohibited

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 441—*contd.*

the accused from coming to the house, an intent to annoy may be legitimately inferred. The following cases were referred to. *Balmakand Ram v. Ghansamram*, I L R 22 Cal. 391, *Premarundo Shaha v. Brindaban Chug*, I L R 22 Cal. 944, *Emperor v. Lakhman Raghunath*, I J R 26 Bom 553, *Emperor v. Mulla* I L R 37 All. 395, *Emperor v. Gaya Bhar*, I L R 38 All. 517, *EMPEROR v. CHROTE LAL* (1917). I. L. R. 40 All. 221

ss. 441 and 442—

See CRIMINAL TRESPASS

ss. 441, 447—

See CRIMINAL TRESPASS.

I. L. R. 43 Cal. 1143

ss. 441, 448—*Criminal Trespass—Finding that the trespass was committed with one of the intents specified in the section, whether necessary—Knowledge of the consequences of the trespass, whether sufficient to inculpate.* *Held*, by the Full Bench (ATLING J., dissenting)—Trespass is an offence under s. 441 Indian Penal Code, only if it is committed with one of the intents specified in the section and proof that a trespass committed with some other object was known to the accused to be likely or certain to cause insult or annoyance is insufficient to sustain a conviction under s. 418, Indian Penal Code. Distinction between 'intention' and 'knowledge of likelihood' pointed out. *Queen-Emperor v. Rajapadayachi* I L R 19 Mad 404 followed. *Emperor v. Lakhman*, I L R 26 Bom 553 and the view of BERTON, J. in *Sella mulhu Serimgaru v. Pollamulhu Karuppan*, I L R 35 Mad. 156 not followed. Per ATLING J. A mere knowledge that the trespass is likely to cause insult or annoyance does not amount to an intent to insult or annoy within s. 441, Indian Penal Code but where the trespasser knows that his trespass is practically certain in the natural course of events to cause insult or annoyance it is open to the court to infer an intent to insult or annoy. It is a question of fact whether this presumption of intent is displaced by proof of any independent object of the trespass. *VULLAPPA v. BREEMA RAO* (1917). I. L. R. 41 Mad. 156

Criminal trespass—Proceedings if he on the complaint of some one other than the person in possession. 'Any person in possession,' meaning of The petitioner was convicted under s. 448, Indian Penal Code, for having broken into a house belonging to the complainant but actually in the possession of her tenant with the object of causing annoyance to the tenant. *Held*, that the proceedings were properly instituted on the complaint of the landlady. That the words 'any person in possession' in s. 441 Indian Penal Code, do not mean only complainant in possession there being no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act. *Chandi Prasad v. Evans* I L R 22 Cal. 122 (1894) followed. *Imperatrix v. Keshavlal*, I. L. R. 21, Bom. 536 (1896), distinguished. *RAYAT SINGH v. MRS. MORGAN*. 25 C. W. N. 425

ss. 443 and 444—

See LURKING HOUSE TRESPASS.

PENAL CODE (ACT XLV OF 1860)—*contd.*

s. 447—

See s. 147 . I. L. R. 29 Mad. 57

See CRIMINAL TRESPASS.

I. L. R. 33 Cal. 180

I. L. R. 43 Cal. 1143

Criminal trespass—

One co-sharer building on common land without the consent of the other co-sharer. Where one co-sharer built upon a piece of common land against the will of the other co-sharer, whose consent had been previously asked and had been refused it was held that the circumstance alone was not sufficient to render the co-sharer so building guilty of criminal trespass. In the matter of the petition of Gobind Prasad, I. L. R. 2 All. 465 and Emperor v. Lakshman Raghunath I. L. R. 26 Bom. 553, referred to. EMPEROR v. RAM SARUP (1914) I. L. R. 38 All. 474

ss. 447, 379—

See THEFT I. L. R. 44 Cal. 66

s. 448—

See s. 441 I. L. R. 48 Mad. 156

See CRIMINAL PROCEDURE CODE, 1898, s. 145 3 Pat. L. J. 147

s. 456—*Lurking house trespass—Intent—Burden of proof.* The accused was found inside the complainant's house at 2 a.m., and when arrested made no statement as to his reasons for being there. On being sent up for trial he stated, but could not prove to the satisfaction of the Court, that he had an intimacy with a widow living in the house. Held, that the presence of the accused in the house at that hour pointed to a guilty intent and it was for him to rebut that presumption. Emperor v. Ishra, I. L. R. 29 All. 46, followed. Emperor v. Jang Singh, I. L. R. 26 All. 194, Sella Matha Srivastava and Matayan v. Palla Matha Koriyaan, 21 Mad. L. J. 161, Queen Empress v. Rayapadayachi, I. L. R. 19 Mad. 240, and Premamunda Shaha v. Brindaban Chaudhary, I. L. R. 22 Cal. 393; referred to. EMPEROR v. MULLA (1915) . I. L. R. 37 All. 395

Lurking house trespass

—*Entering a house with intent to have illicit intercourse with a widow of full age no offence.* An accused person, though he may have known that, if discovered, his act would be likely to cause annoyance to the owner of a house, cannot be said to have intended either actually or constructively to cause such annoyance. Where, therefore, it was proved that a person entered a house with intent to have illicit intercourse with a woman who was a widow and of age: Held, that he was guilty of no offence. Jivan Singh v. King Emperor, 1903, Pat. Cr. J. 54, dissented from. Emperor v. Mulla, I. L. R. 37 All. 393 referred to. Queen Empress v. Rayapadayachi, I. L. R. 19 Mad. 240, followed. EMPEROR v. GAYA DHAN (1916) . I. L. R. 38 All. 517

ss. 456, 457—

Charge of house-break-

ing to commit theft—*Conviction under s. 456, if proper—Mistake of charges—Charge under s. 457, conviction under s. 538, illegality of.* An accused person who was being tried on a charge under s. 457 for house-breaking with intent to commit theft, could not be convicted under s. 456, Indian

PENAL CODE (ACT XLV OF 1860)—*contd.*456, 457—*contd.*

Penal Code, without amendment of the original charge. Although it is not necessary under s. 456, Indian Penal Code, to specify any particular offences intended to be committed, when a particular offence is specified under s. 457, Indian Penal Code, it is incompetent for the Court to convict the accused of house breaking with some other intent. JHARU SKEKH v. THE KING EMPEROR (1912) . 18 C. W. N. 698

See LURKING HOUSE TRESPASS.

I. L. R. 44 Cal. 353

Criminal Procedure

Code, s. 238—*Conviction under s. 456 when charged under s. 457, propriety of—Criminal intention if should be specified in the charge in a case under s. 456—Intention of accused, how may be determined by Court.* The view that under no circumstances can a conviction be made under s. 456 of the Penal Code, when the accused has been charged with the commission of an offence under s. 457, cannot be maintained. The accused in the middle of the night entered the house of the complainant while she was asleep, was caught but ultimately ran away. The motive alleged by the prosecution was to commit theft of the complainant's ornaments. The accused was summarily tried for offences under ss. 457 and 399 of the Penal Code, and the trying Magistrate finding that the intention of the accused was really to make immoral proposals to the complainant and thus to annoy her convicted him under s. 456 of the Penal Code. Held, that although the specific intent, namely, the intent to commit theft was not established, yet it was competent to the Court to convict the accused under s. 456 of the Penal Code, s. 238, Criminal Procedure Code, being clearly applicable to a case of this character, and the accused not having in any way been prejudiced by such conviction. Jharu Sheikh v. King Emperor, 18 C. W. N. 698, distinguished. That it is well settled that to sustain a conviction under s. 456 it is not necessary to specify the criminal intention in the charge, it is sufficient if a guilty intention is proved such as is contemplated by s. 441 of the Penal Code. That the intention may be determined as well from direct evidence as from the conduct of the party concerned and the attendant circumstances and in the circumstances of the case the Court could presume that the accused effected the entry with an intent such as is provided for by s. 441 of the Penal Code. ABALI PRASAD v. KING EMPEROR (1916) . 20 C. W. N. 1075

s. 457—

See s. 379 . 3 Pat. L. J. 348

"Intent to annoy,"

what amounts to A with a view to support a fraudulent claim of title to a house, broke into it during the temporary absence of the owner, assaulted the owner's servant who was in charge of the house and took forcible possession of it. Held, that A was rightly convicted of the offence of house-breaking under s. 457, Indian Penal Code. Per BENSON, J.—That an intent to annoy under s. 457 is established if annoyance in the ordinary course of events is known by the person committing the act to be the natural consequence of such act. A man must in law be held to intend the natural and ordinary consequences of his acts, irrespective of what his object was at the time of

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 457—*contd.*

doing such acts if at such time he knows what the ordinary and natural consequences will be. If he does an act which is illegal, it does not make it legal that he did it with some other object unless the object was such as would under the circumstances render the particular act lawful. *Per SANKARAY NAIK, J.*—That although the act complained of necessarily involved annoyance, yet, unless the intention of the accused was to annoy, it may be that the act cannot be said to have been committed with intent to annoy. *Emperor v. Baid, I L R, 27 All 293*, referred to *Queen Empress v. Rayapadayachi, I L R 19 Mad. 219*, referred to. *A.*, however, in doing the act complained of intended to use criminal force to the servant in possession and therefore intended to commit an offence. *SEELAMUTHU SERVAIGARAN v. PALAMUTHU KARUPPAN (1911)*

I L R. 35 Mad. 186

See s. 411 . I L R. 41 Mad. 156

ss. 457, 511—*House breaking—*

Attempt—Burglars digging a hole in a wall but not boring it through owing to interruption by third persons. The accused dug a hole in the wall of the complainant's dwelling house, during the night, with intent to complete that hole in order to make their entry into the house through it, and, having so entered, to commit a theft in the house. In fact, the hole was not completed in the sense that it did not completely penetrate from one side of the wall to the other, as the accused were interrupted before they could complete it. The accused were on these facts convicted by the trying Magistrate of the offence of attempting to commit house breaking by night. On appeal, the Sessions Judge reversed the conviction and acquitted the accused on the ground that the accused's acts did not amount to an attempt to commit house-breaking, but only to a preparation. The Government of Bombay having appealed against the order of acquittal. *Held*, setting aside the order of acquittal, that the accused's acts did in law amount to an attempt, for the actual transaction, the distinct overt act, was begun and carried through to a certain point but was not completed by reason of the accused's being interrupted. *EMPEROR v. CHANDKHA SALABATKHA (1911)*

I L R. 37 Bom. 553

ss. 457, 380, 456—

See LURKING HOUSE TRESPASS

I L R. 44 Calc. 358

s. 460—*Whether applicable where death was caused by some of the companions of the accused while running away after committing house trespass by night.* The accused appellant was one of a party of 4 men who broke into the house of the complainant by night and, being discovered, were running away when a neighbour caught hold of the accused, whereupon some of his companions inflicted certain injuries upon the neighbour of which he died on the spot. *Held*, that s. 460 of the Penal Code was not applicable as the expression "at the time of the committing of house breaking at night" must be limited to the time during which the criminal trespass continues which forms an element in house trespass, which is itself essential to house-breaking, and can not be extended so as to include any prior or subsequent time. *Jaffir v. Empress*

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 460—*contd.*

(2 P. R. (Cr.) 1832) per Plowden, J., followed *MUHAMMAD v. CROWN. I L R. 2 Lah. 342*

ss. 463-465—

See s. 417 . 4 Pat. L. J. 16

See FORGERY . I L R. 43 Calc. 421
I L R. 38 Calc. 75

ss. 463, 467—*Forgery—Forgery committed to conceal fraud already committed.* A Kulkarni misappropriated certain moneys which the rayats had paid to him as irrigation cesses. Some time afterwards, he forged certain receipts purporting to come from the Government treasury for those moneys, with the object of concealing the misappropriation. The accused helped the Kulkarni in the forgery, by forging the signatures on the receipts. He was paid Rs 25 for the work. The accused was, on these facts, charged with the offence of forgery. The Sessions Judge acquitted the accused on the ground that s. 463 of the Indian Penal Code penalised the making of a false document, only if it was made (*inter alia*) with intent to commit fraud or that fraud may be committed, whereas no such intent could be ascribed where the fraud had already been fully committed. The Government of Bombay appealed against the order of acquittal. *Held*, setting aside the order of acquittal, that the accused had committed forgery, although it was effected in order to conceal an already completed fraud. *Lalit Mohan Borkar v. Queen-Empress, I L R 22 Calc 313*, *Emperor v. Rash Behari Das, I L R 35 Calc 450*, and *Queen Empress v. Sabapati, I L R 11 Mad. 411*, followed. *Empress of India v. Jivanand, I L R 5 All 221*, *Empress v. Mazhar Hussain, I L R 5 All 553*, and *Queen-Empress v. Gurdhari Lal, I L R 8 All 653*, dissented from. *EMPEROR v. BALKRISHNA WAMAN (1913)*

I L R. 37 Bom. 666

ss. 463, 471—*"Using" definition of—Criminal Procedure Code (Act V of 1898), ss. 17 and 531—Jurisdiction—Commitment to Court, not possessing jurisdiction, bad—Transfer.* A forged document was produced in Court in obedience to an order of the Court. *Held* that the production did not amount to using the document as genuine. An involuntary production of a document in Court cannot be said to amount to a use of it. The expression "using a document" is apparently used in the sense of its being put forward in some way for one of the purposes mentioned in s. 463, Indian Penal Code. Although by virtue of s. 531, Criminal Procedure Code, an order in an inquiry made by a Magistrate not having local jurisdiction, will not be set aside unless there is in fact a failure of justice, yet when a commitment is made by such a Magistrate to a Court of Session which has no jurisdiction to try the case under s. 177, Criminal Procedure Code, such commitment is illegal. The High Court has no power to transfer a case thus committed to a Court not having jurisdiction to another Court having jurisdiction. The commitment must be quashed. *ASSISTANT SESSIONS JUDGE, NORTH ARCOT v. RAMAMMAL (1913)*

I L R. 36 Mad. 387

s. 464—

See s. 29 . I L R. 41 Mad. 599

PENAL CODE (ACT XLV OF 1860)—*contd.*— ss. 464—*contd.*

Forgery—Document made to screen a previous offence, whether made fraudulently. An attack made by a process-server with false signatures in order to defraud a District Munsif into excusing his delay in returning process and his absence from duty is made fraudulently and is a forged document within s. 464 of the Indian Penal Code. *Empress v. Salaspathi*, 1 L. R. 11 Mad. 411, *Emperor v. Rishi Echors Das*, 1 L. R. 35 Cal. 459, and *Kotamraja Venkatarajulu v. Emperor*, 1 L. R. 23 Mad. 90, followed. *Emperor of India v. Wassand*, 1 L. R. 5 All. 221, and *Queen-Empress v. Girdhars Lal*, 1 L. R. 8 All. 633, doubted. *KANATCHINATHA PILLAI v. EMPEROR* (1919).

1 L. R. 42 Mad. 553

— ss. 461, 465, 467—*Criminal Procedure Code (Act I of 1933) ss. 221, 222, 223, 312.*—*Making a false document—Forgery of valuable security—Falsification of part of a document which is surplusage—Evidence—Onus—Defect in charge—Omission to set out intention in charge.* Where the accused was convicted of having forged a khabalat executed by himself in favour of his landlord C B whose name appeared on the document as a witness and there were two other witnesses to the document, and it was admitted that the accused who was an illiterate man did not "make the false document" himself, and it was not established that the intention of the accused was to fraudulently bind the landlord by his alleged signature as witness, and the case for the defence was that it was not the landlord C B who signed the name as witness but another person of the same name, and the Sessions Judge held that the onus was on the defence of showing that this C B, whose name appeared on the document, was a real person and signed the deed, and where the Sub-Registrar who registered the document and he'd an inquiry in connection therewith and saw with his own eyes that the accused was in possession of the land covered by the document gave evidence of that fact, but the Sessions Judge held that his statement was not evidence. *Held*, that a charge of forgery cannot lie against a person who was not the writer of the forged document or who did not sign the forged name. Making a false document is one thing and causing a false document to be made is another. One is an offence under s. 465, Penal Code, the other is an act, at most, of abetment. The part of a document in order to come within the definition of false document must be dishonestly or fraudulently made, signed, sealed or executed by the person who is charged, and it must be made with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, and executed by or by the authority of a person by whom or by whose authority, he knows that it was not made, signed, sealed or executed. Even supposing that part of a document is false that part must have some material effect on the transaction. A mere surplusage would not invalidate a document. In the present case even admitting that the name of C B was a fictitious name it would not make the document a false document. There being two other witnesses to the document besides C B, it could have no effect on the validity of the document whether the name was or was not fictitious. If it was the

PENAL CODE (ACT XLV OF 1860)—*contd.*— ss. 464, 465, 467—*contd.*

intention of the accused that the document should be used in future as evidence that the landlord himself was a witness to it that might bring the case within the definition of fabricating false evidence for the purpose of being used in a judicial proceeding, or it might be a preparation for the offence of cheating but certainly does not amount to forgery. *Held*, further that the Sessions Judge was wrong in throwing the onus on the defence and in holding that the statement of the Sub-Registrar was not evidence. *HAIDER ALI PRADHANIA v. THE EMPEROR* (1912).

17 C. W. N. 354

— ss. 465, 471—*Forgery—"Dishonestly"*—*Forging a receipt for a debt which has been written off by the creditor for the purpose of obtaining a certificate of insolvency and indirectly in order to secure a contract—Wrongful gain or loss.* A, in order that he might obtain the annulment of an order adjudicating him an insolvent and thereafter that he might be in a position to tender for municipal contracts, produced before the receiver in insolvency a document which purported to be a receipt from a creditor for payment of debt which the creditor had in fact written off as irrecoverable. *Held*, that in respect of the use of this receipt A was properly convicted under s. 465 read with s. 471 of the Indian Penal Code. *Queen-Empress v. Muhammad Saeed Khan* 1 L. R. 21 All. 113, and *Queen-Empress v. Soohi Phookar*, 1 L. R. 15 All. 210, referred to. *EMPEROR v. ABDUL GHAFUR* 1 L. R. 43 All. 225

— ss. 465, 471, 477A—

See MISAPPROPRIATION

1 L. R. 36 Cal. 955

— ss. 466, 471—

See FORGERY

1 L. R. 43 Cal. 783

— s. 467—

See s. 29 1 L. R. 41 Mad. 539

See s. 30 1 L. R. 33 All. 420

See s. 31 1 L. R. 36 Bom. 524

See s. 463 1 L. R. 37 Bom. 666

— s. 467—

See CRIMINAL PROCEDURE CODE, ss. 233, 239, 239 1 L. R. 32 All. 219

— *Witness proving forged document.* If a witness swears that it is doubtful whether a witness who swears to the truth of a document in Court can be said to swear its use. *Anumudda v. King-Emperor*, 11 C. W. N. 835, s. c. & U. L. J. 454, referred to. *DEVI LIT v. DRABHARTI GANNAI* (1911) 15 C. W. N. 565

— ss. 467, 109, 471—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 403.

1 L. R. 40 Bom. 97

— s. 471—

See s. 30 3 Pat. L. J. 236

See s. 463 1 L. R. 36 Mad. 237

See s. 463 1 L. R. 43 All. 223

See CRIMINAL PROCEDURE CODE—

s. 193 1 L. R. 23 Bom. 642

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 471—*contd.*

- s. 403 . . . I. L. R. 40 Bom. 97
See FORGERY . . . I. L. R. 38 Calc. 75
 I. L. R. 43 Calc. 753
See SANCTION FOR PROSECUTION
 I. L. R. 40 Cal. 584

"Using" definition of The mere production of a document in obedience to the summons of a Court cannot amount to "using" within the meaning of s. 471, Indian Penal Code *Assistant Sessions Judge, North Arcot v Ramammal I L R 36 Mad. 337*, followed. Where a document having been produced upon an order of the Court the witness gives false evidence regarding it, such giving of false evidence cannot by itself be considered a fraudulent user of the document within the meaning of s. 471, Indian Penal Code. A mere statement that a document is genuine does not amount to using it as genuine *Re MUTHIAN CHETTI* (1913)

I. L. R. 36 Mad. 392

ss. 471, 474—Whether convictions under, can stand together—*Forgery—User, whether mere filing in Court—Guilty knowledge, presumption of, if rises from mere filing of a document, being interested in establishing its contents* The mere fact that a litigant is interested in establishing the contents of a forged document filed by him in support of his case, does not raise the presumption that he filed it knowing it to be forged. Where, however, the accused filed a forged document in support of his case but when the forgery was discovered he fled away without prosecuting his case and without attempting to offer any explanation *Held*, that his conduct was not consistent with his innocence and want of guilty knowledge. The filing of a forged document as the basis of a plaint or as a necessary sequel to the pleas in the plaint, constitutes an user of it within s. 471, Penal Code, and it is incumbent on the person using it to show that he filed the document in all good faith believing it to be genuine. *Ambika Prasad Singh v Emperor, I L R 35 Calc 320*, referred to and explained. Convictions of offences under s. 471 and 474, Penal Code, in respect of the same document cannot stand together. The two offences must be charged in the alternative. *Queen v Nurur Ali, 6 N W P. 39*, followed. *MORARAJ ALI v THE KING EMPEROR* (1912) 17 C. W. N. 94

s. 474—

See s. 20 . . . I. L. R. 41 Mad. 589

s. 477A—

See CHARGE . . . I. L. R. 40 Calc 318
See COURT FOR STAMPS.

I. L. R. 47 Calc. 71

• *See CRIMINAL PROCEDURE CODE—*

ss. 222 (2), 233

I. L. R. 38 All. 42

ss. 235, 537 I. L. R. 32 All. 57

Replacing stamps on documents by used up stamps, if offence under The accused was placed on his trial on a charge under s. 477A of the Penal Code on the allegation that he as clerk in the Certificate Department had tampered with requisitions filed under the

PENAL CODE (ACT XLV OF 1860)—*contd.*s. 477A—*contd.*

Public Demands Recovery Act on behalf of an estate under the management of the Court of Wards by replacing the stamps on those documents and on the accompanying *rakalatnamas* by others taken from other papers *Held*, that the acts, alleged did not come within the scope of s. 477A, Indian Penal Code *KING EMPEROR v BIRHUNDANANDA* (1919) 23 C. W. N. 935

ss. 478, 482—"Trademark"—Importer using a distinctive mark has property in it as against the rest of the world. A distinctive mark may be adopted by a person who is not the manufacturer but the importer of goods, and he will acquire the property in that mark as indicating that all goods which bear it have been imported by him. *Palls v Fleming, I L R 3 Calc 417*, and *Laverne v Hooper, I L R 8 Mad 149*, referred to. In this case merchants, selectors and importers of hand made sugar, used a distinctive mark denoting that the sugar contained in the bags so marked had been selected and imported by them, and their customers accepted the mark as a guarantee that the sugar was hand made. *Held*, that the mark so used was a "trade mark" as defined in s. 478 of the Indian Penal Code *EMPEROR v LATIF* (1916)

I. L. R. 30 All. 123

ss. 478, 488—Trade mark, meaning of—s. 28—Counterfeiting, what amounts to The trade mark alleged to be counterfeited was that of a company who were the manufacturers of a kind of tooth powder sold in boxes. It appeared that apart from two points of difference the imitation of the whole design was most marked and complete. *Held*, that the expression "trade mark" as defined in s. 478 must not be confined to the trade mark of the complainants registered in England but must include the whole design on the top of the box and the black label pasted round the side. That the case clearly came within the definition of "counterfeit" in s. 28, Indian Penal Code. *NILMONEY NAO v DURGA PADA BANERJEE* (1915) 19 C. W. N. 957

s. 482—

See s. 478 . . . I. L. R. 39 All. 123

ss. 482, 485, 486—

See TRADE MARK I. L. R. 40 Calc. 281

s. 486—

See s. 478 . . . 19 C. W. N. 957

s. 494—

Bigamy In a case of bigamy the person aggrieved is either the first husband or the second husband and not the father. Where a complaint was preferred by the father of the first husband, which resulted in a commitment on a charge under s. 494 of the Indian Penal Code, it was held that the commitment was bad. *EMPEROR v LALA* (1909)

I. L. R. 32 All. 78

A Hindu convert to Christianity married a Christian woman according to the rites of the Roman Catholic religion. Subsequently, and during the lifetime of his Christian wife, he reverted to Hinduism and married a Hindu woman in accordance with the rites of the class

PENAL CODE (ACT XLV OF 1860)—*contd.*ss. 494—*contd.*

to which the parties belonged. *Held*, the offence of bigamy was not committed. *EMERSON v ANTOY (1910)*. I L R. Mad. 371

*Offence triable by Court of Session—Accused discharged—Order directing complainant to pay compensation—Criminal Procedure Code, s. 250—Judgment written by Magistrate S. 250 of the Code of Criminal Procedure is not applicable where the charge which is being inquired into by a Magistrate is one which is exclusively triable by a Court of Session. Neither in such a case is the Magistrate empowered to write a judgment, all that he is empowered to do is to record reasons for a discharge. If he make such an order, and to pass the order of discharge. *Fattu v Fatu, I L R 25 All 551*, referred to. *HET RAM v GANGA SAHAI (1918)**

I L R. 40 All. 615

*Accused, the wife of a Chamar, becoming a Mussalman and marrying a Mussalman during the life of her Chamar husband—Punishment—Ignorance of law. The accused, Mussamat Nandi, alias Zainab, the wife of the complainant, a Chamar, changed her religion and became a Mussalman, and a month and four days later married a Mussalman named Nukan Din. She was charged with an offence under s. 494 of the Penal Code. *Held*, that the mere fact of her conversion to Islam did not dissolve the accused's marriage with complainant which could only be dissolved by a decree of a Court, and that consequently she was guilty of an offence under s. 494 of the Penal Code. *In the matter of Ram Kumari, (I L R 18 Cal 264)*, and *Ameer Ali's Muhammadan Law v Vol II p. 437*, followed. *The Government of Bombay v Gangs (I L R 4 Bom. 330)*, *Jumna Devi v Mul Raj (19 P P 1907)* *The Crown v Mussamat Rari (5 P R (Cr) 1913)*, and *The Crown v Ghulam Fatima (32 P R (Cr) 18'9)* referred to. *Held* also, that the accused's ignorance of the law could be taken into account in extenuation of the punishment. *MUSAMMAT NANDI v THE CROWN**

I L R. 1 Lah. 440

ss. 494, 109—

See MAHOMMEDALY LAW—BIGAMY

I L R. 39 Cal. 409

ss. 494 and 114—

*Abetment of Bigamy—Hindu father marrying his minor daughter to a man after she had been married by her mother to some one else—Validity of former marriage—Hindu Law. Mussamat D, the wife of Ganga Nand, one of the petitioners, having left her husband's house with her minor daughter, performed the marriage of the daughter with one P. The father hearing of this applied to a Magistrate for a warrant under s. 109, Criminal Procedure Code, and thereon the girl was handed over to him, and a few months later she was married by him to one Kirpa Ram, the second petitioner. The father and Kirpa Ram were then prosecuted for abetting the offence of bigamy and convicted. *Held* that although a Hindu father is the proper person to give his daughter in marriage, the rule is now firmly established that a marriage, which is duly solemnized and is otherwise valid, is not rendered void because it*

PENAL CODE (ACT XLV OF 1860)—*contd.*ss. 494 and 114—*contd.*

was brought about without the consent of the guardian in marriage or even in contravention of an express order of the Court. *Mussamat Maya Devi v Ram Chand (20 P. R 1916)*, followed. *Held* also, that even if the marriage was brought about by fraud and might on that account be declared invalid, it was not a nullity and is binding until it is set aside by a competent Court, and that unless it is declared to be invalid it can sustain an indictment for bigamy and the Petitioners were therefore rightly convicted. *GAJJA NAND v CROWN*. I L R. 2 Lah. 288

s. 498—*Enticing away a married woman—Marriage—Hindu law—Whether marriage legal between a Bania and the illegitimate daughter of a Brahman and a Danya woman. Held*, that there was no reason why a marriage between a Banya and the illegitimate daughter of a Brahman father and Banya mother should not be valid according to Hindu law, especially when the marriage was recognized by the caste to which the husband belonged. *Padam Kumari v Suraj Kumari, I L R 28 All 453*, and *In the matter of Ram Kumari, I L R 16 Cal 264*, referred to. *EMERSON v MADAN GOPAL (1912)*

(I L R. 24 All. 589

*Criminal Procedure Code, ss. 4, 193, 238 (3) Complaint—Statement made in Court as witness. Where in a proceeding instituted by the police under s. 366 of the Indian Penal Code, the husband of the woman appeared as a witness and asked the Magistrate trying the case to drop the proceedings under s. 366 as he intended to prosecute the accused under s. 498 of the said Code. *Held*, that the statement made by the husband, as a witness fell within the definition of complaint as defined in s. 4 cl (A) of the Code of Criminal Procedure and therefore a conviction under s. 498 treating the statement made by the husband as a complaint, was legal. *In the matter of Upala Beva, I C L R 523*, *Queen-Empress v Kangla, I L R 23 All 72*, referred to. *EMERSON v BRAHMAN DAS (1913)**

I L R. 33 All. 276

*Enticing away a married woman—Quantum of evidence necessary to prove the marriage. The fact and the legality of the marriage are material elements in a case of enticing or taking away or detaining with criminal intent a married woman and must be proved as strictly as any other material facts, but it is not necessary that they should be proved in any particular way. *Queen-Empress v Subbarayan, I L R 9 Mad 9*, *Empress v Pitambar Singh, I L R 5 Cal. 556*, *Empress of India v Kallu, I L R 5 All. 233*, *Queen-Empress v Santok Singh, All Weekly Notes, (1895) 156*, and *Queen-Empress v Dal Singh, I L R 20 All 166* referred to. *EMERSON v NAZIR KHAN (1913)**

I L R. 36 All. 1

*To support a conviction under s. 498 strict proof of the marriage is necessary. The mere statement of complainant that he was married to the woman said to have been enticed away is not sufficient. *EMERSON v BODDHY. I L R. 42 All. 401**

— s. 499—

See s. 1. I L R. 46 Cal. 388

PENAL CODE (ACT XLV OF 1860)—*contd.*— s 499—*contd.*

See s 435 . . . I. L. R. 44 Mad. 497

See DEFAMATION I. L. R. 40 Calc. 433

See EVIDENCE ACT (I OF 1872), s 132

I. L. R. 40 All 271

See LIBEL . . . 15 C. W. N. 993

See PRIVY COUNCIL, PRACTICE OF

I. L. R. 41 Calc. 1023

See MAGISTRATE, POWER OF

I. L. R. 38 Calc. 68

Defamation—Absolute privilege, doctrine of, applicable under s 499—Accused, statement of, in course of judicial proceedings A person charged with an offence was, on his trial, asked by the Magistrate what he had to say and in reply made a statement defamatory of one of the prosecution witnesses. Held, that the statement was absolutely privileged and that he was not liable to be punished in respect thereof for an offence under s 499, Indian Penal Code. Although the English doctrine of absolute privilege is not expressly recognized in the section it does not necessarily follow that it was the intention of the Legislature to exclude its application from the law of this country. *In re VENKATA REDDY* (1913) . . . I. L. R. 38 Mad. 216

Defamation—Absolute privilege for statement in complaint to Magistrate A defamatory statement in a complaint to a Magistrate is absolutely privileged. *MUTHUSAMI NAIDU, Re* (1912) . . . I. L. R. 37 Mad. 110

Defamation—Statement made to the police—Criminal Procedure Code, ss 154 and 155 Statements made to the Police as the result of action taken under s 154 or s 155 of the Code of Criminal Procedure are privileged statements, and as such, cannot be used as evidence or made the foundation of a charge of defamation. *Manjaya v Sesha Shetti* I. L. R. 11 Mad 427, and *Queen Empress v Govinda Pillai*, I. L. R. 18 Mad 236, referred to. Further, inasmuch as a statement, in order to be defamatory within the meaning of s 499 of the Indian Penal Code, must be made with a certain intention, a statement made primarily with the object that the person making it should escape from a difficulty cannot be made the subject of a criminal charge merely because it contains matter which may be harmful to the reputation of other people or hurtful to their feelings. *FURBER v PARWARI* (1919) . . . I. L. R. 41 All 311

Defamation—Absolute privilege, if can be claimed by party to judicial proceeding in respect of statements made in petition filed in Court—Different rules applicable to civil and criminal proceedings—Construction of statute—Illustrations, legitimate use of—Reference to history of legislation how far proper—Dismissal of application for sanction to prosecute for false statements on oath is bar to prosecution for defamation—Criminal Procedure Code (Act V of 1898), ss 195, 493 In this country, questions of civil liability for damages for defamation and questions of liability to criminal prosecution do not, for purpose of adjudication stand on the same basis. If a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be

PENAL CODE (ACT XLV OF 1860)—*contd.*— s 499—*contd.*

determined by reference to the provisions of s. 499, Indian Penal Code. Under the Letters Patent the question must be solved by the application of the provisions of the Indian Penal Code and not otherwise, the Court cannot engraft thereupon exceptions derived from the common law of England or based on grounds of public policy. Consequently a person in such a position is entitled only to the benefit of the qualified privilege mentioned in s 499, Indian Penal Code. If a party to a judicial proceeding is sued in a Civil Court for damages for defamation in respect of a statement made therein on oath or otherwise, his liability in the absence of a statutory rule applicable to the subject must be determined with reference to principles of justice, equity and good conscience. There is a large preponderance of judicial opinion in favour of the view that the principles of justice, equity and good conscience applicable in such circumstances should be identical with the corresponding relevant rules of the Common Law of England. A small minority favours the view that the principles of justice, equity and good conscience should be identical with the rules embodied in the Indian Penal Code. In order to take a case out of the primary rule enunciated in s 499 of the Penal Code and to bring it within either exception 8 or 9 good faith on the part of the person who makes or publishes the imputation must be established. An illustration to a section is useful so far as it helps to furnish some indication of the presumable intention of the legislature and does not bind the Courts to place a meaning on the section which is inconsistent with the language. The Court is bound to administer the law as enunciated by the legislature and neither to enlarge nor to restrict the sphere of its application. Reference to history of legislation can only be legitimately made when reasonable doubt is entertained as to the construction of a statute. The proper course is in the first instance to examine the language of the statute, to interpret it, to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, to begin with an examination of the previous state of the law on the point is to attack the problem on the wrong end, and it is a grave error to force upon the plain language of the section an interpretation which the words will not bear on the assumption of a supposed policy on the part of the legislature not to depart from the rules of the English law on the subject. The dismissal of an application by a party to a judicial proceeding for sanction to prosecute the Opposite Party under ss 181 and 193 of the Penal Code for statements made by the latter on oath was no bar to the prosecution for the same statements under s 500 of the Penal Code, the prosecution having been started prior to the application for sanction, and its dismissal further not attracting the operation of s 463, Criminal Procedure Code. *SATISH CHANDRA CHAKRAVARTI v RAM DAYAL DE* (SPE B)

24 C. W. N. 982

— s. 499, Excep. 1, 2, 9 ; s 52—

See PRIVY COUNCIL, PRACTICE OF
I. L. R. 41 Calc. 1023

— s. 499, Excep. 9—

See DEFAMATION I. L. R. 41 Calc. 514

PENAL CODE (ACT XLV OF 1860)—*contd*

ss. 499, 505—

See CRIMINAL PROCEDURE CODE, s 33
435 AND 439 I L R. 43 All. 497

s. 500—

See SANCTION for PROSECUTION
I L R. 44 Calc. 970

s. 503—

See CRIMINAL PROCEDURE CODE, s. 103.
I L R. 43 All. 67

s. 504—

See CRIMINAL PROCEDURE CODE s 106
I L R. 43 Bom 554See PRESS ACT, 1910, s 3
I L R. 39 Mad. 561

Insult intended to provoke breach of the peace—Necessary elements constituting offence—S 95, act causing harm so slight that no person of ordinary sense and temper would complain of such harm A Deputy Magistrate went to a locality to enquire into a petition made by the residents for funds to enable them to dig a well and in the course of a discussion with the people assembled the Deputy Magistrate remarked that as some of the residents were well to-do, they must make the well themselves whereupon the accused who were present there said to the Deputy Magistrate "Then why do you make an enquiry, go away quietly." The accused were convicted under s 504 Indian Penal Code. *Held* that the ingredients essential for a conviction under s 504 are threefold, first, intentional insult, secondly, provocation therefrom and thirdly intention that such provocation should cause or knowledge that such provocation was likely to cause the person so insulted to break the public peace or to commit any other offence. *Held* on a consideration of the circumstances of the case that it was completely covered by the salutary provisions of s. 95 Indian Penal Code. **JOT KRISHNA SAMAYTA v KING EMPEROR (1916)**
21 C. W. N. 95

s 511—

See s 193 . I L R. 37 Bom. 285

See s 417 . I Pat. L. J. 391
4 Pat. L. J. 16

See s 457 I L R. 37 Bom 553

s 511, 124A—Attempt to commit offences—Attempt to commit the offence of sedition—Intention a question of fact Under the Indian Penal Code (Act XLV of 1860) all that is necessary to constitute an attempt to commit an offence is some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish sedition is complete as soon as the accused knowingly sells a copy containing the seditious article. It is now the less an attempt because something external to himself happens which prevents a perusal of the article by the buyers or any other member of the public. In cases of sedition the question of intention is one of fact. **EMPEROR v GANESH BALYANT MODAK (1909)**
s. L. R. 84 Bom. 378

PENAL PROVISIONS.

—construction of—

See TENANTS IN COMMON
I L R. 39 Mad. 1049**PENAL STATUTES**

—generally not retrospective—

See TRADING WITH THE ENEMY
I L R. 40 Mad. 34**PENALTY.**

See APPEAL

I L R. 43 Calc. 1036

See COMPANIES ACT (VI OF 1882), s 74

See CONTRACT ACT (IX OF 1872), s 74

See INTEREST

I L R. 42 Calc. 652, 690

See THEATRICAL PERFORMANCE.

I L R. 44 Calc 1025

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 83 I L R. 39 Mad. 579

—Penalty Clause not becoming operative—

See INSTALLMENT BYDEED

I L R. 42 Bom. 304

—Security bond—Breach of conditions—

See CONTRACT ACT (IX OF 1872), s 74
I L R. 45 Bom. 1213

Court Fees Act (VII of 1870), s 19E—Scope of the section—Suit to recover penalty by Secretary of State, maintainability of—Decision of Revenue authority—Jurisdiction of Civil Court. Unless there is a statutory bar, a suit is maintainable by the Secretary of State for India in Council for recovery of a penalty lawfully imposed. A Civil Court has no jurisdiction to review the decision of Revenue authority on the ground that the valuation had been incorrectly made or that the discretion in the imposition of the penalty had been erroneously exercised. But the position is different when the order for imposition of penalty is assailed on the ground that it has not been made in accordance with the statute. If the action of the Revenue authority is *ultra vires*, if he has not followed the procedure described by the statute which is the source of his authority, there is no enforceable claim which a Civil Court is bound to recognize. **Manekji v Secretary of State for India, (1896).** Bom P J 629, followed. S. 19E of the Court Fees Act, 1870 contemplates an application on the part of the person who has taken out probate and produces the same to be duly stamped. It further contemplates that the estimated value of the estate is less than what the value has after wards proved to be. **A G v Fraser 21 Price 253, Bradlaugh v Clarke, L R 3 A C 351, Conthorne v Campbell, 1 And 221, In the goods of Emily Biber, 1 L R 26 Calc 407, In the goods of Stevenson, 6 C W N 397, referred to NIKENJA PARI CHOWDHURANI v SECRETARY OF STATE FOR INDIA (1915)**
I L R. 43 Calc 230

Interest, exorbitant rate of—Inference by Court—Court's power to reduce rate of interest—Mortgage—Release of one joint mortgagor, effect of—Contract Act (IX of 1872) ss 44, 74 It is competent to a Court to grant relief whenever the stipulation for payment of interest

PENALTY—contd.

at a specified rate appears to the Court to be a stipulation by way of penalty. What constitutes a stipulation by way of penalty must be determined in each individual case upon its own special circumstances. *Welsler v Boenguet*, [1912] 4 G 391, *Khagaram Das v. Ramsankar Das Promank*, 1 L R 42 Calc. 652, *Bowang Raj Chellaphroo Chowdhuri v Banga Behari Sen*, 20 G W N 403, *Abdul Majeed v Khrode Chandra Pal*, 1 L R 42 Calc 690, and *Gopeshwar Saha v Jadav Chandra Chanda*, 1 L R 43 Calc. 632, referred to *Per SANDERSON, C. J.* The release of one of several joint mortgagors with no express reservation of the mortgagee's remedy against the other mortgagors, does not *ipso facto* release the other mortgagors. *KRISHNA CHARAN BARMAN v SANAT KUMAR DAS* (1016). 1 L R. 44 Calc. 162

COMPARE HINDU LAW (MINOR)

2 Pat. L. J. 212

PENSION.

See CIVIL PROCEDURE CODE, 1908, s 10

4 Pat. L. J. 557

See PENSIONS ACT (XXIII OF 1871)

PENSIONS ACT (XXIII OF 1871).

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 9, SCH II, s 20

1 L. E. 37 Bom. 442

ss. 3, 4, 6, 8—*Pension—Definition—Grant of village by Government revenue free—Wajid-ul-az—Construction of document—Condition purporting to restrain alienation.* Held, that a grant of zamindari, the revenue of which is remitted by the Government, is not a pension within the meaning of s 3 of the Pensions Act, 1871, and no certificate is necessary under s 6 to institute a suit with respect to it. Nor can an entry in the *wajid-ul-az* to the effect that "no co sharer is competent to transfer property" standing by itself, have the effect of making such property untransferable. *Ganpat Rao v Anand Rao*, 1 L R 23 All 104, 32 All. 148, and *Lockam Narayan v Makund Singh*, 1 L R 26 All 617, referred to. *MANNU LAL v FAZI, IMAM* (1911). 1 L. R. 33 All. 580

— s. 4—

See SARANJAM 1 L. R. 41 Bom. 403

See SECRETARY OF STATE FOR INDIA

1 L. R. 38 Calc. 378

Collector—Certificate of Collector—Civil Court—Jurisdiction—Suit for declaration for share in cash allowance—Deshpande Kulkarni v Vatan. The plaintiffs sued for a declaration that they were owners of a share in the Deshpande Kulkarni Vatan which consisted of a cash allowance paid annually from the Government Treasury. They did not produce a certificate from the Collector as required by s 4 of the Pensions Act (XXIII of 1871). Held, that the suit in the absence of a certificate from the Collector could not be entertained in a Civil Court owing to the provisions of s 4 of the Pensions Act, 1871, inasmuch as the suit was clearly one relating to a pension or grant of money conferred by the British Government. *Babaji Hari v Rajaram Balkal*, 1 L R 1 Bom 75, followed. *Gorind Sit-*

PENSIONS ACT (XXIII OF 1871)—contd.

— s. 4—contd.

ram v. Bapuji Mahadeo, 1 L R 18 Bom 516, distinguished. *DWARAKANATH AMRIT v MAHADEO BALEKRISHNA* (1912). 1 L. R. 37 Bom. 91

Kulkarni vatan—Land revenue assigned for the office of Kulkarni—Suit for a share in the revenue—Civil Court—Jurisdiction. A suit by a member of a Vatan family for a declaration of his right as owner of a certain share in the land revenue assigned for the purpose of supporting the office of Kulkarni, is a suit falling within the purview of s 4 of the Pensions Act, 1871, and is not maintainable without a certificate from the Collector. *BALEKRISHNA SANDHAI v DATTA TRAYA MAHADEV* (1917). 1 L. R. 42 Bom. 257

No distinct grant of land revenue—Section, no bar—Hereditary Village Offices Act (Mad Act III of 1895), s 21, in "any claim to recover emoluments of an office," meaning of—Regulation VI of 1831—No jurisdiction for Revenue Courts to decide what are emoluments or to decree possession—*Res judicata* S 4 of the Pensions Act (XXIII of 1871) is a bar to a civil suit only where the Court is able to hold that there was distinct grant of the land revenue itself, and where there is nothing to show that in the hands of Government before the grant of the *inam*, the land was treated as liable for the payment of land revenue or that the Government intended to split up its ownership into *mekaram* and *kudiram* or to make a distinct grant of the land revenue, s 4 of the Pensions Act cannot have any application with reference to a suit for the recovery of such land alleged to have been granted as *inam*. Her Highness Mathu Sri Jijamba Bai Sahib v Secretary of State (Appeal No 10 of 1903) explained and followed. The words "any claim to recover the emoluments of an office." The Madras Hereditary Village Offices Act (Mad Act III of 1895), s 21, can only mean a claim to recover what in fact are the emoluments of an office or possibly what are claimed by the plaintiff to be the emoluments of an office, and cannot by any rule of construction be extended to include a claim to recover what the plaintiff denies to be the emoluments of an office but what the defendant alleges to be such emoluments. *Kottaram Narasimhulu v Narasimhulu Patnaidu*, 1 L. R. 39 Mad 126, explained and distinguished. Under Madras Regulation VI of 1831, which was repealed by Madras Act III of 1895, the Revenue Courts had no jurisdiction to decide what were the emoluments of an office or to declare possession against a person alleged to be a trespasser. Hence neither s 21 of Act III of 1895 nor Regulation VI of 1831 is bar to the suit. *Ravutha Aowdan v Muthu Koundan*, 1 L R 13 Mad 41, referred to. Therefore a decision under the Regulation VI of 1831 cannot operate as *res judicata* with reference to a suit for lands in a civil Court. *SECRETARY OF STATE v DUDARAYUDU* (1913), 1 L. R. 36 Mad. 559

ss. 4, 5, 6—*Suit for a declaration affecting the liability of Government—Jurisdiction of civil Court.* The plaintiff came into Court claiming in effect a declaration that he was entitled to be considered as the assignee of the Government revenue payable in respect of certain property as being the reversioner to one Dalpat Rai, who was the last assignee. He produced a certificate

PENSIONS ACT (XXIII OF 1871)—*contd.*— ss 4, 5, 6—*contd.*

purporting to be a certificate under s 6 of the Pensions Act, 1871, but it was a certificate granted in respect of some former litigation between the plaintiff and a rival claimant to the property held, that the suit as framed could not be entered without the production of a certificate in conformity with s 6 of Act No. XXIII of 1871, that the certificate produced was not in conformity with s 6 of the said Act, and that in any case it would be impossible to pass a decree in favour of the plaintiff without affecting the liability of Government to pay such grant within the meaning of the section. *The Secretary of State for India v Momant* 1 L R 49 Cal 331 distinguished. *SECRETARY OF STATE FOR INDIA v JAWAHIR LAL* (1915) . 1 L R 37 All 333

Suit to recover Sardeshmukhi Haq—Pensions and grants in Ratnagiri District—Pensions Act whether ultra vires—Bombay Regulation (XXIX of 1827), s 6—Civil Court—Jurisdiction. Plaintiff filed a suit against Government to recover two per cent Sardeshmukhi Haq on certain villages in Ratnagiri District not on the old Jambhandi but on survey assessment. The District Judge held that the suit was barred under s 4 of the Pensions Act, 1871. On appeal it was contended that the Pensions Act so far as it dealt with pensions and grants of land revenue in Ratnagiri District was *ultra vires*. Held that the Pensions Act was not *ultra vires* and that the suit was barred under s 4 of the Act. *Secretary of State for India v Momant*, (1912) L R 40 I A 45, distinguished. *Varadw Salaslu Modak v Collector of Ratnagiri* (1877) L R 4 I A 112 relied on. The Pensions Act could not be *ultra vires* unless it was established that a suit would have lain against the East India Company on a grant of land revenue. But such a suit would not lie inasmuch as the East India Company exercised sovereign rights in collecting land revenue. If they chose to grant any share of that land revenue to individuals, they did so, not as a mere matter of contract in the ordinary affairs of life, but in the exercise of sovereign rights. *MADHAVRAO MORESHWAR v THE SECRETARY OF STATE FOR INDIA* (1920) 1 L R 45 Bom. 198

— s. 6—

Sanad, construction of—Certificate giving Court jurisdiction to try suit—Grant of soil of village not a grant of land revenue—Non production of certificate at time of institution of suit—Grant on payment of quit rent. A village, portion of the subject of a suit for partition, was granted to the ancestor of the parties by Maharaja Scindia of Gwalior in 1801 and the grant was confirmed in 1869 by the British Government in a sanad which declared that the village in question "shall be continued to the grantee and his heirs inclusive of all lands, allowances and rights belonging to others so long as he and his heirs shall continue loyal to the British Government, and shall pay Rs. 800 to Government as a quit rent." In a later portion of the sanad there was a guarantee against any further payment by the holder "on account of Imperial Land Revenue beyond the amount specified" and a declaration that the village and its holder shall be liable for any local taxation which may be imposed on the district generally. Held (affirming the decision of the High Court)

PENSIONS ACT (XXIII OF 1871)—*contd.*— s. 6—*contd.*

that the sanad was not a grant of Land Revenue but of the soil of the village itself, and therefore the Pensions Act (XXIII of 1871) did not apply; but, even if it did, the Subordinate Judge had rightly held that an order made by the Revenue Court referring the plaintiff (respondent) to a suit in the Civil Court was equivalent to a certificate under s 6. *Semle*. The non production of a certificate under s 6 of the Pensions Act at the time of the institution of a suit for which such a certificate is necessary, is not a bar to the maintenance of the suit, but is a defect which may be cured by obtaining the certificate at a later stage of the proceedings. *GARNEY RAO v ANANT RAO* (1909) . 1 L R 32 All 148

Saranjam—Grant of land revenue—Suit to recover—Collector's certificate—Admission of pleader binding on client—Preliminary decree—Appeal—Remand—Civil Procedure Code (Act V of 1908), O XXI, r 23. The grantee of a Saranjam filed a suit for the recovery thereof and at the trial a preliminary issue was raised as to the maintainability of the suit without the certificate provided for by s 6 of the Pensions Act. The grantee's pleader admitted a certificate was necessary but after several adjournments for the purpose failed to produce a certificate. A decree was thereupon passed on the preliminary issue dismissing the suit. On appeal by the grantee it was contended that he was not bound by the admission of the pleader and it was stated that such evidence could be produced as would render a certificate unnecessary. Held, that the grantee was bound by the admission of his pleader and that even if he was not so bound there was no material before the Court to justify a reversal of the decree and therefore a remand under O XXI, r 23 of the Civil Procedure Code (Act V of 1908) was impossible. In the absence of evidence to the contrary, the grant of a Saranjam must be presumed to be a grant of land revenue and not of the soil. *Bamchandra v Venkatarao*, 1 L R 6 Bom 593, and *Raja Bommadetara Venkata Narasimha Aidi v Raja Bommadetara Eshwara Kuria Naidu*, L R 29 I A 76 referred to. *DATTATRAYA GHOPADE v NILKANTHAO* (1914) 1 L R 39 Bom. 352

— ss 6, 8—

See s 3 . 1 L R 33 All 580

— ss. 6, 8, 11—*Toda grant allowance—Purchase of the rights to receive allowance at a Court-sale—The allowance entered in the name of the purchaser—Application by heirs of the purchaser to receive arrears of allowance—Certificate of Collector.* It was directed by a decree that the purchaser at a Court sale of a Toda grant allowance should recover from the Collector the amount due for arrears of the allowance from the date of his purchase. An application to execute this decree was made in 1864, in consequence of which the decree holder's name was entered in the Collector's books as the person entitled to the allowance in question, and the arrears up to 1864 were paid. In 1903, the decree holder's heirs applied to the Court to recover the arrears of allowance that had remained unpaid since 1868. The Collector contended that the application could not be entertained in the absence of a certificate from the Collector under the provisions of s. 6

PENSIONS ACT (XXIII OF 1871)—contd.

ss. 6, 8, 11—contd.

of the Pensions Act, 1871. *Held*, overruling the contention, that the power of the Collector under the Act had been exhausted and there was no discretion for that officer to exercise either under the Act or the rules, so far as the applicant's right to recover the arrears that had become due in the life-time of the last holder, was concerned. *Held*, further, that if those amounts remained unpaid, the Collector held them for and on behalf of the last holder, as moneys due to him, and as moneys therefore recoverable on his death by his heirs independently of any question which might arise under the Pensions Act, 1871, or the rules framed thereunder. *CHHAGANLAL v. PRANJIVAN* (1909) . . . I. L. R. 34 Bom. 154

s. 11—Pension—Grant of land by Government—Construction of document—Execution of decree—Civil Procedure Code (1908), s. 60(g). The Government "for political considerations" granted certain property to the original grantee for life and to his descendants as an absolute estate. *Held*, that such grant did not constitute a political pension within the meaning of s. 60 (g) of the Code of Civil Procedure, and that the land so granted was not exempt from attachment and sale in execution of a decree. *Held*, also, that the rights of the parties to whom the grant had been made by the Government must be determined by reference to the original sanad conferring title on the grantee and his descendants, and the opinions expressed by certain Revenue Officers as to its meaning were irrelevant on a question of the construction of the document. *Lachmi Narain v. Makund Singh*, I L R 36 All 617, and *Anna Bai v. Najm un nissa*, I L R 31 All 332, followed. *KANIZ FATIMA BEGAM v. SARINA BEGUM* (1914) . . . I. L. R. 36 All. 318

PERFORMANCE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXIII, R 3

I. L. R. 38 Mad. 959

Time for—

See PROCEDURE.

I. L. R. 43 Cal. 832

PERGANA REGISTER.

See LAKHURAJ LAL.

I. L. R. 45 Cal. 574

PERILS OF THE SEA.

See INSURANCE . 16 C. W. N. 891

PERIOD.

expiry of the—

See TRANSFER OF PROPERTY ACT, s. 67

I. L. R. 34 Bom. 462

PERJURY.

See DEPOSITION I L R. 46 Cal. 895

See BENGAL EVIDENCE ACT, s. 16.

15 C. W. N. 169

See FRAUD . I. L. R. 33 Mad. 203

See PENAL CODE (ACT XLV OF 1960), ss. 52, 191, 193

I. L. R. 38 All. 382

PERJURY—contd.

abatement of, before Magistrate—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 195 I. L. R. 42 Bom. 190

Arising from contradictory statements—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 236, 195, 537 (b) AND 164
I. L. R. 45 Bom. 834

sanction to prosecute for, not deniable in public interests—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 195
I. L. R. 37 Mad. 564

In deposition before Civil Court, not read out to deponent—

See PENAL CODE, 1860, s. 193

I. L. R. 1 Lah. 361

Sanction for prosecution—Criminal Procedure Code (Act V of 1898), s. 195—Conditional sanction. A sanction to prosecute for perjury given under s. 195, Criminal Procedure Code, cannot be conditional. *RE MUNEYIA* (1913) . . . I. L. R. 33 Mad. 471

Witness—Deposition not read over to witness in the hearing of accused or his pleader but read by witness himself—Inadmissibility of deposition in subsequent trial for giving false evidence—Proceeding against witness—Preliminary inquiry—Omission to record statements of witnesses examined thereat—Order for prosecution not containing assignment of the false statements—Criminal Procedure Code (Act V of 1898) ss. 360 (1), 476—Practice. S. 360 (1) of the Criminal Procedure Code requires the evidence of a witness to be read over to him in the hearing of the accused or his pleader, so as to enable the latter to correct any mistakes in it. The reading of the deposition by the witness himself is not a compliance with the section, and renders the record of it inadmissible in a subsequent trial against him under s. 193 of the Penal Code. *Mahendra Nath Musur v. Emperor*, 12 C. W. N. 815, and *Jyotish Chandra Mukerjee v. Emperor*, I L R 36 Cal. 955, followed. Although s. 476 of the Criminal Procedure Code does not expressly provide for the manner in which the preliminary enquiry thereunder is to be recorded, a summary of the statements of the witnesses examined thereat should be made. An order under the same section, directing the prosecution of a person for giving false evidence, should set out the statements alleged to be false. *EMPEROR v. JOGENDRA NATH GHOSH* (1914) . . . I. L. R. 42 Cal. 240

Power of High Court to direct prosecution when false evidence given before the committing Magistrate in the Mofussil—Nearest first class Magistrate—Presidency Magistrate—Criminal Procedure Code (Act V of 1898), s. 476—Practice. Where a witness examined during the trial of a prisoner at the Original Criminal Sessions of the High Court has intentionally made false statements before the committing officer at B in the district of Alipore, the High Court has jurisdiction, under s. 476 of the Criminal Procedure Code, to send the case of the witness for inquiry or trial to the District Magistrate of Alipore as the nearest Magistrate of the first class. *Kedar Nath Kar v. King Emperor*, 3 C.

PERJURY—*cond.*

Emperor distinguished *Emperor & Trustees*
Shankar Sarkar 1 L. R. 37 Calc 618 L. J. 357
 DONALDSON (1910) 1 L. R. 43 Calc 642

PERMANENCY OF RENT

— presumption of—

See LANDLORD AND TENANT
 1 L. R. 44 Calc 930

PERMANENT AGRICULTURAL TENURE

See LANDLORD AND TENANT
 1 L. R. 37 Calc 723

PERMANENT HEREDITARY TENURE

See MINES AND MINERALS
 1 L. R. 44 Calc 583

PERMANENT IMPROVEMENTS

See VENDOR AND PURCHASER
 1 L. R. 37 Calc 362

PERMANENT LEASE

See HINDU LAW—PARTITION
 1 L. R. 43 Calc 1118

See HINDU LAW—RELIGIOUS ENDOWMENT
 1 L. R. 42 Calc 536

See LEASE 1 L. R. 43 Calc 332

See LIMITATION 1 L. R. 43 Calc 34

PERMANENT RIGHT OF OCCUPANCY

See MADRAS ESTATES LAND ACT 1908
 1 L. R. 44 Mad. 856

PERMANENT SETTLEMENT

See CHAUVIDARI CHAKKAN LANDS
 1 L. R. 44 Calc 841

See FISHERY 1 L. R. 42 Calc 489

See MADRAS IRRIGATION CESS ACT (VII of 1865) s. 1 1 L. R. 38 Mad. 997
 s. 14 PROS. 1 AND 2.

1 L. R. 40 Mad. 893

See MADRAS REGULATION XAV OF 1900
 1 L. R. 44 Mad. 864

See REGULATION I OF 1793
 15 C. W. N. 300

PERMANENT TENANCY

See BHAGDARI ACT (BOM. ACT V OF 1900) s. 3
 1 L. R. 23 Bom. 679

See LAND REVENUE CODE (BOM. ACT V OF 1879) s. 83
 1 L. R. 38 Bom. 716

See LANDLORD AND TENANT
 1 L. R. 47 Calc 1 and 280

See LEASE 1 L. R. 43 Calc. 332

See SUB LEASE
 1 L. R. 48 Calc 783

See TITLE SUIT FOR
 1 L. R. 37 Calc. 602

— by occupancy raiyat—
See BENGAL TENANCY ACT 1885 s. 85
 25 C. W. N. 4

PERMANENT TENANCY—*cond.*

— if may be granted by raiyat at fixed rent—

See BENGAL TENANCY ACT 1885 ss. 11
 12 18 AND 85 25 C. W. N. 9

— power of head of moul to grant—

See HINDU LAW—ENDOWMENT
 1 L. R. 40 Mad. 745

— Adverse possession—Necessity of notice to the landlord—

See LANDLORD AND TENANT
 1 L. R. 45 Bom. 503

— Adverse possession of tenant against mortgagee—Whether can run adversely against mortgagor—

See ADVERSE POSSESSION
 1 L. R. 45 Bom. 681

1 — Building lease—Lease construction of—Permanency inference as to—Dwelling house—Long possess on The mere facts that a lease of land was for dwelling purposes and that the lessee have been allowed to remain in possession of the land on payment of rent for a long period would not in themselves be sufficient to establish the permanent nature of the tenancy where there is nothing to show that the building was contemplated to be or in fact was a masonry building *BARADA PRASAD BARNAL & PRANAKO KUMAR DAS* (1912) 16 C. W. N. 564

2 — Lease—Presumption of permanency—Lease for building purpose—Long possession—Uniform rent—Permanency question of mixed law and fact—Second appeal Where the origin of a tenancy was unknown and it was established (i) that the original tenant and his successor had been in occupation of the land for over a xty years, (i) that the rent had never been varied (ii) that the tenancy had been treated by the landlord as heritable and (v) that the land was let out for residential purposes the inference was held to be legitimate that the tenancy at its inception was permanent. The question of the nature of the tenancy is a mixed question of fact and law the inference as to the nature of the tenancy from the facts found is a question of law which can be gone into on second appeal *MONA RAM CHATRAJI & TELAMUDDIN BHAK* (1911) 16 C. W. N. 567

PERMANENTLY SETTLED ESTATE

See BENGAL TENANCY
 1 L. R. 48 Calc 473

See LAND TENURE IN MADRAS
 1 L. R. 46 I. A. 38

See RESERVED FOREST
 1 L. R. 47 Calc 839

PERPETUAL INJUNCTION

See INJUNCTION 1 L. R. 37 Calc. 781

See TRUST 1 L. R. 41 Calc. 19

PERPETUITIES

See CHARITABLE TRUST
 1 L. R. 49 Calc. 124

See PRESCRIPTION
 1 L. R. 38 Mad 114

PERPETUITIES—*could**See* PUTTEE LEASE

14 C. W. N. 601

See TRANSFER OF PROPERTY ACT (IV of 1882), s 54 I. L. R. 39 Mad. 492*See* WILL . . . 3 Pat. L. J. 199

I. L. R. 40 Calc. 192

I. L. R. 46 Calc. 485

— applicable to Hindu Law—

See PRE EMPTION I. L. R. 38 Mad. 114*See* HINDU LAW 25 C. W. N. 148*Rule against—Covenant*

to run with the land An agreement to grant at an indefinite time in the future whatever land might be required by the other party to the agreement is void as offending the rule against perpetuities *MAHARAJ BAHADUR SINGH v BALCHAND CHOWDHURY* L. R. 48 I. A. 376

6 Pat. L. J. 163

PERSONÆ INCERTÆ.*See* HINDU LAW—WILL

I. L. R. 39 Calc. 87

15 C. W. N. 945

PERSONAL ACTION.

— whether criminal proceedings abate on death of person assaulted—

See PENAL CODE, 1860, ss 304 AND 323

I. L. R. 1 Lah. 27

Abatement—Death of plaintiff after obtaining a decree in his favour—Whether his legal representatives can carry on an appeal. One D R sold his land in 1908 P, a collateral of D R, brought the present suit for possession on the allegation that the sale was without consideration and necessity. The first Court decreed plaintiff's claim on payment of Rs 830, being the part of the consideration which it held to have been legally proved. Both parties appealed. During pendency of the appeals P died leaving no heirs except his two widows, whose names were brought on the record as legal representatives of the deceased. The lower Appellate Court was of opinion that the right of P, being personal, his widows could not carry on the appeal which was therefore held to have abated and was dismissed. The Court also held that the vendee's appeal must under the circumstances succeed. The widows appealed to the High Court. *Held*, that judgment having been obtained before plaintiff's death the benefit of it survived to his legal representatives and that the lower Appellate Court must therefore hear the appeals on their merits. *Muhammad Hussain v Aluchala*, (I. L. R. 9 All 131, F B) *Subbaraya Mudali v Manika Mudali*, (I. L. R. 19 Mad 345) and *Gopal Ganesh v Pam Chandra*, (I. L. R. 26 Bom 597), followed. *MUSAMMAT RAN KAU v JIWAN SINGH*

I. L. R. 2 Lah. 189

PERSONAL COVENANT.*See* LIMITATION. I. L. R. 42 Calc. 234**PERSONAL DEBT.***See* PUTTEE TRUST

I. L. R. 37 Calc. 747

PERSONAL DECREE.*See* CHARGE . I. L. R. 36 Mad. 493*See* DECREE HOLDER

I. L. R. 38 Mad. 677

See TRANSFER OF PROPERTY ACT (IV of 1882), s 90. I. L. R. 34 Bom. 540

— against sub-mortgagee—

See MORTGAGE I. L. R. 45 Calc. 702**PERSONA DESIGNATA.***See* NAIKINS I. L. R. 37 Bom. 116**PERSONAL INAM.***See* MADRAS FOREST ACT (XXI of 1882), ss 6, 10, 16, 17

I. L. R. 39 Mad. 494

PERSONAL LIABILITY.*See* EXECUTOR I. L. R. 45 Calc. 538*See* FOREIGN JUDGMENT

I. L. R. 36 Mad. 414

PESHKOSH.

1. ———— *Abwab—Antiquity and purpose of payment—Contractual foundation—Bengal Tenancy Act (VIII of 1885), ss 74, 30 (c)—Public Demands Recovery Act (Beng I of 1895)* Where the Collector in execution of a certificate issued under the Public Demands Recovery Act, realised from the plaintiffs certain charges described as *peshkosh* levied on two estates from time immemorial, and the plaintiff sued for a declaration that it was illegal and prayed for the cancellation of the certificate for the refund of the amount thereunder, and for a perpetual injunction restraining the defendant from levying the *peshkosh* in future. *Held*, that *peshkosh* could not be regarded as an imposition in the nature of an *abwab* within the meaning of the various provisions enacted on that subject. Such payment came out of the land and the right thereto was an interest in the land to which a title might be made by prescription. *Held*, also, that the peculiar situation and character of the land and antiquity and purpose of the payment all pointed to a legitimate, contractual foundation. *Uday Narain Jana v The Secretary of State for India in Council*, (1915) S A No 44 of 1912 (unreported) referred to. *LAKSHMI NARAYAN ROY v SECRETARY OF STATE FOR INDIA* (1918) I. L. R. 45 Calc. 666

2. ———— *Peshkosh or an annual sum levied by Government for upkeep of embankment, if abwab* An annual sum levied by Government for the upkeep of embankments is not an *abwab*. Long continued payment from time immemorial which in itself is a title in the recipient of the payment is a good and sufficient basis of the claim. *UDAY NARAIN JANA v SECRETARY OF STATE FOR INDIA* (1915) 22 C. W. N. 823

PETITION.

— delay in filing divorce—

See DIVORCE ACT (IV of 1869), s 14.

I. L. R. 41 Bom. 38

— for winding up Company—

See COMPANY . I. L. R. 39 Bom. 16, 47**PETITION OF COMPROMISE.***See* COMPROMISE I. L. R. 45 Calc. 616

PETROLEUM ACT (VIII OF 1899).

ss. 11 and 15—*Keeping in possession a quantity exceeding the maximum allowed by law—Liability of a licensee for the acts of his servant or agent in the absence of finding of guilty knowledge on his own part—Petroleum Act (VIII of 1899), ss. 11 and 15 (a)* A licensee is not, in the absence of a finding by the Court that he knew that more than 500 gallons of petroleum were being transported at one time on his license, and that he allowed the same to take place with such knowledge by his servant, criminally liable, under s. 11 and 15 (a) of the Indian Petroleum Act (VIII of 1899), for the acts of the latter done in contravention of the law. Though the Act provides a personal penalty the only person that can be punished is the one who keeps petroleum or carries it about or puts more than 500 gallons at one place. *GANPAT RAI v. EMERSON* (1912)
I. L. R. 40 Calc. 359

PIAL.

over a drain, right to—

See MUNICIPAL COUNCIL.

I. L. R. 33 Mad. 6

PICKETING

See MARKET FRANCHISE

I. L. R. 47 Calc. 1079

PIECEMEAL ACQUISITION.

See LAND ACQUISITION

I. L. R. 48 Calc. 892

PIECEMEAL TRIAL.

See RAILWAY . . . I. L. R. 42 Calc. 313

PILGRIM BUSINESS.

profits from—

See RECEIVER . . . I. L. R. 40 Calc. 678

PILGRIMAGE.

See HINDU LAW—LEGAL NECESSITY

I. L. R. 36 Bom. 88

PITRAI CHELA.

See HINDU LAW—SUCCESSION

I. L. R. 39 Bom. 188

PLACE OF EXAMINATION—

See EXAMINATION ON COMMISSION

I. L. R. 48 Calc. 448

PLACE OF SUING.

See CIVIL PROCEDURE CODE 1908 s. 20.

I. L. R. 42 All. 480, 619

PLAINT.

See AMENDMENT OF PLAINT

I. L. R. 36 All. 370

See CIVIL PROCEDURE CODE (1908) O VI and VII

See COURT FEE . . . I. L. R. 42 Calc. 370

See PLEADINGS . . . I. L. R. 37 Calc. 856

See PRACTICE . . . I. L. R. 34 Bom. 244

amendment of—

See APPEAL . . . I. L. R. 43 Calc. 95

See CAUSE OF ACTION

I. L. R. 38 Calc. 787

PLAINT—*could*

amendment of—*could*.

See CIVIL PROCEDURE CODE, 1882

I. L. R. 34 Bom. 250

See CIVIL PROCEDURE CODE, 1903—

s. 9 . . . I. L. R. 45 Bom. 690

s. 92 . . . I. L. R. 36 Bom. 168

O VI, r. 17 . . . I. L. R. 36 Mad. 378

I. L. R. 44 Bom. 515

See CONTRACT . . . I. L. R. 47 Calc. 458

See COURT FEE . . . I. L. R. 44 Calc. 352

See HINDU LAW—ADOPTION

5 Pat. L. J. 164

See IDOL . . . I. L. R. 33 All. 735

See LIMITATION, ACT, 1877, s. 8

14 C. W. N. 123

See LIMITATION ACT (IX OF 1908), s. 3

I. L. R. 33 All. 616

See LIS PENDENS

I. L. R. 41 All. 534

See PARTIES . . . I. L. R. 37 Calc. 229

See PARTITION, SUIT FOR.

I. L. R. 33 Calc. 681

See PRE EMPTION I. L. R. 38 All. 573

See PROCEDURE I. L. R. 48 Calc. 832

See REMAND . . . I. L. R. 43 Calc. 938

See SPECIFIC RELIEF ACT, 1877, s. 42

25 C. W. N. 552

See U. P. COURT OF WARDS ACT (III OF

1890), s. 48 . . . I. L. R. 37 All. 13

authority to file—

See PRACTICE . . . I. L. R. 39 All. 343

construction of—

See SPECIFIC RELIEF ACT (I OF 1877),

s. 9 . . . I. L. R. 40 All. 637

order returning—for presentation in

Proper Court—

See CIVIL PROCEDURE CODE, 1908 s. 104,

O XLIII, r. 1 . . . I. L. R. 42 All. 74

s. 115 I. L. R. 43 All. 324

presentation of—

See MADRAS ESTATES' LAND ACT (I OF

1908), s. 192 . . . I. L. R. 38 Mad. 295

rejection of—

See COURT FEE . . . I. L. R. 40 Calc. 615

I. L. R. 44 Calc. 352

See JURISDICTION OF CIVIL COURT

I. L. R. 34 Bom. 267

See JUDICIAL OFFICERS' PROTECTION ACT

(XVIII OF 1850), s. 1

I. L. R. 39 All. 516

Return of for presentation in proper

Court—

See CIVIL PROCEDURE CODE, 1908, s. 104,

O XLIII, r. 10 I. L. R. 36 All. 53

I. L. R. 43 All. 334

See LIMITATION ACT (IV OF 1908), s. 14

I. L. R. 45 Bom. 443

suit against Receiver—

See HIGH COURT, I. L. R. 44 Bom. 903

PLAINT—*contd.*

Verification of —

See EX PARTE DECREE

I. L. R. 43 Cal. 1001

Amendment—Plaint, amendment of. *by party to whom it is returned for proper valuation* A plaintiff, to whom a plaint was returned for properly valuing the properties claimed therein, altered the valuation as directed therein and struck out some of the properties to bring the suit within the jurisdiction of the Court. *Held*, that there was nothing illegal in the amendment and that it was competent to the Court to accept such amended plaint. **KARUMBAYIRA PONNA FUNDAN v. AUTHIMOOLA PONNAPUNDAN** (1909)

I. L. R. 33 Mad. 282

Leave to file—given by Registrar—*Representation—Limitation, error of procedure, rectification within time, delay in completion of order and recording the representation of plaint.* Where on leave being asked for in the plaint under cl. 12 of the Charter the Registrar on the Original Side of the High Court, under a misapprehension of the change in procedure with regard to the filing of plaints, gave such leave but on discovery of the fact that the Registrar had no authority to grant such leave, the plaint was withdrawn on the 15th August 1907 and was immediately after presented before a Judge sitting on the Original Side who gave the leave and endorsed on the plaint "presented 15th August 1907," but there was delay in the office in completing the order, and stamps were supplied upon requisition from the office on the 14th December 1907, and it was recorded in the office and also re-endorsed on the plaint that the plaint was re-registered and filed on the 18th December 1907, on objection being taken by the defendant that the suit was barred by limitation. *Held* (by CHAUDHURI, J.), that the 15th of August 1907, as recorded by the Judge on the plaint, was the date of its presentation and the suit was not barred by limitation. **OSMOND DEEZY v. KSHITISH CHANDRA ACHARYA CHAUDHURI** (1914) . . . 18 C. W. N. 631

Form of plaint—Suit against Corporations—Defendant, misdescription of—Service on Corporations—Civil Procedure Code (Act V of 1908) O XXIX, rr 1 and 2—Practice. In a plaint filed against two companies, the defendant companies were described as "the India General Steam Navigation and Railway Company, Limited, and the Rivers Steam Navigation Company, Limited by their joint agent A. E. Rogers" and notice was served on Mr. Rogers. Subsequently Mr. Rogers retired from the service of companies and left the country. At the trial of this suit the plaint was amended and Mr. Rogers' name was omitted from the title of the suit which was proceeded with against the two companies. *Held*, that the plaint as originally framed was in contravention of O XXIX, r 1 of the Code of Civil Procedure. **Ram Das Sain v. Stephenson & W. R. 356, Aubergh Chunder Paul v. Stephenson, 15 W. R. 534, and Campbell v. Jackson, 1 L. R. 12 Cal. 41, referred to.** *Held*, also, that the amendment might stand but the plaintiffs were bound to serve notices of the suit in the manner provided in O XXIX, r 2, after the amendment had been made and the suit properly constituted. **INDIA GENERAL STEAM NAVIGATION AND RAILWAY COMPANY, LD v. LAL MOHAN SAHA** (1915) . . . I. L. R. 43 Cal. 441

PLAINT—*concl.*

Amendment of plaint—Procedure—Suit barred by limitation when change in its nature is made by amendment—Discretion to allow amendment—Valuation of suit—Judicial Committee, practice of—Civil Procedure Code (Act V of 1908), O VI, r 17. Where there is admittedly a power to allow an amendment of the plaint, though such power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such considerations are outweighed by the special circumstances of the case. **Mohammad Zahoor Ali Khan v. Rutia Aker, 11 Moo 1 A 463, referred to.** The suits which gave rise to the present appeals were instituted by the three first respondents claiming a declaration that they were entitled to certain right of pre-emption against the several appellants (defendants) who were vendees of certain shares and interests in the properties to which the suits related, but none of the plaintiffs claimed possession of the property sold and the usual consequential relief. The defendants in their defence admitted the plaintiffs' right to pre-emption, but objected that a mere claim to such a right was not a claim to any right of property within the meaning of s. 42 of the Specific Relief Act (I of 1877) and that the right to pre-emption could not be enforced by a mere declaratory decree. The Subordinate Judge and the first Appellate Court refused to permit an amendment to the plaints by adding a claim for possession after pre-emption on the ground that a suit to enforce a right to pre-emption was barred by lapse of time. The Court of the Judicial Commissioner on second appeal allowed the amendment to be made, there being no reason to suppose that the plaintiffs had acted otherwise than *bona fide*, and the amendment not making any alteration in the nature of the relief prayed for. *Held*, that the discretion exercised in allowing the amendment should not be interfered with. *Held*, also, that the Board will not interfere with any question of valuation unless it can be shown that some items has been improperly made the subject of valuation or excluded therefrom or that there is some fundamental principle affecting the valuation which renders it unsound. On the mere question of the value of admitted items their Lordships will not interfere. Nor will they allow an argument based upon an assertion that the valuation has proceeded on an erroneous footing to be raised on appeal to the Board unless it was raised before the Judicial Commissioner, and if it were so raised the fact that it is not referred to in the written statement of the party raising it, is a good and sufficient reason why it should not be introduced at this late stage of the proceedings. **CHARAN DAS v. AMIR KHAN** (1920)

I. L. R. 48 Cal. 110

PLAINTIFF

See CIVIL PROCEDURE CODE (Act V of 1908), O XXII, rr 3, 6

I. L. R. 43 Bom. 168

See INSOLVENT PLAINTIFF

—death of—

See CIVIL PROCEDURE CODE (Act V of 1908), s 92. I. L. R. 40 Mad. 110

PLAINTIFF—contd**—non-appearance of—**

See APPEAL I. L. R. 27 Calc. 426

See NON APPEARANCE

I. L. R. 43 Calc. 57

—substitution of—

See LIMITATION I. L. R. 43 I. A. 113

20 C. W. N. 833

PLANTERS LABOUR ACT (MAD. I OF 1903)

See MADRAS PLANTERS LABOUR ACT 1903.

—s 24, 35—Imprisonment for refusal to perform contract, extent of Prosecutions and punishments under the Planters' Labour Act (Mad Act I of 1903) cannot continue indefinitely. Only two terms of imprisonment may be awarded once under s 24 and again once under s 35. The refusal of a mistry or a labourer under s 35 to perform his contract cannot be treated as a temporary refusal. *Re PANGA MAISTRY* (1913) I. L. R. 36 Mad. 497

FLEA OF GUILTY.

See PENAL CODE (ACT XLV OF 1860).

s 415

I. L. R. 43 Bom. 842

See SANCTION FOR PROSECUTION

I. L. R. 43 Calc. 867

PLEADER

See BOMBAY REGULATION II OF 1827,

s 59

I. L. R. 37 Bom. 354

See DEFAMATION I. L. R. 41 Calc. 514

See LEGAL PRACTITIONER.

14 C. W. N. 521

See LEGAL PRACTITIONERS ACT

See PRACTICE I. L. R. 34 Bom. 408

See UNPROFESSIONAL CONDUCT

—admission by—

See PENSIONS ACT (XXIII OF 1871)

s 6

I. L. R. 39 Bom. 352

—as Diligent—

See UNPROFESSIONAL CONDUCT

I. L. R. 43 Calc. 885

—contempt of Court, by—

See LEGAL PRACTITIONERS ACT (XVIII

OF 1879), s 14

I. L. R. 39 Mad 1045

—defamatory statement by Judge—

See JUDICIAL OFFICERS PROTECTION

ACT 1850

I. L. R. 45 Bom. 1089

—duty of—

See CONTEMPT OF COURT

I. L. R. 44 Bom. 443

—status and duty of—

See HIGH COURT I. L. R. 44 Bom. 418

—engaging in trade without intimating to Court—

See LEGAL PRACTITIONERS' ACT (XVIII

OF 1879), s 13

I. L. R. 37 Mad. 233

1. —Pleader, right of retainer of**—Has no right to retain moneys in one cause for****—due in another cause. A pleader in India has no****PLEADER—contd.**

right of retainer in moneys realised by him in one cause for his dues in other causes conducted by him. *NARAYANASWAMI NAIDU v. CHELLAPALLI KANUMALLU* (1909) I. L. R. 33 Mad. 255

2. —Pleader's authority to compromise—*Dewan Agriculturists' Relief Act (XVII of 1879)*, s 12—Compromise of the case—Court's duty to record the compromise—Pleader's compromising without authority from his client—client to apply to cancel the compromise. Where a party complains that compromise effected in his name was unauthorized, he must move the Court to cancel all that has been done and to revive the suit. *PERAJI v. GANAPATI* (1910)

I. L. R. 34 Bom. 502

3. —Duty towards client—Pleader in the mofussil—Winding up proceedings—Pleader must not represent part to whose interest are conflicting—Bombay Regulation II of 1827, s 59. By the custom of the mofussil a pleader employed by a party to a proceeding before a Court is bound faithfully and exclusively to serve that party throughout the whole proceeding. The pleader in the mofussil is not merely an advocate—he is the confidential legal adviser of his client and does for him those things which in the presidency towns are often done by solicitors. For legal advice, for the prosecution of legal proceedings in all their stages the client depends on the pleader. This dependence makes the position of the pleader peculiarly onerous and binds him to give exclusive attention to the interest of the client throughout any proceedings in which he is engaged. In winding up proceedings, a single pleader must not represent two different creditors whose interests are known to conflict. A pleader must not accept a *vakalatnama* when he knows that he cannot act for his client throughout the proceedings. A pleader in defending himself against charges of professional misconduct made certain statements. He was dealt with under the disciplinary jurisdiction for making them. It was contended in his behalf that the statements made by him in defence must be regarded as having been made by an accused and were therefore protected. Held overruling the contention, that the pleader was writing to the Court as a pleader and was responsible as such for the statements made by him. *GOVERNMENT PLEADER v. BHAGURAT DAYANATH* (1912) I. L. R. 38 Bom. 606.

4. —Suspension of vakil. Under s 95 of the Appellate S. des rule of the Madras High Court, pleaders 'are responsible to the Registrar for all translations and printing charges incurred by him on their behalf'. To that extent therefore, the vakil must co-operate in the conduct of the suit with the Registrar, and with the Court under those regulations, and vakils have also the general function applicable not only to the bar in general but also to solicitors at large, that they must in the conduct of all suits entrusted to them co-operate with the Court in the orderly and pure administration of justice. In a proceeding in the High Court to restore an appeal which had been struck off for non-payment of the printing charges, it appeared that the vakil for the appellant, though the money for that specific purpose had been received in his office from his client, had omitted to pay it to the Registrar, had not made any true and proper explanation to his client of the cause of the appeal being

PLEADER *cond*

struck off but had allowed letters written by his clerks to go from his office to the client, and had even written one himself, which would lead him to believe that the appeal had been heard and dismissed in due course, and had also not given the Court, on the earliest possible opportunity any reason for his absence when the appeal was called on, except that other professional engagements had prevented him from being present, nor had he ever offered to the Court any explanation or apology concerning his conduct of the case nor expressed to the Court any regret for its effect. The vakil after being called on to show cause why he should not be punished under the Letters Patent of the High Court, or the Legal Practitioners Act (XVIII of 1879) for professional misconduct, was, whilst personally acquitted of any fraudulent or criminal act, suspended from practising for six months. *Held*, on an appeal to the Judicial Committee, that the vakil had in his acts and omissions to explain, regret, or apologise for them, utterly failed to perform what his honour and duty to his client and to the Court made it incumbent upon him to do, and their Lordships while not interfering with his acquittance of direct and personal fraud, did not see their way to acquit him of conduct in the management of the appeal, and of his client's affairs, which caused the procedure of the Court to be the very opposite of what it should be, namely, responsible, orderly, and pure, and they were of opinion that there was "reasonable cause" under s 10 of the Letters Patent, for the sentence pronounced by the High Court, which was justified both in its pronouncement, and the extent of the suspension. *In the matter of RAJNARAYAN ATYAN* 1912)

I. L. R. 35 Mad. 543

5. — **Compromise of suit by**—Unless authorised by client—Scope of authority of. Although a pleader has no power to compromise a suit unless he is specially authorised in that behalf, he can bind his client by an admission upon a question of fact, provided that such question falls within the scope of the suit in which he has been retained. *Rhuthiah v Pambal*, 6 C W N 82, *Jagopah v Elambaram*, I L R 21 Mad. 274, followed. *Kowar Narain v Sreenath*, 9 W R 435, *Rajender v Bijas Govind*, 2 Moo. I A 253, *Hinga Lal v Manas Ram*, I L R 18, All 334, *Tenkala Nara Simha v Bhaskara Karim*, I L R 22 Mad. 538, *Nando Lal v Narayan* I L R 27 Cal. 428, *Srinivas v Chelmsford* I F and F 619, 27 L J Pz. 352, referred to. *Dhondhor Ray v Sathar Ata Rahaman* (1911).

17 C. W. N. 158

6. — **Admission of women as pleaders**—Disqualification—Constant Tradition—Regulation of 1871 for the Administration of Justice—Regulation 111 of 1793 (Vakil), Preamble—Regulation (XXII of 1914 (Vakils), Preamble at 4, 5, 10 to 14, 18, 20 to 22, 30, 35, 37—Legal Practitioners Act (I of 1846), s 4, 12—Pleaders of Lower Provinces Act (XVIII of 1852)—Legal Practitioners Act (X of 1853)—Calcutta University Act (II of 1857)—Local Code (XXI of 1870), s 8—Succession Act (X of 1865), s 3—Mofussil Small Cause Courts Act (XI of 1865), s 1—Pleaders Muzdars and Revenue Agents Act (X of 1865), s 2, 6, Sch II—The Punjab Chief Courts Act (XXIII of 1865), s 1—Pleaders, Multahars and Revenue Agents Act (XXIII of 1865), s 1—Pleaders

PLEADER *cond*

Amending Act (XXIX of 1865)—General clauses Act (I of 1868), s 2 (2)—Legal Practitioners Act XVIII of 1879) s 6, High Court rules thereunder General Clauses Act (X of 1877), s 13 As the law now stands, women are not entitled to be enrolled as pleaders of Courts subordinate to the High Court. The Rules of the High Court were made in accordance with, and for the purpose of carrying out, the intention of the Legal Practitioners Act, 1879, and are not *ultra vires*. *Per MOORE, J.* It is improper to give an extended construction of a statute, in the absence of an intention on the part of the Legislature, to reverse the established policy or to introduce a fundamental change in long established principles of law. Where it appears that a change of such a policy is desirable, the proper remedy is legislation and not an alteration of the law in the disguise of judicial exposition of the existing law. Case law on the subject referred to. *Per CHITTY J.* In framing rules under an Act of the Legislature, the Court should not use any particular expression or word in a different sense to be applied to the particular expression or word by the Act itself. But it is doubtful whether the General Clauses Act applies to rules framed by the High Court under the Legal Practitioners Act 1879. *RENTA GUHA, J. re* (1916) I. L. R. 44 Cal. 290

7. — **Professional misconduct**—Disciplinary action—Legal Practitioners Act (XVIII of 1879), s 14—Criminal offence—Suspicion. The District Judge of Rangpur made a reference under s 14 of the Legal Practitioners Act against C, a pleader, on three charges formulating strong suspicion that he offered to bribe the record room keeper and attempted to have certain words removed from a document. *Held*, where the misconduct alleged has no direct connection with the conduct of the pleader in his practical and immediate relation to the Court ordinarily, there should be a trial and conviction for criminal misconduct before disbarment will be ordered. *In the matter of an attorney*, I L R 41 Cal. 113, *In the matter of Nil Kant Biswas*, 9 W R Cr 29, *In the matter of the second grade Pleaders*, I L R 34 Mad. 29. *In the matter of* S B and A D 1053, *In re* 3 Nw and Per 383, *Ex parte* 2 Dowd P C 110, *Stephens v Hill*, 10 M and W 28, *Ex parte Wall*, 107 U S 265, referred to. *CHANDI CHARAN MITTER, A. PLEADER J. re* (1920)

I. L. R. 47 Cal. 1115

PLEADER'S FEES.

See DOWRY REGULATION II of 1827, s. 52 I. L. R. 37 Bom. 303

See COSTS I. L. R. 40 All 515

See HIGH COURT, GENERAL RULES OF, FOR CIVIL COURTS, CHAPTER XXI, s 1 I. L. R. 41 All 245

— **Rules of Court of the 4th April 1891, r 80 (1), proviso—Pleader's fees—Fee certificate not filed at or before the hearing—Fee not paid before hearing—Inaction of Court.** *Held*, on a construction of r 80 (1) of the rules of Court of the 4th April 1891, that the proviso to r 39 only gives a court a discretion to accept a certificate for fees filed after the commencement of the hearing, but, whatever might have been intended, leaves no discretion as to the allowance, on taxation, of a fee, which in fact was not paid

PLEADER'S FEES—contd.

on or before the first hearing **BANK OF BENGAL, CANNING v KALKA DAS** (1911).

I. L. R. 33 All 374

Practice—Costs, scale of—Taxation—Probate proceedings—Probate and Administration Act (V of 1881), s. 83—General Rules and Circular Orders of the High Court Calcutta VI, rr 36 (a) and 42 (a) and Chapter X, r 26 In a contested probate proceeding in which letters of administration and costs are granted, the pleader's fee can only be assessed under Chapter VI, r 42 (a) of the General Rules and Circular Orders of the High Court Rule 36 (a) and Chapter VI of the Rules and Orders has no application. **BAIJNATH PRASAD SINGH v SHAM SUNDAR KHAR** (1913).

I. L. R. 41 Cal. 637

PLEADER'S ACT (I of 1846)—

See REGULATION II OF 1827 (Box)

I. L. R. 37 Bom. 503

PLEADERS, MUKHTARS AND REVENUE AGENTS ACT (XX OF 1865).

See PLEADER. **I. L. R. 44 Cal. 290**

PLEADERSHIP EXAMINATION.

Pledership Examination—Candidate—Examiners—Specific Relief Act (I of 1877), ss. 45, 46—Mandamus—Discretion In making an application under s. 45 of the Specific Relief Act, the provisions of s. 46 must be strictly observed, and in dealing with such an application the principles applicable to a writ of mandamus should generally be followed. **Bank of Bombay v Suleman Sami**, **I. L. R. 32 Bom. 166**, referred to **PROVAS CHANDRA ROY, In the matter of** (1913).

I. L. R. 40 Cal. 588

PLEADERS OF LOWER PROVINCES ACT (XVIII OF 1852).

See PLEADER. **I. L. R. 44 Cal. 290**

PLEADINGS.

See ABANDONMENT **22 C. W. N. 853**

See ARREST OF SUIT

I. L. R. 42 Cal. 85

CIVIL PROCEDURE CODE 1908, Os VI, VII, & VIII

See EVIDENCE ACT (I OF 1872), s. 105.

I. L. R. 40 All 284

See HINDU LAW—WIDOW.

I. L. R. 35 All 228

See ORISSA TENANCY ACT, 1913

4 Pat L. J. 287

See PRE EMPTION **I. L. R. 36 All 456, 476, 573**

See SPECIFIC MOVEABLE PROPERTY

I. L. R. 39 Mad. 1

—mistake of law of liquidator—

See CONTRACT WITH ENEMY

I. L. R. 44 Bom. 631

—whether a plea of jurisdiction can be raised on appeal—

See AGRA TENANCY ACT, 1901 s. 177

I. L. R. 43 All 18

PLEADINGS—contd

—whether a plea of jurisdiction can be raised on appeal—contd.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 52 **I. L. R. 37 Bom. 427**

1. *Quere.* Whether a defendant who puts the plaintiffs to proof of a family usage alleged by them is precluded at a later stage from saying that he will not insist on the proof of usage but will accept the plaintiff's case on the point. **HAZARI MALL BABU v ABANATH ADHURJA** (1912).

17 C. W. N. 280

2. *Plaint, amendment of, when should be allowed.* Amendment of a plaintiff for a claim should be allowed only where the claim has been omitted by a mistake in inadvertence or for similar reasons and not deliberately. **BHUKT KOER v RAM KHELWAN PERSHAD** (1912).

17 C. W. N. 311

3. *Change of case—Issues—Suit to set aside a deed of gift as fraudulent, failing, claim for accounts of a share as from agent* Where on the eve of a contemplated pilgrimage to Mecca, *M* transferred her property to her nephew *E* by a deed of gift, and on the same date the latter executed a deed which provided that a fourth share of the properties thus conveyed should remain in her possession during her life-time, and on her death should come into *E*'s possession. *Held*, that the fact that in a suit to set aside the deed of gift on the ground of fraud and misrepresentation which failed, a general issue as to whether *E* was liable to render an account to *M* was raised with reference to the whole property, would not justify the Court in passing a decree directing *E* to account for the profits of a four annas share, on the footing of his being *M*'s agent in respect of that share. **VAHNUDI AHA TUN CHOWDHURANI v MOHAMMED FAKHRAH KHAN PARI** (1912).

17 C. W. N. 427

4. *Facts in plaintiff not traversed in written statement or put in issue—Court not entitled to decide otherwise.* Where a statement of fact in the plaintiff was not traversed in the written statement or put in issue, the Court is not entitled to decide it against the pleadings. **RAM LAL MODDAL v KHIRODA MOHINI DAS** (1913).

18 C. W. N. 113

5. *Variance between Plaintiff's allegation and proof, when ground for dismissal of suit—True rule—its object—Suit for recovery of possession—Mode of ouster and time thereof, allegation as to, if material.* Where an order having been passed in favour of the defendant under s. 335 of the Civil Procedure Code of 1892, the decree holder (now plaintiff) sued for recovery of possession upon declaration of his title, alleging that the order itself deprived him of possession, but the Courts below dismissed the suit without trial on the merits on the ground that the order under s. 335, Criminal Procedure Code, had not that effect. *Held*, that the suit should have been tried on the merits, as the particular mode in which or the point of time at which the ouster of the plaintiff took place was not so material that a variance between pleading and proof on such matters would alone be considered a sufficient ground for dismissing the suit. The determination in a case should be founded upon a case either to be found in the pleadings or in evidence in or consistent with the case made thereby.

PLEADINGS—contd

It does not follow from this that every variance between pleading and proof is material and justifies a dismissal of the claim. The rule that the allegations and the proof must correspond is intended to serve a double purpose, viz., first, to apprise the defendant distinctly and specifically of the case he is called upon to answer, so that he may properly make his defence and may not be taken by surprise; and, secondly, to preserve an accurate record of the cause of action as a protection against a second proceeding founded upon the same allegations. *NARADIPYDRA MUKERJEE v MADHU SUDAN MONDAL* (1912)

18 C. W. N. 473

6. ——— *Change of case—Suit on hatchitta—Suit on account stated—Alteration of suit on account stated to suit on account stated in previous year when account stated found to be forgery.* The plaintiffs sued to recover the principal and interest due on a certain hatchitta. The plaintiffs alleged that they were the proprietors of a joint bank, that the father of the defendants used to borrow money on hatchittas from their bank, that accounts were adjusted up to 1308 and the father of the defendants signed the hatchittas for 1308 on which the suit was brought. The lower Court found this hatchitta to be a forgery, but gave the plaintiffs a decree on the hatchitta for 1307. *Held*, that the suit being on an account stated and not on an open account and the account stated, sued on, being found to be a forgery, the suit could not be altered to one on an account stated in a previous year. In any case it ought not to have been done with retrospective effect. *BRATEO PROSAD v GOJADRAR PROSAD SAHU* (1914) . 19 C. W. N. 170

7. ——— *Issues not expressly framed when may and when should not be determined.* Where the parties have gone to trial, knowing what the real question between them was, the evidence has been adduced and discussed and the Court has decided the point as if there was an issue framed on it, the decision will not be set aside in appeal simply on the ground that no issue was framed on the point. Where the failure to frame the issue has led to an unfair trial or miscarriage of justice the case will be remanded for retrial. *MOHIUDDIN v PRITHI CHAND LAL CHOWDHURY* (1914) . 19 C. W. N. 1159

8. ——— *Fraud, sole ground of relief—Alteration of ground of relief by picking out facts from allegations in the plaint—Defendant's duty in cases based on fraud.* Where pleadings are so framed as to rest the claim for relief solely on the ground of fraud it is not open to the plaintiff, if he fails in establishing the fraud, to pick out from the allegations in the plaint facts which might, if not put forward as proofs of fraud, have yet warranted the plaintiff in asking for relief. A defendant, in answering a case founded on fraud, is not bound to do more than answer the case in the mode in which it is put forward. *Hickson v. Lombard L. R. 1 H. L. 324*, and *Guthrie v. Abouf Mozuffer Nooroodin Ahmed*, 15 W. R. P. C. 50, referred to. *RAJENDRA KUMAR BOSE v GANGARAM KOTVAL* (1910) 1 L. R. 37 Cal. 856

9. ——— *Variance between pleading and proof—Where plaintiff sues in effect*

PLEADINGS—contd.

ment on the ground of exclusive title, he cannot be given a decree for partition when the claim set up is found to be barred. Where a plaintiff sues the defendant in ejectment on the ground that he and defendant were separately enjoying properties, he cannot, when such claim is found to be barred by limitation, rely on a tenancy in common not alleged in the plaint and claim a decree for partition. *CHIDAMBARAM PILLAI v MUTHU PILLAI* (1909) . 1 L. R. 33 Mad. 359

10. ——— *Suit for cancellation of father's will brought by daughters—Plea of custom excluding daughters from inheritance—Custom not allowed to be raised in this suit.* On suit by the daughters of the testator for a declaration that a will alleged to have been executed by their father was a false and fraudulent document and not binding on them, the defendants set up a custom by virtue of which the daughters, but not apparently daughter's sons, were excluded from inheritance to their father's property. *Held*, that, as members of their father's family, the daughters, who, but for the will, on the death of their mother, would take the property of their father, had a cause of action which entitled them to bring the suit, and the issue whether or not a custom existed excluding them from inheritance was not a fit and proper issue to be determined in the present suit. *RISALI v BALAK RAM* (1912)

1 L. R. 34 All. 351

11. ——— *Defendant admitting plaintiff's title in written statement though claim notified before suit—Suit if may be dismissed for want of cause of action.* The fact that the defendant does not in his written statement deny the plaintiff's title to land of which plaintiff had sued for recovery does not show that the plaintiff had no cause of action. Where, therefore, it appeared that the defendant did not at any time before the institution of the suit admit the plaintiff's title to the lands in suit, although plaintiff served him with notice of his claim. *Held*, that this Court was not justified in dismissing the suit on the ground of want of cause of action merely because the defendant in his written statement admitted plaintiff's title. *GANGADAS SRI v THE SECRETARY OF STATE FOR INDIA* (1916)

20 C. W. N. 638

12. ——— *Plaint, what should state—Omission to state facts necessary for defendant to meet at the trial, effect of—Reliance by plaintiff on inconsistent rights alternately—Plaintiff, if can allege facts destructive of each other—Partition suit—Preliminary decree—Costs.* The plaintiff commenced an action for partition on the allegation that he was entitled to fourteen and a half annas share of the property in suit while the defendants contended that they had acquired a good title to a two annas share. The plaintiff did not narrate the history of the title of the plaintiff nor did it mention the needs whereby the title had devolved on him. The plaintiff did not make a definite case in plaint but sought at the trial to develop two inconsistent cases on the testimony of two different sets of witnesses. Objection was taken by the defendants on the ground of defect in the plaint but the Subordinate Judge proceeded with the trial. He found in favour of

PLEADINGS—*contd.*

the defendants and allowed them the full amount of costs on the value of the suit. Against the preliminary decree the plaintiff appealed. *Held*, that in the plaint the plaintiff was bound to state the nature of the deeds on which he relied in deducing his title from the person under whom he claimed and to show the devolution of the estate to himself. *Philippa v Philippa* 4 Q B D 127, *Derbyshire v Leigh* (1856) 1 Q B 551, and *Davis v James* 26 Ch D 778. It is absolutely essential that the pleading not to be embarrassing to the defendants should state those facts which will put the defendants on their guard and tell them what they will have to meet when the case comes on for trial. Thus much the plaintiff is bound to do though he need not set out the evidence whereby he proposes to prove the facts which give him the title. *Williams v Wilcox*, 8 A and E 331, and *Gautrel v Egerton*, L R 2 C P 371. A plaintiff may in certain circumstances rely upon several different rights alternatively though they may be inconsistent. *Narendra Nath v Abhay Churn*, 1 L R 34 Cal. 51 & c. 11 C W N 20 & C L J 437, *Phillips v Phillips*, 4 Q B D 127, *Bradan v Greenwood* 3 Ez. D 255 *Haukeley v Bradshaw* 5 Q B D 303 and *In re Morgan*, 34 Ch D 498. But the plaintiff cannot be permitted to allege two absolutely inconsistent states of facts each of which is destructive of the other. *Mahmud Bux v Hossein Bibi*, 1 L R 15 Cal. 683. That in the present case the plaintiff should not have been allowed to proceed on the plaint as framed but should have been called upon to specify in his statement of claim the nature of the deeds and transactions from which he deduced his title. That the order for costs on the full value of the suit could not properly be made at the stage of the preliminary enquiry when the matter is controversy related only to a half anna share in the property. *MORI LAL PODDAR v JUDHISTER DAS TEOR* (1915)

20 C. W. N. 310

13. — *Necessity of particularising fraud in plaint discussed.* *ANAND CHANDRA MONDAL v ATUL CHANDRA MULLIK* (1919) 23 C. W. N. 1045

14. — *Pleading and proof variance between, when fatal to suit—Variance not affecting cardinal points in issue—Nature of the principle—Question one of circumstances rather than of law—Application of the principle in an abstract way leading to error of decision on the merits—Trial Judge's appreciation of witnesses examined in his presence, value of.* When a sum of money due by A to B was entered in B's account book as having been paid on 5th November 1907 in cash but B's case was that it was liquidated by a promissory note which however bore date the 7th November 1907, and whilst A alleged that the payment was in fact made on 5th November in cash and the note of 7th November was a forgery, B and his witnesses throughout the trial insisted that the date of the transaction was the 7th and the note was signed then but the evidence and circumstances of the case showed that there was no payment in cash and that the promissory note was genuine, but had been executed not on the 7th but on the 5th—the entry in the account-book to the effect that the payment was in cash

PLEADINGS—*contd.*

being satisfactorily explained by the practice of entering payments by promissory notes as payments in "cash": *Held* that the variance of the case established from the case pleaded in the plaint (as to the date of the note) was not fatal to B's suit to enforce the promissory note, in which the cardinal points to be decided were whether the debt had been paid in cash and whether the note was a forgery. That the High Court in relying for the dismissal of the suit on, amongst other grounds, that of variance between pleading and proof had applied that principle in an abstract and unsatisfactory way which had misled them in estimating the merits of the case. That the question in ultimate analysis, was one of circumstances and not of law. That the evidence adduced in support of the transaction having been effected on the 7th November was not necessarily perjured or fabricated when it appeared that the statements of witnesses and entries in account books might be due to bona fide mistake. *ABDUL RAHIMAN v GUSTADJI MUNCHERJI COOPER* (1915)

20 C. W. N. 297

15. — *Inconsistent material facts in pleadings—Relief in the alternative whether may be claimed—Alternative cases how to be pleaded.* Either party to a litigation may in a proper case include in his pleading two or more inconsistent sets of material facts and claim relief thereunder in the alternative but whenever such alternative cases are alleged the facts belonging to them respectively should not be mixed up but should be stated separately so as to show on what facts each alternative relief is claimed. *OFFICIAL ASSIGNEE OF BENGAL v BIDYASUNDARI DAS* 24 C. W. N. 145

16. — *Variance between allegations and proof.* Every variance between pleading and proof is not fatal, the Court must carefully consider whether the objection is one of form or of substance, having in view the purpose which the rule that allegation and proof must correspond is intended to serve, viz., first to apprise the defendant distinctly and specifically of the case he is called upon to answer, so that he may properly make a defence and not be taken by surprise, and, secondly, to preserve an accurate record of the cause of action as a protection against a second proceeding founded upon the same allegations. *KUMAR SATISH KANTO RAI v SATISH CHANDRA CHATTAPADHYA* 24 C. W. N. 682

17. — *Change of case at a late stage, if should be permitted.* Where the plaintiff sued for recovery of certain jewels upon the allegation that the predecessors in title of the defendants had made a gift of the same to plaintiff and it was not until the appeal to the Privy Council that it was suggested the claim arose not upon gift but upon contract, a case of which there was no trace in the pleadings issues evidence or judgment in *India*: *Held* that the argument now advanced was contradictory of the case made and involved a line of attack that the defendants had no opportunity to meet while the litigation was in the lower Courts and the change of front could not be permitted at the late stage. *MALABARU LAKSHMI VENKAYYAMMA ROW v VENKA TADRI APPA ROW* 25 C. W. N. 654

PLEADINGS—*concl'd.*

18. ——— It is absolutely necessary that the determination in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made. The fundamental principle that the plaintiff cannot be permitted to follow a line of attack which the defendant had no opportunity to meet is of special importance in collision cases when the accident very often happens in an entirely unexpected manner and short time *W. J. REES v. JOHN YOUNG*. 25 C. W. N. 519

19. Court not to entertain a question not raised in—*Reason of the rule explained—Test.* Neither party to a litigation can be allowed to set up at the hearing an entirely new and inconsistent case. The reason for the rule is that the plaintiff might have received no notice that the point would be raised by the defendant and would presumably be not prepared with the necessary evidence, and conversely, the defendant might be seriously embarrassed if the plaintiff were permitted to spring a surprise upon him in the shape of a new case. The test to be applied is whether the party aggrieved has really been taken by surprise. So, where the plaintiff sought to eject the defendant on the ground that he was a trespasser and the defendant answered that he was a tenant at money rent, but the Court determined the nature of the alleged tenancy and came to a conclusion which was not the case of either party *GONDLI BIR v. JOTVAL ABDIN*. . . . 26 C. W. N. 294

PLEDGE.

See BAILMENT I. L. R. 37 Bom. 122

See CONTRACT ACT (IX OF 1872)—

s 103 . I. L. R. 40 Bom. 164

s 176 . I. L. R. 40 All. 522

ss 178, 179 I. L. R. 42 Bom. 205

See PALAS OR TURNS OF WORSHIP

I. L. R. 42 Calc. 455

See RES JUDICATA

I. L. R. 36 Bom. 189

— of shares in a company—

See COMPANY I. L. R. 42 Bom. 159

POLICE.

— custody—confession—

See EVIDENCE ACT (I OF 1872), s 26

I. L. R. 42 Bom. 1

— powers of, to forbid a certain class to enter a certain place—

See POLICE ACT (V OF 1861), ss 31 32

I. L. R. 39 All. 131

— powers of, to require assistance from public—

See CRIMINAL PROCEDURE CODE, s 42

I. L. R. 42 All. 314

— report to—

See BAILABLE OFFENCE

I. L. R. 39 Mad. 1003

POLICE ACT (V OF 1861).

See ACT OF STATE

I. L. R. 39 Calc. 615

— s. 15, cl. (4)—

See PUNITIVE POLICE.

I. L. R. 40 Calc. 452

— ss. 17, 18—

See SPECIAL CONSTABLES

I. L. R. 43 Calc. 277

— s. 29—Police constable—Failure to return to duty. A police constable having failed to return to duty at the expiry of casual leave was convicted and fined under s 29 of the Indian Police Act. During his trial he was under suspension. Subsequently he was reinstated and ordered to return to duty. He failed to do so. *Held*, that this second disobedience of orders was a separate offence entirely from that in respect of which he had been tried and convicted and that his conviction and sentence in respect thereof were legal *EMPEROR v. NUR UL HASAN*

I. L. R. 42 All. 22

— Overstaying leave by a Police officer—Contention, propriety of, when there was reasonable cause. The petitioner, a police officer, was convicted under s 29 of the Police Act for overstaying his leave. His defence was that he was detained by important private business of his own and therefore could not join in time. *Held*, that in the circumstances of the case it could not be said that the petitioner failed without reasonable cause to report himself to duty on the expiration of his leave and the conviction should be set aside *JAGADISH CH. BOSE v. THE KING EMPEROR*

25 C. W. N. 408

— ss 31 32—Jatrawals—Competence of police to issue general order for the control of the business of Jatrawals. *Held*, that it is not competent to a Superintendent of Police to issue a general order forbidding persons of a certain class to frequent certain specified places without having first obtained a license *EMPEROR v. KRISHNA LAL* (1916) . . . I. L. R. 39 All. 131

POLICE CONSTABLE.

See POLICE ACT, 1861, s. 29

I. L. R. 42 All. 22

POLICE DIARIES.

See CRIMINAL PROCEDURE CODE, s 110

4 Pat. L. J. 7

See POLICE REPORT.

See PRIVY COUNCIL, PRACTICE OF.

I. L. R. 44 Calc. 876

— Hostile Crown witness, use of police diaries against—Code of Criminal Procedure (Act V of 1898), s 162—Evidence Act (I of 1872), ss 155 and 157. The police diary may be used to impeach the evidence of a hostile witness for the prosecution. Statements of witnesses made to the police should not be used to corroborate them except in very special circumstances. *RAMCHARITRA SINGH v. KING EMPEROR*

3 Pat. L. J. 568

POLICE JAGIRS.

— Police jagirs in the Pacht Zamindari—Liability of jagir to sale for arrears of rent—Whether successor bound by sale.

POLICE JAGIRS—*contd*

The decision of the Privy Council in the case of *Nilmoney Singh Deo v Bakra Nath Singh*, amounts to a decision that the police jagirs in the zamindari of Pachit are hereditary, subject to the condition that it is competent to the representative of Government to dismiss the heir of the last jagirdar and to appoint even an outsider, but that the customary rule of inheritance operates until the representative of Government exercises his option. Although in *Nilmoney Singh Deo v Bakra Nath Singh*, the Privy Council held that a jagir in the zamindari of Pachit is not liable to be sold for arrears of rent due from a previous jagirdar, yet where in fact such a jagir was sold in execution of a decree for arrears of rent previous to the decision of the Privy Council, *held* that the entire tenure passed at such sale and the subsequent decision of the Privy Council did not affect the rights of the parties because when a sale is held the rights of the parties are fixed with reference to the state of the law at that time, and any subsequent interpretation does not affect the results of that sale. *JADAB LAL v SRI SRI DEVI LAL SINGH* . 2 Pat. L. J. 725

POLICE OFFICER.

See **FIXED OFFICER**
I. L. R. 46 Calc. 411

— duties of—

See **HERRAT CORPUS**
I. L. R. 44 Calc. 78

— opinion of—

See **SEARCH WARRANT**
I. L. R. 47 Calc. 597

— statements made to—

See **CRIMINAL PROCEDURE CODE (ACT V OF 1898)**—
s 162, 283 I. L. R. 34 Bom. 599
s 162 I. L. R. 39 Bom. 58

— *Detention in custody of suspended police officer—Legality of detention—Police Circular Order No 1153—Legality of the Circular—Calcutta Police Act (Beng IV of 1866), s 13* The Commissioner of Police has no authority in law to order the detention of a police officer on suspension as he ceases to be a police officer thereafter, and the Police Circular Order No 1153, published in the *Calcutta Police Gazette*, dated the 8th June, 1917, empowering him to do so is illegal. *PRAMATHA NATH BARAT v P. C. ARIST* (1919) . I. L. R. 46 Calc. 581

POLICE PATIL.

— arresting the accused—

See **PRACTICE** . I. L. R. 46 Bom. 220

POLICE REGULATIONS.

See **PROCESSION** I. L. R. 40 Calc. 470

OLICE REPORT.

See **COGNIZANCE**
I. L. R. 40 Calc. 854

See **CRIMINAL PROCEDURE, INSTITUTION OF**
I. L. R. 37 Calc. 49

See **CRIMINAL PROCEDURE CODE**—
s 4, 173. . 25 C. W. N. 357
s 110. . 4 Pat. L. J. 7

POLICE REPORT—*contd*

s 193 I. L. R. 38 Mad. 1044

See **FALSE INFORMATION**
I. L. R. 43 Calc. 173
I. L. R. 46 Calc. 807

See **SANCTION FOR PROSECUTION**
I. L. R. 41 Calc. 14

See **SURETY**
I. L. R. 42 Calc. 706
I. L. R. 43 Calc. 1024

POLICY OF INSURANCE.

See **INSURANCE**

See **LIFE INSURANCE**

See **TRANSFER OF PROPERTY ACT (IV OF 1882 AS AMENDED BY ACT II OF 1900)**.
s 130 I. L. R. 37 Bom. 198

— if creates trust—

See **MARRIED WOMEN'S PROPERTY ACT (III OF 1874)**, s 6
I. L. R. 37 Mad. 493

POLITICAL AGENT

— certificate of—

See **CRIMINAL PROCEDURE CODE**, s 189
I. L. R. 41 All. 452
I. L. R. 42 All. 89

POLITICAL AGENT AT SIKKIM, COURT OF.

— *Execution of decree—Transfer of decree for execution—Civil Procedure Code (Act XIV of 1882) s 2294 (Act V of 1908), ss 43, 45* By the notifications of the 29th March, 1889, and 3rd October, 1907, the Governor General Council declared that s. 2294 of the Code of Civil Procedure of 1882 (s. 43 of the Code of 1908) should apply to the Court of the Political Agent at Sikkim. A decree obtained in the Court of the Political Agent at Sikkim and transferred for execution to a Court in British India, could therefore be executed within the jurisdiction of that Court. *ZAMEL AHMED v THE MAHARAJAH OF SIKKIM* (1911) . I. L. R. 38 Calc. 859

POLITICAL OFFICER.

— certificate of, for trial of offence—

See **CRIMINAL PROCEDURE CODE** ss 193, 227 I. L. R. 33 All. 514

POLITICAL RESIDENT AT ADEN.

See **DIVORCE ACT (IV OF 1907) s 3 (2)**
I. L. R. 37 Bom. 57

POLYGAMY.

See **BURMESE LAW—MARRIAGE**
I. L. R. 39 Calc. 492

POOLBUNDI CHARGES.

See **EMBARKMENT**
I. L. R. 41 Calc. 130

POONA CANTONMENT.

See **CANTONMENT PROPERTY**
I. L. R. 36 Bom. 1

PORAMBOKE.

See **MADRAS FOREST ACT (XXI OF 1882)**,
ss. 6, 10, 16, 17
I. L. R. 39 Mad. 494

PORT COMMISSIONERS**Liability of—***See* LOSS OF GOODS

I L. R. 46 Calc 56

POSSESSION*See* ADVERSE POSSESSION*See* ACQUIESCENCE

I L. R. 37 All. 412

See ARMS ACT s. 19 (f)

15 C. W. N. 440

See CIVIL PROCEDURE CODE s. 47

I L. R. 35 Bom. 432

O XVI BR 93 96

I L. R. 43 Bom. 559

See COCAINE I L. R. 41 Calc. 537*See* CONSCIOUS POSSESSION*See* COUNTERFEIT COIN

I L. R. 44 Calc. 477

See COURT FEES ACT (VII of 1870)

ss. ETC. I L. R. 38 Mad. 1184

See CRIMINAL PROCEDURE CODE s. 143.

I L. R. 34 Mad. 138

See EJECTMENT SUIT FOR

I L. R. 38 Bom. 240

See FRAUD I L. R. 38 Bom. 185*See* INFUSION I L. R. 38 Calc. 791*See* LAND REVENUE CODE (BOM ACT V

OF 1879) ss. 63 66

I L. R. 39 Bom. 494

See LESSOR AND LESSEE

I L. R. 39 Mad. 1042

See MAHOMEDAN LAW—DOWER

I L. R. 38 Calc. 475

See MAHOMEDAN LAW—ENDOWMENT

I L. R. 47 Calc. 886

See MAHOMEDAN LAW—GIFT

I L. R. 34 All. 465

See OILM I L. R. 43 Calc. 820

I L. R. 37 Calc. 24

See PETROLEUM ACT, ss. 11 15

I L. R. 40 Calc. 356

See POSSESSORY SUIT

I L. R. 41 All. 108

See RECEIVER I L. R. 47 Calc. 418*See* SALE I L. R. 41 Calc. 148*See* SPECIFIC RELIEF ACT s. 9

15 C. W. N. 294

I L. R. 33 All. 647

See TITLE I L. R. 41 Calc. 394*See* TRANSFER OF PROPERTY ACT (IV OF

1887) ss. 4 AND 54

I L. R. 38 Mad. 1158

by agent—*See* LIMITATION ACT (XV of 1877) ARTS14^o AND 144 I L. R. 35 Bom. 78**by person claiming as trustee—***See* ADVERSE POSSESSION

I L. R. 37 Mad. 373

by servant—*See* ARMS I L. R. 41 Calc. 11**POSSESSION—contd****by widow—***See* HINDU LAW—MAINTENANCE

I L. R. 38 Mad. 153

change of—*See* PARTITION I L. R. 44 Calc. 675**confirmation—***See* SURVEY ACT, ss. 41 62

14 C. W. N. 366

Decree for partition—*See* ADVERSE POSSESSION

I L. R. 45 Bom. 843

Decree by Mamlatdar for—*See* LIMITATION ACT (IX OF 1908) ART

47 I L. R. 45 Bom. 1135

delivery of—*See* TRANSFER OF PROPERTY ACT 1882,

s. 54 I L. R. 34 Bom. 139

delivery of, in execution—*See* CIVIL PROCEDURE CODE (ACT V OF

1908) s. 47 O XVI BR 100 101

I L. R. 40 Mad. 964

length of—*See* MUNICIPAL COUNCIL,

I L. R. 38 Mad. 6

non-delivery of—*See* LANDLORD AND TENANT

I L. R. 46 Calc. 956

presumption arising from—*See* LAKHERAJ LANDS

I L. R. 45 Calc. 574

protection of former possession as**against Trespasser—***See* TREE PATTA I L. R. 38 Mad. 148**recovery of—***See* TRANSFER OF PROPERTY ACT (IV OF

1887) s. 54 I L. R. 39 Bom. 472

See TREE PATTA I L. R. 38 Mad. 148**right to—***See* HINDU LAW—ENDOWMENT

I L. R. 45 I. A. 204

Right of Khot to forfeit occupancy**rights—***See* KNOTI SETTLEMENT ACT (BOM ACT

I OF 1880) ss. 9 AND 10

I L. R. 44 Bom. 267

suit for—*See* CHACKIDARI CHAKARAN LANDS.

I L. R. 45 Calc. 685

I L. R. 46 Calc. 173

See EX PARTE DECREE

I L. R. 45 Calc. 820

See GHATWALI TENURES

I L. R. 41 Calc. 812

See HINDU LAW—GUARDIAN

I L. R. 38 Mad. 1125

See LIMITATION

I L. R. 41 Calc. 52

I L. R. 43 Calc. 34

I L. R. 46 Calc. 694

POSSESSION—*contd*—suit for—*contd*

See LIMITATION ACT 1877, SCH. II, ART.
142 AND 144 I. L. R. 35 Bom. 79

SCH. II, ART. 91 I. L. R. 38 Mad. 321

See LIMITATION ACT 1908—

SCH. I, ART. 47

I. L. R. 45 Bom. 1135

SCH. I, ARTS. 142, 144.

I. L. R. 39 Bom. 335

See MISSE PROFITS I. L. R. 40 Calc. 59

—transfer of—

See TRANSFER OF PROPERTY ACT (IV OF
1882), s. 40 I. L. R. 40 Bom. 499

—will of—

See BARRIE I. L. R. 42 Calc. 313

1. ——— Nature of necessary to prove lost grant or title by adverse possession—*Madras Forest Act (I of 1882) at s. 3 16 25—Notification under s. 25 of reservation made before the Act extinguishes all rights existing at time of reservation. Whether enjoyment is set up as the basis of a title by prescription or as evidence on which a lost grant should be presumed the same characteristics will be necessary. Acts done on parts of a tract of land will only be evidence of possession of the whole where the said tract of land possesses a defined boundary. *Sivasubramanya v. Secretary of State for India*, I. L. R. 9 Mad. 285 at pp. 304 and 305 referred to. The intention of the legislature in enacting a 25 of the Madras Forest Act is to place all forests reserved by executive order prior to the introduction of the Act on precisely the same footing as reserves subsequently constituted in accordance with the provisions of the Act. The intention was that the notification under a 25 should operate in exactly the same manner as one under a 16 to which s. 17 is a mere corollary. The further inquiry provided for in a 25 is purely discretionary with Government. Where a reservation made prior to the Act is notified under a 25 of the Act, such notification extinguishes any right existing at the time of reservation whether the lands were within s. 3 of the Act, at the disposal of Government or not at the time of reservation. Where the reservation is made under a 16 the section provides a mode of redress to the party while a 25 gives none as the further inquiry provided therein is merely discretionary with the Government. *SUBRAMANYA PILLAI v. THE SECRETARY OF STATE FOR INDIA* (1910).*

I. L. R. 34 Mad. 353

2. ——— Suit for, by proprietor of undivided half share—*Nature of decree plaintiff entitled to—Proprietor of undivided half share if can eject any one on the land from the whole of it. The plaintiff brought a suit for recovery of possession of a plot of land to the extent of an eight annas share the plaintiff being the proprietor to the extent of eight annas and defendants Nos. 5 and 6 proprietors to the extent of the other eight annas. Defendants Nos. 1 to 3 were tenants of the land recognised by defendants Nos. 5 and 6. The plaintiff asked for joint possession with defendants Nos. 1 to 3, if joint possession with defendants Nos. 5 and 6 could not be granted. Held that all that the plaintiff could ask for was joint possession of an eight annas share. He could not in*

POSSESSION—*contd*

this suit ask the Court to decide who was entitled to possess the of the other eight annas share of the land with which he had no concern. That a person entitled to an undivided half share of the land cannot sue to eject anybody from the whole of it and the defendants Nos. 1 to 3 who had been recognised as tenants by the co-sharer land-lords could not be ejected by the plaintiff from the whole of the land. That the plaintiff was entitled to a decree against all the defendants for recovery of joint possession of an eight annas share of the disputed property and he was entitled to enforce the right by a suit for partition if he was not satisfied with the delivery of possession of an undivided half share. *GAJANATH ANTH v. BHUKARI LAL* (1914) 18 C W N 1011

3. ——— Tenants in common—*Presump-*

*tion—Possession of one co-owner the possession of all. Possession of one co-owner is in law the possession of all the co-owners and nothing short of ouster or something equivalent to ouster will put an end to that possession. Where a co-owner in possession did not deny the title of the other co-owners till shortly before the institution of the suit and never laid claim to more than his share, it was presumed that the co-owner in possession was in possession on his own behalf and as well as on behalf of his co-owner. *Cores v. Appulamy*, [1912] A. C. 230, followed. *Jafar Hussain v. Masbub Ali*, I. L. R. 14 All. 193, and *Jogendra Nath Das v. Baladev Das*, I. L. R. 35 Calc. 961, referred to. *AKHAI KAZA KHAN v. RAM LAL* (1914) I. L. R. 37 All. 203*

3a. ——— Suit to recover possession of land from an alleged licensee—*Act No. IX of 1903 (Limitation Act), Sch. I, Art. 144—Defence of title by adverse possession—Burden of proof. The plaintiff who was the zamindar, sued to eject the defendant from certain land, within the ambit of the plaintiff's zamindari, alleging that the defendant was in possession merely as a licensee. The defendant denied that he was a licensee and claimed that he had acquired a title to the land in suit by adverse possession. The defendant, however, failed to prove that he had been in adverse possession of the land for more than twelve years. Held that the plaintiff was entitled to succeed simply on the strength of his *prima facie* title as zamindar. It was not necessary for him to go further and prove that he had been in actual possession at some period within twelve years previous to the commencement of the suit. In cases to which Art. 144 of the first schedule to the Indian Limitation Act, 1908 applies the defence being a title acquired by adverse possession for more than twelve years it is not necessary for the plaintiff, as in cases falling under Art. 142 to prove that he has been in possession at a period within twelve years from the commencement of the suit, it is sufficient if he establishes a *prima facie* title and it is then, for the defendant to make good his plea of adverse possession. *JAI CHAND BARADER v. GURWAR SINGH**

I. L. R. 41 All. 669

4. ——— Possession and title—suit to establish—*Whether suit for mere declaration—Maintainability—Whether catching fish in a stream amounts to dispossession. Where the plaintiffs in a suit establish their title to a village and also that they have been in possession of it and of a*

POSSESSION—contd

streamlet which lies within it, but that the plaintiff's possession has been disturbed inasmuch as the defendants' people have caught fish in it. *Held*, that under such circumstances the plaintiffs' suit for a mere declaration is maintainable. Even if the defendants are found to have granted the right to catch fish in the streamlet to other persons not parties to the suit that act would not amount even to disturbance of possession still less to disposssession nor would the fact that some persons have at times caught fish in the streamlet show that the plaintiffs have been dispossessed. At most the catching of fish in the streamlet would be a disturbance of possession. **SARDAR LAL v BHAGAT v KESHO MOHAN THAKUR (1916)**

20 C. W. N. 1274

5. — Suit for recovery of, by purchaser at sale of land—*Defendant, if can set up occupancy right after suffering it by conduct to merge in tenure right* The plaintiffs brought a suit in 1909 to recover possession of land purchased at a sale in execution of a decree in 1893. After the sale the land remained vacant for ten years from 1895 and the defendants took possession in 1905. The plaintiffs case was that the defendants were in occupation after the sale without any right or title, the defence was that the plaintiffs purchased their right as tenure holders only and the defendants had also the occupancy right. *Held*, the defendants not having kept alive and distinct the two interests which they possessed but having by conduct treated the occupancy right as no longer existent, could not turn round and set up the latter right to the detriment of the execution purchaser. That the plaintiffs cause of action dated back to 1905 when the defendants took possession and the suit was not barred by limitation. **PROMOTHA NATH ROY v KIRKON LAL SHARMA (1916)**

21 C. W. N. 304

6. — Suit for recovery of, Reversal by Appellate Court on ground of limitation—*necessary findings in—Entry in record of rights, presumption of possession arising from—Onus on defendant to prove plaintiffs dispossession—Judgment of Criminal Court in proceeding under s. 145, Cr. P. C., evidentiary value of—Statement of witnesses examined before Criminal Court but not in the suit if admissible—Previous statements in the Criminal Court of witnesses examined in the suit, proper use of—Decision of Appellate Court as to admissibility of a document solely on opinion of the Criminal Court in s. 145 proceeding* propriety of The plaintiff sued for declaration of his title and recovery of possession. In a record of rights published in 1896 the plaintiff was recorded as an occupancy raiyat of the land in suit. By an order of the Magistrate under s. 145, Cr. P. C., dated the 27th September 1909 the defendants were declared to be in possession thereof. The plaintiff's case was that he was dispossessed on the 12th December 1909. The suit was brought on the 19th March 1910. The Munsif decreed the plaintiff's suit finding that he had been in possession within 12 years of the date of the suit. The District Judge in appeal without finding the date of the plaintiff's dispossession held that the suit was barred by limitation. *Held*, that it was necessary for the District Judge to find when the plaintiff was dispossessed. He must also clearly find under what law the plaintiff's suit was barred and whether the facts necessary for applying that law have been established. That in a suit for

POSSESSION—contd.

ejectment the plaintiff has to prove his possession within the statutory period but in the present case the record of rights raised a presumption in the plaintiff's favour and shifted the onus on the defendants to establish affirmatively that the plaintiff had been out of possession for more than the statutory period. That although the judgment of the Criminal Court in the case under s. 145, Cr. P. C., was evidence of possession, the statements of witnesses who were not examined in the present suit were wholly inadmissible. That if it was sought to use the previous statements of such witnesses as were examined in the present suit, then those statements must first be put to the witnesses and duly proved before they could be treated as evidence. **BARKAT ALI v BASANT NUNIA (1915)**

21 C. W. N. 175

7. — Involving boundary dispute—*Onus of proof when one party in possession under order under s. 145 Criminal Procedure Code, Act V of 1898* The plaintiff sued for declaration of title and possession of certain lands lying on the boundary between their *manza* and that of the defendants. It appeared that the defendants were in possession for some years previous to the suit by virtue of an order of the Criminal Court under s. 145, Criminal Procedure Code. *Held*, that regard being had to the decision of the Privy Council in *Dinamani Choudhuran v Brojo Mohan Choudhuran* L. R. 29 I. A. 24 s. c. I. L. R. 29 Cal. 187 & C. W. N. 336 it seems clear that the principle stated in *Lukhi Aarain Jagadeb v Maharaja Jadu Nath Deo*, L. R. 21 I. A. 39, s. c. I. L. R. 21 Cal. 981, as to the shifting of onus from the plaintiff to the defendant in cases where scientific accuracy regarding boundaries cannot be attained and especially in cases where the disputed line of division runs between waste lands which have not been the subject of definite possession must yield to the circumstances of the present case and the onus was on the plaintiff to show that the persons in possession under the order of the Magistrate had no right to possession. **MANINDRA CHANDRA NAYDI v SARADINDU ROY (1918)**

23 C. W. N. 593

8. — Resistance to delivery of possession to decree-holder—*Claim to be in possession of the property as a tenant under the judgment debtor—Sub tenancy—Civil Procedure Code, 1908, O. XXI, rr. 97, 99—Parties* On the 7th July 1919 the plaintiff instituted a suit against his lessee for the recovery of possession of certain premises upon the determination of the term by forfeiture for breach of conditions in the lease. In that suit the plaintiff did not join as defendant, the respondent who was admittedly in possession of the said premises as under tenant of the lessee. On the 18th December 1919 an order was made for the recovery of possession in the said suit by which the lessee was given time until the 29th February, 1920, to make over possession. This not being done, an order, dated the 12th March 1920 was obtained by the plaintiff directing the Sheriff to put him into possession. The Sheriff on the 8th April, 1920, was obstructed in the execution of this order by the respondent and the plaintiff thereupon made this application before the sitting Judge in Chambers complaining of such obstruction under O. XXI, r. 97. The respondent was summoned to appear to answer the said complaint. *Held*, that the application

POSSESSION—contd.

must be dismissed and the plaintiff must be left to his remedy by suit against the respondent. An action for possession based upon forfeiture of a term should, for practical reasons, be brought against all persons in possession (including constructive possession) at the date of the suit, not that the suit is necessarily defective otherwise, but because the decree will be difficult to enforce under the Code. **D E D J EZRA v J E. GUBRAY** (1920) **I. L. R. 47 Calc. 907**

9. — Onus probandi—conflicting evidence as to title—Presumption from possession. It is only when the evidence of possession is strong on both sides and is equally balanced that the presumption that possession goes with title should prevail. This principle does not apply to cases in which the evidence is equally unworthy of credit on both sides except in respect of land of a special character such as waste or jungle lands or lands under water. Arable land is not land of a special character. **FAKIR LALL SAHU v MUNSHI RAMCHARAN LAL** **1 Pat. L. J. 148**

10. — Trespasser, suit against— by person in possession. Previous possession even for a period short of the statutory period of 12 years, entitles a plaintiff to a decree for possession in a suit against a trespasser. **ELAJODRA KUR v GOBARDHAN TEWARI** **2 Pat. L. J. 280**

11. — When follows title—Said by auction purchaser against person claiming adversely to judgment-debtor—Limitation Act (IX of 1908) Arts 133, 137 and 142. In suits for recovery of possession of land where no evidence of possession within twelve years prior to the institution of the suit has been given or where the evidence tendered is so unsatisfactory and weak on both sides as to leave the Court unable to determine which of the litigating parties is entitled to possession, the legal presumption that possession follows title may be resorted to. Art 138 of the Limitation Act, 1908 does not apply to a suit against a person claiming title by possession adverse to the judgment debtor. **BIKRAM BHUWAN NARAIN TEWARI v UPENDRA NATH ROY** **4 Pat. L. J. 463**

12. — The plaintiffs were the owners of a *muras* tenure and under them was a *darmiras* tenure held by the defendants. This under tenure was sold in execution of a rent decree and purchased by a third party who never obtained possession and in execution of a rent decree obtained against the latter the under tenure was again sold more than twelve years after and purchased by the plaintiffs who used for possession. **Per Walsmley, J** (Woodroffe and Subrahwardy, JJ, contra).—That Art 137 of the Limitation Act applied to the case and the suit was barred. **Per Subrahwardy, J**.—Art 140 or Art 144 applied to the case. **Per Woodroffe J** (to whom the case was referred under sec 98 C P C).—That none of the articles of the Limitation Act applied to the case but the suit was barred under sec 167 of the Bengal Tenancy Act. Where a rent decree has been properly obtained the tenure itself passes to the purchaser and not the right, title and interest of the judgment-debtor only and the rights of the purchaser must be determined by the provisions of the Bengal Tenancy Act under sec 158B and sec 159. The plain

POSSESSION—contd

tiffs by their purchase acquired the under-tenure with power to annul encumbrances and the interest acquired by the defendants by adverse possession against the recorded tenants, of which the plaintiffs were aware, was an encumbrance which the plaintiffs could have and should have annulled under sec 167, Bengal Tenancy Act, within one year, and not having done so their right to recover possession was lost. The word encumbrance as used in secs 159 and 161 of the Bengal Tenancy Act includes a statutory title acquired by a trespasser by adverse possession. **JAYANENDRA MONON DUTT v UMESH CHANDRA GUHA** **26 C. W. N. 985**

POSSESSION BY FRAUD.

See SHAKS I. L. R. 46 Calc. 331

POSSESSORY RIGHT.

See POSSESSION

— protection of, as against trespassers—

See TEEK PATTI I. L. R. 36 Mad. 148

POSSESSORY SUIT.

See MAHLATDAN'S COURTS ACT (BOM 11 of 1906)—

ss. 19, 23. **I. L. R. 35 Bom. 487**

s. 23. **I. L. R. 36 Bom. 123**

I. L. R. 39 Bom. 552

See SPECIFIC RELIEF ACT (I of 1877), s. 9 I. L. R. 41 ALL 108

Specific Relief Act (I of 1877) s. 9—Second appeal—Civil Procedure Code (Act V of 1908) s. 102—Review. Where in a suit under s. 9 of the Specific Relief Act, judgment was purported to be passed against five defendants but the decree was drawn up against one defendant only who alone contested the suit, and the decree holder applied for execution against all the defendants, the Court dismissed the application on the ground that decree was against one defendant only, on appeal the District Judge allowed execution to proceed against all the defendants but on a subsequent application for review he discharged his original order on the ground of jurisdiction under s. 9 of the Specific Relief Act. Held that an application in execution proceedings was included in the term 'suit' in s. 9 of the Specific Relief Act and an appeal to the District Judge from an order of the Court of first instance was incompetent and the application for review equally so. **Thomas Souza v Gulam Modin Beari, I L. R. 26 Mad. 438, Moufuz Ali v Burj Nand Arat (1915), P. L. R. 45 Anand Chunder Roy v Sidhy Gopal Meier & B. R. 112, Gora Chand Meier v Jagabansu Narayan Singh, 12 B. L. R. 261, Dnn Dayal v Patroikhan, I L. R. 13 All. 481, Narayan Parmanand v Nagandas Bhaidas, I L. R. 30 Bom. 113 Marula Ammol v Marula Maracor, I L. R. 30 Mad. 212, Shyama Charan Mitter v Debendra Nath Mukherjee I L. R. 27 Calc. 481, Minkashi Nanda v Subramanaya Sastri, I L. R. 11 Mad. 26, L. R. 111 A 169, Sami Hassan Mookerjee v Radha Nath Bose, 20 C. L. J. 433, and Profulla Krishna Deb v. Nambannera Bibi, 24 C. L. J. 331, referred to. **KAKAI LAL GHOSH v JAYENDRA NATH CHANDRA (1917)** **I. L. R. 45 Calc. 519****

POSSESSORY TITLE.

See ESTOPPEL . I. L. R. 34 All. 538

See HINDU LAW (SUCCESSION)
I. L. R. 1 Lah. 588

See SPECIFIC RELIEF ACT (I OF 1877),
s 9 . I. L. R. 36 All. 51

See TITLE . I. L. R. 41 Calc. 394

POST-NUPTIAL GIFTS.

See HINDU LAW—GIFT.
I. L. R. 37 Calc. 1

POST OFFICE ACT (VI OF 1898).

ss. 19, 61, 70—Offence—Cocaine—Transmission of, by post Held, that cocaine is not a substance which falls within the purview of s 19 of the Indian Post Office Act, 1898, and it is not an offence under that Act to transmit the same by post *EMPEROR v ISMAIL KHAN* (1915)
I. L. R. 37 All. 289

ss 35, 64, 74—Rules framed under Act, infringement of, falls within s 63—General power to frame rules conferred by s 74, cl (1) not confined to such rules as are contemplated by s 74, cl 2 Rules framed by the Governor General in Council under s 74, cl (1) of the Post Office Act regarding the declaration in the case of articles sent by value payable post form part of the Act under s. 74 (3) and infringement of such rules is punishable under s 64. s 35 also enables the Governor General in Council to make such rules. The general power to make rules conferred by s. 74, cl. (1), is not confined to making such rules as are contemplated by cl. 2 *THE CROWN PROSECUTOR v KOTHANDARAMIAH* (1910)
I. L. R. 33 Mad. 511

POSTING OF A DEMAND DRAFT.

See SALE OF GOODS
I. L. R. 42 Bom. 16

POSTPONEMENT.

See CROSS EXAMINATION
I. L. R. 41 Calc. 299

POUNDAGE.

Sheriff's right to poundage. The Sheriff is only entitled to poundage on sums levied so where a seizure is wrongful and is withdrawn by direction of law, the Sheriff receives no poundage *MORTIMORE v CRAGG 3 C P D 216 In re Ludmore, 13 Q B D 415, and In re Thomas, [1899] 1 Q B 460, followed. BHIRATAN v JAYNARAIN* (1910)
I. L. R. 37 Calc. 649

POWER OF ATTORNEY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XLV, rr 15, 16, etc
I. L. R. 38 Mad. 832

See COMPLAINT . I. L. R. 42 Calc. 19

See ESTOPPEL . 2 Pat. L. J. 600

See MALABAR TARIWAD
I. L. R. 39 Mad. 918

See OATHS ACT (X OF 1873), ss 8, 9, 10
I. L. R. 38 All. 131

See PRINCIPAL AND AGENT
I. L. R. 43 Calc. 527

POWER-OF-ATTORNEY—contd.

See REGISTRATION ACT (III OF 1877)
s. 32 . 23 C. W. N. 73
s 33 . I. L. R. 32 All. 179

See STAMP ACT (II OF 1899), ss. 2 (21) AND
60; SCH I, ART 48 (g)
I. L. R. 33 All. 487

See VAKALATNAMA
I. L. R. 43 Calc. 884

— construction of—

See LETTERS OF ADMINISTRATION
I. L. R. 40 Calc. 74

Amendment of—Omission of name of *mulhtar* in the power, by mistake—Amendment of mistake by Court by allowing fresh power to be filed—Inherent jurisdiction of Court to allow amendment of mistake—Effect of amendment as to limitation—Civil Procedure Code (Act V of 1908) ss. 36, 37—Rules and Circular Orders, Ch XI, Art. 31 Where there is no doubt as to the fact that the *mulhtar* who filed an application for execution had in fact authority from the decree holder to do so, and that his name was omitted by mistake from the power of attorney the Court may, in its discretion, allow the power to be amended, upon proper application by the decree holder for the insertion of the name of the attorney. If such amendment is allowed, it takes effect from the date when the power of attorney was originally filed. *CHHAYAMATNESSA BIBI v BASIRAB RAHMAN* (1910)
I. L. R. 37 Calc. 399

Construction of general power-of-attorney—What is a—Civil Procedure Code (Act XIV of 1882) s 37 (a)—Stamp Act (II of 1889), Sch. I, Art 48—Single transaction, meaning of. A power of attorney which authorises a person to do all things and take all steps necessary to complete the execution of a decree is a general power-of-attorney within the meaning of s. 37 (a) of the Civil Procedure Code (Act XIV of 1882). *Semble* The expression "a single transaction," in the Stamp Act (II of 1889), Sch. I, Art 48, applies to a single act or acts so related to each other as to form one judicial transaction *VENKATARAMANA IYER v NARASINGA RAO* (1914)
I. L. R. 38 Mad. 134

Construction—Whether special or general—Agent's authorisation extending to all acts for one particular purpose—Civil Procedure Code (Act V of 1908), O III, r 2 (a), High Court R 333 under s 322 of the Civil Procedure Code (Act V of 1908) A power of attorney was issued in plaintiff's favour in the following terms: "Accordingly I have become owner of the said mortgage bond. Out of the principal and interest due to me in respect of the said mortgage bond, nothing has been paid to me. As the time in respect of it is about to expire, and it is necessary for me to go to my native place, I have constituted and appointed the above named person my true and lawful attorney in this matter to recover all moneys due to me in respect of the principal and interest of the aforesaid mortgage bond by suing on my behalf in a civil Court or by coming to an amicable settlement, and to pass receipts for me, and on my behalf to sue and to receive process, and to do all such acts in this one matter as I, if present, would have done, or could have done or would have been permitted to do or would have been called upon

POWER-OF-ATTORNEY—*could*

to do. The question being raised whether the power of attorney was a general power of attorney with the meaning of r III of the rules made by the High Court under s. 122 of the Civil Procedure Code 1908 or a special power of attorney held, that the power was a special power of attorney inasmuch as the agent's authorisation extended not to any class of business or employment, but was restricted to the doing of all necessary acts in the accomplishment of one particular purpose. *Charles Palmer v Sorabji Jamshedji* (1886) P J 63 applied. *Venkataramana Iyer v Narasimha Rao* I L R 33 Mad 131 not followed. **VARDARI KANTURI v CHANDRAPPA** (1916) I L R 41 Bom. 40

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I L R. 44 Cal. 703

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See ADOPTION I L R. 37 Cal. 860
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I L R. 40 Cal. 163

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See AWARD I L R 47 Cal. 806

See BAILIFF I L R. 42 Cal. 313

See BARRISTER I L R. 44 Cal. 741

See BOMBAY CITY MUNICIPAL ACT (LAW ACT III OF 1888) ss 140 (c) 143
(1) (a) AND (7) (d)
I L R 43 Bom. 231

See BOMBAY HIGH COURT RULES
I L R 36 Bom. 418

See BOMBAY LAND REVENUE ACT 18 9
s. 65 I L R 45 Bom. 929

See BOMBAY REGULATION II OF 18 7
s. 52 I L R 37 Bom. 303

See BOMBAY REVENUE JURISDICTION ACT
1876 s 12 I L R 45 Bom. 1177

See BOOK OF REFERENCE
I L R 40 Cal. 898

See CHARGE I L R. 40 Cal. 163

See CHARGE CANCELLATION OF
I L R 39 Cal. 885

See CIVIL PROCEDURE CODE 188 —
ss. 276 293 320 323A
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ss 321A 272, 285
I L R. 36 Bom. 519

s 539 I L R 35 Bom. 470

See CIVIL PROCEDURE CODE 1908—

s 10 I L R 44 Bom. 283

ss. 47 AND 104
I L R 44 Bom. 473

s 92 I L R. 40 Bom. 439

ss 86 100 I L R 36 Bom. 369

s 97 I L R 36 Bom. 536

I L R 37 Bom. 430

I L R 38 Bom. 531

I L R 45 Bom. 627

s 109 (c) I L R. 37 All. 124

s 115 I L R. 45 Bom. 832

O V s. 5 I L R. 38 Bom. 377

O V s. 15 23
I L R 33 All. 649

O VII s. 14 AND 18.
I L R 44 Bom. 625

O VIII s. 3 4 5
I L R 41 Bom. 89

O XVI s. 1 I L R 35 Bom. 35

O XVI s. 10 5 Pat. L. J 390

O XXI s. 35
I L R 34 All. 150

O XVI s. 60
I L R 44 Bom. 860

O XXII s. 10
I L R. 38 Bom. 668

O XXV s. 1 AND O XXVIII s. 1
I L R 36 Bom. 415

O XII s. 22
I L R 34 All. 140

O XLVII s. 1
I L R 38 Bom. 416

O XLVIII s. 9
I L R 38 All. 280

SCH. II PARA 10
I L R 45 Bom. 512

See COGNATE I L R 40 Cal. 854

See COMMISSION AGENT
I L R 45 Cal. 138

See COMPANIES ACT (VII OF 1913) s. 38.
I L R 41 Bom. 76

See COMPANY
I L R 47 Cal. 620 901

See COMPLAINT I L R 41 Cal. 1013

See CONSOLIDATION OF APPEAL
I L R 43 Cal. 95

See CONTEMPT OF COURT
15 C W N 771
I L R 42 Cal. 1169

See CONTRACT ACT 187 s. 10 AND 74
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- See COSTS . I. L. R. 43 Calc. 190
 I. L. R. 46 Calc. 158, 795
 I. L. R. 45 Bom. 1234
- See CRIMINAL PROCEDURE CODE (ACT V OF 1898)—
 ss. 162, 283 I. L. R. 34 Bom. 699
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 ss 248, 258, 315
 I. L. R. 37 Bom. 369
 s 263 . . . I. L. R. 39 Calc. 931
 s 337, CL (3)
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 s 342 . . . I. L. R. 45 Bom. 672
 s 319 . . . I. L. R. 38 Bom. 719
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 s 435 . . . I. L. R. 43 All. 497
 s 437 . . . I. L. R. 40 All. 416
 s 438 . . . I. L. R. 36 All. 378
 s 476 . . . I. L. R. 34 All. 267
 I. L. R. 38 All. 695
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- See CRIMINAL REVISIONAL JURISDICTION,
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 I. L. R. 40 Calc. 41
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- See CROSS EXAMINATION
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 I. L. R. 42 Calc. 957
- See DAUGHTERS I. L. R. 34 Bom. 510
- See DECREE . I. L. R. 44 Calc. 627
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- See DEPOSITION I. L. R. 46 Calc. 895
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- See DIVORCE I. L. R. 41 Calc. 863
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- See DIVORCE ACT (IV OF 1899)—
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- See EVIDENCE . I. L. R. 42 Calc. 784
- See EVIDENCE ACT (I OF 1872)—
 ss 5, 32 AND 167 5 Pat. L. J. 410
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- See EXAMINATION ON COMMISSION
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- See EXECUTION OF DECREE
 I. L. R. 34 All. 518
 I. L. R. 44 Calc. 1072
 I. L. R. Calc. 515

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- See EX PARTE DECREE
 I. L. R. 41 Calc. 956
 I. L. R. 43 Calc. 1001
- See FRAUD . I. L. R. 36 Bom. 185
- See HABEAS CORPUS.
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- See HIGH COURT I. L. R. 34 Bom. 378
 I. L. R. 41 All. 587
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- See HINDU LAW—JOINT FAMILY
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- See HINDU LAW—WILL.
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- See IDOL I. L. R. 33 All. 735
- See INSOLVENCY I. L. R. 42 Calc. 109
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 I. L. R. 44 Calc. 286
 I. L. R. 47 Calc. 56
- See INSOLVENT . I. L. R. 45 Bom. 550
- See INTERROGATORIES
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- See JOINT ESTATE
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- See JURISDICTION I. L. R. 34 Bom. 13
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- See LAND ACQUISITION ACT (I OF 1894),
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- See LIMITATION ACT (XV OF 1877)—
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- See LOCAL INSPECTION
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- See MORTGAGE I L. R. 37 Calc. 907
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- See MUNICIPAL ELECTION
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- See NEW TRIAL, APPLICATION FOR
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- See PERJURY I L. R. 42 Calc. 240
I L. R. 43 Calc. 542
- See PLAINT I L. R. 43 Calc. 441
- See PLEADER & FEE
I L. R. 41 Calc. 637
- See PRE EMPTION
I L. R. 36 All. 476 514
- See PRESIDENCY SMALL CAUSE COURTS
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I L. R. 38 Mad. 823
- See PRESIDENCY TOWNS INSOLVENCY ACT
(III of 1909) s 25
I L. R. 35 Bom. 47
- See PRIVY COUNCIL
I L. R. 40 All. 497
I L. R. 34 All. 57
- See PROBATE I L. R. 37 Calc. 224
I L. R. 39 Calc. 245
- See PROFESSIONAL MISCONDUCT
I L. R. 41 Calc. 113
- See PROVINCIAL INSOLVENCY ACT (III of
190)—
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- See PUBLIC PROSECUTOR
I L. R. 41 Calc. 425
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- See RECEIVER I L. R. 46 Calc. 352
- See RECORDS POWER TO CALL FOR
I L. R. 43 Calc. 239
- See RESCUE OF COURT FEE
I L. R. 40 Calc. 365
- See REMAND I L. R. 43 Calc. 1104
I L. R. 46 Calc. 733
- See REVIEW I L. R. 45 Calc. 80
I L. R. 35 Calc. 823
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- See SPECIFIC RELIEF ACT (I of 1877)—
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- See STAY OF EXECUTION
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- See TRANSFER OF APPEAL
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s 52 I L. R. 37 Bom. 427
s 107 I L. R. 36 Bom. 500
- See VAKALATNAMA
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- See VALUATION OF SUIT
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- See WARRANT I L. R. 38 Calc. 769
- See WIFE'S COSTS I L. R. 44 Calc. 35
- See WINDING UP PETITION
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- See WITHDRAWAL OF SUIT
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- See WRITTEN STATEMENT
I L. R. 42 Calc. 957
- Assignment of decree—notice—
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See CIVIL PROCEDURE CODE (1908) O
XXI s 16 5 Pat. L. J 390
- appeal Presentation of out of time—
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15^o I L. R. 43 Bom. 376
- as to mode of proof—
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- award of Court—
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- deaf and dumb accused—
See CRIMINAL PROCEDURE CODE (ACT V
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I L. R. 40 Bom. 598
- delay in filing process fees—
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- appointment of guardian—Court's
power to pass order regarding marriage pend-
ing appointment—
See GUARDIANS AND WARDEN ACT (VIII
of 1890) ss 12 43 and 47
I L. R. 44 Bom. 690
- Order in personam against a party
residing out of the Court's jurisdiction—
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- documents relied on by plaintiff
should be produced in Court along with the
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Insolvency—Appearance of the insolvent to obtain a final order of discharge—

See *PRESIDENCY TOWNS INSOLVENCY ACT* (III of 1909), ss 38 (b) AND 52 (2) (a)
I. L. R. 44 Bom. 555

Interest on overdraft—Implied contract to pay—

See *BANKERS*. I. L. R. 44 Bom. 474

Joint possession—Suit for recovery of—

See *CIVIL PROCEDURE CODE*, 1908, O XXI, r. 35. I. L. R. 34 All. 150

Execution of decree—Second Appeal—

See *CIVIL PROCEDURE CODE*, 1908, ss 47 AND 104 (2), O XXI, r. 80
I. L. R. 44 Bom. 472

Parties to appeal—

See *CIVIL PROCEDURE CODE*, 1908, O XXI, r. 60. I. L. R. 44 Bom. 880

Publication of proceedings in pending cases—

See *CONTEMPT OF COURT*
I. L. R. 44 Bom. 443

Right to worship in a temple and to carry processions through public streets, suit whether of a civil nature—

See *CIVIL PROCEDURE CODE* 1908, s. 9
I. L. R. 44 Bom. 410

Revision—Whether application should be to Sessions or District Judge—

See *CRIMINAL PROCEDURE CODE* s. 475.
I. L. R. 43 All. 497

Suit against a Receiver—application for leave—amendment of plaint—

See *HIGH COURT* I. L. R. 44 Bom. 903

Suit for possession—Conversion to suit for redemption—

See *CIVIL PROCEDURE CODE* 1908 O VI, r. 17. I. L. R. 44 Bom. 515

Commissioners appointed by Court to examine arbitration award—

See *CIVIL PROCEDURE CODE*, 1908, SCH. II, PARA 12 (f) AND (c)
I. L. R. 45 Bom. 512

Third party proceedings (Summons for directions)—

See *LETTERS PATENT*, 1861, cl. 15
I. L. R. 45 Bom. 428

Filing objections to arbitration award—

See *CIVIL PROCEDURE CODE* (ACT V OF 1908) s. 115 SCH II PARA 16
I. L. R. 45 Bom. 832

Summary eviction for Breach of condition of the grant—

See *BOMBAY LAND REVENUE CODE* (BOM. ACT V OF 1879) ss. 68 79A
I. L. R. 45 Bom. 920

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Reference to High Court under Bombay Revenue Jurisdiction Act—Taxation of Costs—Power of High Court to give direction as to how costs should be taxed—

See *BOMBAY REVENUE JURISDICTION ACT* (X OF 1876), s. 12
I. L. R. 45 Bom. 1177

Minor—Purchase from—

See *PARTITION SUIT*
I. L. R. 45 Bom. 983

Reference to arbitration after suit without intervention of Court—

See *CIVIL PROCEDURE CODE* 1908, O XXIII r. 3, O VIII, RR 8 AND 9 AND SCH II, PARAS 1 to 17, 20 AND 21
I. L. R. 45 Bom. 245

Claim by a Parsi wife for Costs—

See *PRESIDENCY SMALL CAUSE COURTS ACT* (XV OF 1882)
I. L. R. 45 Bom. 318

Consent order for extension of time—

See *ARBITRATION*
I. L. R. 45 Bom. 1071

Decree—Application to set aside sale by Collector—

See *BOMBAY HIGH COURT CIVIL CIRCULARS*, p. 106 n. 17
I. L. R. 45 Bom. 1132

Inherent powers of Court to re-admit appeals—

See *CIVIL PROCEDURE CODE*, 1908, s. 151, AND O XII r. 19
I. L. R. 45 Bom. 648

Mistake—Discovery of—when first Court's decree was passed—

See *LIMITATION ACT* 1908, SCH I, ART 96
I. L. R. 45 Bom. 582

Preliminary issue—

See *CIVIL PROCEDURE CODE*, 1908 ss 97 AND 2. I. L. R. 45 Bom. 827

Summons case—Magistrate to examine accused—

See *CRIMINAL PROCEDURE CODE* (ACT V OF 1898) s. 342
I. L. R. 45 Bom. 872

Trial of an offence with the aid of assessors—

See *CRIMINAL PROCEDURE CODE* (ACT V OF 1898) s. 234.
I. L. R. 45 Bom. 619

1. Analogous appeals Two analogous appeals were preferred against the decisions of the Subordinate Judge and the District Judge respectively. In remanding the cases the High Court directed both cases to be tried by the District Judge. *MAHJUDDIN SANDAS : ABTOOSH CHUKKIBUTTY* (1910) 14 C. W. N. 352

2. Arbitration—Order of Judge refusing to decide whether arbitrators are going beyond scope of their authority—Judgment—Appeal—Construction of submission to arbitration—Insurance against fire—Liability of Company for further loss—Letters Patent 1865, cl. 15 The fact that a

PRACTICE—contd.

petition by nineteen different Companies was not signed by all the nineteen Companies and that the appeal from the order of the Judge dismissing the petition was by but one of the nineteen Companies, and the other Companies were not parties to it, would have required serious consideration if the Court had to revoke the submission to arbitration but when the order which the Court passes is only an intimation to the arbitrators of its opinion on the question of their jurisdiction it is immaterial whether all or some of the Companies are formally parties to the proceedings in appeal. As to the objection that even so far as the petition is by one Company, it is signed by one of its officers without any authorisation as required by law, the defect is a mere irregularity which can be cured, if necessary, by the Company putting in a power of attorney showing the authority given to a signatory ATLAS ASSURANCE COMPANY, LD v ARNESTHOF HARBOR (1908) L. L. R. 34 Bom. 1

3. — **Compromise—Court—Inherent powers—Compromise accepted by pleader not specially authorised in that behalf—Decree in terms of compromise—Decree set aside** In the course of a suit, a compromise was presented which was signed by the defendants' pleader who was not specially authorised in that behalf. The Court passed a decree in terms of the compromise. The defendant then applied to the Court to set aside the decree on the ground that he did not engage the pleader and that he had not authorised the pleader to compromise the suit. The Court set aside the decree and set down the suit for hearing. *Held* that it is the inherent power of every Court to correct its own proceedings where it has been misled. *Held* also, that, under the circumstances, the compromise was not binding upon the defendant and the decree passed upon it was void as to him BASANDOWA v CHIRAKKIDOWA (1910) L. L. R. 24 Bom. 408

4. — **Decree, amendment of—Decree not conformable to what the Court intended—Inherent power of Courts in India—Attachment, setting aside of—Sheriff's right to Poundage—Civil Procedure Code (Act V of 1908), s 152** The Courts in India have an inherent power to amend or vary decrees so as to bring them into accordance with the judgments, after they are signed by the Judges, even if they do not fall within s 152 of the Civil Procedure Code (Act V of 1908). *In re Swett, 29 Cal 2 239*, referred to *Ainsworth v Harding, [1898] 1 CA 673*, distinguished. The Sheriff is only entitled to poundage on sums levied; so where a seizure is wrongful and is withdrawn by direction of law, the Sheriff receives no poundage. *Mortimore v Cragg, 3 C. P. D 216*. *In re Ludmore, 13 Q B D 415*, and *In re Thomas, [1899] 1 Q B 460*, followed. *Prabhakar v Jayaraman* (1910) L. L. R. 37 Cal. 643

5. — **Decree, modification of the terms of, after appeal—Jurisdiction—Appellate Court, powers of—Civil Procedure Code (Act V of 1908), s 113** S 148 of the Civil Procedure Code, 1908, cannot be taken to give any Court power to interfere with or modify its decree after there has been an appeal filed against the decree. The only Court that could, after an appeal had been preferred, modify the terms of the decrees, or extend the time fixed in the decree for its execution, or suspend the order made in

PRACTICE—contd.

the decrees, would be the Appellate Court. *PARMA KAND DAS v KATRASINDHU ROR* (1909) L. L. R. 37 Cal. 848

6. — **Plaint, amendment of—Set against defendant on ground which failed not to be decreed on another ground—Application for leave to amend plaint after arguments heard in appeal disallowed—Res judicata** A suit brought against the defendants on one ground which fails should not be decreed against them on another ground which they had no opportunity of meeting. After arguments in appeal have been heard, the Court will not allow an amendment of the plaint so as to convert a suit of one character into a suit of a substantially different character. *If* filed a suit in 1904 against A and J, the drawer and indorser respectively of two hundies. At the time of filing the suit J was *ad. If* obtained a decree against both defendants, which decree remained unsatisfied. In 1905 *If* filed a suit against the heirs of J on the same two hundies. *Held*, that the earlier suit having been filed against the firm of J and not against J personally, was a bar to the later suit. *BAYARAI v HARI NOOK MAROMED* (1908) L. L. R. 35 Bom. 244

7. — **Reference under Legal Practitioners' Act—Jurisdiction—Legal Practitioners' Act (XI of 1879), ss 13, 14—Division Bench, jurisdiction of, to hear reference under the Act from subordinate Courts** According to a long and undeviating course of practice, which may be regarded as the law of the Court, a Division Bench appointed to dispose of the civil business arising out of a particular group, has power to hear and dispose of a reference, under s 14 of the Legal Practitioners' Act, by the Presiding Officer of a Court within that Group. *ANISAW CHANDRA MOTTRA, In re* (1909) L. L. R. 37 Cal. 173

8. — **"Same transaction"—Civil Procedure Code (Act V of 1908), O 1, r 3, O 11, r 3—Grades of several defendants in one suit—"Same act or transaction"—"Series of acts or transactions"** In reading O 1, r 3, of the Civil Procedure Code (Act V of 1908), it seems quite obvious that the word "same" which precedes the words "acts or transaction" governs also the words "series of acts or transactions" and must be read before those words also. The first condition to be fulfilled before joining several persons as co-defendants in the same suit is that the right to relief sought in the suit must arise against all the defendants from the same act or transaction or from the same series of acts or transactions. The second condition to be fulfilled under the rule is that some common question either of fact or law should arise against the defendants if separate suits were brought against such persons. Before a plaintiff can join several defendants in the same suit both the conditions laid down in the rule must be fulfilled. *First*, the relief sought against the defendants whether jointly, severally or in the alternative, must arise from the same act or transaction or the same series of acts or transactions. And, *secondly*, there must arise between the plaintiff and all the defendants some common question of law or fact. The plaintiff may in one action unite several causes of action against several defendants provided that all such defendants are "jointly liable in respect of each and all of such causes of action" and that the condition precedent to the plaintiff being allowed to

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join several causes of action against several defendants is that such defendants must all "have a joint interest in the main question raised by the litigation" and that causes of action joined in one suit against several defendants must be causes of action in which "the defendants are all jointly interested." It is not necessary that every defendant should be interested as to all the reliefs claimed in the suit but it is necessary that there must be a cause of action in which all the defendants are more or less interested although the relief asked against them may vary *UMRAI v BHAI BALWANT* (1903)

L. L. R. 34 Bom. 358

9. ——— **Third-party procedure—Directions, refusal to give—Discretion** The general principle on which a Court will issue third party directions is:—(i) that there must be a clear case of contribution or indemnity from the third party, (ii) that all the disputes arising out of a transaction as between the plaintiff and the defendant and between the defendant and a third party can be tried and settled in one suit, and (iii) that in cases of contract and sub-contract it must appear that the contract between the plaintiff and the defendant has been imported into the contract between the defendant and the third party. Under the rules now in force, the third party cannot be cited so as to be bound by the trial of one particular question which is identical as between the plaintiff and the defendant and as between the defendant and the third party *Barter v France* (No. 2), (1895) 1 Q B 591, followed. *W & A. GRAHAM & Co., v CHUNILAL HANILAL & Co* (1909)

L. L. R. 34 Bom. 423

10. ——— **Vakil's right to appear before a Judge sitting on the Original Side of the High Court—Application to file warrant of attorney—Extraordinary Civil Jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 635—Civil Procedure Code (Act V of 1908) s. 119, 129** A vakil of the High Court applied before a Judge sitting on the Original Side of the Court, claiming a right to file a warrant of attorney in respect of a suit pending before the Madras District Court, in which a rule had been issued calling upon the plaintiffs to show cause why the suit should not be transferred to the High Court in its Extraordinary Original Civil Jurisdiction. *Held*, that having regard to the long-continued course of practice during which vakils never appeared on the hearing of such applications, the present application should be refused. *Held further*, that the Civil Procedure Code of 1908 has nothing to do with a matter governed by old rules in force before 1909. *JAY A VAKIL'S APPLICATION* (1910)

I. L. R. 37 Calc. 853

11. ——— **Raising of Issues.** The practice of raising a number of issues which do not state the main questions in the suit but only various subsidiary matters of fact upon which there is not agreement between the parties is very embarrassing. Issues should be confined to questions of law arising on the pleadings and such questions of fact as it would be necessary for the Judge to frame for decision by the jury in a jury trial at nisi prius in England. *WEST END WATCH COMPANY v BENSA WATCH COMPANY* (1910)

L. L. R. 35 Bom. 425

12. ——— **Redemption suit—Second suit an ejectment—Res judicata—Court—Discretion—**

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ejectment suit a decree for redemption can be passed—Civil Procedure Code (Act V of 1908), s. 11 Expl. IV. It is the practice of the Bombay High Court to pass a decree for redemption in a case in which the plaintiff has sued in ejectment. That is purely in the exercise of the Court's discretionary power, and it can hardly be maintained that the plaintiff failing in an ejectment suit ought to pray for the alternative relief by way of redemption, when the Court is not bound to grant it as a matter of right. *MAHOMED IERA HIM v SHEIKH HAMJA* (1911)

L. L. R. 25 Bom. 507

13. ——— **Local Inspection—Subordinate Judge—Personal view of disputed premises—Appreciation of evidence based on the personal view** The plaintiff, in a suit to establish easement of passing his rain water over the defendant's field, tried to make out his right by the evidence of his witnesses who deposed that the passage for the rain water had all along existed and was still visible to the eye. The Subordinate Judge visited the spot in question at the request of both parties, to test the veracity of the witnesses, but, finding that there was no passage at the spot, he dismissed the witnesses and dismissed the suit. On appeal it was contended that the Subordinate Judge had wrongly decided the case, because he had disposed of it not by appreciating the evidence, but by the light of his own view of the passage. *Held* that there was no error in the procedure adopted by the Subordinate Judge. *LAKMI DAS KHUSHAL v BHAIJI KHUSHAL* (1911)

I. L. R. 35 Bom. 31

14. ——— **Security for cost—Infant plaintiff—Civil Procedure Code (Act V of 1908), Sec. 10 XXV r 1** It is not desirable to run any risk of stopping a suit filed on behalf of an infant, which may be a proper suit to bring merely because of some inability on the part of the next friend to give security for costs. *BHAISHANKER AMBHASHANKER v MULJI ASHARAM* (1910)

L. L. R. 35 Bom. 339

15. ——— **Sentence—Magistrate passing non-appealable sentence—Adding to sentence to make it appealable—Appeal to Sessions Judge—The Sessions Judge to entertain the appeal and to decide it on merits—Criminal Procedure Code (Act I of 1898), s. 13** The Magistrate trying a case passed at first a non-appealable sentence on the accused, but at the request of the accused, made an addition to the sentence passed so as to make it appealable. When the accused appealed to the Sessions Judge his appeal was dismissed on the ground that no appeal lay inasmuch as the sentence first passed by the Magistrate was not appealable and the addition to the sentence could not be made legally. In revision. *Held*, that the Sessions Judge had committed an error in holding that he had no jurisdiction to hear the appeal, for though the Magistrate had no jurisdiction to alter the sentence once passed by him, yet for the purposes of the Sessions Judge's jurisdiction, so far as the appeal was concerned that was the very mistake which he was called upon to correct by way of appeal. When the appeal was heard again by the Sessions Judge he struck out the addition made by the Magistrate in the sentence, and having done that, dismissed the appeal on the ground that the sentence appealed from was not appealable. In

PRACTICE—contd.

revision. *Held*, that when the Magistrate had passed a sentence beyond one month, an appeal lay to the Sessions Judge, under s. 413 of the Criminal Procedure Code whether that sentence was passed legally or illegally. *Held* also, that the Sessions Judge being once seized of the appeal the whole appeal became open to his Court, even on merits. **EMPEROR v KASHAVALL VIRCHAND (1911)** I. L. R. 35 Bom. 418

16. ———— **Service of summons—Procedure—Civil Procedure Code (Act V of 1908), O V r 25—Service of summons by registered post on defendant residing out of British India—Summons returned marked "Refused to take—General Clauses Act (V of 1897) s 27** A summons was sent by registered post addressed to the first defendant at Navalgur in the State of Jaipur and purported to be sent in accordance with the provisions of O V r 25 of the Civil Procedure Code (Act V of 1908). The cover was returned with an endorsement in the vernacular which was translated as follows:— "Refused to take. The handwriting of Chunial, postman." *Held*, that, as it appeared that the cover was properly addressed to the first defendant and had been registered, duly stamped and posted the Court was entitled to draw the inference indicated in s. 27 of the General Clauses Act and to hold that there was sufficient service. *Per Curiam*. The only rule if it can be called a rule to be laid down, is that the Court must be guided in each case by its special circumstances as to how far it will give effect to a return of a cover enforced "refused" or words to the like effect. **Jayant Nath Brakbhau v J E Sassoon I L R 18 Bom. 606** distinguished. **BALRAM RAMKISSEY v HAI PANNABAI (1910)** I. L. R. 35 Bom. 213

17. ———— **Setting aside consent decree** A consent decree once duly obtained cannot be set aside by a rule, but if it is sought to impeach it upon grounds of fraud, that must be done in a regular suit. The only alternative which the law allows is an application for review of judgment. **FATKABAI v SONBAI (1911)**

I. L. R. 36 Bom. 77

18. ———— **Appellate Court, duty of—Defective judgment—Omission to consider the defence evidence in a bad livelihood case—Criminal Procedure Code (Act V of 1898), ss 110 118 367 and 424** It is the duty of the Appellate Court, on an appeal from an order under ss 110 and 118 of the Criminal Procedure Code, to look into the evidence for the defence, and after dealing with it to come to a decision thereon, notwithstanding that the counsel for the appellant has practically ignored it during his arguments. **TIPOT HOSSEIN v EMPEROR (1912)** I. L. R. 40 Cal. 376

19. ———— **Criminal Proceedings—Special Leave to Appeal—Limit of jurisdiction—Leave to appeal from convictions and sentences on the grounds of alleged irregular conduct of the proceedings misdirection to the jury, and misrecapitulation of evidence refused, the case not coming within the principle as laid down in *Ja re Dillet*, 12 App Cas, 439** **CLIFFORD v KING EMPEROR (1913)** I. L. R. 40 I. A. 241

20. ———— **Magistrate cannot invite District Magistrate's opinion** While a Magistrate was trying a case, a question arose whether the accused was amenable to his jurisdiction

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The Magistrate felt himself doubtful on the question and he referred it to the District Magistrate for opinion. On receipt of the opinion he directed the trial to proceed before him. *Held*, that it was not competent to the Magistrate to seek the opinion of the District Magistrate in the way he did, but that he should finish the inquiry and complete the record by the reception of all evidence of relevant facts including the facts which bear upon the question of the accused's amenability to a British Court's jurisdiction, and then consider for himself the question of law arising on those facts. **EMPEROR v ABDUL RAHMAN (1912)** I. L. R. 37 Bom. 144

21. ———— **Evidence—Defendant's right to offer evidence** Where the defendant appears and the plaintiff does not appear or offers no evidence when a suit is called on for hearing, the Court has no jurisdiction except to dismiss the suit for want of prosecution; the defendant is not entitled to have his evidence heard before the suit is dismissed. *Ex parte Jacobson*, L. R. 22, Ch. D 312, distinguished. **KESHI CHAND v NATIONAL JUTE MILLS CO (1912)** I. L. R. 40 Cal. 119

22. ———— **Cause of action—Promissory Note—Consideration for Note—Separate Causes of Action—Ceylon Civil Procedure Code (Ordinance II of 1889), s 34** S 34 of the Ceylon Civil Procedure Code, 1889 (which is in the same terms as the Indian Code of Civil Procedure, 1908, O 2, r 2), provides that every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, and that a plaintiff cannot afterwards sue for a part of the claim omitted from an action, or (without leave) for another remedy for the same cause of action. The respondent sued upon promissory notes, but the action failed owing to a material alteration in the notes. He afterwards sued to recover a part of the consideration for which the promissory notes had been given. *Held*, that although the claims in the two actions arose out of the same transaction, they were in respect of different causes of action, and that, consequently, the second action was not brought contrary to s 34 of the Code and could be maintained. **PATANA REXA SAMIYATHAN v PANA LANA PALANIAPPA (1913)** L. R. 41 I. A. 142 18 C W N 617

23. ———— **Withdrawal of suit—Material irregularity—Revision—High Court, power of—Civil Procedure Code (Act V of 1908), s 115—High Courts Act, 1861, s 15** In a suit to set aside a revenue sale the evidence on both sides had been heard, the plaint amended during such evidence the arguments of both parties completed, the case closed and the judgment reserved. The plaintiffs then applied for leave to withdraw the suit with liberty to bring a fresh suit on the same cause of action. This application was granted on the ground of formal defects. The plaintiffs, subsequently, instituted a fresh suit. Thereupon, the defendant moved the High Court to set aside the order and obtained a Rule. *Held*, that the High Court had no power to deal with this case under s 115 of the Code of Civil Procedure. **Kharda Co., Ltd. v Durga Charan Chandra, 11 C L J 45, Dick v Dick, 1 L R 15 All 169, and Tumpkin v Mutu 1 L. R. 11 Mod 322, distinguished.** **BANSI SINGH v KISHAN LALL THAKUR (1913)** I. L. R. 41 Cal. 632

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24. — **Admission of fresh evidence—Appellate Court—Civil Procedure Code (Act V of 1908), O XXI, r 27** Where an Appellate Court desires to admit fresh papers in evidence, under r 27 of O XXI of the Civil Procedure Code (Act V of 1908), it must record its reasons in writing for doing so and admit them formally in evidence. **DAJI BABAJI v SAKHARAM KRISHNA (1914)**

I L R. 38 Bom. 885

25. — **Previous conviction—Relevancy of previous conviction for the purpose of determining extent of sentence—Indian Penal Code (Act XLV of 1860), s 75—Indian Evidence Act (I of 1872), s 54, 165** The proof of a previous conviction not contemplated by s 75 of the Indian Penal Code may be adduced after the accused is found guilty, as an element to be taken into consideration in awarding punishment. **Per SMITH, J.**—The proof of a previous conviction not contemplated by s 75 of the Indian Penal Code may be adduced provided the previous conviction is relevant under the Indian Evidence Act. The whole question, therefore, is whether the previous conviction in question is relevant under the Act. It is certainly relevant with reference to the question whether the provisions of s 562 of the Code of Criminal Procedure would apply to this case, and it seems to me to be otherwise relevant on the question of punishment. **EMPEROR v ISMAIL ALI BHAI (1914)** I L R. 39 Bom. 326

26. — **Reference for Assessment of damages—A reference should be directed by the Court to assess damages only when the enquiry would involve questions of detail which it would be wasting the time of the Court to investigate.** **Wallis v Sayers, 6 T L R 356**, referred to **D N GHOSH & BROS v POPAT NARAYAN BROS (1915)** I L R. 42 Calc. 819

27. — **Execution of decrees—Civil Procedure Code (Act V of 1908) O XXI, r 41—Judgment-debtor, examination of—Application by judgment-debtor to have order for examination set aside.** An application under O XXI, r 41, of the Civil Procedure Code, 1908, made *ex parte* on a verified tabular statement, is in order. The judgment-debtor is entitled to be heard to have such order set aside, but he should apply on summons. The object of O XXI, r 41 is to obtain discovery for purposes of execution to avoid unnecessary trouble in obtaining satisfaction of money decrees. Although an order for personal examination is likely to operate harshly and cause unnecessary harassment and obviously ought not to be made unless the Court is satisfied about the bona fides of the application and its urgent necessity, still such applications may be usefully encouraged to prevent unduly dilatory, troublesome and expensive execution proceedings. **In re Premji Trikumdas, I L P 11 Bom 514**, referred to **NATIONAL BANK OF INDIA, Ltd v A K. GRUVAYI (1915)** I L R. 43 Calc 235

28. — **Charge to jury—Misdirection—Omission to direct jury on points falling in accused's favour—High Court—Interference—Statements made by accused before Committing Magistrate—Admissibility—Criminal Procedure Code (Act V of 1898), s 237—Indian Evidence Act (I of 1872), s 24—Person in authority—Police Officer arresting the accused.** The High Court will interfere in those cases where it is made to apear that the Sessions Judge has prejudiced the accused

PRACTICE—contd

by omitting from his charge to the jury points of capital importance telling in accused's favour. The phrase "a person in authority" in s 24 of the Indian Evidence Act would include the Police Officer who arrests one of the persons accused of the offence. **Quere** Whether the statement made by an accused before the Committing Magistrate is governed by s 237 of the Criminal Procedure Code or by s 24 of the Indian Evidence Act. **EMPEROR v FAKIRA APFYA (1915)**

I L R. 40 Bom. 220

29. — **Partition Suit—Parties—Review—Civil Procedure Code (Act V of 1908), s 152, O XLVII, r 1—Partition of undivided share—Fraudulent representation** Where the mortgagees of the plaintiff's share in a partition suit applied (i) to be added as parties to the suit, and (ii) for revocation of an order made by another Judge directing a sale of the one-fourth share of certain premises which is one of the properties to be partitioned in the suit on the ground that the conduct of the mortgagors and their attorneys was fraudulent and that the said order was made without jurisdiction. **Held**, that one Judge cannot set aside an order made by another Judge, even though the order be wrong. The remedy lies in review on the ground set out in O XLVII, r 1. **Sharup Chant Mala v Pat Dassee I L R 14 Calc 627, Jatra Mohun Sen v Aukhil Chandra Choudhury, I L R 24 Calc 331**, referred to **BASANTA KUMAR DAS v KUSUM KUMARI DAS (1916)** I L R. 44 Calc 23

30. — **Suit filed by an agent on behalf of an absent plaintiff—Objection raised as to authority of agent—Duty of Court in which plaint is presented.** In the case of a suit filed by an agent on behalf of an absent plaintiff, where the authority of the plaintiff to have a suit brought at all and to allow his name to be used as a plaintiff in the case is seriously questioned, that is a matter of principle which it is a Court's duty to decide, and unless it is shown that the plaintiff has in fact authorized the suit, either expressly or impliedly, a Court ought not to grant a decree in his favour. But where authority has been given by the plaintiff in some form or another, and the question is whether the agent has complied with the rules as laid down in the Code of Civil Procedure, that is not a question of principle at all, but a question of practice and procedure. It is the first Court's business to see that the rules are complied with and it should not leave the investigation of that question to the Appellate Court. But a suit should not be dismissed without the party who has failed to comply with the rules of procedure being given an opportunity of correcting the defect in procedure, if there be any. **RAMAN LALJI v GORUL NATHJI (1917)**

I L R. 39 All 343

31. — **Modification of Order—Order of Judge on Original Side of the High Court—Jurisdiction to modify order before formally drawing up the order.** A Judge on the Original Side of the High Court has jurisdiction to modify the minutes of an order before the formal order is drawn up. **MAHBOOB BI v SHERIFA BI (1918)**

I L R. 42 Mad. 268

32. — **Judgment containing remarks against a person who is neither party nor witness.** It is very undesirable that a Judge

PRACTICE—contd

or Magistrate should make remarks which are prejudicial to the character of a person who is neither a party nor a witness in the proceeding before him, and who has therefore no opportunity of giving an explanation or defending himself against the remarks made by the Court. *In re HOLIBASSARPA* (1929) 1 L. R. 45 Bom 1127

33. ————— Probate and Administration proceedings—Appeals—Rules of the High Court 35, 36, 38—Fees payable to legal practitioners in appeals from orders granting or refusing probate or letters of administration: the fee allowable to a legal practitioner is regulated by rule 38 and not by rr. 35 and 36 of the Appellate Side Rules of the High Court. *SIDHA CHETTY v VENKA SAKOTA CHETTY* (1920) 1 L. R. 43 Mad. 232

34. ————— Revision—Application to the High Court to revise a proceeding under s. 131 Criminal Procedure Code without moving the Judge in the first instance—Criminal Procedure Code (Act I of 1898) ss. 435, 438, 439. It is not the practice of the High Court to entertain an application in revision against an order made by a Magistrate in a proceeding under s. 133 of the Criminal Procedure Code unless the party aggrieved has first moved the Sessions Judge under ss. 430 and 434. *RASH BEHARY SAHA v PHANI BURHAN HALDAR* (1920) 1 L. R. 43 Calo. 534

35. ————— Judicial Committee—Compromise of Appeal—Parties not *sub jure*—Certificate of High Court. When a person not *sub jure* is a party to an appeal to His Majesty in Council and, an agreement by way of compromise having been made, it is desired to obtain leave to withdraw the appeal the regular and usual course is to obtain a certificate from the High Court from which the appeal is preferred that the agreement is for the benefit of that party. It is only in rare cases that the Judicial Committee will itself make the necessary inquiries and grant leave without a certificate, as was done in *Salimbas v Shrinibas*, 1 L. R. 47 I. A. 89. *GORINDA CHANDRA PAL v KAILASH CHANDRA PAL* (1921) 1 L. R. 48 Calo. 894

36. ————— Peremptory order dismissing action—Order dismissing action in default of condition precedent—Difference—Order not completed or filed, effect of, on suit. On the suit coming for hearing on the 10th April 1919 it was ordered that it be adjourned to the 1st June 1919 that the plaintiff was to pay to day's costs and was to pay Rs. 200 as a condition precedent before the 1st June to the defendant's attorney, refundable on taxation of bills, and that in default the suit would be dismissed with costs and no further adjournment would be granted. This order was never drawn up or filed. The suit came up again on the 25th June 1919, when it was adjourned though opposed on the ground that the suit could not proceed, on an application of the surviving plaintiff to enable substitution in respect of one of the plaintiffs, who had died on the 28th June 1919. On the 25th August 1919, the surviving plaintiff obtained an *ex parte* order recording the death of the deceased plaintiff. On the 13th January 1921, when the suit was on the Special List plaintiffs applied that it would be placed in the Prospective List. It was contended on behalf of the defendants that the suit was dead. *Held* that irrespective of subsequent proceedings or any question of drawing

PRACTICE—contd

up of the order, and in the absence of any appeal from the order, the dismissal would be from the date of the order had it contained the words 'in default the suit will stand dismissed' but in the terms of the order of the 10th April 1919, continuing conditions precedent, a further order of the Court was necessary before the suit was dead. *SENHATA v KRISTO MOHON SRAW* (1921) 1 L. R. 48 Calo. 902

PRADHAN

————— Status of in Santal Parganas—tenants induced by pradhan, whether can set up adverse possession as against the landlord. Although a pradhan in the Santal Parganas is not a tenant holder as defined in the Bengal Tenancy Act he has all the attributes of a tenant holder and tenants induced on to the land by him cannot acquire title by adverse possession as against the landlord. *RAM CHARAN SINGH v L. W. BERRY* 5 Pat. L. J. 656

————— pre-emption—mukar: interest sale of—whether right of pre-emption arises. The doctrine of pre-emption applied only to the sale of the proprietary interest and therefore, does not apply to the sale of the mukarrar interest. *SHAHID MOHAMMAD JAMIL v KHUSAL RAUT* 5 Pat. L. J. 740

PRAGWAL

————— Right of pragwal to exclusive use of a flag of a certain design—Suit for injunction—Birla jaymani. *Held*, that a pragwal may acquire a right to the use of a flag of a particular design so as to enable him to sue for an injunction against any other pragwal making use of a flag with a similar design for the purpose of diverting pilgrims from the original owner. *Ganesh v Dabhi Ram* 1 L. R. 37 All. 72 referred to. *BENT MADHO PRAGWAL v JIMA LAL* 1 L. R. 43 All. 20

PRAYERS

See CIVIL PROCEDURE CODE 1908, s. 92
1 L. R. 36 Bom. 168

PREAMBLE.

See CONSTRUCTION OF STATUTES
20 C. W. N. 1158

PRE-EMPTION

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See BUNDELAH ALIENATION ACT (II OF 1903) s. 3 1 L. R. 37 All. 662

See CIVIL PROCEDURE CODE 1908, ss. 2, 104, 143 1 L. R. 35 All. 582

See CIVIL PROCEDURE CODE 1908, O. XVI s. 88 1 L. R. 35 All. 296

PRE-EMPTION—contd.

See COURT FEES ACT (VII OF 1870), s 7
CLS (v) and (vi)

See HINDU LAW—JOINT FAMILY
I L R. 35 ALL 564

See LETTERS PATENT, s 10
I L R. 34 ALL 13

See LIMITATION ACT (IX OF 1908) s. 4
I L R. 41 ALL 47

See MAHOMEDAN LAW—PRE EMPTION

See PRADHAN
5 Pat. L. J. 740

See TRANSFER OF PROPERTY ACT, 1882
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See CIVIL PROCEDURE CODE 1882 s. 368,
I L R. 32 ALL 301

— In respect of sale effected by com-
promise in a suit for land—

I L R. 1 Lab. 109

— Extension of time for payment of
purchase money—

See CIVIL PROCEDURE CODE, 1908,
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O XX, N 14 . . . 1 Pat. L. J. 92

right of—

See LIMITATION ACT (IX OF 1908) SEC I,
ART 120 I L R. 38 Mad. 67

See MAHOMEDAN LAW—PRE EMPTION
I L R. 33 Bom. 183

Registration—Whether sale com-
plete without—

See TRANSFER OF PROPERTY ACT, 1882,
s 54 . . . 1 Pat. L. J. 174

suit for—

See COURT FEES ACT (VII OF 1870)
s 7 (vi) I L R. 40 ALL 353

CONTRACT

— Rule against Perpetuities—Promisor,
heirs of, not enforceable against—Perpetuities, rule
of, applicable to Hindu law also A contract of
pre-emption (with reference to sale of lands),
which fixes no time within which the agreement
to convey is to be performed cannot be enforced
against the heirs of the person who entered into
the contract as it infringes the rule against per-
petuities The rule of perpetuities is applicable
to Hindus also *Nabin Chandra Soot v Nabin*
Chandra Sarna & C W N 343, followed *KOLATHU*
AYYAR v RANGA VADRYAN (1912)

I L R. 38 Mad. 114

— Held, that an option
to arise on any intended sale or other alienation
is subject to the rule against perpetuities *NABIN*
CHANDRA SARMA v RAJANI CHANDRA CHAKRA
PARTY . . . 25 C W. N. 902

CUSTOM

See PRE-EMPTION—WAJIB UL-AZAR

See CUSTOM

1. — Nature of evidence
required to establish a custom of pre-emption The

PRE-EMPTION—contd**CUSTOM—contd.**

plaintiffs claimed a right, based upon contract
or custom, to pre-empt a sale of zamindari prop-
erty The property was situated in one of the
three mahals of a village named Suram The
plaintiffs were not co-sharers with the vendors in
that mahal the vendees were strangers In 1873
the village Suram consisted of a single mahal
and the village *wajib ul arz* of that date con-
tained the following reference to pre-emption—
'In future if any *patidar* wishes to transfer
his share by sale to a stranger

first, the sharers in the *patlikhas*,
then *patidars* in the *thok*, and then *d gar*
patidarani deh shall have a right to purchase'
In 1883 perfect partition took place, and the
village was divided into three separate mahals
A fresh *wajib ul arz* was drawn up for each of
the new mahals but in each the provisions regard-
ing pre-emption were copied verbatim from the
wajib ul arz of 1873 Held (i) that the plaintiffs
had failed to establish any right of pre-emption
based on contract, (ii) that the oral evidence
was worthless as supporting the custom set up
by the plaintiffs, and (iii) that the evidence
afforded by the *wajib ul arzes* of 1873 and 1883
was quite insufficient to establish the right claimed
by the plaintiffs if such right was to be regarded
as one based on an alleged custom *Dalgajyan*
Singh v Kalka Singh, I L R 22 All 1, referred
to *Auseri Lal v Ram Bhayan Lal* I L R
27 All 602, and *Sardar Singh v Iyaz Hussain*
Khan I L R 28 All 614, discussed *GANGA*
SINGH v CHEDI LAL (1911)

I L R. 33 ALL 605

2. — *Wajib ul arz*—
Custom or contract—Construction of document—
Regulation VII of 1832 In a suit for pre-
emption *wajib ul arzes* of 1830 and 1869 were
produced The preamble to the former was
worded thus—'Having well understood the
following matters we willingly accept them.
It then dealt with the right of pre-emption in
the following terms—'Mode of sale or transfer
of whole or part of share giving the right of
pre-emption to co-sharers as against strangers
and concluded with the words 'therefore we
write this *agarnama* so that it may be of use
in future' The *wajib ul arz* of 1869 provided
that 'near co-sharers and other *patidars* would
have the right of pre-emption Preference
amongst them would be according to degree of
nearness'—Held (STANLEY, C J, dissenting)
that the *wajib ul arzes* contained the record of
custom and not of contract Per STANLEY,
C J—A custom to be binding must be unaltered,
uniform constant and definite If the settlement
of 1833 recorded a custom then the co-sharers
in the village at the time of the later settlement
of 1869 must be deemed to have abrogated it
and to have adopted by agreement the right of
pre-emption which is recorded in the later *wajib*
ul arz as more suitable to the then existing con-
ditions The variance in the rights as defined
in two *wajib ul arzes* leads to the conclusion
that the right recorded in 1869, cannot be treated
as a right existing by custom Per KNOX and
CHAMBER JJ—The word *agrar* does not neces-
sarily mean a contract It means ratification or
assent *RETURAJI DUBAIN, v PAHALWAN BHAGAT*
(1910) . . . I L R. 33 ALL 198

PRE-EMPTION—*contd*CUSTOM—*contd*

3 ———— *Custom—Wajib ul-urz—Owner of isolated revenue free plots—Evidence of custom* The pre-emptive clause of a *wajib ul-urz* contained the following provisions:—

If the owner of a share wish to sell it he shall do so first to his near relation, who may be a co-sharer in the zamindari and in case of his refusal to anyone he likes" *Held* that this by itself was not sufficient evidence of a custom giving owners of isolated revenue free plots of land in the village a right to pre-empt. *MAWASI v. MULL CHAND* (1910) I L R. 34 ALL 434

4 ———— *Evidence—Sales to strangers unchallenged as evidence negating custom—Mode in which such sales should be proved* Where the Court is trying the issue of the existence or non-existence of a custom of pre-emption, every instance of a sale to a stranger is material evidence which the Court ought to take into consideration and weigh when coming to a conclusion on the issue. But a mere vague statement that there had been sales to strangers without the production of the sale deeds or certified copies thereof and without some further data is of the sale, is not sufficient to prove sales to strangers. *Sewak Singh v. Gurja Pandit*, 2 ALL L J 6 discussed. *JAMAL MISHRA v. RAYGO SINGH* (1913) I L R. 35 ALL 472

5 ———— *Wajib ul-urz—Custom—Effect of perfect partition* The *wajib ul-urz* of an undivided village supported a finding that there existed a custom of pre-emption amongst the co-sharers in the village. Subsequently to the framing of this *wajib ul-urz* a perfect partition of the village took place. *Held* that the basis of such a custom was the coparcenary relation and that after partition a co-sharer in one mahal could not claim pre-emption in respect of property sold in another mahal in which the pre-emptor was not a co-sharer. *Dalgunjan Singh v. Kalita Singh*, I L R 22 ALL 1 and *Ganga Singh v. Cheli Lal* I L R 33 ALL 695 referred to. *MUHAMMAD MAHMOUD ALI KHAN v. RAJENDR NAR DATTAL* (1915) I L R. 33 ALL 27

6 ———— *Custom—Vendor bound to offer to co-sharers—Refusal to purchase—Refusal to give more than a fixed price* The custom in pursuance of which a right of pre-emption was claimed being that the vendor was bound to offer the property for sale to his co-sharer and only in case of their refusal he could sell to a stranger the vendor offered the property in dispute to the pre-emptor who offered only Rs 160 for it and refused to give more. The vendor thereupon sold it for Rs. 235 to the defendants. *Held* that the conduct of the plaintiff amounted to a refusal to purchase the property and the vendor was not obliged to give him the option of taking up the contract which he subsequently made for Rs. 235. *Keshal Lal v. Kalka Prasad*, I L R 47 ALL 670 discussed. *IRONAKI v. BANERJEE CHAKRABARTY* (1915) I L R. 37 ALL 233

7 ———— *Wajib ul-urz—Prevalence—Custom—Finding of fact—Second appeal* In a suit for pre-empt on brought on the basis of custom if the Court considers the proper issue in the case namely whether the custom alleged does or does not exist, and on the evidence

PRE-EMPTION—*contd.*CUSTOM—*contd*

comes to the conclusion that it does not exist, the finding is one of fact and is binding on the High Court in second appeal. *BABU MAL v. TANSEN RAI* (1915) I L R. 37 ALL 524

8 ———— *Custom—Effect on pre-existing custom of village coming to be owned by a single individual* When a mahal in respect of which there exists a custom of pre-emption comes into the ownership of a single individual the effect is to put an end to the custom and not merely that the custom falls into abeyance. *KANHUN NISSA BINI v. SUGRA BINI* (1917) I L R. 39 ALL 450

9 ———— *Wajib ul-urz—Custom—Property to be offered first to a co-sharer* In a pre-emption suit the custom being that a co-sharer wishing to sell his property should first offer it to the other co-sharers, if the vendor goes to the other co-sharers and informs them of his desire to sell, and they decline to purchase on the ground that they have not the means or on any other similar ground, the vendor is at liberty, without violating the custom to sell to a stranger. If however a co-sharer offers to purchase at a particular value the vendor ought not to sell to a stranger at a lower price. *NATURAL SINGH v. RAM PATAN* (1916) I L R. 39 ALL 127

10 ———— *Custom—Wajib ul-urz—Right of pre-emption acquired by means of imperfect partition of the village* There being a pre-existing custom of pre-emption in a village, a right of pre-emption may arise in favour of an individual co-sharer just as much by the creation of a new partition by imperfect partition as by purchase by the co-sharer of a share in the patti. *Mahadeo Prasad Sahu v. Jaipal Raut*, 8 Indian Cases 587 dissented from. *LALTA PRASAD CHAUDHARI v. GOKUL PRASAD* (1918) I L R. 40 ALL 617

11 ———— *Entry in Wajib ul-urz clear and unambiguous—Where there is an entry in the Wajib ul-urz as to the right of pre-emption which is clear and distinct and there is no evidence to the contrary the Court ought, having regard to the prevailing practice to hold that the custom of pre-emption exists*. *FAZAL HUSSAIN v. MUHAMMAD SHARIF* I L R. 36 ALL 471

12 ———— *Partition* The *Wajib ul-urz* of an undivided village afforded evidence of the existence of a custom of pre-emption in the village between co-sharers. Subsequently the village was divided by perfect partition into several mahals each adopting the old custom. *Held* that no right of pre-emption survived as between the different mahals. I L R 33 ALL 605, referred to.

I L R. 41 ALL 426

13 ———— *Hindus in Surat—Pre-emption of agricultural lands—Proof of custom* Though the Hindus in Surat have adopted the Mahomedan law of pre-emption by a long established custom with regard to houses it is an open question whether they have adopted the law with regard to agricultural lands. *JAGJIVAN HANIBHAI v. KALIDAS MEHTA* (1920) I L R. 45 Bom. 604

14 ———— *Held*, that there was a custom of pre-emption existed amongst

PRE-EMPTION—*contd*CUSTOM—*contd*

Hindus in Ahmedabad. *MOTILAL DAYANBHAI v HARILAL MAGANLAL*. I L R 44 Bom. 696

15 ———— *Held*, that in the district of Bulsar when the Ilanah School of Mahomedan Law prevails, neighbours have equal right to pre-empt and there is nothing which is contrary to the principles of justice, equity and good conscience in allowing two neighbours who have equal rights of pre-emption to exercise them *Gokaldas v Parlab* (1916), 18, Bom L R 693, not followed *VITKALDAS KAKHADAS v JANETRAM*. I L R 44 Bom. 887

16 ———— *Custom—Wajib ul arz*—Partition of villages—Old custom adopted in new mahals—Right of pre-emption not surviving as between the new mahals The Wajib ul arz of an undivided village afforded evidence of the existence of a custom of pre-emption in the village between co-sharers Subsequently the village was divided by perfect partition into several mahals and each of the new mahals adopted the old custom *Held*, that no right of pre-emption survived as between the different new mahals *Ganga Singh v Chedi Lal* I L R 33 All 605, referred to *DIXONNANDAN v MAHTAB PAI* (1919) I L R 41 All 426

FORMALITIES.

1 ———— *Mahomedan law*—*Talab-i-shahid* *Held*, that a Mahomedan pre-emptor cannot validly make the talab-i-shahid by letter when he is in a position to do so in person *MUHAMMAD KHALEEL v MUHAMMAD IBRAHIM* (1916) I L R 38 All 201

2 ———— *Suit by Hindu*—*Mahomedan law of sale whether applicable*—*Sale complete, when—Ceremonies necessary before pre-emption compliance with*—S 37, Act XII of 1887 *Per MULLICK, J* There being special custom pleaded a case where pre-emption is claimed by a Hindu must be tried on the principles of justice equity and good conscience under s 37, Act XII of 1887 As a sale is not complete till legal ownership passes no matter whether there has been payment and delivery the pre-emptor's title in the case of a property worth more than Rs 100 does not accrue till after registration It would be against equity, justice and good conscience to apply in such a case the Mahomedan law of sale which is no longer in force and to attach to a mere contract for sale an incident which the Mahomedan lawyers intended to attach only to an actual sale The performance of the two formalities talab-i-mauzibat and talab-i-shahid can be combined but it is essential that the talab-i-shahid should refer expressly to the talab-i-mauzibat as having been duly made *Yamun naran v Ajab Ali Khan* I L R 22 All 343 *Janki v Gajadai*, I L R 7 All 480 *Begum v Muhammad Yakub* I L R 16 All 544 *Jadu Lal Sahu v Janki Koer*, I L R 35 Cal 375 and *Bulhas Sardar v Sonaulah Sardar* 19 C L J 694, s c 18 C W N 899 referred to. *Rox, J*—The test to apply in these cases is was the sale in the eyes of the contracting parties and the pre-emptor, complete If it was it was not necessary for the pre-emptor to wait till

PRE-EMPTION—*contd*FORMALITIES—*contd*

registration before performing the ceremony of *mauzibat* *KHETALI PRASAD v NAZARUL ALAM* (1916) 20 C W. N. 1048

3 ———— *Mahomedan law*—*Talab-i-shahid and talab-i-mauzibat—Observance of both talabs necessary* *Held*, that the performance of the talab-i-shahid is an indispensable preliminary to the enforcement of a right of pre-emption according to the Mahomedan Law *MUHAMMAD AHMAD SAID KHAN v MADHO PRASAD* (1916) I L R 39 All 133

MORTGAGE

1 ———— *Mortgage of property prior to the passing of Act No 21 of 1884—Government revenue paid by mortgagee—Liability of pre-emptor to pay the amount of the revenue as a condition precedent to obtaining possession of property* Under a mortgage deed the mortgagor was liable to pay the Government revenue, and if he failed to do so, the mortgagee was to pay it and was entitled to recover the sum from the mortgagor and his other property The mortgagor failed to pay the revenue which accordingly was paid by the mortgagee Subsequently the property was sold to the mortgagee for the amount of the mortgage plus the amount of the revenue paid by the mortgagee In a suit to pre-empt this sale *Held*, that the pre-emptor was bound to pay the amount paid by the mortgagee for the revenue as a condition precedent to his obtaining possession of the property as well as the amount of the mortgage *EMOR RAS v RAM NARAIN* (1916) I L R 38 All 530

2 ———— *Transfer—Mortgage—Use of the term malkuzat not sufficient to constitute a mortgage* The material portion of a document executed by the borrowers to secure a loan was as follows—We agree that we shall pay annually the interest and in default of payment of interest for two years the creditors shall have the right without waiting for the expiry of the time fixed to file suit and to recover their dues from the property mortgaged (*malkuzat*) and if the creditors make delay in realizing the principal and interest then the aforesaid creditors shall not be entitled to recover their dues under the deed from any other property of myself excepting the property mortgaged (*malkuzat*) A claim for pre-emption was brought based upon this document which was claimed to be a sale or at least a mortgage *Held*, by *PICKARDS C J*, that it was very difficult to distinguish the transaction evidenced by the document in question from what is ordinarily called a simple mortgage On a construction however, of the *wajib ul arz* it was held not to include mortgages which did not involve a change of possession *Held*, by *TRYPALL J*, that the document under consideration did not amount to a mortgage, but at most constituted a charge on the property referred to there in *Dalip Singh v Eshadur Ram*, I L R 24 All 416 referred to *KHETERNAD ALI v ABDUL MAJID* (1916) I L R 38 All 361

POSSESSION.

—*Purchaser's possession and right to rents and profits continue until full pre-emption price is*

PRE-EMPTION—*contd*POSSESSION—*contd*.

paid—Civil Procedure Code, 1882, s. 211—Mahomedan law of pre-emption—Change of possession under decree. If a claim to pre-emption be disputed, and a suit must be brought, the rights of the parties are regulated by s. 211 of the Code of Civil Procedure, which in this respect embodies the principle of the Mahomedan Law. That section enacts that "When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase money has not been paid into Court the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase money, together with the costs (if any) decreed against him the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid the suit shall stand dismissed with costs." It is therefore only on payment of the purchase money on the specified date that the plaintiff obtains possession of the property, and until that time the original vendee retains possession, and is entitled to the rents and profits. *Deokhandan v. Sri Ram, 1 L. R. 12 All. 236*, approved. In the present case the decree under which possession was given to the pre-emptor (appellant) was made on 31st March 1900 by the Subordinate Judge who found that the pre-emptive price was Rs. 37,000 and on payment of that sum the pre-emptor was put into possession. The High Court reversed that decree and dismissed the suit but found that the price was Rs. 44,850 as stated in the deed of sale. On 2nd July 1904 the original purchaser was put into possession. On 25th January 1909 the Privy Council set aside the decree of the High Court and restored that of the Subordinate Judge except as to the pre-emptive price which was fixed as being Rs. 44,850 and the additional sum making up that amount having been deposited possession was again given to the pre-emptor on 19th January 1909. In proceedings in which each party claimed mesne profits from the other the original vendee from the pre-emptor from 1900 to 1904 and the pre-emptor from the vendee from 1904 to 1909: *Held*, that the possession of the vendee continued until 19th January 1909; and the pre-emptor only obtained possession on within the meaning of s. 211 of the Civil Procedure Code, 1882, on the date. No mesne profits thereafter were due to him but he was liable to the vendee for mesne profits from 1900 to 1904 for which period he was in possession without title. *Deokhandan Prasad Singh v. Ramdhari Chowdhri (1916)*

L. L. R. 44 Cal. 675

PRE MORTGAGE.

Pre-emption (pre-mortgage)—Joint usufructuary mortgage—Further simple mortgage on share of one mortgagor in favour of same mortgagees—What amount the claimants of the right to pre-mortgage are liable to pay. Certain persons made a joint usufructuary mortgage of their property. On the same day one of them executed a deed by way of a further charge, or simple mortgage, of his share in favour of the same mortgagees. In a suit for pre-mortgage of his share in this second mortgage it was held that the plaintiffs were not liable to pay the sum

PRE-EMPTION—*contd*PRE-MORTGAGE—*contd*,

secured by the deed of further charge which was a separate and independent transaction, but were entitled to pre-mortgage upon paying such amount of the mortgage debt as was proportionate to the share of the said mortgagor. *KALLA v. HARGIAN (1912)*

L. L. R. 34 All. 416

PRICE

Decree for pre-emption—Price for pre-emption directed to be deposited within one month—Decree holder's application for extension of time granted—Deposit made within extended time—Civil Procedure Code (Act V of 1908), O. XX, r. 14—S. 115, Civil Procedure Code—Court's jurisdiction—S. 115. On the last day fixed for the deposit of money by a decree of pre-emption, the decree holder applied for extension of time to make the deposit and he deposited the amount within the extended time granted to him (*ex parte*) by the Court. *Held*, that the Court had jurisdiction to extend the time. The High Court declined to interfere under s. 115 of the Civil Procedure Code. *ABU MUHAMMAD MIAN v. MUKUT PRTAP NARAIN (1916)*

20 C. W. N. 860

Payment of pre-emption price into Court—short by one rupee—decree holder entitled to Rs. 19 10-0 as costs—whether such payment is sufficient compliance with the terms of the decree. The appellants obtained a pre-emption decree in their favour by which they were entitled to get possession of the property on paying into Court the sum of Rs. 99, by the 30th of April 1918, and they were also entitled to Rs. 19 10 0 as cost of the suit. By the date fixed they paid into Court Rs. 98, i.e. one rupee short of Rs. 99. Subsequently they took possession of the property and realised the full amount of their costs. *Held*, that as the decree holders were entitled to deduct their costs from the decretal amount, the payment of Rs. 98 was really in excess of what they had to pay and the terms of the decree were therefore satisfied. It is immaterial what the decree holders intended to do, the only real test is whether they have sufficiently complied with the terms of the decree. *Dechas Singh v. Ekams Aali (10 Indian cases 454)*, followed. *KAPURIA MAL v. WALI MUHAMMAD*. L. L. R. 2 Lah. 294

RIGHT OF PRE EMPTION

See PRE EMPTION—WALIN UL AZIZ

1. *Mortgage—Pre-emption a right of substitution, not of re-purchase—Vendor not competent to mortgage property liable to pre-emption so as to bind pre-emptor.* The right of pre-emption being a right of substitution rather than a right of re-purchase, the vendee of property which is subject to a right of pre-emption cannot defeat the pre-emptive right by subsequently mortgaging the property and thus force the pre-emptor to take the property subject to a mortgage so created. *Gobind Dayal v. Inayatullah, 1 L. R. 7 All. 775*, referred to. *Sekh Mal v. Hukam Singh, 1 L. R. 20 All. 100*, *Naraya v. Parbat Singh, 1 L. R. 23 All. 247*, and *Dro Dutt v. Ram Aulor, 1 L. R. 8 All. 502*, distinguished. *KANTA PRASAD v. MOHAN BHAGAT (1900)*. L. L. R. 32 All. 45

PRE-EMPTION—contd

RIGHT OF PRE EMPTION—contd.

2. ——— Partition after sale but before decree—*Muhammadan law*—Effect on suit The plaintiff sued for pre-emption of zamindari property, basing his claim upon the Muhammadan law and the fact that he was a co-sharer in the property sold. After the suit, but before decree, the property was partitioned and the plaintiff and the vendors became owners of different *Mahals*. *Held*, that the plaintiff was no longer, after the partition had been completed, entitled to a decree for pre-emption. *TAVAZUL HUSAIN v. THAN SINGH* (1910). I. L. R. 32 All. 567

3. ——— Covenant in deed of partition—*Proper sale price, meaning of* A right of pre-emption reserved in a partition deed is valid as between the co-owners themselves. The *ekramamah* contained the following clause—Any one of the parties desirous of selling shall sell the same to the other party willing to buy the same at the proper sale price. *Held*, that the proper sale price would be the market value. *KALIMUDDIN BHUXAN v. REAZUDDIN AHMED* (1909). 14 C. W. N. 295

4. ——— Misjoinder—*Civil Procedure Code*, 1852, ss 41, 45—Two sales to same vendee—*Suit in respect of both sales—Joinder of vendors as defendants* Of the four owners of undivided shares in immovable property three sold their interest in the property, and the fourth sold his interest separately at a later date to the same vendee. A pre-emptor sued for pre-emption on the basis of both these transactions, impleading as defendants the vendors and rival pre-emptor as well as the vendee. *Held*, that the suit was not bad for misjoinder of either causes of action or parties. *Bhogendra Prasad Gur v. Budeseshri Gur*, I L R 6 All. 106 dissented from. *Kallaian Singh v. Gur Dayal*, I L R 4 All. 163, referred to. *Held*, also, that the vendor is not a necessary party to a suit for pre-emption. *Hira Lal v. Ram Jas*, I L R 6 All. 57, *Lok Singh v. Balooan Singh*, All. W. N. (1903) 239, and *Ram Sarup v. Sial Prasad*, I L R 26 All. 519 referred to. *HANRAJ TIWARI v. TOTA SAKU* (1903).

I L R 32 All. 14

5. ——— House of residence—*Family property—Division under an award—Prohibition of sale by a co-sharer of his portion to an outsider—Pre-emption—Construction—Court sale—Prohibition not effective* An award under which family property was divided among co-sharers provided that in case of a sale by any of the co-sharers of his portion of the house of residence he should sell it to his co-sharer for a certain sum and that he should not sell it to an outsider until the expiration of two months from the date of a notice in writing saying that they (co-sharers) were not willing to buy it. Subsequently a portion of the house belonging to one co-sharer having been sold in execution of a decree against him it was purchased by an outsider. The sons of one of the other co-sharers, thereupon having brought a suit for a declaration that the Court sale was not binding upon them. *Held*, that the term of pre-emption in the award was contemplated to attach to sales made privately and willingly and not to attachment and sales in execution. The judgment. *delivered by VITHAL NARAYAN v. MARUTI NARAYAN* (1910). I. L. R. 34 Bom. 567

PRE-EMPTION—contd

RIGHT OF PRE EMPTION—contd

6. ——— Suit instituted after decrees passed in favour of other pre-emptors—*Plaintiff no party to former suits—Suit maintainable* *Held*, that where a pre-emptor having a superior right of pre-emption brings his suit within limitation, the fact that decrees have been made in favour of other pre-emptors, the plaintiff not being a party to the suits in which such decrees were passed, will be no obstacle to the success of the suit. *Abdur Razzak v. Mamluk Hussain*, I L R 25 All. 334, distinguished. *Serb Mal v. Hukum Singh*, I L R 20 All. 100, *Allahabad Khan v. Abdul Halim*, S. A. No. 724 of 1906, decided April 12th, 1907, and *Muhammad Latif v. Govind Singh*, I L R 5 All. 332, referred to. *RAJ NARAYAN RAI v. DULIA PANDE* (1910).

I. L. R. 32 All. 340

7. ——— Suit for pre-emption—*Act No. XVIII of 1876 (Oudh Laws Act), s. 9, cl. (1) and (2) and proviso as to drawing lots—Act No. XVII of 1816 (Oudh Land Revenue Act)—'Mahal' definition of—'Co-sharer in subdivision of tenure in which property in suit was comprised'—'Co-sharer in whole mahal' At the summary settlement of Oudh the taluk in which the property in suit (three villages and two pattis or parts of villages) was comprised was settled with the father of the first respondent as taluqdar, but at the regular settlement in 1864 he came to a compromise with two other claimants by which he took half the taluk as superior proprietor, and the other half was assigned in equal shares to the other claimants, who were his relatives, in under proprietary right, they paying the Government revenue plus 10 per cent to the taluqdar and being jointly liable to him in respect of the same as rent. One of these two died childless and his share devolved upon the other one, and on the death of the latter both shares descended to the appellant (his son) and the second respondent (his grandson). Between these two in 1893 a partition took place under which the three villages and the two pattis were assigned to the second respondent, and a decree and mutation of names was made in accordance with the partition but no separate engagement was made for payment of the Government revenue in respect of the property so assigned. In 1902 the second respondent sold the property in question to the first respondent, who had succeeded his father as taluqdar. In a suit by the appellant against the respondents claiming the right of pre-emption under s. 9 of the Oudh Laws Act (XVIII of 1876) *Held* (affirming the decision of the majority of the court of the Judicial Commissioner), that the meaning attributed to the term 'mahal' in the judgment of the officiating Judicial Commissioner (Mr. Chamber), namely, "any parcel or parcels of land which have been separately assessed to, or are held under a separate engagement for, the revenue, and for which a separate record or right has been prepared," was the proper meaning of the word in the Oudh Laws Act, and therefore, although the second respondent and the appellant may have been jointly liable to the first respondent for the Government revenue plus *malikana* as the rent of the villages and pattis assigned under the compromise of 1864, they were not at the date of the sale to the first respondent co-sharers in any sub-division*

PRE-EMPTION—*contd*RIGHT OF PRE-EMPTION—*contd*

of the tenure in which the property in suit was comprised (under cl 1 of s 9), or the whole mahal (under cl 2 of that section). The Appellate Court in India found that the appellant and the first respondent had an equal right to pre-emption of the two pattis, and that under the proviso to s 9 they must draw lots to determine which of them should be entitled to exercise the right. This being done the right to purchase fell to the first respondent, and the appellant consequently lost the right to pre-empt. *SHEORAJ KUNWAR v HARIBHAI BAKSHI SINGH* (1910)

I. L. R. 32 ALL 351

8 ——— *Wahib-ul-arz*—Notice of sale given to member of a joint Hindu family—Effect of such notice—Effect of conditional reply disavowing amount of alleged consideration. *Held*, that a person having a right of pre-emption does not lose it by refusing to purchase the property at the price at which it is offered to him because he believes that such price is in excess of the real price, where such belief is entertained and expressed in good faith. Where the pre-emptor and his brothers were members of a joint Hindu family and the vendor addressed a notice to him and his brothers jointly, to which the pre-emptor's brother sent a reply. *Held*, that the plaintiff pre-emptor was entitled to claim the benefit of this reply as it had been sent by himself. *Lajja Prasad v Debi Prasad*, I. L. R. 3 ALL 236, *Amir Chand v Ishar Das*, All Weekly Notes (1882) 136, *Ekadi Bibi v Fakhma Bibi*, All Weekly Notes (1882) 46 and *Karim Baksh v Khuda Baksh*, I. L. R. 10 ALL 247, followed. *Sri Krishna Singh v Bachcha Pandey* (1911) I. L. R. 33 ALL 637

9 ——— Claim of pre-emptor based on purchase by him of another share in the same mahal—Claim made before confirmation of sale in plaintiff's favour—Civil Procedure Code, 1852, s 316. *Held* with reference to s 316 of the Code of Civil Procedure, 1852, that a purchaser at auction sale in execution of a decree of a share in zamindari property does not become a co-sharer in the mahal in which such property is situate until the sale has been confirmed in his favour. *HASAN ALI v MIAN JAN KHAN* (1910)

I. L. R. 33 ALL 45

10 ——— Right—Personal—Transfer—Transfer of Property Act (IV of 1852) s 6. The right of pre-emption is a purely personal right which cannot be transferred to any one except the owner of the property affected thereby. *JAS UDIN v SAKHARAN GANESH* (1911)

I. L. R. 36 Bom 139

11 ——— Mahomedan law—Demand made "on the premises"—Demand made in the abadi which was part of the premises sold. Where a person claiming pre-emption in respect of a certain zamindari share proved that he had made the demand with witnesses while sitting on his chabutra in the abadi which formed part of the premises sold, it was held that the demand of pre-emption was a good demand made "on the premises" within the meaning of the Mahomedan law. *Kulsum Bibi v Faqir Mohammad Khan* I. L. R. 13 ALL 293, followed. *MUKAM MAD CHAN v MUHAMMAD ABDUL GHAFUR* (1911)

I. L. R. 34 ALL 1

PRE-EMPTION—*contd*RIGHT OF PRE-EMPTION—*contd*

12 ——— Mahomedan law—Talab-i-mawasilat—Where a person immediately on hearing of the sale of a house exclaimed *mera hak alafa hai* and without any delay took the price and brought it to the vendee and claimed the house. *Held*, that the expressions used by him coupled with the circumstances constituted a sufficient first demand. *Muhammed Abdul Rahman Khan v. Mahomed Khan*, 8 ALL. L. J. 270, distinguished. *MUHAMMAD NAZIR KHAN v. MAHMOUD BAKSHI* (1911) I. L. R. 34 ALL 53

13 ——— *Wazir-ul-arz*—Custom—Effect of joining in the purchase a co-sharer having an inferior right. The vendee in a suit for pre-emption having equal rights with the pre-emptor, disables himself from resisting a suit for pre-emption as much by associating with himself in the purchase another co-sharer whose rights are inferior to those of the pre-emptor as by associating with himself a stranger. *GUPTESWAY RAM v RATI KRISHNA RAM* (1912)

I. L. R. 34 ALL 542

14 ——— Conditional decree—Decretal amount deposited in Court—Decree enhanced in appeal—Additional payment made not covering amount withdrawn as costs. A successful plaintiff pre-emptor deposited in Court the amount of the decree in his favour, but subsequently withdrew therefrom the amount of the costs decreed in his favour. On the amount payable being enhanced on appeal he paid into Court the difference between the original and appellate decrees. *Held*, that the decree had been fully complied with. *Gopal Saran v Ishri*, I. L. R. 6 ALL 353, *Bolmunda v Pancham* I. L. R. 10 ALL 400, *Parmanand Rast v Gobardhan Sahai*, I. L. R. 23 ALL 678, and *Beekai Singh v Shamsi Nath*, 3 ALL. L. J. Notes, p. 27, followed. *ALI HUSSAIN v AMIN ULLAH* (1912) I. L. R. 34 ALL 596

15 ——— Second sale—Subject-matter of suit re-sold at advanced price—Second sale subject to right of pre-emption in respect of the first. A house in the city of Benares subject to a customary right of pre-emption was sold for Rs. 1,150. The vendee resold it shortly afterwards to the defendant for Rs. 4,000. *Held*, on suit brought to pre-empt the property at the original price of Rs. 1,150, that the second sale was subject to the right of pre-emption and the pre-emptor was only bound to pre-empt the first sale, making the subsequent vendee a party to the suit so as to bind him by the proceedings. *Kamla Prasad v Mohan Bhagat*, I. L. R. 32 ALL 45, referred to. *KHETTER CHANDRA BASU MALLIK v NARIN KALI DEBI* (1913) I. L. R. 35 ALL 385

16 ——— Right of pre-emptor to put vendor to proof of title—Suit must be for entire property sold. *Held*, that a pre-emptor is not entitled in a pre-emption suit to put the vendor on proof of his title to the property which he purports to sell. The principle of pre-emption is substitution. A pre-emptor is therefore bound to take the title which the vendee was ready to take. Further, that a pre-emptor cannot sue to pre-empt only a portion of the property sold. *SABODRA DEBI v BAGESHWARI SINGH* (1910)

I. L. R. 37 ALL 529

17 ——— Effect of perfect partition on—No fresh *waqf ul-arz* prepared at or after

PRE-EMPTION—*contd*RIGHT OF PRE EMPTION—*contd*

partition—Right of a sharer in new mahal after partition to pre-empt property in another new mahal in which he was not a sharer at date of sale—Value of wajib ul arz as evidence—Prima facie evidence of custom of pre-emption without proof of instances of custom being enforced In this appeal, which was one arising out of a suit by the appellant, one of the co-sharers in a mauza, for pre-emption after there had been a partition of the mauza in which the land sold was situated, and no fresh wajib ul arz had been prepared after the partition had taken place, their Lordships of the Judicial Committee (affirming the decision of the High Court) were of opinion that the clauses relating to pre-emption contained in wajib ul arzes of 1863 and 1870 proved that prior to the partition the right of pre-emption had existed in the mauza, but that the appellant had not shown either on the construction of the wajib ul arzes, or by other evidence, that the custom of pre-emption which obtained in the unpartitioned mauza survived the partition, so as to give the appellant, a sharer in one of the new mahals, a right to pre-empt property in another of those mahals in which he was not a sharer at the date of the sale. Their Lordships did not dissent from the view expressed by BANERJI, J., in the full bench case of *Dalganyan Singh v Aika Singh*, 1 L R 22 AU 1, that "where a fresh wajib ul arz has not been prepared at partition, it does not follow as a matter of law or principle that the custom of contract in force before partition is no longer to have effect or operation," and were of opinion that the question must depend upon the circumstances of each case and the inferences which may legitimately be drawn from the evidence. A wajib ul arz is by itself good *prima facie* evidence of a custom of pre-emption stated in it without corroboration by evidence of instances in which the custom has been enforced. The evidence as to a custom of pre-emption afforded by a wajib ul arz may of course be rebutted by other evidence. *DIGAMBAR SINGH v AHMED SYED KHAN* (1914)

I. L. R. 37 ALL 129

18 ————— *Wajib-ul-arz—Owners of resumed musaf land—Held, that the owners of a plot of resumed musaf land assessed to revenue separately from the rest of the village, which constituted one 16 anna mahal, was not a co-sharer with the owners of the mahal, so as to give him a right of pre-emption on sale of the mahal, under the terms of the wajib ul arz which declared a right of pre-emption to exist, on a sale by a co-sharer, in favour of other co-sharers in the village* *Kallian Mal v Modan Mohan*, 1 L R 17 ALL 447, *Narain Das v Ram Saran Das* 1 L R 17 ALL 419, *Rajbhawan Prasad v Konhaya Lal*, ALL W N, 1902 63, *Ahmad Ali v Nayam unnessa* 2 ALL L J 145, and *Dattu Lal v Bhole Nath* 19 Indian Cases 119, referred to *Narain Prasad v Munna Lal*, 1 L R 30 ALL 329, not followed. *MAHADEO PRASAD v JAGAR DEO GUR* (1916)

I. L. R. 38 ALL 260

19. ————— *Partition—after institution of suit but before decree—Plaintiff, if entitled to decree—Court, if should take notice of matters which come into existence after suit—Talab-i-musafidat erroneous statement as to price in if invalidates—Review on ground not before taken, when allowed—Suits*

PRE-EMPTION—*contd*RIGHT OF PRE EMPTION—*contd*

Valuation Act (VII of 1887), s 11—Valuation—Appeal—Jurisdiction SANDERSON, C J, and MOOKERJEE, J.—The right of the plaintiff to get pre-emption must exist not only at the time of the sale, but also at the time of the institution of the suit, and finally up to and at the date of the decrees of the trial Court. A judgment passed by the High Court on second appeal was reviewed on a ground not taken at any previous stage of the proceeding, when the ground raised a quite question of law which did not depend for its determination upon the investigation of new facts and when the alleged error was apparent on the face of the record *Connecticut Fire Insurance Co v Kavanagh*, (1892) 4 O. 473 at p 480, referred to *Per MOOKERJEE, J.—The decree in a suit should ordinarily conform to the rights of the parties as they stood at the date of its institution. But the same cases when it is incumbent upon a Court of Justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made. This principle will be applied where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties* *Per SHABUDDIN and FOX JJ.—For the performance of the talab-i-musafidat what is necessary is an expression by the pre-emptor in clear and explicit terms that the demands to make the purchase and it is not necessary that he should, at the time of the performance of the ceremony, make any mention of the price. Where in performing the talab the claimant owing to mistaken information understated the price, though the ceremonies required by law were fully performed *Held* that the talab was validly performed. Plaintiff suing for pre-emption valued his suit at Rs 4000 the price for which, according to his information the property had been sold to the defendant. The suit was dismissed by the Subordinate Judge but decreed on appeal by the District Judge who however, found that the real value of the property was over Rs 6000. On second appeal it was urged that having regard to the value of property as found by the District Judge appeal lay to the High Court and not to the District Judge, but the point was not taken in the memorandum of appeal. *Held per SHABUDDIN and FOX JJ.* That this objection should be overruled in view of s 11 of the Suits Valuation Act, and that the decision in *Pai Lakshmi Dasee v Kalyagani Dasee*, 1 L R 38 Cal 63 was distinguishable from the present case as in that case the suit was intentionally and grossly undervalued. *ACBI MIY v AMERICA SINGH* (1916)*

10 C. W. N 1059

20 ————— *Wajib ul arz—Intigual—Mortgage by conditional sale—Cause of action* The wajib ul arz of a village in recording an entry as to the right of pre-emption referred to transfers (intigul) and provided for the mode in which the first offer was to be made. *Held*, that this provision applied to a mortgage by way of conditional sale and that the pre-emptor's cause of action arose upon the execution of the deed of

PRE-EMPTION—*could*RIGHT OF PRE-EMPTION—*could*

mortgage and not when a foreclosure decree was passed or when the mortgagee obtained possession thereunder. *Sharma Singh v Mahabir Singh* (1917) I. L. R. 29 All. 244

21 ————Sale by co-sharer to Mahomedan a Hindu.—On the assumption that other co-sharers were to have the right to pre-emption, the right of pre-emption of latter Vendor if may prescribe special conditions not imposed by law.—Agreement of sale understood by parties as and represented to be sale.—Transfer of right of pre-emption.—Transfer of Property Act (IV of 1882) s. 54, if determines date of sale. Where in property owned by Mahomedans co-owners entitled to a fourth share agreed to sell their share to certain persons who were Hindus, and in pursuance of the agreement, the vendors intimated to the remaining co-sharer that they had sold their share as aforesaid and gave the latter two days' time within which to exercise his right of pre-emption. *Held*, that as all the parties had considered that there was a law of pre-emption which applied between the vendors and their co-sharer and that it was applicable to the purchasers, who too had assented to that view it was not necessary to enquire whether there was a local custom of pre-emption or whether it could be enforced by a Mahomedan against a Hindu purchaser. The Transfer of Property Act was not intended to alter to Mahomedan Law of pre-emption. *SRYARAM BHAWRAO DESHMUKH v SYED JAUH HANAN KHAN* (PC) 26 C. W. N. 221

WAJIB UL ARZ

See PRE-EMPTION—RIGHT OF AND CUSTOM OF

1 ————Custom or contract.—The wajib ul arz of a village in the Saharanpur district contained the following declaration on the part of the co-sharers:—Whereas a new settlement of our village from July 1860 to 1890 for a period of 30 years has been made on a revenue of Rs. 481 annually therefore the agreement of us, proprietors and landholders is that till the term of this settlement and in future till the completion of the next settlement we shall remain bound and carry out —, the reference intended being presumably to subsequent clauses of the document. In a later wajib ul arz of 1245 Fash the parties stated:—In regard to the remaining customs of the village the wajib ul arz of 1247 Fash should be referred to. *Held*, that the wajib ul arz of 1247 Fash recorded a contract and not a custom, and that contract had expired with the settlement for which it was entered into. *Mahabir Hussain v Alam Ali*, 40 B. N. (1907) 235 and *Budd Singh v Gopal Rai*, I. L. R. 30 All. 511, followed. *Asa Ram v Kanyasree Lal* (1910) I. L. R. 32 All. 399

2 ————Partition of village.—Separate wajib ul arzes.—Change in the language. A village originally undivided was first partitioned into several mahals with a separate settlement wajib ul arz for each. Subsequently one of these mahals was subdivided into two and fresh wajib ul arzes were framed for these two mahals. One of these new mahals was in turn divided into two, but no fresh wajib ul arzes were then framed. The wajib ul arzes framed at the first and second

PRE-EMPTION—*could*WAJIB UL ARZ—*could*

partitions differed *inter se* as to their condition relative to pre-emption. *Held*, that there was evidence only of a contract for pre-emption, which, so far as the two last formed mahals were concerned, had ceased to exist even before the expiry of the term of the settlement. *Prasanna Ram v Balto Ram* (1910) I. L. R. 32 All. 261

3 ————Custom or Contract.—The wajib ul arz of an undivided village gave a right of pre-emption first to a rear co-sharer (*Kissadar Karib*) and then to a co-sharer in the village (*Kissadar dik*). Subsequently the village was divided by perfect partition. No new wajib ul arz was framed. Property situated in one of the new mahals was sold to a stranger and a suit for pre-emption was brought by sharers in one of the other mahals, claiming a *Kissadar dik*. *Held*, per STANLEY, J. that the plaintiff was entitled to pre-empt notwithstanding the partition, and that the words *Kissadar dik*, as used in the wajib ul arz, meant a sharer in the village. *Durganjan Singh v Akko Singh*, I. L. R. 22 All. 1, distinguished. *Sukh Ali v Potha Bhai*, I. L. R. 32, All. 63, *Mishra Lal v Muhammad Ahmad Said Khan*, All. B. N. (1899) 19. *Abdul Hai v Nain Singh*, I. L. R. 20 All. 92, *Mateo Bah v Mussamat Collee*, B. D. A. & W. P. Vol. I, 366. *Lokul Singh v Minu Lal*, I. L. R. 7 All. 772. *Atena Ali v Ghulam Nafi*, All. B. N. (1891) 137, *Mela Dun v Mahesh Prasad*, All. B. N. (1882) 100. *Ram Dun v Pokhar Singh*, I. L. R. 27 All. 533. *Azari Lal v Ram Bhajan Lal*, I. L. R. 27 All. 602 and *Gorind Ram v Manish Khan*, I. L. R. 29 All. 295, referred to. *Held*, per BANERJI, J., that the plaintiff pre-emptor could not pre-empt after the partition of the village as, although he was a sharer in the village, he was not a co-sharer of the vendor, and that the words *Kissadar dik* as used in the wajib ul arz meant a co-sharer of the undivided village for which the wajib ul arz had been prepared. *Durganjan Singh v Akko Singh*, I. L. R. 22 All. 1 followed. *Janki v Ram Partap*, I. L. R. 29 All. 263, and *Abdul Hai v Nain Singh*, I. L. R. 20 All. 92, referred to. *Dona v Jwan Ram* (1910) I. L. R. 32 All. 263

4 ————Custom or contract.—The pre-emptive clause of a wajib ul arz ran as follows:—*Ayenda furi rakhsa rauaj shafa in ham ko man-ar hai*. *Held* on a construction of the wajib ul arz, that it denoted a record of custom and not of contract. *Tanadung Hussain Khan v Ali Hussain Khan* 40 B. N. (1903) 121 distinguished. *Hazari Lal v Durga Das* (1900) I. L. R. 32 All. 187

5 ————Perfect partition.—"Malikan dhs.—The determination of an alleged right of pre-emption must depend upon the particular circumstances of each case and the evidence adduced in support of the pre-emptive right. A village was divided by perfect partition into several mahals, but no new wajib ul arz was prepared. The wajib ul arz framed before partition was headed "Hakik Kissadara Bahadur rights of co-sharers *inter se*" and gave the right of pre-emption (i) to co-sharers in the *Ekota*, (ii) to the proprietors of the *path*, and (iii) to the proprietors of the village (*malikan dhs*). Plaintiff was a co-sharer in a different mahal from that in which the vendor was a co-sharer. *Held*, that the heading of the wajib ul arz limited the mean

PRE-EMPTION—*contd*WAJIB UL ARZ—*contd*

ing of the expression *maḥālan deh* to proprie-
tors who were co sharers with a vendor between
whom and the vendor a common bond sub stituted
and as the plaintiff was not a co sharer in the
same mahal with the vendor she had no right of
pre-emption *Janki v Ram Partap Singh I L R*
28 All 286 *Sardar Singh v Ijaz Hussain Khan*
I L R 28 All 614 and *Govind Ram v Maḥ*
ḥ Khan I L R 29 All 295 distinguished
Dalganjan Singh v Kalla Singh I L R 29 All
I followed *SARIB ALI v FATIMA BIBI (1909)*

I L R 31 All 63

6 ——— Partition of village—New
wajib ul arzes prepared after partition The *wajib*
ul arz of a village before partition provided for
pre-emption in the following way — Rights of
co sharers as among themselves on the basis of
custom or agreement The custom of pre-emption
obtains In case of sale of property by a co
sharer another co sharer in the mauza can bring
a suit for pre-emption If he offers a low price
then the vendor can sell the property to a stranger
The village was divided by perfect partition
into three mahals New *wajib ul arzes* were
drawn up after partition and the condition as
to pre-emption in each ran as follows — Rights
of co sharers *inter se* based on custom or agree-
ment The custom of pre-emption prevails
In this case one co sharer sells his share (*hakikat*)
another co sharer in the village (*hissdar sharik*
mauza) can claim pre-emption If he offers a
smaller price the seller can sell it to a stranger
The plaintiff pre-emptor was a co sharer in a
different mahal from that in which the property
sold was situate The vendee was a stranger to
the village The entire body of co sharers in the
village were Muhammadans of the same stock
and continued so up to the time of partition
Held upon a construction of the language of the
wajib ul arz and the circumstances of the case,
that the pre-emptor must succeed as against the
stranger vendee notwithstanding that a parti-
tion had taken place *Janki v Ram Partap*
Singh I L R 28 All 286 referred to *CHENNAI*
v ABDUL HAKIM (1910) I L R 33 All 296

7 ——— Contract or custom—Presump-
tion as absence of evidence that the record is one
of custom Where it is not apparent either
from the language of the *wajib ul arz* itself or
from other evidence, that the pre-emption clause
of a *wajib ul arz* is merely the record of a new
contract between the co sharers the presumption
is that it is the record of a pre-existing custom
Majdan Eibi v Shakh Hajatan Ali Weekly
Notes (1897) 3 followed The pre-emption clause
of a *wajib ul arz* was headed *Pelating* to the
right of pre-emption and ran as follows — If a
co sharer has to sell and mortgage his *hagrat*—
then at the time of transfer it will be incumbent
that he should after giving information sell and
mortgage for a proper price etc etc *Held*,
that this in the absence of evidence to the contrary
indicated a pre-existing custom of pre-emption
rather than a contract *BHIM SEN V MORI RAM*
(1910) I L R 33 All 85

8 ——— Initial—Perpetual
lease *Held* that the word initial used in the
pre-emption clause of a *wajib ul arz* was wide enough
to include a perpetual lease *Jagadam Sahay*
v Mahabir Prasad, I I R 28 All 60, and *Ahmad*

PRE-EMPTION—*contd*WAJIB UL ARZ—*contd*

Ali Khan v Ahmad I A W P 101 referred to
LALJI MISHR v JAGOO TEWARI (1910)

I L R 33 All 104

9 ——— “Apna shafi”—*Mahomedan law*
A *wajib ul arz* provided that if any co sharer
of a *patti* in the *Khalisa* wished to sell his share,
he would do so paying due respect to his own
pre-emptor (*apana shafi*) and if the latter
refused and all the other pre-emptors of the village
(*our sub shafian deh*) refused then he might sell to
a stranger *Held*, that the expression *apna shafi*
connoted nearness in space and not a blood rela-
tionship and therefore where the vendor and pre-
emptor were co sharers in the same *patti* the
vendee being a co sharer in a different *patti* the
co sharers in the same *patti* had a preferential
right *LAKHAN SENON v BISHAN NATH (1910)*

I L R 33 All 299

10 ——— Partition of village into—
several mahals—*Dastar dehi* relating to whole
village—*Suit by co sharer of one mahal against*
co sharer of another mahal on ground of nearness
in relationship to vendor The *dastar dehi* of
a village divided into several mahals but
which nevertheless was held to be applicable
to the whole village, and to represent an arrange-
ment come to by the co sharers in the village
amongst themselves provided as to pre-emption,
as follows — If a co sharer wants to sell his
share he must sell first to near co sharers then
in the *patti* then in the mahal then in the village
Held that the effect of this clause was to give
to a co sharer in one mahal who was a relation
of the vendor a preferential right of pre-emption
over a co sharer in another mahal who was not
a relation *YAD RAM v CHEDA LAJ (1913)*

I L R 35 All 478

11 ——— Co-sharer in *patti*—and co
sharer in mahal—*Fictitious conveyance of share*
*in *patti* to latter—Alleged previous offer to plaintiff*
—*Witnesses found to have deposed falsely as to*
part of it to be believed as to other parts—Party not
coming forward to contradict positive evidence of
opponent is to matters within his personal knowl-
edge if may succeed Plaintiff being a co sharer
in the *patti* sued for pre-emption and the defend-
ants who were only co sharers in the mahal or
mahal resisted his claim on the grounds (i) that
they had by a prior conveyance acquired a share
in a *patti* and (ii) that the plaintiff had refused
the offer of the defendants vendor to sell the
property to him *Held* that the reasons given
by the High Court for holding in reversal of the
first Court that the prior conveyance did not
represent a genuine transaction and was fabri-
cated with a view to defeat the claim for pre-
emption which the plaintiff was about to bring
were cogent and decisive The High Court also
disbelieved the evidence adduced by the defend-
ants to prove plaintiff's refusal of the offer
to him of the property by the defendant vendor
on the ground that the witnesses were the same
who spoke to the prior conveyance and one
part of whose evidence had been found to be
distinctly false *Held* that it was open to the
High Court to take this view although there
was one witness who did not depose to the deed
and neither plaintiff nor other persons in whose
presence the offer was stated to have been made
had come forward to contradict the defendants

PRE-EMPTION—contd.

WAJIB UL ARZ—contd

witnesses The judgment of the High Court should not be treated in a piecemeal manner, and taken as a whole was correct **MATHURA PRASAD v SHAHEH MUHAMMAD (1912)**

17 C W N 381

12. ——— Incidents of custom not recorded.—*Mahomedan Law* A suit for pre-emption was brought both under the custom recorded in the wajib ul arz and Mahomedan Law, but the incidents of the custom were not recorded in the wajib ul arz *Held*, that the rights were co-extensive **Jagdem Sahai v Mahabir Sahai, 1 L R 28 All 67**, followed. **ZAKIR AHMAD v ABDUL RAZAQ (1915)** I L R 37 All 472

13 ——— Wajib ul arz—Partition of village Right of co-sharers different in mahals.—*to pre-empt inter se* A certain village prior to 1873 consisted of one mahal which was subdivided into two *patties* The wajib ul arz of that year recorded a custom of pre-emption, first, with near relations, then with co-sharers in the *patti* and lastly with co-sharers in the village Subsequently the village was divided into a number of different mahals, and at the last settlement a new wajib ul arz was drawn up for each of the new mahals in similar terms The plaintiff, a proprietor in the village, though not a co-sharer in the mahal, brought a suit for pre-emption *Held* that the plaintiff was no longer a co-sharer with the vendor and therefore had no preferential right as against the vendor, who was grove holder in the village **KHAYALI RAM v KALI CHAWAN (1915)**

I L R. 37 All 573

14 ——— Custom—Mortgage by conditional sale. In 1895 a mortgage was made consolidating previous mortgages of the years 1892, 1893 and 1891 In 1903 a suit was instituted on the mortgage, which was construed as a mortgage by way of conditional sale A decree for foreclosure was obtained and in 1911, the decree was made absolute Shortly afterwards, possession was obtained under this decree In 1914 a suit was brought claiming to get possession by virtue of a custom set forth in the wajib ul arz. The clause relating to pre-emption was as follows:— If a *patidar* wishes to transfer his share by sale or mortgage, he should do so, first to another *patidar* of the same *thok* and in case of his refusal to the *patidars* of another *thok* of the village If the *patidar* wants to sell his share to a stranger by entering an excessive and fictitious price, the *patidar* having the right of pre-emption shall be entitled to acquire the property in payment of the price awarded by the arbitrators *Held*, that having regard to the whole context of the wajib ul arzes the sale mentioned wherein for the purpose of giving rise to a right of pre-emption according to custom meant a voluntary sale, and the wajib ul arzes did not give him a right of pre-emption under the circumstances under which the mortgagee became the owner of the property **Afu Prasad v Sukhan, 1 L R 3 All 619**, distinguished. **SEKHAR KHANWAR v PAM CHULAN (1918)** I L R 40 All 626

15 ——— Property to be sold to co-sharer first.—*Sale to stranger—Refusal to purchase* As a general rule the custom as to Pre-emption as evidenced by the record in the

PRE-EMPTION—contd

WAJIB UL ARZ—contd

wajib ul arz, is that where a co-sharer wishes to sell his property he must first offer it to another co-sharer and if the co-sharer refuses to purchase he is entitled to go to a stranger Where the custom proved is of this nature, if the co-sharer (vendor) offers the property to another co-sharer and such co-sharer refuses to purchase on the ground that he has no money or is unwilling for any other reason to purchase, the owner of the property is entitled to go and sell it to a stranger and he is not obliged after he has made a definite agreement with the stranger to return and offer the property a second time to the co-sharer, **Nounihal Singh v Ram Rattan, 1 L R 39 All 127**, and **Nath Lal v Dhani Ram, 15 A L J 315**, followed **Munawar Hussain v Khadim Ali, 5 A L J 331** and **Kanhai Lal v Kalika Prasad, 1 L R 27 All 670**, not followed. **SHAM SHER SINGH v FIARI DAT (1918)**

I L R 40 All 690

16 ——— Involuntary sales.—*Held* by the Full Bench.—In the absence of any statutory reservation of the right, a right of pre-emption does not exist in cases of involuntary sales, hence a Mahabir mortgagee has no right of pre-emption against a purchaser in Court auction of the mortgaged property and he is not entitled to any notice of the intended Court sale or of the price fetched at the sale **VASUDEVAN MOHANDAS v ITTARICHAN NAIR (1918)**

I L R. 41 Mad. 532

17. Purchases made by vendee on different dates.—*Suit to pre-empt first sale only*—Vendee claiming to be a co-sharer in virtue of second purchase—*Suit not maintainable* The defendant purchased shares in a village on two different dates The plaintiff sued to pre-empt the earlier sale, but no suit was brought in respect of the second sale *Held*, that the suit was not maintainable **CHANDRA SINGH v MAHESH NARAIN SINGH (1918)**

I L R. 40 All 572

18 ——— Sale of right to receive *malikana*—*not a subject of pre-emption* *Held* that a right to receive a *malikana* allowance cannot be the subject of a suit for pre-emption **ABDUL WARD v HALIMA KHATUN**

I L R 42 All 262

19 ——— Involuntary sale.—*Owner declared insolvent on application by a creditor—Sale of property by official assignee—Omission of pre-emptor to bid at auction sale* On an application made by a creditor in insolvency one Rai Eil Kishan Das Bahadur was adjudged an insolvent and his property was placed in charge of an official assignee Some of this, consisting of zamindari, was sold by the official assignee at public auction *Held* that, the sale not being voluntary, no right of pre-emption would arise under the village wajib ul arz **Kanhai Lal v Kalika Prasad, 1 L R. 27 All 610** distinguished *Held* further, that the sale having been widely notified a pre-emptor who, knowing of the sale, did not bid, must be taken to have refused to purchase, and the official assignee was under no obligation to offer the property to him after it had been knocked down to the highest bidder at the auction **Kanhai Lal v Kalika Prasad, 1 L R 27 All 670**, not followed **GHULAM MOHI UD DIN KHAN v HARDEO SAHAI I L R. 42 All 402**

PRE-EMPTION—*contd*WAJIB UL ARZ—*contd*

20. ———— Resale of property during pre-emption suit to person with a preferential right—but after the extinction of his right to pre-empt by reason of limitation. During the pendency of a suit for pre-emption under the provision of the village wajib alarz, the vendee resold the property in suit to a person who originally had a pre-emptive right superior to that of the plaintiff, but who at the date of the sale, was barred by limitation from enforcing it. *Held*, that the plaintiff's claim was not defeated by such sale. *Manpal v Shaib Ram*, I L R 27 All 544, *Janis Prasad v Ishar Das*, I L R 21 All 374, and *Ram Gopal v Puri Lal*, I L R 21 All 411, distinguished. *KANTA PRASAD v PAM Jsa* (1913) . . . I L R. 36 All 60

21. ———— Custom—Effect of confiscation of part of village—“*Karbi wa khandani*.” In a village comprising two eight anna *thoke* a custom of pre-emption was recorded as prevailing in two wajib ularzes of 1833 and 1860 and in the *tamima khawat* of 1884, the date of the last settlement. *Held*, that the custom so recorded was in no way modified by the fact that a four anna undivided share in the village had been confiscated by the Government after the mutiny and re-granted to other proprietors. *Held*, also, that a person related to a vendor through the female line only and twelve degrees removed from him could not be considered as falling within the description in the wajib ularz of “*karbi wa khandani*.” *DURG PRASAD PASDE v FATEK BAHADUR SINGH* (1914)

I L R. 36 All 451

22. ———— Claim based on relationship to vendor—Death of plaintiff pending suit—Sons of plaintiff not entitled to take advantage of the relationship of their father. The plaintiff in a suit for pre-emption had a preferential right over the vendee on the ground of his nearer relationship to the vendor but the plaintiff's sons had not. *Held*, that the plaintiff's sons could not, on the death of their father pending the suit, claim to take advantage of the relationship in which their father had stood to the vendor. *PARTAB SINGH v DAYLAT* (1913)

I L R 36 All 63

MISCELLANEOUS

1. ———— Execution of decree—Decree amount deposited but part taken out of Court by a creditor of the decree holder, the decree for pre-emption having been set aside—Restoration of decree on appeal—Position of decree holder. A decree for pre-emption conditional on the plaintiff pre-emptor depositing in Court by a certain date Rs 1009 was duly complied with. But on appeal by the vendee the decree was set aside, and thereafter a portion of the money deposited by the pre-emptor was attached and drawn out of Court by a creditor who had obtained a money decree against him. The decree was, however, restored as the result of an appeal to the High Court. *Held*, that the plaintiff was entitled to execute his decree upon making good the amount which had been removed by his creditor. *Held*, also, that the Court of first instance ought not to have permitted any part of the money deposited to be withdrawn until

PRE-EMPTION—*contd*MISCELLANEOUS—*contd*

the pre-emption suit had been finally decided. *Abdus Salam v Hidayat Ali* All Weekly Notes (1937) 31, distinguished. *SURE GOPAL v NAJIB KHAN* (1914) I L R. 36 All 393

2. ———— Pleadings—Alternative claims under custom and Mahomedan law. There is nothing to prevent a plaintiff in a suit for pre-emption basing his claim in the alternative, on contract, custom or Mahomedan law. But where there is an established custom of pre-emption and the pre-emptor fails to bring himself within that custom, he cannot fall back on the Mahomedan law. *Muhammad Salim v Sadar ud-din Beg*, 7 All L J 660 distinguished. *MUHAMMAD AZHARULLAH v S AMY UY CHISA BIRT* (1914)

I L R 36 All 456

3. ———— Dispute as to true sale consideration—Evidence—Burden of proof—Payment before Sub-Registrar. In a suit for pre-emption where it is alleged that the sale price is fictitious and put into the deed for the purpose of defeating pre-emption, it is open to the pre-emptor to give evidence to show that the market price is far below that stated in the sale deed. If he gives such evidence to the satisfaction of the Court, the latter is quite justified in arriving at its own conclusion as to what was the real consideration, and this notwithstanding that it is proved that the amount stated in the deed was paid before the Sub-Registrar. *Abdul Mayid v Amolak*, I L P 29 All 612, referred to. *O Conor v Ghulam Haidar* I L R 28 All 617 not followed. *RAM SARUP SARTI v KARAHULLAH KHAN* (1914) I L R. 36 All 404

4. ———— Practice—Alternative claims—Claim for possession as owner joined with alternative claim for pre-emption. There is nothing in law to prevent a plaintiff in a suit for pre-emption also setting up a claim for possession of the property as owner and his suit ought not to be dismissed on the ground that he has put his case in the alternative. *BHAGWATI SARAN MAN TIWARI v PARNESHAR DAS* (1914) I L R 36 All 476

5. ———— Mahomedan law—Vendor a Shia and pre-emptor a Sunni—Shia law to be applied. In a suit for pre-emption the vendor was a Shia Mahomedan, the vendee Hindu, and the pre-emptor a Sunni. The claim was laid in the alternative either on custom or on the Mahomedan law. The custom set up was not proved. *Held*, that the Mahomedan law applicable was that of the vendor, namely the Shia law, and that the pre-emptor had no case. *Jog Deb Singh v Mahomed Afzal* I L R 32 Cal 382, not followed. *Abbas Ali v Mayas Ram*, I L R 12 All 229. *Qurban Husain v Chole*, I L R 23 All 102, and *Gobind Dayal v Inayatullah* I L R 7 All 775, referred to. *PIR KHAN v FAIZAZ HUSAIN* (1914)

I L R 36 All 488

6. ———— Time for payment of—sum decreed—Pre-emptive price enhanced on appeal by the vendee but no time fixed for payment—Practice. The appellate Court in a pre-emption suit enhanced the amount decreed to be payable by the pre-emption in the first Court, but omitted to fix any time within which the enhanced amount should be payable. *Held*, that the plaintiff pre-emptor was entitled to a reasonable time within

PRE-EMPTION—*contd.*MISCELLANEOUS—*contd.*

which to pay in the amount decreed, and having regard to the enhanced amount (Rs 801) the time within which it was in fact paid (one month and one day after the decree) was reasonable, and the plaintiff was entitled to execute his decree
DEVI SARAN TIWARI v. GURPAR TIWARI (1914)

I L R. 36 All 514

7. — **Pleadings—Mahomedan Law—Custom—Amendment of plaint—Discretion of Court**
 The plaintiff in a suit for pre-emption based his claim upon the Mahomedan law. At a somewhat late stage in the case the plaintiff asked leave to amend his plaint by adding an alternative claim based on custom as evidenced by the wajib ul-arz, but this was refused, and the Court not withstanding that it found that, according to the wajib ul-arz, a custom of pre-emption existed, dismissed the suit. *Held*, that the Court ought to have permitted the plaint to be amended, and, even without amending the plaint, was competent to decree the claim on the basis of the wajib ul-arz. **ABDUL HAMID v. MASUD ULLAH (1912)**

I L R. 36 All 573

8. — **Applicability of Mahomedan law—in the case of a sale of zamindari property**
 The Mahomedan law of pre-emption applies to zamindari property and is not restricted to houses, gardens and small plots of land. **MUNNA LAL v. HAJIRA JAN I L R 33 All 23** followed. **FARAZ AHMAD v. TASADDUQ HUSAIN (1919)**

I L R. 41 All 428

9. — **Custom—Wajib ul-arz—Partition of village—Old custom adopted in new mahals—Right of pre-emption not surviving as between the new mahals**
 The wajib ul-arz of an undivided village afforded evidence of the existence of a custom of pre-emption in the village between co-sharers. Subsequently, the village was divided by perfect partition into several mahals and each of the new mahals adopted the old custom. *Held*, that no right of pre-emption survived as between the different new mahals. **GANGA SINGH v. CHEDI LAL I L R 33 All 805** referred to. **DROKINANDAN v. MAHTAB RAY (1919)**

I L R. 41 All 428

10. — **Sale to stranger—Plaintiffs joining in their suit persons who were not strangers but had pre-emptive rights vis-à-vis to them**
 In a suit for pre-emption, where the suit is a suit against strangers the plaintiffs by joining person who have different rights inter se do not thereby forfeit their rights. **Gyatsahar Ram v. Rati Krishna Ram I L R 34 All 542**, distinguished. **SHEKHAR SINGH v. NAIK SINGH SAHAI (1919)**

I L R. 41 All 423

11. — **Perpetuity Rule when applicable to—Pre-emption, right of, with regard to immovable property**
 Covenant for unlimited in point of time of value. A Hindu transferred certain immovable property to his son in law reserving a condition that if the transferee or his successor found it necessary to sell the property he or his successors might sell it to the vendor his nephew or heirs at a specified price. The son of the third son in law sold the property to some others whereupon the nephew sued for enforcement of the right of pre-emption. *Held*, that an option to arise on any intended sale or other particular kind of alienation is subject to the rule against

PRE-EMPTION—*contd.*MISCELLANEOUS—*contd.*

perpetuities unless the right is conferred by statute
NABIN CHANDRA SARMA v. RAJANI CHANDRA CHAKRAVARTI . . . 25 C W. N. 902

12. — **Conditional decree—With costs to the plaintiff—Amount paid by the plaintiff less than the sum named in the decree, but more than the decretal amount less the plaintiff's costs**
 The decree in a pre-emption suit ordered the plaintiffs to pay Rs 100 within a certain time and also awarded costs amounting to Rs 9, annex 8, to the plaintiffs. The plaintiffs deposited in court within the time allowed Rs 99. *Held*, that there was a sufficient compliance with the decree. **Bechar Singh v. Shami Lath, 8 A L J (Notes) p 27, and Ali Hussain v. Amin-ullah, I L R 24 All 596**, referred to. **RAM LAGAN PANDY v. MUHAMMAD ISHAQ KHAN I L R. 42 All 181**

13. — **Mahomedan law—Zamindari village—Imperfect partition of mahal into several pattis—No rights or property left in common—No right of pre-emption amongst owners of different pattis inter se**
 Where the Mahomedan law of pre-emption is applicable there is ordinarily no right of pre-emption as between owners of different pattis of a mahal divided by imperfect partition. **Munna Lal v. Hajira Jan, I L R 33 All 23**, referred to. **MATHEBA PRASAD v. HARDEO BAKSH SINGH I L R. 42 All 477**

14. — **Sale of family property—by the father of a joint Hindu family—Said by sons to pre-empt sale—Said not maintained**
Held, that the sons in a joint Hindu family cannot maintain a suit to pre-empt a sale of joint family property made by the father as manager and for legal necessity. **Raghunath v. Muzumdar Fakat Begam 3 A L J 611**, and **Gandharv Singh v. Sahib Singh, I L R 7 All 181**, followed. **PRATAP NARAYN SINGH v. SHIAM LAL**

I L R. 42 All 264

15. — **Vendee becoming a co-sharer pending the suit—During the pendency of a suit for pre-emption of a share in zamindari property the defendant vendee acquired by gift a share in village, which put him as regards pre-emption on the same level with the plaintiff pre-emptor**
Held, that in these circumstances the suit must be dismissed. The principle of **Pam Gopal v. Puri Lal, I L R 21 All 411**, applied. **BIHARI LAL v. MOHAN SINGH**

I L R. 42 All 263

16. — **Valuation of property the subject of a claim for pre-emption—Property subject to a mortgage—Personal remedy barred and mortgage debt in excess of market value**
 Where the personal remedy of the mortgagee has been barred, and the mortgage debt exceeds the value of property mortgaged the value of the property from the point of view of a claimant for pre-emption is the market value simply. **JAGAT SINGH v. BALDEO PRASAD**

I L R. 43 All 137

17. — **Khandesh District—Rule of pre-emption does not exist in the Khandesh District—Bombay Regulation II of 1827, cl 26**
 In the District of Khandesh in the Bombay Presidency the rule of pre-emption does not exist either as a rule of law or as a rule of justice, equity and good conscience. **MAHOMED BRA AMIN v. NARAYAN MEHARJI (1915) . . . I L R. 40 Bom 358**

PRE-EMPTION—*contd*MISCELLANEOUS—*contd*

18. ——— Sale by Mahomedan to Hindu —Co-sharer's claim to pre-emption—*Law applicable*—*Intention of parties* One of two Mahomedan co-sharers in two villages in the Presidency of Bombay agreed to sell his share to a Hindu, the agreement being made subject to a right in the co-sharer to pre-empt, and as a complete and immediate sale although part of the purchase price was to be paid later and a sale deed executed. The vendor informed his co-sharer that he had sold, and invited him to pre-empt the share sold. The co-sharer thereupon performed the ceremonies of pre-emption and claimed as pre-emptor to recover the share from the purchaser. *Held*, that the co-sharer had a right of pre-emption in accordance with the intention of the parties, which had to be looked at to determine what system of law was to apply, and what was to be taken as the date of the sale with reference to which the ceremonies were performed. Judgment of the High Court affirmed. *SITARAM BHARAO v. JIAUL HASAN SHAJJUL KHAN* (1921) L. R. 43 I. A. 475

I L. R. 45 Bom. 1056

19. ——— Shafi-i-Khaki right of—Partition of estate into separate mahals—*sale of separate town number*—*whether owner of one of the mahals has a right to pre-emption* On partition property was divided into several mahals, but joint between the parties were left a well certain roads a tank, a number of brahmottar and fakirana holdings, and two occupancy holdings. A separate town number formed by this partition was sold, and the owner of one of the mahals into which the parent estate had been divided claimed a right of pre-emption over the town number which had been sold. *Held* (1) that the existence of the undivided holdings did not give him a right of pre-emption, (2) that he had no right of pre-emption as shafi-i-khaki, as the roads, well tank, etc., were not appurtenances. *ABDUL SINGH v. DASTI SINGH* 4 Pat. L. J. 420

20. ——— Adhlati transaction—*Whether a sale, when no money consideration passes*—*Transfer of Property Act, IV of 1882, s. 51* One T. R. in 1907 entered into an Adhlati transaction with G. M. in the Alipur Tahsil of the Muradgarh District by which the latter was to sink a well and clear the land attached to it within a period of 4 years and on his carrying out his undertaking G. M. was to get possession of one third of the land as proprietor. G. M. apparently carried out his part of the undertaking and on 18th June 1913 his name was entered in the mutation register as owner of one third of the land attached to the well. The present plaintiff then brought a suit for pre-emption in respect of the sale of the one-third share in the land, and it was objected that the transaction was not a sale. *Held*, that the creation of the Adhlati tenure in the present case did not amount to a sale, as no money consideration passed at all, and the defendant became proprietor of one third of the land only because he sank a well and brought the land attached to it under cultivation. Such a transaction did not give rise to any rights of pre-emption. *Mel Chand v. Manasa Ram* (187 P. R. 1833) distinguished. *Ude Ram v. Baldevi* (12 P. R. 1331, P. 36, note), and *Jee Ram v. Chitka Mal* (23

PRE-EMPTION—*contd.*MISCELLANEOUS—*contd*

P. R. 1313), referred to. *GHULAM MUHAMMAD v. TEK CHAND* I. L. R. 2 Lah. 189

21. ——— Waiver—*Pre-emptor who refused to purchase except at a price much below the value* H., a member of an agricultural tribe, applied to the Deputy Commissioner for permission to sell his land. His application was forwarded to the Tahsildar, who went to the village to make inquiries and on 8th January 1913 vendee offered to purchase the land for Rs. 1,600 and the house for Rs. 400. On 10th January the plaintiffs, collaterals of H., stated that they were not prepared to pay more than Rs. 950 or Rs. 960 or both the properties and declined to buy them for more than that sum. The properties were then sold to the vendee. *Held*, that the conduct of the plaintiffs amounted to a waiver and that they could not enforce their right of pre-emption. *Indraj v. Brother Clement* (I L. R. 37 All. 262), referred to, also *Sri Kishan Singh v. Eachela Pandey* (I L. R. 33 All. 637), *Karam Chand v. Ghulam Hassan* (74 P. R. 1815), distinguished. *Held*, also, that plaintiffs had no reasonable ground for entertaining the belief that Rs. 2,000 was an excessive price. *MUKH RAM v. HARBAS* I L. R. 1 Lah. 51

PRE-EMPTION DECREE—

——— *Whether transferable*—On 17th June 1918, Mehr Khan, appellant, obtained a pre-emption decree on payment of Rs. 1,500 within one month. On 6th July 1918 Mehr Khan sold his rights in the decree to Shah Din, appellant, and on 8th July 1918 they both presented a joint application for execution and deposited Rs. 1,500, the fact of the sale being recited in the application. On 6th August 1918 Mehr Khan stated in Court that as he had sold his rights to Shah Din he wished possession under the decree to be given to him. *Held*, following *Ramaswami v. Goya* (I L. R. 7 All. 107, 111) that a decree for pre-emption is not capable of transfer, so as to enable the transferee to obtain possession of the pre-emptional property in execution and that consequently Shah Din could not get possession under the decree in favour of Mehr Khan. *Lashkari Mal v. Ishar Singh* (94 P. R. 1902), referred to. *MEHR KHAN v. GHULAM RASTI* I. L. R. 2 Lah. 251

PRE-EMPTOR.

——— right of, to put vendor to proof of title—

See PRE-EMPTION I L. R. 27 All. 529

PREFERENCE

See DEBTOR AND CREDITOR I L. R. 43 Calc. 321

PREFERENCE SHAREHOLDERS

See COMPANY I L. R. 42 Bom. 579

PREFERENTIAL CLAIM.

See MUTAWALLI I L. R. 43 Calc. 467

PREFERENTIAL HEIR.

See HINDU LAW—SUCCESSION I L. R. 38 Mad. 45.

PREJUDICE

see CHANGE I L R 41 Calc 66
see CRIMINAL PROCEDURE CODE (ACT V OF 1873) s 24

I L R 39 Mad 503

(CROSS EXAMINATION)

I L R 41 Calc 299

See FALSE INFORMATION

I L R 43 Calc 173

See LOCAL INSPECTION

I L R. 39 Calc 476

See LARKING HOUSE TENANT

I L R. 44 Calc 358

PRELIMINARY DECREE

S APPEAL I L R 42 Calc 914

I L R 48 Calc 1036

See POMBAY REGULATION (II OF 1877)

s 32 I L R 37 Bom 303

See CIVIL PROCEDURE CODE 1908—

ss 39 AND 97 O XXVI R. 11 10

I L R. 35 Bom. 392

I L R 39 Bom. 422

s 47 O XXII R. 10

I L R 39 Mad. 489

s 97 I L R 36 Bom. 536

I L R 37 Bom. 480

I L R 38 Bom. 331

I L R 39 Bom. 339

I L R 40 Bom. 627

O XXII R 18 I L R 35 All 159

See COURT FEES ACT VII OF 1870—

Section II CLS 34

I L R 32 All 517

s 7 cl (4) I L R. 39 Mad. 725

See HINDU LAW—PARTITION

I L R. 42 Bom 535

See MORTGAGE I L R. 38 Calc. 913

See MORTGAGE DECREE

I L R 39 Mad. 541

See PRETENSES ACT (XXIII OF 1871)

s 6 I L R. 39 Bom. 352

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss. 98 89

I L R 40 Bom 321

— in favour of puisne mortgagee—

See CIVIL PROCEDURE CODE (1908) O

XXXIV R. 4 5

I L R 35 All 398

Findings on issues relating to misjoinder limitation and jurisdiction—
Drawing up a preliminary decree—Material irregularity in declining to do so. A Subordinate Judge in trying a suit gave his decision on issues relating to misjoinder limitation and jurisdiction and directed the parties to adduce evidence relating to accounts. He was asked to draw up a preliminary decree in accordance with his findings on the issues and having declined to do so: Held that the Subordinate Judge committed a material irregularity in the exercise of his jurisdiction. The decision on the issues conclusively determined the rights of the parties regarding some matters in controversy so far as his Court was concerned,

PRELIMINARY DECREE—contd

the decision on each of those issues was therefore, sufficient to constitute a preliminary decree. *Per CHIAM*. It is the duty of the Court where it is applied to after the passing of a preliminary decree to have the decree drawn up so as to enable the party aggrieved to appeal. *Jai Diah v Shat V. Anab Manorode* I L R 34 Bom 18^o referred to *SIDHANATH DIONDIFY v CANESH GOVIND* (1919) I L R 37 Bom 60

Findings that a suit is not res judicata. A decision on that matter is not res judicata is not a preliminary decree. *Chon mainwami v Gangadharappa* I L R 39 Bom. 339 followed. *BILAL TA BIN SHIDAPPA v DHANA GAVDA* (1911) I L R. 39 Bom. 421

Appeal—final decrees passed before appeal from preliminary decree disposed of. When an appeal has been filed and is pending against a preliminary decree in a suit for partition the passing of the final decree does not render the appeal untenable. *Per SHAW J*.—A preliminary decree retains its force as such even after the passing of the final decree. A preliminary decree is not extinct after the passing of the final decree and the final decree instead of extinguishing the preliminary decree gives effect to it. *BISI WAIDUNNISA v DEEF NARAIN PRASAD* 1 Pat. L. 7 406

PRELIMINARY INQUIRY

See COMPLAINT DISMISSAL OF

I L R. 40 Calc 444

See COURT SPENDING OF

I L R 37 Calc. 642

See PERJURY I L R 42 Calc 240

— by an Assistant Settlement Officer—

See JUDICIAL PROCEEDING

I L R. 37 Calc. 52

PRELIMINARY MORTGAGE DECREE

See LIMITATION I L R. 42 Calc 776

PRELIMINARY ORDER

— defective effect of—

See CRIMINAL PROCEDURE CODE 1898

ss 145, 435 to 439

I L R 36 Mad. 275

PRELIMINARY POINT

See CIVIL PROCEDURE CODE (1908) O

XLI R 3 I L R. 39 All 163

s 6 REMAND I L R. 43 Calc. 143

PRE-MORTGAGE

See PARTITION I L R. 34 All 418

PREPARATION

See DAWOITY I L R. 41 Calc. 350

PREROGATIVES

See MADRAS CORPUS

I L R 44 Calc 459

PRESCRIPTION.

See EASEMENT I. L. R. 42 Calc. 164

I. L. R. 45 Bom. 1027

See EASEMENT (V of 1882), s 15

I. L. R. 39 Mad. 304

— non-riparian owner—

See EASEMENTS ACT (V of 1882), ss. 2 (c)

and 17 (c) I. L. R. 42 Bom. 238

— Prescription, proof of acquisition of title by—A is necessary to prove prescriptive right as trustee of tank—such right not acquired by acts of conservancy, maintaining and repairing, etc. A prescriptive right as trustee of a tank, the common property of a village, cannot be acquired by performing acts of conservancy, clearing and maintaining the tank, building flights of steps, sluices, etc., enjoying the fruits of trees in the bund, selling withered trees and similar acts. *Muthayya v Sivaraman*, I. L. R. 6 Mad. 229, followed. *Sivaraman Chetty v Muthayyan Chetty*, I. L. R. 12 Mad. 241, 244, followed. *KARUTHAN CHETTY v KALIMUTHAN* (1910)

I. L. R. 34 Mad. 323

— Water-rights—Reservoir in another's land—Prescriptive right to take water by defined channels—reservoir fed by surface water—Excavation by owner affecting supply of surface water, if actionable. The defendants had by prescription acquired the right to take water for the irrigation of their lands by two defined channels issuing westward from an ahar or reservoir in plaintiffs' mouzah and fed by water coming to it by a defined channel from the north west and surface water from the north, south and east. Held, that the plaintiffs had every right to cut in their own mouzah a pipe or channel which in no way interfered with the passage of water to the ahar through the channel from the north west, although it might result in drawing off the supply of surface water to the ahar to such an extent as would diminish the quantity of water available to the defendants for irrigating their lands. *INDRANATH PRATAP BANADUR BASTI v KRISHNA DOVAL GIRI* (1910)

14 C. W. N. 825

PRESENTATION.

See COMPLAINT I. L. R. 42 Calc. 19

See REGISTRATION ACT (III of 1877),

s 32 I. L. R. 34 All. 335

See REGISTRATION ACT (XVI of 1893)—

s 35 I. L. R. 35 All. 72, 134

ss. 32, 33 71, 73, 75, 87, 89

I. L. R. 40 All. 434

PRESIDENCY BANKS ACT (XI OF 1876)

— s. 32—Vacation Certificate Act (III of 1894), ss. 16 and 17—Dividends on shares may be paid to the person obtaining succession certificate—Transfer of shares to the holder of certificate etc. or to a nominee—Case stated for opinion of Court—*Civil Procedure Code* (Act I of 1876), s. 50 and O. XXXI. The provisions of s. 23 of the Presidency Banks Act of 1876 do not prevent the Banks from accepting the succession certificate granted under the Succession Certificate Act. The certificate affects all interests to all the persons who are liable on the securities specified in the certificate as regards all dealings in good faith in respect of such securities. *Hind,*

PRESIDENCY BANKS ACT (XI OF 1876)—
contd

— s. 32—contd

accordingly, the Banks will not be contravening the provisions of the Act if they pay the dividends on the shares in the Banks to the person obtaining the certificate, and on his requisition transfer the said shares to him or his nominee. *RANJIT SINGH v THE BANK OF BOMBAY* (1920)

I. L. R. 45 Bom. 133

— ss. 36, 37—Directors lending on the unauthorized securities (e.g., mortgage of immovable property, not ultra vires of the bank. The provisions of s. 37 of the Presidency Banks Act (XI of 1876) prohibiting the directors of such banks from entering into certain kinds of transactions therein mentioned such as taking mortgages of immovable properties are only directory and not mandatory and they prohibit only the directors and not the banks from entering into them and if such transactions are actually entered into by the directors, on behalf of the bank they are not ultra vires of the bank. The directors are only agents of the bank and if in entering into such transactions they exceed the powers given to them by the Act, the bank can ratify them and enforce them, and an assignee (as in this case) from the bank of its rights under such transactions, is equally entitled to enforce them. *DAMDAR SHANBOOTE v RAMA RAO* (1917)

I. L. R. 39 Mad. 101

PRESIDENCY MAGISTRATES.

See FISCAL TRIAL.

I. L. R. 42 Calc. 313

— jurisdiction of—

See COMPANY I. L. R. 45 Calc. 420

— notes of depositions—

See COPIES 13 C. W. N. 770

— courts of—jurisdiction of Inter se—Transfer, High Court has power of from Court of Chief Presidency Magistrate to Court of another Presidency Magistrate—*Criminal Procedure Code* (Act I of 1876), s. 21, cl. (2), 526, cl. (ii), Chapter Act (1863) s. 15 The Court of the Chief Presidency Magistrate and those of the other Presidency Magistrates are "Courts of equal jurisdiction" within the meaning of s. 526, cl. (ii), *Criminal Procedure Code* (Act I of 1876). The High Court has power to transfer a case from the file of the Chief Presidency Magistrate to that of another Presidency Magistrate. *In re VENKATASUBARA SASTRI* (1912)

I. L. R. 25 Mad. 759

— Jurisdiction within Port of Calcutta—[The High Court has jurisdiction in the Presidency, as the right kind of the High Court—Dismissal of complaints for want of complete complaint presented at the time by or before an adjoining Court—*Criminal Procedure Code* (Act I of 1876), s. 27 44—*Calcutta Port Act* (Act III of 1893), ss. 124 and 125 A Presidency Magistrate has jurisdiction under s. 20 of the *Criminal Procedure Code*, read with s. 129 of the *Calcutta Port Act* (Act III of 1893), to try an offence, under s. 46 of the latter Act committed outside the Port of Calcutta but within the limits of the Port of Calcutta. Where a complaint was presented in the Court of a Magistrate who had jurisdiction, but not the case under the Act of that it would

PRESIDENCY MAGISTRATES—concl'd

be heard by him but it was taken up and dismissed, under s. 217 of the Code, by the Chief Presidency Magistrate, without the knowledge of the complainant.—*Held*, that the order of acquittal under s. 247 ought in the circumstances of the case, to be set aside. *W. J. COOD v. GUNPAT RAI KHUKKA* (1919) **I. L. R. 47 Calc 147**

PRESIDENCY SMALL CAUSE COURT**Judgment of—**

See *APPEAL* **I. L. R. 41 Calc 323**

Rules of—

See *PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)*, ss 9 AND 38

I. L. R. 38 Mad. 823

suit in—

See *SANCTION FOR PROSECUTION*

I. L. R. 44 Calc 816

Jurisdiction—Fraud

Where a decree was passed by the Presidency Small Cause Court and a suit was instituted in the Court of a Munsif to set aside the decree on the ground of fraud. *Held*, that the jurisdiction to entertain such suits must be determined by the Civil Procedure Code, and the suit must be brought either in the Court within whose jurisdiction the fraud was perpetrated or within whose local jurisdiction the defendant ordinarily resides and personally works for gain. *Ailmony Barack v. Palla Lohan Chakrabarti*, 5 W. R. Act V 50 referred to. *Held*, further that the suit was maintainable in the Munsif's Court, and the jurisdiction of the Presidency Small Cause Court to vacate its own decree when the same has been obtained by fraud is not sufficient to oust that of another Court to set aside the decree. *Sarkisakram Masit v. Nando Ram Masit*, 11 C. W. N. 379 referred to. The plaintiff in such a suit must allege fraud by which he was prevented from placing his case before the original Court. He cannot bring a fresh action by merely alleging that the decree was obtained by the perjury of the person in whose favour it was given. *Mohamed Oslab v. Mohamed Salliman*, 1 I. L. R. 41 Calc 610, referred to. *ABDUL HUSSAIN CHOWDHURY v. ABDUL HUSSAIN* (1910)

14 C. W. N. 695

New Trial—Powers of

*Bench sitting on application for new trial—Jurisdiction—Practice—Questions of fact and of law—Presidency Small Cause Courts Act (XV of 1882) ss 17 and 33—Investment Act (I of 1895) s. 13—Civil Procedure Code (Act V of 1908) s. 115. The Second Judge of the Presidency Small Cause Court having dismissed a suit after trial the plaintiff applied under s. 33 of the Presidency Small Cause Courts Act for a new trial, and the Judge (the Chief and the Second) on such application set aside the order of dismissal and transferred the suit to the Third Judge to be tried by him. On a motion to the High Court by the defendants to set aside the order for new trial. *Held*, that s. 33 of the Presidency Small Cause Courts Act gives the Court power to set aside a new trial to be held and that there is no limitation in s. 33 that the Court can only*

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exercise the power if a question of law arises. *Sassoon v. Hurry Das Bhatia*, 1 I. L. R. 24 Calc 453, referred to. *JORAN SINGH v. RAM PRASAD* (1911) **I. L. R. 33 Calc 425**

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—

Jurisdiction of Presidency Small Cause Courts—Claim by a Parsi wife to recover costs incurred by her in a matrimonial suit—Arrears of maintenance at the rate fixed by arbitrators—Award—Practice and procedure. A suit by a Parsi wife to recover costs incurred by her in a matrimonial suit and to recover arrears of maintenance at a rate fixed by arbitrators in their award, is one cognizable by the Presidency Court of Small Causes. *ERACHSHAW v. DINSHI* (1920) **I. L. R. 45 Bom. 318**

ss 6, 41—

See *APPEAL* **I. L. R. 41 Calc. 323**

ss. 9, 33—

See *NEW TRIAL*

I. L. R. 47 Calc. 763

New trial, application for—Right of a party to apply—Presidency Small Cause Court Rules, O. XXI r 2, ultra vires—High Court, power of to make rules—Matters of practice or procedure—Right of a party to apply, not a matter of practice or procedure. The rules of the Presidency Small Cause Court are made by the High Court under the powers conferred by s. 9 of the Presidency Small Cause Courts Act of 1882, as amended by the Act of 1895. That section only empowers the High Court to make rules with reference to matters of practice or procedure and not matters of substantive right. On a true construction of s. 38 of the Act the power given to the Court is really a right given to a party to apply for a new trial, such right like the right of appeal is not a matter of practice or procedure. O. XXI, r 2 of the Presidency Small Cause Court Rules which requires at the time of presenting an application for new trial, either the deposit in Court of the decree amount or the giving of security for the due performance of the decree is inconsistent with the statutory right given by s. 38 of the Presidency Small Cause Courts Act and is ultra vires. *Attorney General v. Sullen*, 11 E. R. 1200, s. c. 10 H. L. C. 701 referred to. *Colonial Sugar Refining Company v. Irving* (1905) A. C. 359, referred to. *MAHURAI PILLAI v. MUTHU CHETTY* (1914) **I. L. R. 33 Mad. 823**

s. 19 (g)—Suit for stones of a well or their value—Title to the well questioned—Jurisdiction of the Small Cause Court. Suit to recover stones forming part of a well and said to have been wrongfully removed by the defendant, or their value is cognizable by the Presidency Small Cause Court in spite of the fact that it is necessary to determine the question of title to the well. *Puttanavada v. Ailanth Kalo Desai* (1915) 1 I. R. 37 Poon 675 followed. *Thuyat Raju v. Vasomhaya* (1917) 1 I. P. 20 Mad. 135 considered and distinguished. *Krishna-MACHARI v. Komalaveral* (1909)

I. L. R. 43 Mad. 603

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—*contd*

—s 19, cl (a)—*Jurisdiction—Unsuccessful claim proceedings—Suit to recover movable property attached by the Presidency Small Cause Court or for payment of its value—Not a suit for a mere declaration—The Small Cause Court Rules—Claim petitions—Civil Procedure Code (Act V of 1908)* A suit by the unsuccessful party in claim proceedings to recover movable property attached by the Presidency Small Cause Court or for the payment of its value is not excluded from the jurisdiction of the Presidency Small Cause Court under s 19 cl (a) of the Act as a suit for a declaratory decree. The statutory suit to establish his right given to the unsuccessful party in claim proceedings under the Code involves in every case a prayer for the setting aside of a summary order of a Civil Court this being so such a suit cannot be regarded as a suit for a mere declaration. *Phulkumar v Ganeshji* I L R 35 Cal 29 35 followed. The Small Cause Court rules reproduce the provisions of the Civil Procedure Code as to claim petitions and cases under them must be governed by the same considerations. *RAJENDRA v NARAYANASAMY NAIGER* (1915) I L R 33 Mad 219

—s 22—

See COSTS I L R 43 Cal 190

—s 31 cl (b)—

See EXECUTION OF DECREES

I L R 37 Cal 574

—ss 37 38—

See CRIMINAL PROCEDURE CODE s 105

I L R 24 Bom 313

—Sanction to prosecute—*Order granted by single Judge—Powers of Full Court to revoke the sanction—Full Court not an Appellate Court* Where a sanction to prosecute has been granted by a Judge of the Presidency Small Causes Court at Bombay a Full Court of that Court has no power to revoke the sanction. *Per CHANDAYAN, J*—The language used in ss 37 and 38 of the Presidency Court of Small Causes Act (XV of 1882) does not appear to be appropriate for the purpose of conferring appellate jurisdiction upon the Full Court. *Per BATHUR J*—The jurisdiction conferred by s 38 of the Act is not appellate but revisional only. *SHIVLAL PADMA, In re* (1909)

I L R 34 Bom 316

—ss 37 38—

See PRESIDENCY SMALL CAUSE COURT

I L R 38 Cal 425

—s 38—

See s. 9 I L R 38 Mad 823

I L R 47 Cal 783

—*New trial power of Court to order—Judgment against weight of evidence* s 38 of the Presidency Small Cause Courts Act (XV of 1882) places no limitation upon the power of the Court to order new trial in a matter when the judgment is manifestly against the weight of evidence such power is not restricted to questions of law only. *Sassoon v Hurrey Dass Bhat* I C B N 44 relied on *SHIV v RAM PRASAD* (1911) 18 C W N 25

—*Full Bench of the Small Causes Court no power to decide facts* *Held*

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—*contd*

by the Full Bench that a Full Bench of the Presidency Small Cause Court sitting under s 38 of Act XV of 1882 has no jurisdiction to decide questions of fact whether they are raised generally or in consequence of its finding on another question of fact or law. *Sadasook Gomb v Chund v Kannappa* I L R 19 Mad 96 and *Srinivas Chari v Balaji Rao* I L R 21 Mad 230 approved. *Ramasamy Aiyar v The Madras Tires Limited* 30 Mad L J 207 overruled. *SAT SUNDAR ROWTHOR v GHOSHMOHINI MARRAKATAR* (1916) I L R 40 Mad 355

—*New trial—Full Court*

—*Difference of opinion on questions of fact—Powers of interference—Powers not restricted to questions of law only—Jurisdiction* S and D filed cross suits in the Presidency Small Cause Court. The trial Judge allowed S's suit and dismissed that of D. D obtained a Rule for new trial and the same coming up for argument before the Chief Judge and the trial Judge there was a difference of opinion between the learned Judges on questions of fact. In this division the order of the Chief Judge prevailed with the result that D's claim was wholly allowed and that of S disallowed. Against this order S applied in revision to the High Court contending that under s 38 of the Presidency Small Cause Courts Act 1882 the Full Court had no jurisdiction to make the order because they had no appellate powers on a question of fact and upon such questions their powers of interference were limited to cases where the judgment of trial Court was manifestly against the weight of evidence. *Held* that the Full Court had jurisdiction on as the powers conferred under s 38 of the Presidency Small Cause Courts Act 1882 were not restricted to interferences on questions of law only. *Per BATHUR, ACTING C J* There is nothing in the wording of the section which suggests that the Legislature intended to confine the powers thus generally granted to particular cases where questions of law are involved, nor can it be accurately said that the powers of interference are only to be used where the original judgment is manifestly against the weight of the evidence. *BOVOO NARAYAN v DINKAR JAGANNATH* (1917)

I L R 42 Bom 80

—s 41—

See APPEAL I L R 41 Cal 323

—ss 41-49 and Ch VII—

See BOMBAY RENT (U.S. RESTRICTIONS) ACT (No II of 1918)—

ss 9 AND 10 I L R 45 Bom 928 1048

—ss 43 and 48—

See BAILIFF I L R 42 Cal 313

—s 43—*Order for possession—S* *Full Cause Court has no jurisdiction to amend terms of decrees or order passed under Ch. VII—Pent (War Restrictions) Act (Bom. Act II of 1918)* s 9 On the 21st January 1920 a decree for possession was made in favour of the petitioner by the Presidency Small Cause Court on the ground that the premises were reasonably and bona fide required and the opponent was ordered to vacate by the 21st June 1920. On the 15th June 1920 the opponent applied for further

PRESIDENCY SMALL CAUSE COURTS ACT
(XV OF 1892)--contd

—————→ p. 43—concl'd

time and was granted time till the 9th July Thereafter on a further application by the opposite the Court stayed execution till the 20th October 1920 The petitioner having applied to the High Court under its revisional jurisdiction —*Held* setting aside the order, that the Small Cause Court had no jurisdiction to alter or amend the terms of a decree or order for possession once passed under s 43 of the Presidency Small Cause Courts Act, 1882, nor was there anything in the Rent Act which gave the Small Cause Court any power to alter its orders for possession made in due course JAMESHJI HORMASJI v GORDHANDAS GOELDAS (1920)

48—Orders made in proceeding under Ch VII—Review—Power of the Court to review the order—Civil Procedure Code (Act V of 19 5), as s 114 and O XLVII The Presidency Small Cause Court has no jurisdiction to review its decision in a proceeding under Ch VII of the Presidency Small Cause Courts Act 1882. *PER MAHADEO, C J* —S. 48 of the Presidency Small Cause Courts Act, 1882, means that in the proceedings themselves under Ch. VII, the provisions of the Code shall apply as far as possible that is to say, until an order is made granting or dismissing the application and while any further proceedings which might become necessary in execution of the order are being taken. To go a step further by stating that any other provisions of the Code with regard to appeals or reviews apply, would not be warranted by the words of the section. '*PER FAWCETT J*' —The expression 'proceedings under Ch. VII' should be construed as referring simply to the proceedings for the actual hearing of the case on its merits which are terminated by an order either refusing the application or granting possession. It is a further stage and in reality a separate proceeding, when the Court after passing such an order is asked to review that order. *FRAMROZ DOSABHAI v. DALSUKHRAI FULCHAND* (1920).
I. L. R. 45 Bom. 872

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See CAUSE OR ACTION

I L R 41 Calc 825

See PRESIDENTY TOWNS INSOLVENCY ACT
(Ill. of 1909), s. 17

L L R 39 Mad 889

Limitations Act 125

of 1993) - 29 promised—Part payment of principal—Literate debtor—Part payment signed but not verified by him whether sufficient compliance within the promise When two or more Judges of the Small Cause Court are sitting together for the purpose of exercising the jurisdiction conferred by a. 35 of the Presidency Small Cause Courts Act (XX of 1882), they are sitting "in a suit" within the meaning of those words in a. 6) and if a reference is made to the High Court under its provisions, such reference is valid S. 22 of the Limitation Act required that in the case of a part payment of the principal of a debt, the entry recording the payment should be written by the person who makes the payment, when such person knows how to write, his mere signature to the entry written by another is not a

PRESIDENCY SMALL CAUSE COURTS ACT
(XV OF 1882)—*concl'd.*

sufficient compliance with the section. *Joshi*
Bhas Shantkr v Ras Parvat, 1 L R 26 Bom
216, Jasud v Jom Bhana, 1 L R 28 Bom.
267 and Mukhi Hays Palmutulla v Corery
Bhaja 1 L P 23 Cal 545 followed. See
Seahwa 1 L P 7 Vad 55, and Elappa v
Annamalai, 1 L R 7 Vad 76, distinguished.
Lodd Govindoss Krishnaboss v Rikmani
Bai (1913) 1 L R 38 Mad. 433

_____ 88-

Set PRESIDENCY SMALL CAUSE COURT
I L R. 38 Calc 425

_____ § 94.

See FRAUD . 14 C. W. N 695

PRESIDENCY SMALL CAUSE COURTS
(AMENDMENT) ACT (I OF 1895)

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See PRESIDENCY SMALL CAUSE COURT
I. L. R. 38 Cal. 425

PRESIDENCY TOWNS INSOLVENCY ACT (III
OF 1909)-1

See INSOLVENT I L R 45 Bom 550

— ss 5, 6, 36, 101, sec 18, Sch II—
Appeal, time within which to be filed—Signing of the findings and of the report—Jurisdiction of the Registrar in Insolvency—Validity of a mortgage, whether could be decided by the Registrar—Consent when infants are concerned, effect of Under s. 101 of the Presidency Towns Insolvency Act, 1909, the period of limitation for an appeal from the order of the Registrar in Insolvency is twenty days from the time when the report is signed by the Registrar and the matter is thereby completed and not from the time when the findings of the Registrar are signed or filed The Registrar in Insolvency has no jurisdiction to deal with the question of validity or otherwise of a mortgage alleged to have been executed by the insolvent,
re LALBHAI SHAI 26 C W N 631

ss. 6, 8, 23, 28, 29 (2)—(a) (b), (c),
(2), (f), (j)—Protection order—Appeal lies against a protection order—Opposing creditor, though not a decree holder a person aggrieved by the protection order—Protection order a privilege to be granted or withheld, according to the character and circumstances of the insolvency—Insolvent guilty of malpractices not entitled to protection Under s. 8, cl. 2 (b) of the Presidency Towns Insolvency Act (III of 1909) an appeal lies from a protection order made by a Judge in the exercise of the insolvency jurisdiction It does not appear from s. 8 of the Presidency Towns Insolvency Act that the Legislature wished to put any limitation upon appeals made from original orders of a Judge except perhaps orders regulating procedure The expression any person aggrieved in cl. 2 of the last mentioned act on is not to be limited to a creditor who has obtained decrees against the insolvent Every application for protection after refusal or suspension of discharge must be judged on its merits If the insolvent has acted recklessly and dishonestly the fact that he cannot pay, is no reason for depriving the

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*ss. 6, 8, 25, 33, 39 (2)—*concld*

creditor of the power of punishing him by attachment and imprisonment to the extent the law allows. A protection order is a privilege to be granted or withheld as the Court in its discretion may determine. In exercising that discretion, it is relevant and proper for the Court to have regard to the character and circumstances of the insolvent. Where a Court finds that the insolvent is of a flagrantly culpable kind, being the result of gross extravagance accompanied by grave malpractices and a total disregard of the creditors whose money was squandered, protection ought to be refused. *MATTIE v INGRAM*, 11 CA D 335, and *In re Gent*. *Gent Davis v Harris* 40 CA D 190, 195 referred to. *MAHOMED HAJI ESSACK v SHAIK ABDUL RAHMAN* (1915).

I. L. R. 40 Bom. 481.

ss. 6, 27, 36, 121.—*Ind an Insolvency Act (II & 12 Vict., c. 21) s. 3—Employ Insolvency rules under Indian Insolvency Act, r. 37—Officer appointed by the Chief Justice under s. 6 of the Presidency Towns Insolvency Act—Attorneys right of audience* The petitioner complained that in certain proceedings before the officer appointed under s. 6 of the Presidency Towns Insolvency Act, namely, on the holding of the public examination of insolvents under s. 27 of the Act and the examination of persons summoned by the Court under s. 3, such examinations had been conducted by solicitors. The petitioner submitted that, for reasons set forth in the petition, solicitors had no right of audience before the said officer, and petitioned the Chief Justice of the Bombay High Court to form a Special Bench for the determination of the question whether any legal practitioner except counsel had the right to audience before the officer so appointed. *Held*, that attorneys of the High Court have a right of audience before the officer appointed by the Chief Justice in the exercise of the powers conferred upon him under s. 6 of the Presidency Towns Insolvency Act. *In re* ADVOCATE GENERAL OF BOMBAY (1913).

I. L. R. 37 Bom. 464.

ss. 6, 101; Sec II, s. 18—

See INSOLVENCY I. L. R. 47 Cal. 721.

cap. 21, s. 25.—*Immovable property outside local limits of ordinary original civil jurisdiction of High Court—Dispute as to title—Jurisdiction of High Court in insolvency to decide—Summary procedure, when—Letters Patent, cl. 12 and 18—Bankruptcy Act (46 & 47 Vict., cap. 62 of 1883) s. 102* Under s. 7 of the Presidency Towns Insolvency Act (III of 1909), the High Court of Madras in the exercise of its insolvency jurisdiction, has jurisdiction to adjudicate on claims relating to immovable property situated outside the limits of its ordinary original civil jurisdiction; the jurisdiction which existed under s. 25 of 11 & 12 Vict., cap. 21, has not been cut down by the Presidency Towns Insolvency Act. The jurisdiction conferred by s. 7 of the Act is of a discretionary character and it is seldom that the Insolvency Court will deem it expedient to try difficult questions of title; the Judge in such cases would ordinarily ask the Official Assignee in Insolvency to establish his title in an

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*ss. 7, 36 and 90—11 and 12 Vict., cap. 21, s. 25—*concld*

ordinary Civil Court. S. 36 of the Act does not control the language of s. 7 but provides a special and summary procedure in certain cases, nor does s. 90 curtail the jurisdiction otherwise exercisable by the Insolvency Court. Decisions on the Bankruptcy Act (46 & 47 Vict. cap. 52 of 1883) s. 102, corresponding to s. 7 of the Indian Act III of 1909, are relevant and should be followed. Cl. 12 of the Letters Patent does not control the provisions of cl. 18 thereof so as to limit the insolvency jurisdiction of the Court. *Ex parte Declan* *In re Pollard* L. R. 8 Ch D 377, 378. *Ex parte Brown* *In re Yates*, L. R. 11 Ch D 143 followed. *Macle v Dittie* *In re Motion*, L. R. 9 Ch App 192, 210, *In re Lucas*, L. R. 42 Cal. 109. *Ganeshdas Parolal* *In re R D Sethna v R D Chandra* I. L. R. 32 Bom. 195. *Khan Sahib Bangs Abdul Kadir Sahib v The Official Assignee*, 14 Mad L T 51, referred to. *ABDUL KHADER v THE OFFICIAL ASSIGNEE OF MADRAS* (1916).

I. L. R. 40 Mad. 810.

ss. 7, 86—*Official Assignee—Third person a property taken in custody by Official Assignee—Sust by stranger—Civil Court—Right of suit* Where the Official Assignee takes into his possession property as belonging to the insolvent which a third party claims as his own, the latter can bring a suit against the Official Assignee in a Civil Court to establish his right. *NATIONAL CHINLAI v THE OFFICIAL ASSIGNEE* (1911).

I. L. R. 35 Bom. 473.

s. 8—

See s. 6

I. L. R. 40 Bom. 461.

See INSOLVENCY I. L. R. 43 Cal. 248.

ss. 35—*Rules (Calcutta) under Presidency Towns Insolvency Act, r. 17, 18, 19 and 30—Ex parte order for examination of a person, if could be made—Power of the Registrar in Insolvency to make such an order—Procedure when the witness refuses to answer questions—Appeal from an order of Judge in Insolvency* Application under s. 36 (1) of the Presidency Towns Insolvency Act, 1919, could be, and are intended to be made *ex parte*. To such an application r. 30 of the rules framed by the High Court under s. 112 of the Act applies and not rr. 17, 18 and 19. *In re Kanyas Mohan Poy*, I. L. R. 43 Cal. 280, s. c. 20 C. W. N. 1155 (1916), followed under s. 6 (d) and (e) of the Act the Registrar in Insolvency has power to deal with such an application. An application to the Court to set aside an order made by the Registrar in Insolvency under s. 36 (1) is not an appeal under cl. (2) of s. 8 but an application under cl. (1) for the review of an *ex parte* order. The course to be adopted if the person summoned is advised not to answer questions put to him indicated. *Pe ALBERT ELLER SELBANA PATRONAL KARNAT BHANDAR v THE OFFICIAL ASSIGNEE OF CALCUTTA* 25 C. W. N. 750.

s. 9 (d) III.—*Idem* *Idem* on petition for what to do in case of a person who is given a petition for adjudication in bankruptcy alleged that the directors of a company in their place of business and persons and are providing themselves so as to deprive their creditors of the means of compensation with them whereby they

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§ 9 (d) III—*contd.*

petitioners are advised and believed that the said insolvents are liable to be adjudged to have committed an act of insolvency." An affidavit in support of this petition alleged the indebtedness of the debtors and that they had left Madras leaving no one in charge of their respective business and are secreting themselves for the purpose of evading their creditors. *Held*, that these allegations were a sufficient compliance with s. 9 (d) of the Insolvency Act. The statement of intent to defeat or delay the creditors must appear either in the petition or in the affidavit, otherwise, the petition is liable to be dismissed as the omission to state it is a substantial defect incurable by amendment. An omission to state in fact that the petitioning creditor is a secured creditor and the value of his security, as required by s. 12 (2) and r. 21, is one that could be cured by amendment. *WHITE, C. J.*—Leave to amend a petition by inserting new causes of action should not be given at a time when by doing so the Court would be depriving the defendant of the plea of limitation. *WALLIS, J.* (dubitant) whether under peculiar circumstances leave could not be given in such cases. *PER WALLIS, J.*—The passage (in the petition) conveys with sufficient certainty that the debtors committed an act of insolvency by leaving their place of business and residence with intent to defeat and delay their creditors. But if that act of insolvency is not expressed with sufficient certainty we are at liberty to look at the affidavit and after reading the petition with the affidavit to find that the act of insolvency is charged with sufficient certainty. *Ex parte Coates, In re Skellon & Co. D 979*, distinguished. *GRANT & Co v. MANDRAJAYAN SANKAR* (1913) **I. L. R. 37 Mad. 555**

§§ 9 (e), 10—Partnership debt—

Attachment of property in execution of a joint decree against partner—Property claimed on behalf of an endorser—Enquiry as to whether property attached was really judgment debtors, if essential—General Clauses Act (X of 1897), s. 13—Act or default, if to be personal of person sought to be adjudicated—Delay in applying for annulment § 9 (e) of the Presidency Towns Insolvency Act requires that the act or default which amounts to an act of insolvency must be a personal act or default of the particular individual or in certain circumstances of his agent Where properties alleged to belong to three judgment-debtors remained under attachment in execution of a joint decree against them for more than 21 days. *Held*, that this alone could not be relied on as an act of insolvency on the part of *H*, one of the co judgment debtors when, in the execution proceedings, claim was laid to what was alleged to be his share of the property on behalf of an endorser, and that claim was pending when the adjudicating order was made against him and the other co judgment debtors. On an application by *H* for annulment of the adjudication: *Held*, that the above act of insolvency on the part of his co judgment debtors could not be regarded as an act of insolvency on the part of *H*. *Held*, that it was necessary to inquire whether the property attached was in fact the applicant's. An objection that the application for annulment was not made till after the lapse of a considerable time,

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§§ 9 (e), 10—*contd.*

having been raised for the first time on appeal? *Held*, that there being no bar of limitation in the matter, this objection taken at this late stage should not be entertained. *HARISH CHANDRA MCKEEJEE v. THE EAST INDIA COAL CO. LD.* (1912) **18 C. W. N. 733**

§§ 13 (8) 15 (2) and 21 (1)—Adjudication, annulment of, when Court has jurisdiction to pass order for—Debts, necessity that all debts of the insolvent actually and properly proved in the bankruptcy should have been fully paid in cash—Conduct of insolvent applying for annulment of an adjudication order, duty of Court to scrutinize—Discretion of Court, how exercised—A debtor who has been adjudicated insolvent on his own petition cannot even with the leave of the Court, withdraw his petition. S. 15 (2) of the Presidency Towns Insolvency Act only applies to petitions that are pending before any order has been made, as also does s. 13 (8) dealing with petitions by creditors. Once an order of adjudication has been made, the debtor becomes an insolvent and remains so until the order of adjudication is annulled or he obtains his discharge. The Court can only annul the order of adjudication under s. 21 of the Act if the Court is of opinion that the debtor ought not to have been adjudicated insolvent or it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full and in the latter case the "debts" including at least all debts actually and properly proved in bankruptcy must have been fully paid in cash. It is the duty of the Court to scrutinize the conduct of an insolvent applying for an order of annulment. The Court is given a discretion by s. 21, and it would not be a good exercise of that discretion to make an order of annulment of an adjudication where, if the insolvent were applying for his discharge, an order of discharge would not be granted. *In re Keet, (1905) 2 K B 666*, 661, applied. *In the matter of MANDRAJAYAN SANKAR* (1912) **I. L. R. 38 Bom. 200**

§§ 14, 15, 21, 28—

See *INSOLVENCY I. L. R. 44 Calc. 899*

§ 15—

See s. 13.

See *INSOLVENCY I. L. R. 44 Calc. 899*

§ 17—

Leave of Court—

Power of secured creditor of adjudicated insolvent to realise his security by means of a regular suit without obtaining leave, *A*, having obtained a decree in a suit brought by him against *B* for the payment of a sum of money, assigned the decree to *C* by way of mortgage in return for repayment of monies advanced by *C* to *A*. Subsequently *A* became insolvent and his property being vested in the Official Assignee the latter executed the decree against *B* and obtained payment of the amount due from *B* in full. Subsequently *C*, without the leave of the Court first obtained, brought a suit against the Official Assignee to recover the amount due to him as mortgagee of the decree against *B* out of the monies so recovered by the Official Assignee. *Held*, that the Official Assignee, having executed a decree which had been assigned by way of

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security, was in the position of a mortgagor who had sold the mortgaged property and was in possession of the sale proceeds, that until the claim of the mortgagee had been satisfied the insolvent or his Official Assignee had no right to the proceeds of the decree and that the secured creditor in such a case might file a suit to obtain payment of his claim out of the amount so recovered by the Official Assignee without obtaining the leave of the Court under s. 17 of the Presidency Towns Insolvency Act as the proviso to s. 17 covered a suit by a mortgagee to realise his security *Lavo v HETILLANNAI ISMAILI* (1913)

I. L. R. 39 Bom. 359

Suit by creditors against an adjudicated insolvent—Suit commenced without the leave of the Court—Application for leave after the institution of the suit—Application refused The leave contemplated under s. 17 of the Presidency Towns Insolvency Act (III of 1909) is leave which ought to be obtained before the commencement of a suit, and cannot be granted after the same is filed *In re DWARKADAS TR. BHANDAS* (1915)

I. L. R. 40 Bom. 235

Decree of Presidency Small Cause Court—Judgment debtor, adjudicated insolvent subsequent to decree—Adjudication by the High Court—Application for execution by arrest in the Presidency Small Cause Court—Leave of the High Court, not obtained—Release of judgment debtor on security—Non appearance, effect of—Security bond validity of—Jurisdiction—Water—Presidency Small Cause Courts Act (XV of 1862), s. 69 Where a decree was passed by the Presidency Small Cause Court against a person who was subsequently adjudicated an insolvent by the High Court in the exercise of its insolvency jurisdiction, the former Court had no jurisdiction without the leave of the High Court to entertain any application for execution of the decree against the insolvent under s. 17 of the Insolvency Act III of 1909. Consequently a security bond, executed to the Court by a third party for the appearance of the judgment-debtor in the course of the execution proceedings carried on without the leave of the High Court, was obtained without jurisdiction and was void in law. A reference to the High Court under s. 69 of the Presidency Small Cause Courts Act should state clearly the points on which there is a difference of opinion among the Judges of the Small Cause Court. *EASWARA v GOVINDARAJULU NAIDU* (1913)

I. L. R. 39 Mad. 699

ss. 17, 22 and 51—Adjudication by different Courts—Later adjudication based on earlier acts of insolvency—Vesting of property under prior adjudication—Official Assignees whether created by later adjudication—Convenience of administration of assets by one Court—Annulment of adjudication, in other, necessity for—Order of adjudication—Specification of acts of insolvency therein, necessity for Where there are successive adjudications in insolvency by two Courts, all the property of the insolvent vests in the Official Assignee appointed by the Court in which the prior adjudication was made and it will not be divested from him by the subsequent adjudication of the other Court, even if the later adjudication be based on acts of insolvency committed

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd***ss. 17, 22 and 51—*contd***

earlier in date than those upon which the prior adjudication was made. Where it is found convenient that the estate should be administered by the Court in which the later adjudication was made, steps should be taken to annul the prior adjudication. S. 51 of the Presidency Towns Insolvency Act (III of 1909) which enacts the doctrine of relation back, is intended to enable the Official Assignee to recover property in the hands of third parties and has not the effect of divesting property vested in an Official Assignee under a prior adjudication. *Ex parte Geddes, In re Masai, 1 Q & J 414*, followed. An order of adjudication should specify the precise acts of insolvency on which it is made, as the insolvency relates back to the date of the acts of insolvency which are found to have been proved. **OFFICIAL ASSIGNEE OF MADRAS v OFFICIAL ASSIGNEE OF BANGALORE** (1918)

I. L. R. 42 Mad. 121

ss. 17, 103 and 104—Adjudged insolvent—Criminal proceedings against the insolvent—Penal Code (Act XLV of 1860), s. 421—Sanction of Insolvency Court not obtained—Jurisdiction of Magistrate—Suit or other legal proceeding, interpretation of A person in insolvent circumstances applied to the Insolvent Debtors' Court at Bombay for relief under the provisions of the Presidency Towns Insolvency Act, 1909, and was adjudicated an insolvent. Ten days later, a creditor of the insolvent, without having obtained any sanction from the Insolvent Debtors Court, filed a complaint against the insolvent in the Presidency Magistrate's Court for an offence punishable under s. 421 of the Indian Penal Code, 1860. It was contended that the Magistrate had no jurisdiction to entertain the complaint. *Held* that the Magistrate's jurisdiction to try the insolvent for an offence under s. 421 of the Indian Penal Code, 1860, was not taken away by anything contained in the Presidency Towns Insolvency Act, 1909. The expression 'or other legal proceeding' in s. 17 of the Presidency Towns Insolvency Act, 1909, coming after the word 'suit', a word of more limited application, must be construed on the principle of *ejusdem generis*. It, therefore, includes only proceedings of a civil nature. **EMPEROR v MULSHANKAR HARINDAR BHAT** (1910)

I. L. R. 35 Bom. 63**ss. 17, 126—****See INSOLVENCY I. L. R. 40 Cal. 78**

s. 18 (3)—Suit on a promissory note against an adjudged insolvent—Proceedings against an insolvent may be stayed although not pending at the time of the order of adjudication—Proceedings against an insolvent stayed, although leave to sue was obtained under s. 17—Discretion of the trial Court in staying proceedings not to be interfered with, where interference would involve abuse of judicial proceedings The wording of s. 18 (3) of the Presidency Towns Insolvency Act III of 1909 is wide enough to justify a stay of proceedings in an action which was not pending at the time of the order of adjudication. S. 10 of the English Bankruptcy Act, and *Brouncombe v Fair*, 55 L. T. 85, referred to **MAHOMED HAJI ESSACK v ABDUL RAHMAN** (1916)

I. L. R. 41 Bom. 312

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd.*

— s. 21—

See s. 13 I. L. R. 33 Bom. 200

See ADJUDICATION ANNULMENT OF
I. L. R. 47 Cal. 914

— ss. 21, 28 to 30—*Prvt. arrangement of insolvent with creditors for full discharge on part payment whether 'payment in full' or 'composition' under the Act.* A private arrangement of the insolvents to pay four annas in the rupee in full satisfaction of their claims even though made with all their creditors is neither a 'payment in full' nor a 'composition' within the meaning of the Act so as to entitle the insolvents to an annulment of an order of adjudication. An order of adjudication under the Presidency Towns Insolvency Act made on an application of the insolvents who were unable to pay their debts, can be annulled by 'payment in full' to the creditors as provided for by s. 21 of the Act or as the result of a composition with the creditors in the manner provided for by ss. 28 to 30 of the Act. *BALI KESOOK LALL & OFFICIAL ASSIGNEE, MADRAS (1920)* I. L. R. 43 Mad. 71

— s. 22—

See s. 17 I. L. R. 42 Mad. 121

— s. 25—

See s. 6 I. L. R. 40 Bom. 461

Protection order—Previous decisions on applications for interim orders—Discretion—Practice. It has never been the practice of Commissioners in Insolvency under the Indian Insolvency Act (II and II Act. c. 21) to consider themselves bound by their previous decisions on applications for interim orders when it has been a matter for their discretion and it by no means follows that because an application has been refused on the first occasion it must also be refused on the second occasion. S. 25 of the Presidency Towns Insolvency Act (III of 1909) clearly intends that while an insolvent diligently performs the duties prescribed by the Act he should not be harassed by execution creditors, and should not be rendered liable to pressure whereby one creditor may get undue advantage over another. The section does not deprive the Court of its discretion in granting or refusing protection, but sub s. (4) indicates clearly the lines along which that discretion should be exercised when a creditor opposes the grant. If an insolvent can produce the certificate referred to, the onus is thrown on the opposing creditors of showing cause why the protection order should not be granted. *In the matter of MURUGAI GANOA & CO (1910)* I. L. R. 35 Bom. 47

— ss. 25, 28, 27, Sch. II—*Creditor, if includes his benamidar—s. 12 (1) (a) 13, & 3 (2) (b) and 30—Official Assignee if may examine petitioning creditor's claim and remove his name—Benamidar, onus of proof of advances on one behalf—"Person aggrieved"* It is open to the Official Assignee after the insolvent to examine the claim of the petitioning creditor and if he finds that in fact there is no debt due to the petitioning creditor, he must strike out the name of such creditor from the list. A benamidar is not entitled to claim as a creditor in the insolvency. The persons who really advanced the money should

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd.*

— ss. 25, 26, 27, Sch. II—*contd.*

come forward and prove their claims before the Court. *MOORE & J—The term "creditor" in the Presidency Towns Insolvency Act does not include the benamidar of a creditor. Any person who makes an application to a Court for a decision or any person who is brought before the Court to submit to a decision is, if the decision goes against him, thereby a person aggrieved by that decision, within the meaning of that expression in s. 80 of the Act. KETOKE CHARAN BANERJEE v. SARAT KUMAR DABEE (1916) 20 C. W. N. 995*

— s. 27—

See s. 5 I. L. R. 37 Bom. 464

— ss. 28, 29, 30—

See s. 21 I. L. R. 43 Mad. 71

— s. 30—*Ind an Contract Act (IX of 1872) s. 135—Surety—Dabash of a Company, guaranteeing customers—Part payment of debt by surety to creditor—Insolvency of debtor—Composition effected by insolvent-debtor with creditors—Subsequent approval by Court and annulment of insolvency—Right of surety to refund of money paid to creditor—Composition and annulment, whether under s. 30 of the Act.* The dabash of a Company stood surety for customers introduced by him and deposited with them certain Government promissory notes as security. One of such customers failing in business, the Company sold the notes and appropriated the proceeds in part payment of the debt of the customer. Both the customer and the dabash were adjudicated insolvents. The customer entered directly without the Official Assignee's intervention into a composition with his creditors with a view to obtain the approval and sanction of the Insolvency Court and subsequently applied to the Court for approval of the composition and annulment of the insolvency. The Court annulled the insolvency but the order did not embody the terms of the composition, as required by s. 30 of the Presidency Towns Insolvency Act. The Company had agreed to the composition without the consent of the dabash and received a dividend on the full amount of their debt, without giving credit for the money which was appropriated. The Official Assignee, acting on behalf of the insolvent dabash, applied to the Court to direct the Company to refund the value of his Government Promissory Notes appropriated by them. *Held*, that a creditor was entitled to prove for the full amount of his debt in the insolvency of the principal debtor, notwithstanding that the surety had paid a portion of the debt and that the surety could not prove, until he had paid the full amount for which he was liable. *ELLIS v. ELLIS (1876) 1 K. J. 137 and In re Societe Generale Bank of England (1886) 2 Q. B. 12* followed; that the fact that the creditor entered into a composition which the principal debtor without the surety's consent did not entitle the latter to a refund of payments already made by him to the creditor although it might release him from future liability, that the irregularities in the proceedings did not vitiate the Court's approval of the terms of the composition and the consequent annulment of the insolvency under s. 30 of the Insolvency Act; and that the discharge of the principal debtor, in such a case,

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—contd**s. 30—contd**

being by operation of law and not by act of the creditor, the surety would not be discharged from his obligation to the creditor under s. 13 of the Indian Contract Act. *Ex parte Jacob & In re Jacobs* (1875) 10 Ch App 211, followed. On the question whether the fact that the creditor had given receipts in full settlement of the debt, without waiting until the composition was sanctioned by the Court discharged the creditor *Held*, by **SANJIVARI ARYAN, J** (WALLIS C J, not deciding the point) that where after notice to the surety the composition was accepted by the Court it became an act of the Court and the surety was not discharged from liability. **BOMBAY COMPANY, LTD v OFFICIAL ASSIGNEE OF MADRAS** (1921) 1 L. R. 44 Mad 381

s. 33—

See **INSOLVENCY** 1 L. R. 47 Calc 56

ss 32 to 37, 43—

See **INSOLVENCY** 1 L. R. 44 Calc 374

s. 35—

See s. 7 . . . 25 C W. N 750

s. 36—

See s. 5 . . . 26 C.W. N 631

See s. 6 . . . 1 L. R. 37 Bom 464

See s. 7 . . . 1 L. R. 40 Mad. 810

See Costs . . . 1 L. R. 48 Calc. 795

See **INSOLVENCY** 1 L. R. 42 Calc. 109

1 L. R. 44 Calc 286, 374

1 L. R. 48 Calc 1039

See **INSOLVENCY** 1 L. R. 46 Calc 996

Application under, if may be made ex parte—Calcutta High Court Insolvency rr 17, 18, 19 and 30 Applications under s. 36 (1) of the Presidency Towns Insolvency Act for examination of persons thereunder are intended to be made *ex parte* under the rules framed by the Calcutta High Court under s. 112 of the Act. To such applications r. 30 applies and not rr. 17, 18 and 19, and this view is supported by the English Bankruptcy Act (1914), 4 & 5, George V, Ch. 59, and the rules thereunder. *In re KESORJI MOHAN ROY* (1916) 26 C. W. N. 1155

Order under section when can be properly made—Admission of proof of debt by Official Assignee a condition precedent The words in a. 36 "any creditor who has proved his debt" mean not merely a creditor who has lodged proof of his debt but a creditor whose proof has been admitted by the Official Assignee and unless this has been done no order can be made under the section. The mere fact that a creditor's name was included in the schedule filed by the insolvent and that so far his claim has not been challenged does not assist him if his debt has not been admitted by the Official Assignee so that he becomes a creditor who has proved his debt within the meaning of s. 36 of the Act. **Re ABDUL SAMAD** . . . 26 C. W. N. 744

s. 36 (4) (5)—

Proper proceedings under s. 36 (4) and (5) for discovery of insolvent's property—Practice—Costs, order for, against Official

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—contd**s. 36 (4) (5)—contd**

Assignee—Indemnity If the Official Assignee desires to proceed under s. 36, (4) and (5) of the Presidency Towns Insolvency Act (III of 1909) for discovery of an insolvent's property known or suspected to be in possession of any person, the only way he can do that is to take the examination of such person by itself and ask the Court for an order that he is justified, by the admissions made or evidence given by such person and without looking to any further evidence at all, to have the order. In such cases the proper procedure is not for the Official Assignee to present a petition and obtain from Court a rule in bankruptcy against such person to show cause. There are two courses open to the Official Assignee in such cases. The one is to start an action and the other is to proceed against the respondent by notice of motion in insolvency. But it is discretionary with the Court in the latter case to direct at the hearing of the motion that the matter be dealt with by an action. In the case of motion, a notice of motion has to be sent to the respondent stating the grounds of the application supported by an affidavit giving the evidence relied upon. The rule was discharged on the merits with liberty to the Official Assignee to proceed by motion on proper materials or by action if he so desired. If the Official Assignee brings an unsuccessful motion, however careful he may have been the order that the Court would make generally would be that he is to pay the respondent's costs and he will have the right of indemnity given him by the previous order of the Court. Or he may obtain an indemnity from the creditor or other person in whose interest the motion is brought before he starts proceeding. The order for costs should not be directed to be limited to the assets in the hands of the Official Assignee when the respondent is not in any way in default for which he may be partially mulcted in costs. **Re SURESH CHANDRA GOOYER** (1918) 23 C W. N. 421

Examination by creditor of a mortgagee under s. 36—Costs of mortgagee appearing by counsel, if recoverable from creditor A mortgagee of an insolvent (applicant) was examined under s. 36 of the Presidency Towns Insolvency Act, 1909, at the instance of a creditor (the respondents) who "challenged the validity of the mortgage. At the examination counsel and attorney appeared for the mortgagee. Subsequently the respondents did not take any step to have the mortgage declared void. Thereupon the applicant made the present application asking for costs of attending by solicitor and counsel upon his own examination against the respondents. *Held*, that the applicant was not entitled to the order asked for. *In re Waddell*, 6 Ch. D. 323 (1877) and *In re Applicant French and Scatchell*, Ltd (1905) 1 Ch. 749 referred to. **IN THE MATTER OF ANSHU PROKASH CHOWSE** 24 C. W. N. 688

Scope of order—An order under the section should not be made in circumstances justifying the institution of a regular suit. One P. obtained a decree against J. and Co for the recovery of the value of certain shares which according to him had been made over to J. and Co. in pursuance of an agreement of sale. The

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd.*s 36 (4) (5)—*contd.*

decree was affirmed in appeal and an appeal was also preferred to the Privy Council. During the pendency of this litigation J and Co deposited with the Registrar of the Court some war bonds for the satisfaction of the decree which might ultimately be binding on them. The Official Assignee obtained an order from the Court under s 36 cl (5) in respect of those war bonds claiming them as part of the estate of the father of R who was an insolvent. *Held*—That in the circumstances of the case the order in question should not have been made but the matter in issue should have been left to be decided in a regular suit. The Court should not deal with the matter under s 36, if it really involves difficult questions of title, but should leave the parties to litigate such matters in a regular suit. *RAMES BHENAI GHOSH v THE OFFICIAL ASSIGNEE OF CALCUTTA* 25 C W N 852

s 33, 51 55—*Insolvency Rules*
Calcutta 5 (1)—*Jurisdiction of Insolvency Court to acquire real fraudulent transfer of property and to set aside sale on application under s 36—suit for full for selling and order under s 36—S 25*
Insolvency Act of 1843 (31 and 32 Vict. c 21)—13
Elm. c 5 *principle of*—*Evidence of insolvent of*
admissible against transferee of property in case of
insolvency—Burden of proof on person claiming by
such transfer—Transfer by insolvent when good—
Transfer or assignment by insolvent when fraudulent
 Under the Presidency Towns Insolvency Act, (III of 1909) the Insolvency Court has, on an application by the Official Assignee jurisdiction under s 36 to inquire as to whether any sale of property by an insolvent is fraudulent or void and if so to make an order for the delivery of such property to the Official Assignee. Any one aggrieved by such an order might bring a regular suit to vindicate his title. *SREENASE, Re A F C.* (1917) 22 C. W. N. 335

s. 36, 103, 104—*Offences under the Insolvency Act—Notice of charges—Framing of charges—Discrepancy between notice and the charges framed—Finding of intention—Apparal Court it may make a finding of intention for the first time—Examination of the insolvent under s 36 of the Insolvency Act whether permissible—Voluntary examination of the insolvent—Admissibility of such evidence at the trial of the insolvent—Indian Evidence Act (I of 1872) s. 132*
 The insolvent was adjudicated on the 6th March 1919 and on the same day he made over one book of account to the Official Assignee. On the 6th March there was a search in the insolvent's room and amongst other things two diaries of 1918 and 1919 respectively and a stock book were taken charge of by the servant of the Official Assignee and taken to the office. On the 7th March the diary of 1918 and pages 5 to 22 of the stock book were alleged to be missing. It was alleged by the Official Assignee that this was done by the insolvent. Thereafter the insolvent was examined under s. 36 of the Presidency Towns Insolvency Act to which no objection was taken by the insolvent. Charges were framed against the insolvent on four counts, viz., that he fraudulently and with intent to conceal the state of his affairs and to defeat the object of the Act (1) withheld the production of his diary for 1918 and 1919

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd.*ss. 36, 103, 104—*contd.*

and his stock book, (2) wilfully prevented the production of pages 5—22 of his stock book by removing and causing to be removed the said pages, (3) destroyed the said stock book by removing or causing to be removed therefrom the said pages (4) wilfully prevented the production of his diary for 1918. *Held*, that s. 103 of the Presidency Towns Insolvency Act, 1909, applies to offences committed both before and after the adjudication. The section also applies to cases of wilfully withholding the production of books even after they have come to the possession of the Official Assignee. *Per WOODROFFE, J.*—Though a charge under s. 103 cannot be maintained if not framed in pursuance of the notice under s. 104 this must be taken as subject to the principle which is embodied in s. 637 of the Criminal Procedure Code, 1898, namely, that no error or irregularity in a charge will call for a reversal of an order unless it in fact has occasioned a failure of justice, and in determining whether this is so the Court shall have regard to the fact whether the objection could and should have been raised in an earlier stage of the proceedings. *J. M. Lucas v Official Assignee of Pongol*, 24 C W N 418 (1914) referred to. *Held*, that with regard to charges (1) and (3) there was no material difference between the charges as framed and as mentioned in the notice and as regards charges (2) and (4) though there was no mention in the notice they were allowed to remain as under the circumstances of the case no prejudice was caused to the accused and as no objection was taken to them in the first instance. *Per WOODROFFE, J.*—If an accused receives notice that the prosecution may seek to prove against him either of two alternative intentions, he cannot, as he must be ready to meet a charge in respect of both, be prejudiced, by a charge of having had both intentions. *Quere*—Whether the insolvent could be charged both under charges (2) and (3) as the acts charged took place at one and the same place and were one alleged event. The Appeal Court, with all the materials before it, can make a finding of intention if it has been omitted per incuriam by the Judge. *The Queen v Ingham*, 29 L J (M C) 38 (1859), distinguished. *Held* also that there was no objection on the part of the insolvent to his being examined under s. 36 of the Presidency Towns Insolvency Act 1909, his examination was voluntary and as such was admissible at his trial under s. 103 of the Act. *Quere*—Whether an insolvent could be examined under s. 36 of the Presidency Towns Insolvency Act, 1909. *Held*, on the facts that the charges against the insolvent had not been made out. *JOSEPH PRATT v OFFICIAL ASSIGNEE OF CALCUTTA*

I L R 47 Calc 254

24 C. W. N. 425

s 37—

See INSOLVENCY I L R. 41 Calc. 374

s 38—

See s 6. I L R. 40 Bom. 461

Adjudicated insolvent
 —*discharge suspended—practice of Court requiring*
insolvent's attendance to obtain final discharge—suit
against Official Assignee for an injunction to restrain
threatened and imminent injury to property—Notice

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

§ 35—*contd*

not necessary. The plaintiff was adjudicated insolvent on the 26th of September 1911 when an order was made vesting his estate in the Official Assignee. The plaintiff having subsequently applied for his discharge an order was made on the 2nd of October 1912 in the following terms — "It is ordered that the insolvent's discharge be with protection suspended for one year and that he be discharged as from the 2nd day of October 1913." In 1916 and 1917 the plaintiff acquired property in the nature of a business. No final order of discharge having been made, the Official Assignee on the 22nd of January 1918 took possession of the plaintiff's stock in trade and then restored possession to the plaintiff on condition of his making payments for the benefit of his scheduled creditors. On the 7th of March 1918, the Official Assignee threatened to re-take possession and on the following day the plaintiff filed the suit (1) to recover the sums paid to the Official Assignee together with damages for the trespass already committed and (2) to restrain the Official Assignee by an injunction from committing the threatened trespass. The defendant contended, *inter alia*, that the suit was not maintainable as the plaintiff had not given notice as required by s. 80 of the Civil Procedure Code and further, that until a final order of discharge was made at the expiration of the period mentioned in the order suspending discharge the property acquired by the plaintiff became divisible amongst the plaintiff's creditors under s. 52 (2) (a) of the Presidency Towns Insolvency Act. In support of the latter contention the defendant relied upon the practice of the High Court to require the insolvent whose discharge has been suspended to appear and obtain the final and absolute discharge after the expiry of the period of suspension. At the trial, the plaintiff abandoned his claim on the first cause of action and elected to proceed only on the injunction in respect of the second cause of action.—*Held*, (1) that the suit was maintainable in respect of the injunction to restrain the threatened and imminent injury to the plaintiff's property in spite of the fact that no notice was given under s. 80 of the Civil Procedure Code, (2) that the order of 2nd October 1912 though suspending discharge for one year expressly provided that the plaintiff "be discharged as from the 2nd day of October 1913," and that the said order having operated as a discharge under the Act from the 2nd of October 1913 the Official Assignee could not proceed against the property of the plaintiff acquired by him after that date, (3) that the practice of the High Court to require the insolvent whose discharge has been suspended to appear and obtain the final and absolute discharge after the expiry of the period of suspension being in contravention of the law was unlawful and ought not to be given effect to. *Agastial Chavatal v. The Official Assignee Bombay* (1912) 37 Bom. 213, followed though doubted. *In re Dove* (1881) 27 Ch. D. 637, referred to. *Per Curiam*.—The words of s. 38 (5) of the Presidency Towns Insolvency Act (III of 1909) imply that the discharge is granted through its operation is suspended. It is not the making of the order that is suspended but the operation of the order made. The Act makes no further proceedings

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*

§ 38—*contd*

necessary after an order of suspension under s. 38 has been passed. *MURDALLY SHAMU v. B. N. LANG* (1919) I. L. R. 44 Bom. 555

§ 39—

See s. 6 I. L. R. 40 Bom. 461

§ 43—

See INSOLVENCY I. L. R. 44 Calc. 374

§ 51—

See s. 17 I. L. R. 42 Mad. 121

ss. 52, 62, 64—

See SALE OF GOODS I. L. R. 40 Calc. 523

ss. 53 (1), 109, 109—

See INSOLVENCY I. L. R. 44 Calc. 1016

§ 55—

See s. 38 22 C. W. N. 335

*Provincial Insolvency Act (III of 1907), s. 36—Mortgage within two years of insolvency of mortgagor—Good faith and consideration for mortgage—Onus of proof on mortgagee—Mortgagee admitted to proof by Official Assignee—Application by Official Assignee to expunge proof of mortgage—Onus of proof Under s. 55 of the Presidency Towns Insolvency Act, as under s. 36 of the Provincial Insolvency Act, a mortgagee setting up a mortgage executed within two years of the insolvency of the mortgagor, has the onus cast on him to show that the transaction was one executed in good faith and for consideration. The fact that the Official Assignee is moving to expunge a proof which he has admitted under s. 26 of the former Act does not shift the burden of proof from the mortgagee to the Official Assignee. *The Official Assignee v. Annapuramammal* (1913) 20 I. C. 901 followed. An admission of proof by the Official Assignee is in no sense an adjudication and it is open to him as well as to other creditors to have an adjudication by the Court on notice, and in such adjudication the matter has to be decided with reference to the ordinary legal presumptions which arise. *OFFICIAL ASSIGNEE OF MADRAS v. SAM BANDA MUDALIAR* (1920) I. L. R. 43 Mad. 739*

§ 55, 56—Transfer of property by debtor to a creditor—Provincial preference—With a view of giving preference, meaning of—*English Bankruptcy Act, 1883, s. 45—Construction adopted in English cases, applicability of, to the Indian Act.* A trader, being in very embarrassed circumstances and unable to meet his obligations as they fell due, sold to one of his creditors, for what was found to be a fair price, a large quantity of diamonds pledged by him with certain other creditors and thereby paid off the debts due to the latter and the purchasing creditor, the balance was paid to the debtor who kept his business going by paying off other pressing creditors with that amount. The debtor was adjudged an insolvent on a petition presented within three months of this transaction. On an application by the Official Assignee filed before a Judge of the High Court in Insolvency to declare the transfer void under ss. 55 and 56 of the Presidency Towns Insolvency Act: *Held*, that the transaction was not void as a fraudulent preference

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*ss 55-56—*conclld*

under s 56 of the Presidency Towns Insolvency Act nor was it void under s 55 of the Act as it was made in good faith and for valuable consideration *Per CURRIAM* To bring a transaction within the scope of s 56 of the Act it must have been entered into with the dominant view of preferring a particular creditor The construction adopted in several English decisions and approved by the House of Lords in *Sharp v Jackson* (1899) 1 C 419 on the corresponding provision in s 48 of the English Bankruptcy Act 1883 should be followed in construing similar language used in s 56 of the Presidency Towns Insolvency Act (III of 1909) *Sharp v Jackson* (1899) 1 C 419 *Ex parte Griffith In re Burdon* 1 P 23 Ch D 69 *Ex parte Hill In re Burd* 23 Ch D 699 followed *Valiam Vinnathan v Official Assignee of Madras* 32 I C 793 disented from. THE OFFICIAL ASSIGNEE MADRAS T B MENTA & SONS (1918) I L R 42 Mad. 510

Held that an application under this section should be made by the Official Assignee re *SURAJMULL MUNOIRCHAND* 28 C W N 803

s. 57—

1. *Indications to the creditor that debtor is about to suspend payment—Transfer of goods to creditor thereafter but before the filing of a petition for declaration of insolvency not a bond fide transfer—Bond fides a requisite under s 57 of the Act* After receiving notice from the debtor's agent that the debtor was going to suspend payment a creditor took on the day previous to the debtor's filing a petition in insolvency, possession of the debtor's goods by virtue of a bill of lading given by the debtor to secure past and future advances and overdrafts *Held* affirming the decision of *WILLIS J* (a) that giving notice to a creditor that the debtor is about to suspend payment is an act of insolvency (b) that though by the transaction of taking possession of the goods the creditor became the transferee of the goods he was not a bond fide transferee for value within s 57 of the Presidency Towns Insolvency Act (III of 1909) as the act of taking possession was after knowledge of the act of insolvency and (c) that though the body of s 57 of the Act has not expressly prescribed that the transfer should be bond fide yet bond fides is legally necessary to claim the benefit of the section *Per CURRIAM*—The provisions and the wording of the Presidency Towns Insolvency Act being almost the same as those of the English Bankruptcy Act the rulings of the English Courts on the latter Act are to be followed in interpreting the Indian Act *Obiter*: A mere intimation to a creditor by the debtor or his agent that the debtor is insolvent does not amount to an act of insolvency *MERCANTILE BANK OF INDIA LTD v THE OFFICIAL ASSIGNEE MADRAS* (1913) I L R. 33 Mad. 250

2. *Transfer by insolvent prior to insolvency to wife—Benami transaction—Transfer by wife to another after husband's adjudication on* A husband transferred his share in his family dwelling house to his wife without consideration on the 11th November 1911 On the 27th of February 1912 he was adjudicated insolvent and his wife on the 17th of October 1912

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*contd*s 57—*conclld*

transferred the property which had been so conveyed to her to the appellant, *Held* that even assuming that the appellant had purchased the property for valuable consideration and without notice of the adjudication of the insolvent the transfer to the appellant subsequent to the adjudication was void under s 57 of the Presidency Towns Insolvency Act inasmuch as the transfer by the husband to the wife prior to his insolvency was found to be fictitious or benami and the consequence that the property had vested in the Official Assignee prior to the transfer to the appellant *Per MOOREJEE J*—No title by estoppel accreted to the appellant as against the Official Assignee The Official Assignee to what extent representative of insolvent considered *In re Slobodinsky* (1913) 2 A B 517 522 and *In re Hart* (1914) 3 A B 6 distinguished *In re LAKSHI PRATYA DAS v RAI KISHORI DAS* (1916) 20 C W N 554

ss 62, 64—

See SALE OF GOODS

I L R. 40 Calc 523

ss 70 and 82—

Separate Creditors—Misfeasance, neglect or omission—Distribution of assets—Notice of claim not disposed of—Personal liability of the Official Assignee—Method of ascertaining his liability—Costs The Official Assignee distributed the assets of the insolvent after deducting commission etc to the two scheduled creditors, though he had notice of claim by three other creditors and their claims were neither admitted nor rejected *Held*—That the Official Assignee was personally liable for the amount of which the three creditors had been deprived A creditor who lodges his proof in the statutory form is entitled that it should be dealt with without doing anything more *Re ARCHIBALD GILCHRIST PEACE* 26 C W N 653

s 88—

See s 7

I L R. 35 Bom 473

s 90—

See s 7

I L R. 45 Mad. 810

Civil Procedure Code (Act V of 1908) s 21—Transfer of petition for insolvency to munsiff District Court for a spouse—No jurisdiction—As the jurisdictions conferred by the Presidency Towns Insolvency Act on the High Court and by the Provincial Insolvency Act on the munsiff courts are distinct, and the provisions of the two Acts differ in such important respects it is not competent for the High Court to transfer under s 90 of the Presidency Towns Insolvency Act and under s 24 Civil Procedure Code an Insolvency petition pending before it, under the Presidency Towns Insolvency Act for a spouse by a munsiff District Court under the Provincial Insolvency Act *SRINIVASA AYYANGAR v THE OFFICIAL ASSIGNEE OF MADRAS* (1913) I L R. 38 Mad. 472

s 101—

See s 5

28 C W N 631

See INSOLVENCY I L R. 47 Calc. 721

ss 102, 104—

See s. 17

I L R. 35 Bom 63

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—contd

ss 103, 104—concld

See s 36

24 C. W. N. 425

See INSOLVENT I L. R. 47 Calc. 254

Offence under the Insolvency Act—Trial of offence—Notice of charge and the charges framed whether must agree—Undue preference where the creditor is not admitted as such—Undue preference whether must be made fraudulently—Criminal proceedings when to be taken A charge framed under s 103 of the Presidency Towns Insolvency Act, 1909 must be in pursuance of the notice required to be issued under s 104. When the insolvent was charged with having withheld the production of the cash book or books for a certain period and the notice made no reference to the books. *Held*—That the charge was not framed in pursuance of the notice and could not be maintained. To establish a charge that books are being purposely withheld, it must be shown that they exist and have not been destroyed. The insolvent was also charged that on or about January or February 1912 the insolvent for the purpose of giving undue preference to one of his alleged creditors to wit A, made away with a stock of Shellac. *Held*—The charge was bad inasmuch as it was not alleged that the making away was done fraudulently as was required by s 103 (b) of the Insolvency Act. *Held also*—That the charge was bad as the creditor was not admitted as such by the Official Assignee. *Per JENNINGS, C. J.*—Though no universal rule can be laid down, it is ordinarily undesirable to institute criminal proceedings until determination of civil proceedings in which the same issues are involved. It is too well known to need elaboration that criminal proceedings lend themselves to the unscrupulous application of improper pressure with a view to influencing the course of the civil proceedings, and beyond that there is the mischief of criminal proceedings being instituted with an imperfect appreciation of the facts where they have not been ascertained in the more searching investigation of a Civil Court. *J. M. LUCAS v. OFFICIAL ASSIGNEE OF BENGAL*

24 C. W. N. 418

Offence under the Insolvency Act—Trial of offence—Notice of charge and charges framed if must agree See *Head note* under Insolvency in the Civil Index. *J. M. LUCAS v. OFFICIAL ASSIGNEE OF BENGAL, JOSEPH PERRY v. OFFICIAL ASSIGNEE OF CALCUTTA*

24 C. W. N. 425

s. 108—

See LETTERS OF ADMINISTRATION

15 C. W. N. 350

s. 115—Immunity of Official Assignee from stamp duty, whether applicable to his attorney—*Nattukkottai Chettis* whether bankers—*Loans advanced on or without deposit of goods*—*Entry in account*—*Bankers' lien on goods for general balance of account*—*Indian Contract Act (IX of 1872) s. 171* An attorney representing the Official Assignee is entitled to the same privileges as to stamp duty as the latter has under s. 115 of the Presidency Towns Insolvency Act. Consequently, the attorney need not pay stamp duty for a copy of the order passed by a Judge of the High Court in the exercise of its insolvency jurisdiction. It is perfectly general knowledge, and it

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—co cld

s 115—concld

has been recognised in judicial decisions that *Nattukkottai Chettis* are the Indian bankers of this part of the country. *Velayappa Chettiar v. Unnamalai Achi* (1910) 6 L. W. 637 and *Annamalai Chettis v. Annamalai Chettis* (1910) 10 L. W. 67, referred to. The garnishee, a *Nattukkottai Chetti* had, in addition to money lending business, customers who deposited money with him, kept pass books and went with them and drew money, and he paid interest on the deposits and bought and sold hundies and lent money on securities. *Held*, the garnishee was a banker. It appeared that diamonds were deposited by a customer with the garnishee from time to time and advances made thereon and the diamonds were redeemed from time to time but also that loans were made by him without deposit of diamonds and entered in the same account. *Held*, on the insolvency of the customer that under s. 171 Indian Contract Act the garnishee was entitled as a banker to retain the deposits as security for his general balance of account with the insolvent, and that no contract to the contrary had been proved in the case. *OFFICIAL ASSIGNEE OF MADRAS v. RAMASWAMY CHETTI* (1920)

I L. R. 43 Mad. 747

s 121—

See s 6

I. L. R. 37 Bom. 464

s. 126—

See INSOLVENCY I L. R. 33 Calc. 542

I L. R. 40 Calc. 78

Sch II—

See s 21

20 C. W. N. 995

See INSOLVENCY

I L. R. 47 Calc. 721

PRESIDING OFFICER.

absence of—

See SALE IN EXECUTION OF DECREE

I L. R. 39 Calc. 26

PRESS

keeping a, whether a "Licensed calling or common law right"—

See PRESS ACT (I of 1910), s. 3 (1),

PROVISO I L. R. 39 Mad. 1164

members of the—

See LIBEL I L. R. 41 Calc. 1023

PRESS ACT (I OF 1910).

See PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867)

s. 3—Printing Press—Order to make deposit—Failure to make deposit—Liability—Deposit to be made within reasonable time The Government of Bombay, on the 13th September 1912, issued to the applicant a notice calling upon him under s. 3, sub-s. (2) of the Indian Press Act 1910 to deposit with the District Magistrate of Kara security to the amount of Rs. 3 (3). It was served on the applicant on the afternoon of the 25th September. On the 3rd October, which was a Monday, the applicant sent off by post letters to His Excellency the Governor and to the District Magistrate of Kara stating that he had called down the press. On the 2nd October

PRESS ACT (I OF 1910)—contd

s 3 contd

the applicant nullified the press and had his declaration in respect of the press cancelled the next day. On the 5th October proceedings were taken against the applicant, under s 3 (1) of the Act, for keeping the press without making the deposit. He was convicted of the offence. The applicant having applied to the High Court. *Held* that no limit of time having been given to the applicant within which to make the deposit ordered the notice and s 3 of the Indian Press Act 1910 must be construed as meaning that the deposit ordered should be made within a reasonable time. *Held* also, that the interval which elapsed between the afternoon of the 28th September and the 3rd October could not be reckoned as an unreasonable time. *EXTENSION & REINSTATEMENT* (1913)

L. L. R. 37 Bom. 555

—proviso construction of

—Original order of Magistrate dispensing with security.—Demand of security by Magistrate there after legally of Government of India. Act (5 & 6 Geo. 5) cap. 61 ss 106 and 107.—Criminal Procedure Code (Act 5 of 1898) s 435.—High Court power of review writ of certiorari and to cancel Magistrate's order.—Magistrate demanding security not a Court but executive officer.—Writ of certiorari when can be issued.—Judicial act what is.—Indian Press Act (1 of 1910) s 2.—Whether a bar to issue of writ of certiorari.—Proviso object of.—Keeping a press where a licensed calling or common law right. *PER ANDRA RAHM Offg C J and SENAAGIRI AYER J* (AYLING J not dissenting). The Chief Presidency Magistrate acting under s 3 (1) of the Indian Press Act is not a Court but is only an executive officer entrusted with the performance of certain administrative duties, whose details are left entirely to his discretion. Hence an order by him requiring security from the keeper of a press over and in excess of his powers is not capable of being reviewed by the High Court either by means of a writ of certiorari issued under ss 106 and 107 of the Government of India Act (5 & 6 Geo. 5) cap. 61 or by the exercise of revisional powers as provided by s 435 Criminal Procedure Code (Act 5 of 1898). *S. RAMANUJAM & SUBRAMANIAM v. THE GOVT. OF INDIA* (1913) 1 L. R. 21 Mad 259. *SHANKER SARP v. MEYER* (1913) 1 L. R. 23 Ill 313. *MUSKAT v. SUBRAMANIAM* (1913) 1 L. R. 11 Mad 26. *PER ANDRA RAHM Offg C J and SENAAGIRI AYER J*. Whether an act is judicial or not depends on the nature of the powers conferred by the legislature the character of the act sought to be quashed and the nature and extent of the discretion vested with the authority and other similar considerations. *PER CUNNINGHAM*.—Every keeper of a printing press who makes a declaration under s 4 of the Press and Registration of Books Act (XXV of 1907) after the commencement of the Indian Press Act (1 of 1910) is simultaneously liable to deposit such security as the Magistrate demands under s 3 (1) of the Indian Press Act even though the press and the newspapers published therein were in existence before the passing of the Press Act. But the Magistrate may under the proviso to s 3 (1) make an order dispensing with a security. *PER ANDRA RAHM Offg C J and SENAAGIRI AYER J* (AYLING J concurring).—If once a Magistrate dispenses with a security he cannot thereafter cancel

PRESS ACT (I OF 1910)—contd

s 3 contd

such order and demand security. The words or have from time to time cancel or may make any order under this subsection which are to be taken in the proviso as that which enables a Magistrate to make an order dispensing with security cannot be construed to include an order dispensing with security. A proviso appended to a section is either an explanation or a qualification of the section. It does not add to or enlarge the scope of the section. *WEST DERBY UNION v. METROPOLITAN FIRE ASSURANCE SOCIETY* (1897) 1 L. R. 647 referred to. *PER AYLING J*.—The substance and not the form must be looked at and that which is in form a proviso may in substance be a fresh enactment adding to and not merely qualifying that which goes before; and the proviso is really such a one. *PER ANDRA RAHM Offg C J and SENAAGIRI AYER J*. The Supreme Court of Madras had the right to issue writs of certiorari as the King Bench in England and that right has been preserved to the High Court by the Charters of 1861 and 1887 the Letters Patent of 1865 and the Government of India Act of 1915 and no Act of any Legislature has taken away this right. *UNION OF INDIA v. THE CORPORATION FOR THE TOWN OF CALCUTTA* (1913) 1 L. R. 22 Cal 273 referred to. *PER ANDRA RAHM Offg C J and SENAAGIRI AYER J* (AYLING J concurring).—If once a Magistrate dispenses with a security he cannot thereafter cancel

s 3, sub-s (1) and s 4 sub-s (1)

Expt 2 ss. 17 and 22. Order of Magistrate cancelling previous order dispensing with security if judicial or administrative order.—Power to review by certiorari.—Power whether taken away.—High Courts in India power to issue writs of certiorari when exercisable.—Order of forfeiture by Local Government.—Publication with intent to excite hatred etc.—Intent how established.—Acts upon school of opinion and class divided.—Government of India Act 1915 ss 65A, 106 and 107.—S 22 Press Act if ultra vires.—Statute interpretation of

Proviso. Under s 3 sub-s (1) of the Press Act of 1910 the Magistrate has power to cancel a previous order dispensing with security the necessary consequence of which will be that security will have to be deposited according to the amount thereupon fixed by him with the limits prescribed as would be done in normal course on the first making of a declaration. There is no magic in the words of the proviso and the plain meaning must be given to the words of the Legislature. The act on of the Magistrate in increasing or diminishing or withdrawing or imposing the deposit of security under the Press Act is a mere matter of administrative discretion not a judicial order open to examination by a Court of law of superior jurisdiction. In the only case in which he is to record his reasons the object of recording them is for the information of his superiors in the Government. Where a Magistrate cancelled his previous order dispensing with the deposit of security without giving the owner of the printing press an opportunity to be heard: *Held* that though it might have been a mere exercise of the Magistrate's discretion to have given the owner such an opportunity it was not a condemnation on which case law requires that the person to be condemned should be first heard the act of the Magistrate amounting only to the withdrawal of a privilege which need never have been granted and the order would be irre-

PRESS ACT (I OF 1910)—contd

s. 3 sub-s. (1) and s. 4, sub-s. (1).

Expt 2, ss. 17 and 22—contd

versible either upon process of *certiorari* or by way of revision, assuming that the order was open to such examination. *Held*, further, that if it were a judicial order, it would be open to examination by way of a revision so that there being a more suitable remedy available a writ of *certiorari* would be excluded and that if it were an order of that quasi-judicial kind to which *certiorari* has sometimes been applied in England or in India, the Press Act may quite reasonably have intended to take it away. *ANNE BESANT v THE ADVOCATE GENERAL OF MADRAS* (1910)

L. R. 43 Mad. 146
23 C. W. N. 938

ss. 3 (1), 4 (1), 17, 19, 20 and 22—*Demand of security by Magistrate under process to s 3 (1), legality of—Order by Government under s 4 (1) forfeiting security and copies of newspaper, legality of—Jurisdiction of High Court under s 17, extent of—Words . . . which are likely or may have a tendency, directly or indirectly whether by interference, suggestion, allusion, metaphor, implication, or otherwise* in s. 4 (1), meaning of—*“Hatred, or contempt,”* and *“Government established by law in British India,”* in s. 4 (1), meaning of—*Intention of writer whether essential under s 4 (1)—Onus under s 4 (1), whether on applicant—“In aid of the proof of the nature of or tendency of the words”* in s. 20, effect of—*ss 4 and 22 whether ultra vires of the Imperial Legislature of India as contravening s 43 of 3 & 4 Will. IV, cap 85 or s 22 of 24 & 25 Vict, cap 67, or s 63 of the Government of India Act 5 & 6 Geo 1, cap 61.* The petitioner in this case who was the keeper of a printing press and publisher of a news paper therein made his application to the High Court under s. 17 of the Indian Press Act (I of 1910) for cancellation of (a) an order of the Chief Presidency Magistrate of Madras, demanding from her under s 3 (1) of the Act security for two thousand rupees in supervision of a previous order made by him dispensing with security and (b) an order of the Governor in Council, Madras, declaring under s 4 (1) the security of the two thousand rupees so deposited and all copies of the newspapers wherever found, to be forfeited to His Majesty. In dismissing the application on the ground that some of the specified articles (herein after called extracts) of the newspapers were of the objectionable nature described in s 4 (1) of the Press Act, their Lordships of the Special Bench, *held*, as follows:—In an application, made under s 17 of the Indian Press Act, the only question which the Special Bench of the High Court can determine is whether the extracts complained of did not contain any words of the nature described in s 4 (1) and the Court has no jurisdiction to determine any other question, such as, (a) whether the particular order of the Magistrate demanding security was beyond his powers or (b) whether s 4 or 22 of the Press Act is *ultra vires* of the powers of the Imperial Legislature of India as contravening any Act of Parliament, or (c) whether the order of forfeiture was legally made. *In re Mahomed Ali*, I L R 41 Cal 466, referred to *Advocating*, “Home Rule” for India is not per se objectionable. But such advocacy must not offend against existing laws “*hatred*” and “*contempt*” towards “the Government” occurring in s 4 may be created by

PRESS ACT (I OF 1910)—contd

ss 3 (1), 4 (1), 17, 19, 20 and 22—contd

articles imputing to the Government base, dishonourable corrupt or malicious motives in the discharge of its duties,” or by articles unjustly “accusing the Government of hostility or indifference to the welfare of the people.” Though the operative or enacting portion of s 4 (1) (c) does not make the intention or motive of the writer of the articles complained of material in considering whether the words are not of the nature described in s 4 (1) Explanation 2 thereto requires that the writer must intend to excite hatred, contempt or disaffection if his writings are to be brought within cl (c), the intention being deducible mainly from the words used. The words “the Government established by law of India,” occurring in s 4 are not to be construed as indicating only the supremacy of the British Crown over India and the British connection with it, as opposed to independence. *MRS BESANT v EMPEROR* (1910)

L. L. R. 39 Mad. 1035

s 4—

See FORFEITURE

L. L. R. 42 Cal. 730

Interpretation of Statute—“Government established by law in British India,” meaning of—*S 4 of Act No 1 of 1910 not ultra vires of the Indian Legislature* *Held* that s 4 of the Indian Press Act, 1910, is not ultra vires of the Indian Legislature, *Besant v Advocate General of Madras*, I L R 53 Mad 146, referred to. In cl (1) (c) of that section, the expression “Government established by law in British India” means the established authority which governs the country and administers its public affairs and includes the representatives to whom the task of government is entrusted. The word Government in ss 2 and 4, of the Act is equivalent to Government established by law in British India. *Besant v King Emperor*, I L R 39 Mad 1035, referred to. In an application under s 17 of the Indian Press Act, 1910, against an order under s 4 forfeiting the applicant's security, the Court, on a consideration of the articles upon which the order complained of was based, found that they were such as would convey to an ordinary person that the rules of this country “in addition to incompetence, cowardice and heartlessness, were guilty of the slaughter of innocent people in order to terrorize them into subjection, and to crush out all kinds of political movements and national aspirations, and further that they were perfidious enough to pervert and misapply the Defences of India Act with the like object and to invent the ‘Rowlatt Act’ for a similar purpose.” The Court accordingly held that the order for forfeiture of the applicant's security was completely justified. *In the matter of the petition of SUNDAR LAL*

L. L. R. 42 All. 233

ss. 4, (1), cl (c), Expt. II, ss 17, 21, 23—*Ground for setting aside forfeiture of security defect in notice, if—Seditious intent, proof of, if necessary to justify forfeiture under s 4 (1) (c)—Intention how far material—“Intention” and “tendency” distinguished—Truth of facts alleged, if justification—What evidence admissible under s 20—Extrinsic evidence of intention, if admissible when meaning of writing plain—Evidence Act*

PRESS ACT (I OF 1910)—contd

— s 4 (1), cl. (e), Expl. II, ss 17, 21, 23—contd

s 17 15 21 ss 9 98 and 14—*Effect on probable result if may be considered—Order of forfeiture as far as concerned—Onus of proof on an application under s 1—Government established by law as it is in India meaning of—Class, members of the Indian Services recruited in England if a Per Curiam—Upon an application under s 17 of the Indian Press Act I of 1910 to set aside an order of forfeiture of security deposited by a newspaper the Court has to see whether the article in question is obnoxious to the provisions of s 4 of the Act. Defect in the form of the order under s 4 sub s (1) is no ground for setting aside the order of forfeiture. It is only Expln. II to s 4 which according to the decision of the Judicial Committee in *Amis v. The Advertiser General of the Government of Madras* 35 T P 509 s c 23 C W 4 950 imports consideration of the writer's intention. The explanation does not cover all the cases comprehended in cl. (e). The explanation does not apply where the words used have a tendency to bring into hatred or contempt or excite disaffection towards the Government established by law in British India or where the words used tend to bring into hatred or contempt a class or section of His Majesty's subjects in British India e.g. the officers of the Government recruited in England. *Per Woodroffe J* (FLETCHER, J. agreeing)—The question of intention is only material if the Court has to deal with comments on the measures (meaning thereby legislative measures) or action of the Government or the administration of justice. These comments again are not protected if they in fact excite or attempt to excite hatred, contempt or disaffection, but are protected if the disapproving comments on the measures of Government are made with a view to obtain their alteration by lawful means or if they are made on the actions of Government or administration of justice and if in both cases there is no attempt to excite hatred, contempt or disaffection. *Per Woodroffe J*—Comments of the character mentioned in Expln. II to s 4 of the Act may be permissible even though they are likely or may have a tendency to produce the corresponding result mentioned in cl. (e) but they must not excite or constitute an attempt to excite hatred, contempt or disaffection. The term measures in the explanation was intended to apply to legislative measures. *Per Woodroffe J* (FLETCHER, J. agreeing)—An offence under the Press Act is not sedition as such but the printing or publishing of matter of the nature and tendency mentioned in s 4 which attracts to itself the penalty of forfeiture. *Per Woodroffe J*—Whether the offending article justifies a conviction under s 124A of the Penal Code is no test of the validity of an order of forfeiture under s 4 of the Press Act. An article may well be beyond the bounds of the Penal Code and yet be drawn into the net of the Indian Press Act. *Per Curiam*—The truth of the facts alleged in the article is no ground for taking the case out of the operation of s 4 of the Press Act and evidence is not admissible to prove their truth. Both the Crown and the accused may under s 29 of the Press Act give in evidence other copies of the newspaper published after the commencement of the Act in aid of the proof of the nature and tendency*

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— s 4 (1), cl. (e), Expl. II, ss 17, 21, 23—contd

of the matter contained in the offending article. *Per Woodroffe J* (FLETCHER, J. agreeing)—S 20 applies where if the offending article stood alone there might be doubt or ambiguity as to the character, nature or tendency of the words used and not where the meaning of the article is apparent on its face. Other articles which appeared in the newspaper cannot be put in to prove its policy. *In the matter of the AMRITA BAZAR PATRIKA PRESS, LD* (1919)

23 C. W. N. 1057

— ss. 4, 12, 17, 19, 22—

See FORFEITURE L. L. R. 41 Cal. 466
L. L. R. 47 Cal. 190

— ss 4 (1), 17 and 23—Forfeiture of deposit and pamphlet—application to set aside forfeiture—*onus* is for a notification under s 4 (1) of the Press Act 1910, forfeiting the security deposited under s 3 (1) can only be challenged by means of an application under s 17 and in order to succeed the applicant must show that the newspaper, book or other document in respect of which action is taken is not of the nature described in s 4. *Per MAWER, J*—The High Court has to look to the reasonably possible effects which the words complained of may produce. Where there is a particular enactment and a general enactment in the same Statute and the latter taken in its most comprehensive sense, would overrule the former the particular enactment must be operative. *PUNOSITAM NARAYAN NAYDE v. CHIEF SECRETARY TO GOVERNMENT OF BIHAR AND ORISSA*

524 Pat. L. J. 174

— ss. 17, 19, 20 and 23—

See s 3 L. L. R. 39 Mad. 1085

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S. ADVERSAL POSSESSION

L. L. R. 33 All. 229

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ss 166, 201 L. L. R. 34 All. 250

s. 201 L. L. R. 33 All. 799

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See CUSTOM L. L. R. 33 All. 257

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S. HINDU LAW—JOINT FAMILY

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See MAHOMEDAN LAW—LEGITIMACY.
I. L. R. 48 Calc. 856

See MAHOMEDAN LAW—MARRIAGE
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of commission of offence.
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of permanent tenancy—
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one grant to another—
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See HINDU LAW—SUCCESSION
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of Right arising from occupation—
See EJECTMENT, SUIT FOR
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PREVAILING RATE.
See LANDLORD AND TENANT
I. L. R. 37 Calc. 742
I. L. R. 45 Calc. 930

PREVENTION OF CRUELTY TO ANIMALS
ACT (XI OF 1890).

See BOMBAY DISTRICT POLICE ACT (BOM
ACT IV OF 1890), s 62
I. L. R. 45 Bom. 203

s. 3—
Whether the offence must
be committed within sight of any person—Prepara-
tion of 'puri dye from cow's urine' Where it was
found that the petitioner tortured his cows by
depriving them of water and these cows were tied
up where the sufferings of the animals could be
witnessed by persons from the lane on which
the house of the petitioner was situated Held,
that the offence comes within the purview of
s 3 of the Prevention of Cruelty to Animals Act
(XI OF 1890) MISRI GORP v ABDUL LATIF (1912)
17 C. W. N. 332

Owner turning out
horse into street to starve Accused abandoned
his horse by turning it out into the street and
some days after it was found in a starving condi-
tion and accused was charged under s 3 Held,
that accused could not be convicted under the
section as he must in fact be able to exercise
control over the animal at the time of ill treat-
ment EMPEROR v NASTI WAZIR
I. L. R. 44 Bom. 159

s. 3, cl. (b)—Cruelty to animals—
Cranes having their eyes sealed up—Carriage by
railway in that condition The accused purchased
at Indore certain cranes (parrots) which had their
eyes sealed up He was carrying them in that
condition by rail from Indore to Kolhapur At
Poona, an intermediate station, it was found that
the bird's eyes were bleeding from the stitches
He was therefore convicted of an offence punish-
able under s 3, cl. (b) of the Prevention of Cruelty
to Animals Act, 1890: Held, that the accused
had committed no offence under the section, for
the cruelty, if any, was caused by the antecedent
starving up of the eyes and not by the manner
or position in which the birds were carried in the
train. EMPEROR v ISRAHIM MEER SHIKARI (1917)
I. L. R. 41 Bom. 654

PREVENTION OF GAMBLING ACT.
See BOMBAY PREVENTION OF GAMBLING
ACT, 1887.

PREVIOUS ACQUITTAL

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See SECURITY FOR GOOD BEHAVIOUR

I L R 43 Cal. 1128

— when passed in a Native State—

See PENAL CODE s. 75

I L R 42 All. 138

Theses—Habit—Evidence of habit—Admissibility of evidence of previous convictions of offences against property and of bad livelihood—Penal Code (Act XLV of 1860) s. 401 Where the evidence in a case under s. 401 of the Penal Code establishes association for the purpose of habitually committing theft, evidence of previous convictions of offences against property and of bad livelihood is admissible to prove habit and for this purpose convictions of bad livelihood are more cogent than those of isolated thefts *Empress v. Naba Kumar Palai & Co W N 116*

Maharaj Saheb v. Emperor (Cr App 712 of 1903) decided 20th March 1901 by PARSEUR and HILL, JJ. (unreported) *Madhav Dhari v. Emperor* (Cr App 582 of 1905) decided 26th July 1905 by RAMSING and MOORSWAMY JJ. (unreported) *Khanis Karwal v. Emperor* (Cr App 78 of 1909) decided 28th January 1909 by HOLWOOD and RYVES JJ. (unreported) *Gobar Das v. Emperor* (Cr App 958 of 1910) decided 21st November 1910 by HOLWOOD and FLETCHER, JJ. (unreported) referred to. *Manikam Pass v. Queen Empress* I L R 27 Cal. 133 doubted and explained *Bhoya v. Emperor* (1911) I L R 33 Cal. 498

A finger mark expert was called as a witness who compared certain finger prints of the accused taken in Court with some other finger prints on a paper which contained a record of certain convictions which purported to be the convictions of the accused and pronounced them to be similar. This was taken as proof of the previous convictions of the accused: *Held* that the previous convictions were not properly proved. *RAM DAS v. KING EMPRESS* (1916) 21 C W N 459

PREVIOUS DEPOSITIONS

See ADMISION

I L R 41 Cal. 601

PREVIOUS ENJOYMENT

See EASEMENT

I L R 39 Cal. 59

PRICE

— oral agreement as to—

See EVIDENCE ACT (I of 1872) s. 92

I L R 33 Mad. 514

PRICE—contd

— of goods sold, suit for—

See CONTRACT ACT ss 33 73 170

I L R 34 Bom. 193

PRIEST

— Panchas preventing he edary priest from giving his ministrations—

See VENTRI I L R 45 Bom. 234

PRIMARY COURT

— jurisdiction of—

See EX PARTE DECREE

I L R 48 Cal. 153

PRIMOGENITURE

See CUSTOM 24 C W N 601

1 Pat. L J 109

See HINDU LAW—IMPARTIBLE ESTATE

I L R 33 All. 590

See HINDU LAW—INHERITANCE

I L R 34 All. 65

I L R 42 Cal. 1179

See HINDU LAW—SUCCESSION

18 C W N 55

I L R 43 Cal. 997

See KUNIPURA, STATE OF

I L R 39 Cal. 711

See OUDH ESTATES ACT (I of 1869)—

ss 8 10 I L R 39 All. 532

ss 8 AND 22 SUBS (11)

I L R 32 All. 599

ss 14 15 AND 27

I L R 43 All. 245

See TALUQDARI ESTATE

I L R 43 All. 297

PRINCIPAL

See HUNDI SUIT OF

I L R 45 Cal. 663

See UNDISCLOSED PRINCIPAL

— death of—

See PRINCIPAL AND AGENT

I L R 43 Cal. 249

— liability of—

See PRINCIPAL AND AGENT

14 C W N 414

I L R 43 Cal. 511

— part-payment of—

See PRESIDENCY SMALL CAUSE COURTS

ACT (XV of 1889) s. 60

I L R 28 Mad. 428

— suit by for money received by

agent—

See PRINCIPAL AND AGENT

I L R 41 All. 254

PRINCIPAL AND AGENT

See ACCOUNT 15 C W N 930

I L R 40 Cal. 108

I L R 44 Cal. 1

See CIVIL PROCEDURE CODE 1882 ss

215A AND 216 I L R 32 All. 505

See CIVIL PROCEDURE CODE 1908 s. 70

(c) I L R 34 All. 49

PRINCIPAL AND AGENT—*contd.*

See COMPANY . I. L. R. 36 Bom. 364

See CONTRACT ACT (IX of 1872)—

ss 178, 179 . I. L. R. 42 Bom. 205

s 235 . . I. L. R. 34 All. 168

ss 182 to 237

See CONTRACT WITH ENEMY

I. L. R. 44 Bom. 631

See COSTS . I. L. R. 43 Calc. 190

See LIMITATION ACT (IX of 1908) SCH

I, ART 115 . I. L. R. 39 All. 81

ART. 116 . . I. L. R. 39 All. 355

See OATHS ACT (X of 1878), ss 8, 9, 10

I. L. R. 39 All. 131

See PRACTICE (30)

See SALE OF GOODS

I. L. R. 42 Calc. 1050

I. L. R. 42 Bom. 18

Agent's power in disposing of land—

See ESTOPPEL . 2 Pat. L. J. 600

Agent's power to refer dispute to arbitration—

See JURISDICTION I. L. R. 34 Bom. 13

Lambardar not agent for co-sharers—

See AGRA TENANCY ACT, 1901 s 104

I. L. R. 31 All. 93

suit for negligence occasioning loss—

See CIVIL PROCEDURE CODE, 1908 s 20

I. L. R. 34 All. 49

ACCOUNTS 3397

AUTHORITY OF AGENT 3401

FRAUDULENT REPRESENTATIONS BY AGENT 3103

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ACCOUNTS

1 ———— *Limitation Act (XV of 1877), Sch. II, Arts 89, 115, 116—Accounts suit for, against some of gomastha—Covenant to furnish annual accounts—Neglect to do so, if refusal—Suit by co-sharer for accounts of his share of lies. A suit for money found due on an account and a suit for an account are really one and the same thing. Subh Chandra v Chandra Narain, 1 C L J 232 I. L. R. 32 Calc. 719, followed. Such a suit lies on the death of an agent against his legal representatives. Lawless v The Calcutta Landing and Shipping Co., Ltd., I. L. R. 7 Calc. 627, Jogesh Chandra v Benoit Lal Ray 14 C W N 23 followed. Held (COX J, dubitante), that a suit for accounts not against the agent personally but against his legal representative, is governed by Art 115 or Art 116 of the Limitation Act and not by Art 89. The objection that a co-sharer cannot sue the gomastha of all the co-sharers for the accounts of his share only does not apply where the remaining co-sharers have been made parties defendants and a decree passed*

PRINCIPAL AND AGENT—*contd.*ACCOUNTS—*contd.*

for an account of the whole agency. *Quare*—Whether, when there is a covenant by the agent to furnish accounts year by year, the neglect on the part of the agent to furnish the accounts in respect of any particular year amounts to "refusal to render accounts" within the meaning of Art 89. *Quare*—Whether, where there is such a covenant, a suit against an agent for accounts of particular years when the agent has neglected to furnish accounts, or for the sum found due thereon, can be regarded as a suit for compensation for the breach of a contract as contemplated by Arts 115 and 116 of the Limitation Act. JHAPPANHAZSA BIRI v DANA SUNDARI CHAUDHURANI (1912) 16 C. W. N. 1042

2 ———— *Agent's death—Liability of legal representatives to render accounts—Liability of agent's assets—Remedy of principal—Suit for damages—Onus—Limitation—Limitation Act (IX of 1908) Sch I, Arts 89, 115, 120* The legal representatives of an agent cannot be called upon to render accounts to the principal in the same sense as the agent himself, as they cannot be required to explain matters of which they have no personal knowledge and to assist the principal in the investigation of the management of his estate of which they are ignorant. The estate of the agent however continues to be liable and the remedy of the principal is to sue the representatives for any loss he may have suffered by reason of the negligence or misconduct, misfeasance or malfeasance of his agent. The maxim *actio per sonalis moritur personae* would be no bar to an action where the act complained of was not a mere tort but was a breach of a quasi-contract, where the claim was founded on a breach of a fiduciary relation or on failure to perform a duty. *Conchr v Murrieta, 40 CA D 543, Philips v Homfray, 24 CA D 439* relied on. A claim by the principal against the legal representative of the agent for money misappropriated by the agent and for damages for loss suffered by reason of the agent's negligence or misconduct is therefore maintainable—the suit being one not for accounts strictly so called but for money payable to the principal by the representatives of the agent out of the assets in their hands. *Marmothomath Bose v Basanto Kumar Bose, 1 L R 22 All. 332*, relied on. In such a suit, the burden will be on the plaintiff to prove his case. Such a suit is not governed by Art 89 of the Limitation Act but by either Art 115 or Art 120. *Lawless v Calcutta L & S Co., 1 L R 7 Calc. 627, Harinder v Administrator General, 1 L R 12 Calc. 357, Bindraban v Jamuna 1 L R 25 All. 5*, referred to. *KUMEDA CHARAN BALA v ASUTOSH CHATTO PADHAYA (1912) 17 C. W. N. 5*

3 ———— *Death of agent—Suit for accounts if lies or may be continued against heirs* A suit for accounts brought against an agent may be continued, on his death pending suit, against his legal representatives. *Semble*. A suit for accounts lies against the heirs of a deceased agent. *Manmohi Lal Bose Mullick v Basanto Kumar Bose Mullick 1 L R 22 All. 332*, doubted. *Kumeda Charan v Asutosh, 16 C L J 259*, referred to. *BAHADUR SINGH v BASANTA KUMAR ROY (1913) 17 C. W. N. 695*

PRINCIPAL AND AGENT—contd

ACCOUNTS—contd

4. — *Principal suit by agent for accounts. Limitation—Limitation on Act (IX of 1908) Art 69.* The plaintiff as principal sued the defendant as agent for accounts. The agency was created in 1896 by a registered document which provided that accounts were to be rendered at the end of each year the agent also hypothecating immovable property as security. In 1897 the plaintiff transferred the property to his wife who in 1899 retransferred the property to her husband. The agency was terminated in 1910 and the suit was brought in 1911 for accounts from 1892. *Held* that a new agency was created in 1899 irrespective of the agreement of 1896. That Art 69 of the Limitation Act was applicable to the case and as in this case there was no demand and refusal during the continuation of the agency and as the suit was instituted within three years of the date when the agency terminated the plaintiff was entitled to the accounts claimed. **BURESH KANTA BANERJEE CLOUTIER V NAWAB ALI KHAN (1913) 20 C. W. N. 356**

5. — *Suit for account—Hypothecation of property as security for the proper discharge of his duties by the agent. Agreement to render accounts annually—Limitation Act (IX of 1908) S. 1 Arts 44, 115, 120. Death of the principal. Effect of—Agent continuing in service of the heir—Contract Act (IX of 1902) s. 37. 253 cl. (10)—Method to be adopted for rendering accounts.* Where certain immovable properties were hypothecated to the principal by the defendant as security for the valid discharge of duty as agent in a suit for accounts by the principal. *Held* that Art 130 of the Limitation Act will apply inasmuch as it is also by implication a suit to enforce a charge. **Hosfend's Mandals v Jala Nath Saks 1 L. R. 33 (note 298) Illawad Jyoti Chandra v Banote Lal 11 C. W. N. 177.** A consented from. On the death of the principal an agency is terminated and a new agency is created if the agent continues in service of his principal's heir. Where there is an agreement to submit accounts annually in a suit against the agent for an account Art. 69 and not Art. 115, of the Limitation Act will apply. **523 Chandra Roy v Chandra Naraya Monkerjee 1 L. R. 22 Cyl 719 and Ishwar Ali Khan v Kharsah Ali Khan 1 L. R. 24 A.L.J. 27 followed. Jasin v Harnda Kishore 11 C. W. N. 43.** Discontinued from. Duty of an agent does not end by merely submitting papers when accounts are demanded but a failure to explain them when called upon to do so will amount to a refusal under Art. 69 of the Limitation Act. **Harsenath Ray v Arishoo Kumar Baskh 1 L. R. 14 Cyl. 147** relied on. **Chand Ram v Broja Gokul 19 W. N. 11 Upendra Kishore v Pankaraj Debn 13 C. W. N. 626** not followed. **MADHUSUDAN SEN v RAKHAL CHANDRA DAS BAKSH (1913) 1 L. R. 43 Cal. 248**

6. — *Ordinary money account—Lending of money to persons to whom agent is not authorized to lend—Suit for account—Limitation Act (IX of 1908) Arts 89 and 90—Termination of agency.* A suit by a principal against an agent for the recovery of money lent to persons to whom the agent was not authorized to lend is a suit for an ordinary money account and is governed by Art. 89 and not Art. 90 of

PRINCIPAL AND AGENT—contd

ACCOUNTS—contd.

the Limitation on Act. The question when an agency terminates is a question of fact. **Great Eastern Insurance Co v East of India Co 55 Ind. 1913 39 Ind. 36** relied on. **MIRJAN V ALI ARIFA (1917) 1 L. R. 41 Mad. 1**

7. — *Ind on Trust Act (II of 1881) s. 85. Suit against agent for account of profits of private business—Limitation—Opening of accounts under art 12 between principal and agent reasons for.* Where the main allegation on which a suit was based was that the defendant being an agent of the plaintiff had for some time been carrying on in his own account and to the detriment of the plaintiff a business similar to that of the plaintiff and the object of the suit was to compel the defendant to account for the profits which he had received from his own private business it was held that the article of s. 85 of the Ind on Limitation Act II of 1881 which was applicable was not Art. 69 of the Act. On the facts it was found that where Art. 69 was applied the suit was barred. Where fiduciary relations have subsisted between the parties a Court will not re-open accounts which have long been settled between the parties, unless the plaintiff can show definitely at least one fraudulent omission or insertion in the account. The principle is laid down in **Williamson v Paterson 1 P. 9 Cyl. D. 379** and **Deo Jankar v Ala Nagar Falaah Kanti 1 L. R. 11 Bom. 55** followed. **PRASAD V FORD MACDONALD AND COMPANY LD (1919) 1 L. R. 41 All. 635**

8. — *Suit by principal for money received on his behalf by agent—Interest—Cause—Apparatus of interest—Interest—Principles.* *Held* that where money is recoverable by a principal from an agent as having been received by the agent on the principal's behalf the agent is not as a rule liable for interest unless by virtue of an express agreement or of some mercantile usage. *Held* also that an appeal as to the allotment of costs will lie from an appellate decree when the Court below has exercised its discretion as to costs arbitrarily and not according to general principles. **Dast v Pam v Durga Prasad 1 L. R. 13 All. 333 and Fiddle Shom v Bhatia Lal 1 L. R. 40 All. 335** 567 followed. **LALMA V CHITTAMANI (1914)**

1 L. R. 41 All. 254

9. — *Committee for collection of subscription to rebuild a mosque—Neglect of treasurer to pay his own subscription and to collect other subscriptions promised—Treasurer not legally liable.* A movement having been set on foot for re-constructing a mosque A and J were appointed treasurer of the committee for collecting subscriptions. J gave a cheque for his promised subscription of Rs. 500 but owing first to some defect in the endorsement and later on to its having become out of date it was never cashed. The mosque also was never reconstructed A having died his heirs were sued by the members of the committee for the amount of the unpaid subscriptions. *Held* that neither A nor his heirs were liable for payment of the money. **ABDUL AZIZ V NASEEM ALI (1914)**

1 L. R. 38 All. 263

PRINCIPAL AND AGENT—contd.

ACCOUNTS—contd.

10. *Obligation of agent not only to submit accounts but to explain account papers* The obligation of an agent towards his principal does not terminate merely by submission of account papers. He is bound to explain those papers and if on accounts taken it is found that he had in his hands money which belongs to his principal he is bound to pay that sum. *MADHUSUDAN SEN v. RAJMAL CHANDRA DAS BASAK* (1915) . . . 19 C. W. N. 1070

AUTHORITY OF AGENT

1. *Lease by agent—Apparent authority—Ratification—Knowledge of principal, if necessary for ratification* Every act done by an agent in the course of his employment on behalf of his principal and within the apparent scope of his authority binds the principal, unless agent is in fact unauthorised to do the particular act and the person dealing with him has notice that in doing so he is exceeding his authority. The grantees in this case were entitled to presume that the agent who had admittedly authority to grant reclamation leases had acted with regularity and within the scope of his authority. Where ratification is established as to a part, it operates as a confirmation of the whole of that particular transaction by the agent. Before the principal can be held bound by ratification he must be proved to have had full knowledge or at any rate means of knowledge of all the essential facts of the transaction into which his agent had entered on his behalf. *KATTAYANI DEVI v. PORT CANNING AND LAND IMPROVEMENT CO* (1914) . . . 19 C. W. N. 56

2. *Construction of Power of Attorney—Denial of authority of agent—Chetty money lending firm, business of—Power implied from nature of business which could not be carried on without it—Proof of similar previous transactions with objection by principal—Account books, presumption to be drawn from—Evidence Act (I of 1872), s 111* The defendant was a Chetty and had a large money lending business in Rangoon which he carried on by an agent to whom he gave a power of attorney for the general management of his business in which he stated the duties and powers entrusted to him as being "to transact, conduct and manage all affairs, concerns, matters and things" in which he "may be in anywise interested and concerned," and for that purpose "in his own name or in any other name, or writing whatsoever, to borrow money from any bank or banks, firm or firms, person or persons either with or without pledge of securities for money advanced to various persons," and "to make, draw, sign, accept, endorse, negotiate and transfer all and every or any bills of exchange, promissory notes, hundies, cheques, drafts, bills of lading and all other negotiable securities whatsoever which my signature or endorsement may be required or which my said attorney may in his absolute discretion think fit to make, draw, sign, accept, endorse, negotiate and transfer in my name and in my behalf." Under this power the agent pledged the firm's credit with the plaintiff Bank to enable a client who applied to him for financial assistance to have a cash credit account opened in his name and obtain from the Bank

PRINCIPAL AND AGENT—contd.

AUTHORITY OF AGENT—contd.

advances to secure due repayment of which he executed a promissory note in favour of defendant's firm which the agent endorsed over to the Bank in conformity with the provisions of the Presidency Banks Act (XI of 1876), s 37, cl (c) the agent at the same time giving the Bank a letter of guarantee on behalf of his firm. The client, after drawing large sums of money on the cash credit account thus opened, having become insolvent, the Bank brought an action for the amount due, to which the defence was a denial of authority on the part of the agent to enter into the transactions so as to bind the defendant's firm. *Held* (reversing the decision of an Appellate Bench of the Chief Court), that applying the principles of construction of powers of attorney laid down in *Bryant Povey and Bryant v. La Banque du Peuple*, (1893) A C 170, the authority to enter into transactions of the nature in dispute in the present case, was to be found in the document itself by necessary implication from the nature of the business with the general management of which the agent was entrusted without such authority it would hardly have been possible to carry on the business of a money lender and financier. On the evidence, moreover, it was proved that amongst such Chetty money lending firms it was the practice for the agent to pledge the credit of the firm, and that for a considerable time similar transactions had been entered into previously by the agent without this authority being questioned. The mere fact that the defendant did not receive any benefit on the transaction would not (if it were the case) relieve him of liability, if the authority of the agent was established, but the defendant's books of accounts which were called for and not produced, would presumably have shown such transactions, and the receipt of commission on them. *BANK OF BENGAL v. RAMA NATHAN CHETTY* (1915) 1 L. R. 43 Cal. 527

Limited authority of letter known to third party—"Holding out," principle of, if applies—Estoppel—Negligent or improper act of principal apparently investing the agent with extended authority, not proved—Misdirections A person who deals with an agent whose authority he knows to be limited does so at his peril, in this sense, that should the agent be found to have exceeded his authority the principal cannot be made responsible. In order that the principle of "holding out" should, in any given case of agency, apply to the act done by the agent and relied upon to bind the principal, must be an act of that particular class of acts, which the agent is held out as having a general authority on behalf of his principal to do. But if the agent be held out as having a limited authority to do on behalf of his principal acts of a particular class, then the principal is not bound by an act done outside that authority, even though it be an act of that particular class, because the authority being thus represented to be so limited, the party prejudiced has notice, and should ascertain whether or not the act is authorised. Where the principal did not by any negligent or improper act allow the agent to be apparently invested with an authority beyond or greater than the limited authority which the customer knew him to possess, there could not be any estoppel against the principal in respect of any of the steps in a transaction whereby the customer was deceived

PRINCIPAL AND AGENT—*contd.*AUTHORITY OF AGENT—*contd.*

by the agent acting beyond his authority *THE
RICASO CREDITORS BANK v. LI YAU SAM* (1909)
14 C. W. N. 331

FRAUDULENT REPRESENTATIONS BY
AGENT

*Principal and Agent—
Bribe or secret commission accepted by Agent after
transaction completed—Contract obtained by fraud
voidable but not void—1st instance Act (X) of 1877.
Sec. 11, Art. 95* The plaintiff instituted a suit
against the defendant within three years from the
date when the fraud as alleged in the suit became
first known to him though he had suspicions of
the fraud prior to the three years. The suit was
for setting aside a lease which the plaintiff alleged
he had been induced to grant to the defendant
No. 1 under fraudulent representations made to
the plaintiff by the defendant No. 2 who whilst
purporting to act as the plaintiff's servant or
agent, received after the lease had been duly
drawn up executed and registered the sum of
Rs. 500 from the defendant No. 1 as a bribe or
secret commission by way of payment for the
services rendered to the latter in connection with
the making of the arrangements for the execution
of the lease: *Held*, that mere suspicion is not
knowledge and the suit was not barred by limita-
tion. *Held*, further that a bribe is nevertheless
a bribe because its payment is postponed. When
a bribe has been given, it is immaterial to in-
quire what, if any effect the bribe had on the
mind of the receiver and whether he was influenced
thereby to recommend to the plaintiff an arrange-
ment with the appellant which he would
otherwise have recommended. *Harrison v.
Victoria Graving Dock Company* L. R. 3 Q. B. D.
519, and *Shipway v. Broadwood* (1899) 1 Q. B.
369, referred to. *Held* further, that a contract
induced by fraud is only voidable, and the remedy
by rescission is open only so long as the parties
can be restored to the relative position which
they originally occupied. *Urgulari v. Macpherson*
L. R. 3 App. Cas. 331 followed. *Clough v.
London and North Western Railway Company*,
L. R. 7 Ex. 26 referred to. *INDRA NATH BAKSH
JEE v. MOORE* (1909) 1 I. L. R. 37 Cal. 81

LIABILITY OF AGENT

1. — *Misconduct—Agent with ir-
revocable authority may be removed for misconduct—
Self abatement of* In every contract of service
there is an implied condition that if the services
be not faithfully performed the employer is en-
titled to put an end to the contract; and an ir-
revocable contract of agency is no exception to this
rule. An agent appointed under an irrevocable
contract of agency may be removed if he is guilty
of misconduct in the performance of his duties.
The above principle will apply whether the person
employed be a servant or agent or a person occupy-
ing a fiduciary position. A suit brought against
such an agent for his removal and for recovering
damages for his misconduct does not abate with
the death of such agent. *MORIE KOTTA KUN
CHUNNI NATH v. SUBRAMANIAN PATTAR* (1908)
1 I. L. R. 33 Mad. 163

2. — *Construction of Contract—
Indian Contract Act (IX of 1872), ss. 213-216—*

PRINCIPAL AND AGENT—*contd.*LIABILITY OF AGENT—*contd.*

*Agent appointed to sell goods buying them on his
own account* 8 210 of the Indian Contract Act
is merely enabling and confers upon the principal
the right to claim from his agent the benefit of
the transaction to which the agency business
related where the agent, without the knowledge
of the principal has dealt with the business on his
own account, instead of on account of the latter.
The principal is free to exercise that right or not.
The law is that where a party elects to adopt a
transaction he must take its benefit with its
burden. He cannot, as is said, "both approbate
and reprobate." But both the benefit and the
burden must, for that purpose be attached to and
incidents of the transaction which the principal
has affirmed by election. Where an agent ap-
pointed to sell his principal's goods for a fixed
price buys them on his own account without the
previous consent of the latter it is competent for
the principal either to repudiate the transaction
under the circumstances mentioned in s. 215 of
the Contract Act or to affirm it. If he elects to
affirm, the principal will be liable to pay to the
agent such charges only as are incidents of the
transaction of purchase, that is, such as the vendor
under the contract would have been liable to pay
to the purchaser, because what is affirmed is the
relation of vendor and purchaser. But if those
charges are annulled by the terms of the contract
to the agency so as to regulate the relation of
principal and agent as distinguished from the
relation of vendor and purchaser, the agent is
not entitled to recover them. *Solemans v. Perder*
3 H. & C. 639, and *Andrew v. Ramsay & Co.*
(1903) 2 A. B. 635, referred to. *JOACHIMSON v.
BISCHNER VALLABHADAS* (1909)

1 I. L. R. 34 Bom. 292

LIABILITY OF PRINCIPAL

*Contract Act (IX of
1872) s. 213—Liability of principal and agent—
Principal when may be sued—Negotiable Instru-
ments Act (XXI of 1881), ss. 4 III (b) and 23
—Negotiable instrument what is not—Debt incurred
on behalf of several co-sharers—If everyone bound for
every part of the debt—Apportionment is allowable
according to the properties in respect of which debt
incurred* Where an agent is personally liable for
a debt the creditor has the option to proceed either
against the principal or the agent. Where it did
not appear that in lending the money, the lender
(who knew that the money was being borrowed
on behalf of certain principals) looked exclusively
to the agent for repayment. *Held* that he could
proceed to realise the money from the principals.
In the matter of the Ganges Steam Tug Co., Ltd.
1 I. L. R. 13 Cal. 31 36. *Paterson v. Gandaswami*,
15 East 62, *Thomson v. Darnley*, 9 B. & C. 73
referred to. As the authority to the agent contem-
plated a joint and reciprocal liability of all the
principals. *Held*, that the liability could not be
distributed so as to hold, each of the principals
liable for his own apportioned share of the debt.
Where an agent took loans upon notes of hand
under letters of authority in order to pay the
Government revenue in respect of certain proper-
ties and it was found as a fact that in one of these
properties defendant No. 2 had no interest and
that he had not given any power of attorney for
raising loan to meet dues in respect of that pro-

PRINCIPAL AND AGENT—*contd*LIABILITY OF PRINCIPAL—*contd*,

party, but that agent was authorised by defendant No 2 generally to raise money for the management of the state. *Held*, that the defendant No 2 was liable for the entire debt. *SATTA PRITA GHOSAL v GOBINDA MOHON ROY CHOWDHURY* (1909) . . . 14 C. W. N. 414

Liability of principal for fraudulent conduct of the agent—Scope of the agent's or servant's employment—Unauthorised acts—Scope of agency Tort The principal is liable to third persons in a civil suit for the frauds, deceptions, concealments, misrepresentations, torts, negligence and other malfeasances or misfeasances and omissions of duty of his agent in the course of his employment although the principal did not authorise or justify or participate in, or, indeed, know of such misconduct or even if he forbade the acts or disapproved of them. The principal is not liable for the torts or negligences of his agent in any matter beyond the scope of the agency unless he has expressly authorised them to be done, or he has subsequently adopted them for his own use and benefit. *McGowan v Dyer*, 1 L R 8 Q B D 141, *Hern v Nichols*, 1 Sallfield 289, *National Exchange Co v Drew*, 2 Macq H L 103, *Brooklesby v Temperance P B Society*, (1895) A C 173, *Pearson v Pearson v Dublin Corporation*, (1907) A C 351, *Chazen's Life Assurance Co v Brown*, (1901) A C 423, *Glasgow Corporation v Lorimer*, (1911) A C 209, *Bocles v Stewart*, 1 Sch & Lef 209, *Fit-Simons v Duncan*, 2 I R 433, *Subjan Bibi v Saraiwalla*, 3 B L R 413, *Morrison v Verschoyle*, 6 C W N 422, *Inwar Chunder v Satish Chunder*, 1 L R 30 Calc. 207, *Gopal Chandra v Secretary of State*, 1 L R 36 Calc 617, *Motilal v Goindram*, 1 L R 30 Bom. 43, *British M B Co v Charnwood Forest Ry Co*, 13 Q B D 714, *MacKay v Commercial Bank*, 1 L R 5 P C 394, *Sieva v Francis*, 3 A C 106, *Houllsworth v City of Glasgow*, 5 A C 317, referred to *Lloyd v Grace*, (1912) A C 716, and *Rubens v Great Fingall*, (1908) A C 439 followed. *Barwick v English Joint Stock Bank*, 1 L R 2 Ex 259, and *Burma Trading Corporation v Myra Mahomed Ally*, 1 L R 4 Calc 116, explained. Acts of fraud by the agent, committed in the course and scope of his employment, form no exception to the rule whereby the principal is held liable for the torts of his agent even though he did not in fact authorise the commission of the fraudulent act. This rule of liability is based upon grounds of public policy. It seems more reasonable that where one of the two innocent persons must suffer from the wrongful act of a third person the principal who has employed and retained a dishonest agent and has placed him in a position of trust and confidence, should suffer for his misdeed rather than a stranger. *SURESH KHAH v ALIMUDDI* (1915)

I L R. 43 Calc. 511

NOTICE.

Agent paying debts owed to principal from money belonging to a third person—Principal if affected with notice of trust—Payment by cheque drawn by person connected with the third person's business, if amounts to such notice—Sub-agency—Priority with principal absent—Contract Act, s 194 V, a servant of a Banking

PRINCIPAL AND AGENT—*contd*NOTICE—*contd*

Company, was also the sole agent of the Texas Oil Company for sale of the latter's oil. The Banking Company having pressed V to pay moneys owed to it by V, V discharged some of his debts to the Bank by a cheque drawn in its favour on another Bank by M who was the head clerk and manager of V's agency for the Oil Company "per pro V, sole agent for Bengal and United Provinces." Some of this money might presumably be money held by V in trust for the Oil Company: *Held*, that there was nothing on the face of the cheque that would lead the Bank to doubt that V was perfectly entitled to deal with the moneys to which they related in whatever manner he thought fit. To affect a Bank with knowledge of the ownership of moneys paid into the accounts of their customers by the mere form of the signature on the negotiable documents by which such moneys are transferred is to proceed far beyond the recognised limits of the doctrine of notice, and such a doctrine, if accepted, would create a serious embarrassment to the conduct of banking business. *Coleman v Bucks* (1897) 2 Ch 243 and *Croy v Johnston*, 1 L R 3 H L 1 (1868), referred to. *Held*, further, that the fact that V was a servant or agent of the Banking Company did not affect it with notice of the trust. Knowledge communicated to an agent of a fact which it was not the agent's interest to disclose and which he did not disclose to the principal cannot be imputed to the principal. V had appointed sub agents for sale of the Texas Oil Company's oils on terms similar to those which bound him to the Company: *Held*, on the facts, that no privity was established between the Company and the sub agents. *THE TEXAS COMPANY v THE BOMBAY BANKING COMPANY*]

L R 46 I A. 250

I L R. 44 Bom. 139

24 C. W. N. 469

MISCELLANEOUS

*Claim and cross-claim—Business of principal Company transferred to another Company set up by former and closely identified with it, but business conducted as before by former—Latter Company if may sue without reference to set off claimed by the agent A & Co. were entitled to receive from the respondents the price of sugar purporting to have been sold by the latter on their behalf, and the respondents had a larger sum of money in deposit with A & Co as bankers. A & Co, it appeared had incorporated another Company called the Mysore Sugar Company which as to personnel and otherwise was closely identified with A & Co and completely controlled by them, the object being that the Mysore Sugar Company would take over the sugar factory of A & Co, and though this was technically done, the factory continued to be run and maintained in the same way as before and the respondents never knew of what had happened. The Official Trustee in whom the assets of the Mysore Sugar Company vested upon insolvency having sued the respondents for the price of sugar sold out of the factory without reference to the cross-claim and set off of the respondents against A & Co. *Held*, that if the Mysore Sugar Company could bring actions for sums due*

PRINCIPAL AND AGENT—*contd.*MISCELLANEOUS—*contd.*

from the respondents in respect of sales of sugar, they could bring them only as principals in this sense that they could take the benefit of those suits subject to every equity which affected those suits in the hands of A. & Co. **THE OFFICIAL TRUSTEE OF MADRAS v. A. SUNDARAMUTHI MUDALIAR** 24 C. W. N. 1004

Contract—Undisclosed principal—Contract Act (IX of 1872) ss. 230 (2), 236 To enable an agent to sue on a contract under s. 230 (2) of the Contract Act there must in fact have been a principal though undisclosed, for whom he was acting in entering into the contract. Where a person in entering into a contract purported to act as agent for an undisclosed principal, but in fact no such principal existed and the person was in reality acting on his own account he is debarred from suing on the contract by s. 236 of the Contract Act. **RAMJI DAS v. JAYKE DAS (1912)** 1 L. R. 33 Cal. 502

Suit for declaration of title to the benefit of a decree—Maintenance of the suit Where an agent entered into a contract in his own name with a third party and brought a suit to recover damages for breach of the same and obtained a decree thereon a suit subsequently brought by the principal against the agent for declaration of title to the decree was not maintainable. The principal before the suit was brought by his agent might have adopted the contract made by the latter and acted on it but if he did so he was bound to adopt the contract *en masse*. **UDILL v. ALIKHON 2 H. & V. 172**, and **BRIDGES v. WHITMORE 9 H. L. C. 391** approved. His agent also has intervened at any stage in the action and has been concerned by his agent. **SILLER v. LYNCH & CAMP 195** approved. **GODDARD v. JAMESWELL PATELA (1912)** 1 L. R. 49 Cal. 335

PRINCIPAL AND INTEREST.

See ACCOUNTS 1 L. R. 41 Mit. 570

See DECRETARY AGENCIES' RELIEF ACT (XVII of 1879) 1 L. R. 35 Bom. 211

See LIMITATION ACT (IX of 1903) Arts. 132 and 75 1 L. R. 37 Mit. 931

PRINCIPAL AND SURETY.

See CONTRACT ACT (IX of 1872), ss. 126 to 147

debt barred against principal, whether surety liable for—

See HINDU LAW—JOINT FAMILY.

1 Pat. L. J. 497

Promissory note, payable on demand—Limitation—Payment of interest by principal—Acknowledgment of debt—Liability of surety—Contract of guarantee—Limitation Act (IX of 1903), ss. 13 and 29, 21 Sec. 1 Arts. 65 73 115—Contract Act (IX of 1872), ss. 126, 128 Where an on demand promissory note was executed by the debtor and bore an endorsement on it "repay ment guaranteed by me," signed by the person

PRINCIPAL AND SURETY—*contd.*

purporting to make the guarantee and where the said promissory note was unaccompanied by any writing restraining or postponing the right to sue: *Held*, that the endorsement must be treated as a contract of guarantee by the person purporting to make the guarantee: *Held*, also, that the promissory note was a present debt payable without demand, that the liability of the surety on the guarantee accrued from the date of the promissory note, that the Statute of Limitation began to run in favour of the surety from the date of the note, and that for the purposes of this case it mattered not whether Art. 65 or Art. 115 of the Limitation Act applied. **ARLON v. ELHAM 2 M. & W. 461, ROWE v. YOUNG 2 Brod. & Bing. 165 Malby v. Murrelle, 5 H. & N. 312, In re George, 44 Ch. D. 627, PERMAL AYYAN v. ALPURIAN BAJAPATHAR, 1 L. R. 20 Mad. 245, HOL v. HADLEY 2 Ad. & EL 755, COLVIN v. BUCKLE, 3 M. & W. 650 Srinath Roy v. Peary Mohan Moortjee 25 C. L. J. 91 and Dwarika Das Govardhana Das v. Choralala Arisannaya, 21 Mad. L. J. 457, referred to** Where payment of interest on an on demand promissory note was made by the principal debtor with the knowledge and consent of the surety and even at his request, but where there was no evidence that it was made on behalf of such surety: *Held*, that the fresh period of limitation created under s. 20 of the Limitation Act by the payment of interest by the principal debtor could be only in respect of the debt upon which the interest was paid, viz., the debt of the principal debtor. The fact that the interest was paid with the knowledge and consent of the surety and even at his request made no difference, unless the circumstances could be said to render the payment one on behalf of the surety. **Doms. Lal Saha v. Roshan Dossy, 1 L. R. 33 Cal. 1278, In re Powers, Lindsell v. Phillips, 30 Ch. D. 291, In re Frisby 43 Ch. D. 106, Lewis v. Wilson, 11 App. Cas. 639 distinguished** **Krishna Kishori Chowdhary v. Radha Ponnun Munnai, 1 L. R. 12 Cal. 339, Hajaratmal v. Krishnarao 1 L. R. 5 Bom. 617, Coops v. Oreswell, L. R. 2 Eq. 106, Morgan v. Richards L. R. 7 Q. B. 493, Green v. Humphreys 26 Ch. D. 474, In re Borwell, (1916) 3 Ch. 359, Athury v. Athury (1923) 2 Ch. 111, In re The Estate of William Senger, 3 Jur. N. S. 451, 26 L. J. Ch. 309 and Gardner v. Brooke, 21 R. 6 referred to** **Per MOOREHEAD, J.**—Though the liabilities of the debtor and the surety arise out of the same transaction, the liabilities of the two persons are distinct for the purposes of the application of s. 20 of the Limitation Act. **Gopal Das Saha v. Gopal Das Sonu Saha, 1 L. R. 28 Bom. 248, and Sriyanata Varadachariar v. Echrammal 21 Mad. L. J. 455 followed** The surety, under the terms of the contract, is either jointly or separately liable, along with the principal debtor; if the debts are deemed joint, s. 21 (2) of the Limitation Act shows that the payment by one of them (the debtor) does not extend the time, on the other hand if the debts are deemed distinct, the same result follows upon a true construction of s. 20 itself. s. 123 of the Contract Act which makes the liability of the surety co-extensive with that of the principal debtor, is of no assistance to the plaintiff, as it must be read along with the provisions of the Limitation Act; it defines the measure of the liability and has no reference to the extinction of liability by operation

PRINCIPAL AND SURETY—contd.

of the Statute of Limitation. A payment by one person cannot keep alive the remedy against another, unless the circumstances are such that payment by the one may be regarded as a payment for the others. There is nothing in the relation of principal and surety itself which makes payment by the principal binding as a payment by the surety. *Cockhill v Sparks, 1 H & C 699, 139 R R 739, Re Wolmerhausen, 62 L T 511, and Henton v Padison, 63 L T 405, referred to. BRAJENDRA KISHORE ROY CHOWDHURY v HINDUSTAN CO OPERATIVE INSURANCE SOCIETY, LD (1917) L. L. R. 44 Calc. 978*

PRINCIPAL CONTRACT.

See CONTRACT. L. L. R. 46 Calc. 831

PRINTER AND PUBLISHER.

See CONTEMPT 15 C W. N 771
L. L. R. 45 Calc. 169

See SEDITION
L. L. R. 33 Calc. 227, 253

PRINTING PRESS

See PRESS ACT (I OF 1910)

"Newspaper," definition of.—Paper not containing periodically public news or comments thereon.—Onus of proof of character of the paper.—Formal proof of newspaper and offending matter.—Incitement to murder and acts of violence.—Use of seditious language.—Newspapers (Incitement to offences) Act (I of 1908) ss 2 (1) (b), 3.—Power of third Judge on difference of opinion between Judges of the Court of Appeal, to deal with the whole case against an accused.—Criminal Procedure Code (Act V of 1898) s 429. The definition of a "newspaper" in s 2 (1) (b) of Act VII of 1908 must be read as a whole. It refers to a work which publishes periodically public news or comments thereon. It is not enough to take a single issue of it, and to pick out an isolated sentence or a paragraph therein which might by stretch of language be interpreted to contain public news or comments thereon. When it is disputed whether a work is a "newspaper" the prosecution ought to establish its alleged character by proof of the contents of more than one issue. To bring a case under s 3 (1) of the Act the character of the offending paper as a "newspaper" has to be first established, and this may not always be possible by the production and proof of the contents of one issue only. In a proceeding under s 3 of the Act the newspaper and the offending matter must be regularly proved. In such cases it is essential that the proceedings should be regularly conducted and the forms of law observed. s 7 (1) of the Act confers very limited powers of forfeiture and applies only to the cases of presses used for the printing of newspapers which contain an incitement to the particular crimes or class of crimes specified therein. The word "incitement" clearly implies the idea of rousing to action, instigation or stimulation. The use of seditious language, sufficient to bring the case under s 124A of the Penal Code, is not equivalent to an incitement to offences mentioned in s 3 (1) of Act VII of 1908. A thinly veiled glorification of rebellion implying a drive on the part of the writer that there should be a successful rebellion, though it

PRINTING PRESS—contd.

may amount to sedition under s 124A of the Penal Code, is not sufficient to bring the case within s 3 (1) of the Act. There must be something more direct and specific for that purpose. In the case of two prisoners, regarding the guilt of one of whom only the Judges of the Appellate Court are divided in opinion, it may be that what has to be laid before another Judge is the case of such prisoner alone. But where they are equally divided as to the guilt of one accused, though in certain aspects they may be agreed, the whole case as regards the accused is laid before the third Judge, and not merely the point or points on which there is a difference of opinion, and it is his duty to consider all the points involved before delivering his opinion upon the case. *SARAT CHANDRA MITRA v EMPEROR (1910)*

L. L. R. 33 Calc. 202

PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867)—

— Indian Press Act (I of 1910) s 3, sub s (1)—Control of press owners.—Deposit of security, power of Magistrate to dispense with.—Order for deposit made after dispensing with it.—Declarations made by keeper of printing presses.—Publishing objectionable matter in newspaper or other periodical.—Order by Governor in Council for seizing security and newspapers with all copies wherever found and annulling declarations made.—Petitions by owner of press to set aside or revise orders of Magistrate and Governor in Council.—Articles in newspaper bringing Government into hatred and contempt.—Criminal Procedure Code, 1898, s 435.—Writ of certiorari.—Appeal in criminal case.—Practice in Privy Council.—Indian Press Act (I of 1910) ss 3, sub s (1) & sub s (1) 75 and 22. Under the Printing Presses and Newspapers Act (XXV of 1867) s 4, any person who keeps a printing press in his possession must make and subscribe a declaration before a Magistrate stating that he has a press for printing and where it is situated, and by s 3 no printed newspapers or other periodical shall be published without the printer or publisher making a declaration that he is the printer or publisher, the name of the periodical, and the place where the printing is conducted. Under the Indian Press Act (I of 1910 of the Government of India) s 3, sub-s (1), the person making such declaration is required to deposit before a Magistrate a sum of money or other security not less than Rs 500 but not more than Rs 2,000 as the Magistrate thinks fit to require. The Magistrate however may for special reasons dispense with the deposit, and has certain powers of cancelling or varying any order made under this sub-section. By s 4 sub-s (1), the Local Government, in case of anything objectionable appearing in the paper, may by notice in writing addressed to the owner of the press, declare the security deposit, the newspaper in which the objectionable matter appears and all copies of it wherever found, to be considered forfeited to the Crown and the declaration made as above by the keeper of the press annulled. ss 17 and 18 give power to any person interested in any property so forfeited to make an application to a Special Bench of the High Court to set aside such order, on the ground that the newspaper did not contain anything of an objectionable nature such as is described in s 4, sub-s (1). The appellant

PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867)—*contd.*

was the owner and keeper of a printing press, and printed and published a newspaper called "New India" and on 2nd December 1914 she had made all the declarations required and had duly observed all the proceedings (except making a deposit of security with which the Magistrate had dispensed) necessary under the above Acts to enable her to carry on and print and publish the newspaper. On 23rd May 1916, however, she received a notice from the Magistrate, dated 22nd May 1916, in which he had, under sub s. (1) of s. 3 of Act I of 1910 cancelled his order dispensing with the security and required her within fourteen days to deposit Rs. 2,000 as security, and in accordance with that order the appellant deposited the amount, but under protest. On 23rd August 1916 she was served with an order, dated 25th August 1916 made by the Governor of Madras in Council reciting that twenty passages published in the newspaper "New India" and identified in the order were of the nature described in sub s. (1) of s. 4 of Act I of 1910, and declaring that the security which the appellant had deposited and all copies of the newspaper in which the passages appeared were to be considered forfeited to the Crown. The appellant thereupon presented two petitions to a Special Bench of the High Court, one a Criminal Revision Petition under ss. 106 and 107 of the Government of India Act (5 and 6 Geo. V, No. 61) and s. 435 of the Code of Criminal Procedure 1898, against the order of the Magistrate requiring security and praying that it might be set aside; and the other under s. 17 of Act I of 1910 against the order of forfeiture made by the Governor in Council praying that it might be revised and set aside. The application against the order of the Magistrate was described in the course of the proceedings as an application for a writ of *certiorari*. Both applications were heard by a Special Bench and both were dismissed. In the petition s. 17 of Act I of 1910 the Special Bench unanimously held that three articles (2), (11) and (13) were within the terms of s. 4 sub s. (1) cl. (c) a majority, *ANURADHAM Off. C. J.*, and *AYLING, J.*, thought articles (1), (6) (10) and (12) obnoxious to cl. (c); *AYLING, J.* thought the same of articles (9) and (14), and *SESHAGIRI AYYAR, J.*, of article (3). *AYLING, J.*, was of opinion that article (7) was obnoxious to cl. (c) and *SESHAGIRI AYYAR, J.*, thought the same of article (17). Applications to the High Court for leave to appeal to His Majesty in Council were refused, but the appellant obtained special leave to do so. *Held* with regard to the petition to set aside the order of the Magistrate that on the construction of s. 3 sub s. (1) of Act I of 1910 the Magistrate had power to cancel his order dispensing with security that the order cancelling the dispensation was not a judicial act, but one done in the exercise of administrative functions, that the omission to hear the appellant before making it was only an irregularity which could not be reviewed at any rate by writ of *certiorari* and not a case for revision under the Code of Criminal Procedure. The provisions of s. 435 of the Code of Criminal Procedure, and of s. 115 of the Code of Civil Procedure are not exhaustive and there may be rare cases which might not fall under either of those sections, and for those cases the powers of the High Courts which have inherited the ordi-

PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867)—*contd.*

nary or extraordinary jurisdiction of the Supreme Court to issue writs of *certiorari* cannot be said to have been taken away; though it is taken away in ordinary cases by the above sections of the Civil and Criminal Procedure Codes. And assuming the power to issue writs of *certiorari* remain notwithstanding the existence of later procedure by way of revision, in the present the procedure by *certiorari* would be precluded by s. 22 of Act I of 1910. *Held* with respect to the petition under s. 17 to set aside the forfeiture, the question was as to whether the passages cited from the articles published in the newspaper came within s. 4, sub s. (1) of the Act and the Judicial Committee found that due weight had been given by the Special Bench to the several portions of the section and that it had not been misconstrued on any matters of law. Their Lordships acting on their usual practice would not with regard to appeals in Criminal cases, interfere on the merits with the conclusions of the Court below. *Dal Singh v. King Emperor (1917), 1 L. P. 41 Cal. 376 L. R. 44 I. A. 137 and Dal Gangadhar Tilak v. Queen Empress (1897), 1 L. R. 22 Bom. 323, L. R. 25 I. A. 1*, were referred to. *ESANT : ADVOCATE GENERAL OF MADRAS (1920)*

L. L. R. 43 Mad. (P.C.), 146

— **ss. 4, 5—Press Act (XXV of 1867**
ss. 4 and 5—Declaration made by owner who took no part in managing a printing press—Publication of a seditious book at the press—Penal Code (Act (XXV of 1860) s. 124A—Sedition—Intention. The accused made a declaration under Act XXV of 1867, s. 4, that he was the owner of a press called "The Atmaram Press." Beyond this, he took no part in the management of the press, which was carried on by another person. A book styled "Ek Shikhi Gita" was printed at this press. It was a book that dealt to a large extent with metaphysics, philosophy and religion. It also contained seditious passages scattered among discussions of religious matters. It was not shown that the accused ever read the book or was aware of the seditious passages it contained. The accused was convicted of the offence punishable under s. 124A of the Indian Penal Code, 1860, as publisher of the book. On appeal—*Held*, by *CHANDRAYAKKAR, J.*, that the cumulative effect of the surrounding circumstances was such as to make it improbable that the accused had read the book or that he had known its seditious object; and that the evidence having thus been evenly balanced and equivocal a reasonable doubt arose as to the guilt of the accused, the benefit of which should be given to him. *Held*, by *ILAYARAJ, J.*, that before the accused could be convicted under s. 124A of the Indian Penal Code it must be found that he had an intention of exciting disaffection; and that the evidence fell very short of proving the intention. *Per CHANDRAYAKKAR, J.*—A declaration made under s. 4 of the Press Act is intended by the legislature to have a certain effect, namely, that of fastening responsibility for the conduct of the press on a person declaring in respect of matters where public interests are involved. Hence where a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing

PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867)—*contd.*

ss. 4, 5—*contd.*

and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption, however, is not conclusive; it is not one of law, but of fact, and it is open to the accused to rebut it. *EMKOR & SHANKAR SRIKRISHNA DEY* (1910) . I. L. R. 35 Bom. 55

z. 7.

See SEDITION

I. L. R. 38 Calc. 227, 253

PRIOR MORTGAGE.

See CIVIL PROCEDURE CODE, 1882, ss. 13, 43 . . . I. L. R. 32 All. 119

See CIVIL PROCEDURE CODE, 1908 s. 11 . . . I. L. R. 35 All. 111

See MORTGAGE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 74 . . . I. L. R. 32 All. 138

See SUBROGATION I. L. R. 43 Calc. 69

extinguishment of—

See MORTGAGE . I. L. R. 39 Calc. 527

right of—

See MORTGAGE . I. L. R. 37 Calc. 282

PRIOR RIGHT.

See HINDU LAW—ADOPTION

I. L. R. 38 Calc. 694

PRIOR SALE.

See PUTNI TALUK

I. L. R. 49 Calc. 454

PRIORITY.

See CO OPERATIVE SOCIETIES ACT s. 10, 20 . . . I. L. R. 42 Calc. 377

See EXECUTION OF DECREE

I. L. R. 44 Calc. 1072

See MORTGAGE I. L. R. 43 Calc. 1052

See REGISTRATION ACT (III OF 1877), s. 50 . . . I. L. R. 34 All. 631

See REGISTRATION ACT (XVI OF 1908), s. 60 . . . I. L. R. 35 All. 271

Of attachment—

See CIVIL PROCEDURE CODE, O XXI, r. 63 . . . I. L. R. 44 Mad. 100

PRIORITY OF TITLE.

See TITLE . . . I. L. R. 37 Calc. 239

Customary right of in Gujarat.

See EASEMENT I. L. R. 44 Bom. 498

PRIVACY.

See EASEMENT . I. L. R. 44 Bom. 496

PRIVATE AWARD.

See APPEAL . . . I. L. R. 23 Calc. 143

See ARBITRATION . 19 C. W. N. 948

PRIVATE COMMON DRAIN.

See DRAINS . I. L. R. 33 Calc. 263

PRIVATE DEFENCE.

See EVIDENCE ACT (I OF 1872), s. 10b
I. L. R. 40 All. 284

See PENAL CODE ss. 96 to 106

See PIGHT OF PRIVATE DEFENCE.

Rioting—Pennal Code (Act XLV of 1860), ss. 141, 147 and 148—Hostile witness
Where a person in possession of property sees an actual invasion of his rights to that property, if that invasion amounts to an offence under the Penal Code, he is entitled to assert his right by force, and to collect for that purpose such numbers and such arms as may be absolutely necessary for this purpose provided only that there is no time to have recourse to the protection of the police authorities. The right of private defence extends to s. 141 of the Code, and subsequent sections just as much as it extends to any other offence punishable under the Code, and exists even where the consequence is a riot. A statement made by a prosecution witness in favour of the defence is not necessarily a hostile act. Before a witness can be declared hostile it must be shown that there is good ground for believing that the statement he has made in favour of the defence is due to enmity to the prosecution. *FOUZDAR RAI v THE CROWN* . 3 Pat. L. J. 419

Assessors Penal Code (Act XLV of 1860), ss. 99, 147, 148 and 326—Assessors, duty of Judge in putting questions to S. finding that the opposite party were cutting the crops from his field, remonstrated with them. They thereupon threatened him and he retired. He sent a messenger to the Thana to lodge information of what was occurring, then returned to his field accompanied by his son and three others. He asked the leader of the opposite party why the field was being looted, and the latter thereupon assaulted him. A fracas occurred in which one person was killed and several injured on the side of the accused, and one man was injured on the opposite side. S was convicted under ss. 148 and 326 of the Penal Code, and sentenced to three years' rigorous imprisonment under s. 326. The remaining accused persons were convicted and sentenced under s. 147. *Held*, setting aside the convictions and sentences, that S was justified in collecting his men and arming them sufficiently to prevent the crops being removed from his field in the event of the police not arriving in time. In cases where the possession of the accused is admitted, and where the right of private defence is pleaded it is not sufficient for the Sessions Judge to put the assessors such general questions as, "Are any of the accused persons guilty of any offence?" "Is the offence of rioting proved against any of the accused?" Assessors being laymen who are not familiar with niceties of the law of private defence it is the duty of the Sessions Judge to assist them by putting specific questions concerning the facts upon which the law will turn. *SENDER BUX v THE KING EMPEROOR* . . . 3 Pat. L. J. 653

Robbery—Treason charged with two offences—Evidence regarding one offence found unreliable, whether the whole evidence should be discarded—Indian Penal Code (Act XLV of 1860), ss. 111, 143, 329 and 372. Robbery by violence may be resisted by violence sufficient to overcome the force employed by the attacker, and if, in the course of such resistance death is caused, it

PRIVATE DEFENCE—contd.

may be justified if the right of self defence was exercised reasonably and properly, but the measure of self defence must always be proportionate to the quantum of force used by the attacker and which it is necessary to repel. A Court should not convict where it finds that the prosecution case is, in the main, untrue but each case must depend upon its own facts as to the applicability of this general principle. Where the prosecution case is found to be substantially untrue but there is a residuum of evidence with regard to some other charge incidental to the main charge, which, after careful judicial enquiry is found to be true and trustworthy, the accused may be convicted on such incidental charge. **RAM PRASAD MANTON v KING EMPEROR** 4 Pat. L. J. 239

Right of, whether may be pleaded in the alternative. An accused person is not debarred from denying that he committed the act of which he is accused and at the same time pleading the right of private defence. **PAUDI KHOT v THE KING EMPEROR** 5 Pat. L. J. 64

PRIVATE FERRY

See FERRY . I. L. R. 37 Calc. 543

PRIVATE FISHERIES ACT (II OF 1839)

§ 3—Conviction without ascertaining boundary of fishery which is in dispute and bona fides of accused property of—Purcha, evidentiary value of—Certified copy of Rubakari admissibility of. The petitioner, a fisherman, was convicted under § 3 of the Private Fisheries Act for having fished in a river. It was in dispute whether the river appertained to a Khass Mahal or to a mouzah belonging to the zemindars under the orders of whose ijaradars the petitioner acted. The complainant, the ijaradar under Government, produced a Government purcha or extract from a record of rights prepared under the Bengal Tenancy Act and the defence produced a certified copy of a Rubakari issued by the Commissioner containing an adjudication of the disputed boundary. Held, that in the absence of a determination of the true boundary of the fishery and the bona fides of the petitioner the conviction was not proper. That the extract from the record of rights at most raised a rebuttable presumption in favour of the complainant. That the Magistrate's order that the Rubakari was inadmissible in evidence on the ground that a certified copy not the original order was produced was wrong. **RADHANATH KAINATHA v EMPEROR (1917)** 22 C. W. N. 742

PRIVATE INTERNATIONAL LAW.

See FOREIGN JUDGMENT SUIT ON
I. L. R. 37 Mad. 183

Jurisdiction—Power of Foreign Court to sell debt which has arisen in British India—lex loci rei sitae. Where a pledge of movable property or of a debt is allowed by the law of the territory where the transaction took place, the Court of that territory has jurisdiction to sell the property in execution of its decree so as to pass a valid title to it, even if the property in situate outside of its jurisdiction. **Chaneshamilas v Dharmoli** I. L. R. 3 Bom. 219, distinguished **D COTTEA v ASSAY KUNNU (1913)**
I. L. R. 36 Mad. 1

PRIVATE KNOWLEDGE.

— of facts by Judge—

See EVIDENCE I. L. R. 38 Mad. 123

PRIVATE LAND.

See MADRAS ESTATES LAND ACT (I OF 1908), ss 3, 8 AND 125

I. L. R. 39 Mad. 341

PRIVATE PARTITION.

See JOINT ESTATE

I. L. R. 43 Calc. 103

PRIVATE PATHWAY.

See MUNICIPALITY

I. L. R. 43 Calc. 120

PRIVATE REFERENCE.

See ARBITRATION I. L. R. 37 Calc. 63

PRIVATE SALE.

See ATTACHMENT BEFORE JUDGMENT

I. L. R. 45 Calc. 780

PRIVATE STREET.

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1883) ss 305

I. L. R. 43 Bom. 122

I. L. R. 34 Bom. 593

PRIVATE TRIBUNAL.

See HINDU LAW 25 C. W. N. 201

PRIVILEGE.

See DEFAMATION I. L. R. 43 Calc. 328
I. L. R. 33 Mad. 67

See DEFAMATION—STATEMENT BY ACCUSED I. L. R. 40 Calc. 433

See EVIDENCE ACT (I OF 1872) s 129
I. L. R. 41 All. 125

See FALSE EVIDENCE
I. L. R. 37 Calc. 878

See LIBEL . I. L. R. 40 All. 841
I. L. R. 39 All. 561

I. L. R. 43 Calc. 304

See LIMITATION I. L. R. 40 Calc. 836

See MALICIOUS PROSECUTION
I. L. R. 38 Calc. 830

See PEVAL CODE s 499.

See SECRETARY OF STATE FOR INDIA.
I. L. R. 39 Mad. 781

— against Court—

See INSTRUCTIONS TO COUNSEL.
I. L. R. 40 Calc. 898

— for statement in complaint to Magistrate—

See PEVAL CODE (ACT XLV OF 1860),
s 493 . I. L. R. 37 Mad. 110

PRIVILEGE OF COUNSEL.

See LIMITATION . I. L. R. 40 Calc. 898

PRIVILEGE OF WITNESS.

See EVIDENCE ACT (I OF 1872), s 132
I. L. R. 40 All. 271

PRIVITY.

— between parties—

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 11 . I. L. R. 40 Bom. 679

PRIVITY—*could*

— meaning of—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 103 (5)

I. L. R. 40 Mad. 1111

PRIVITY OF CONTRACT.

See CONTRACT . I. L. R. 37 All. 115

PRIVITY OF CONTRACT AND ESTATE.

See JURISDICTION

I. L. R. 39 Calc. 739

PRIVITY OF ESTATE.

See LESSOR AND LESSEE

I. L. R. 37 Calc. 683

PRIVY COUNCIL.

See APPEALS TO HIS MAJESTY IN COUNCIL.

See APPEALS TO PRIVY COUNCIL

See CIVIL PROCEDURE CODE, 1908—

s 13 . . . I. L. R. 40 Mad. 112

ss 103, 108, 109, O XLII, r 23

I. L. R. 33 All. 391

s 110 . . . I. L. R. 40 Bom. 477

I. L. R. 42 All. 445

I. L. R. 44 Bom. 104

O XLV, r 15 I. L. R. 37 All. 567

See COSTS . I. L. R. 47 Calc. 415

See COURT MARTIAL.

25 C. W. N. 95

See LAND ACQUISITION ACT (I of 1894),

s 54 . . . I. L. R. 37 Bom. 508

See LEAVE TO APPEAL TO PRIVY COUNCIL.

See PRACTICE

I. L. R. 48 Calc. 994

See PRIVY COUNCIL APPEALS

— appeal to against conviction by Court Martial Commissioners—

See CRIMINAL LAW . 25 C. W. N. 701

— Certificate of High Court.

See PROCEDURE

I. L. R. 44 Mad. 293

— decision of—

See BILL OF LADING

I. L. R. 38 Mad. 941

See WARP, OF VALIDITY OF

I. L. R. 43 Calc. 158

— judgment of—

See HINDU LAW—WILL.

I. L. R. 33 Calc. 188

— order of His Majesty in—

See LIMITATION ACT (XV of 1877), SCH II, Art 180 I. L. R. 33 All. 154

— order of, transmitted to the original Court.

See CIVIL PROCEDURE CODE (ACT V of 1908), O XLV, rr 15 and 16

I. L. R. 38 Mad. 832

— Restoration of property alienated pending appeal—

See CIVIL PROCEDURE CODE, 1908, O XLV, r 15 . I. L. R. 37 All. 567

PRIVY COUNCIL—*could*,

— whether new point may be taken on appeal to—

See COMPROMISE I. L. R. 42 Mad. 581

See PRIVY COUNCIL, PRACTICE OF

I. L. R. 34 All. 57

— When will interfere in Criminal cases—

See PEVAL CODE s 89.

25 C. W. N. 514

1. ——— New case—*Practise*. The hearing of the appeal being *ex parte*, the Judicial Committee refused to depart from the established practice of not allowing the appellant to make a new case based on grounds which were not urged in the Courts in India, were not specified in the petition to the High Court for leave to appeal, and were not suggested in the reasons contained in the case for the appellant *SOVI RAM v. KANHAIYA LAL* (1913)

I. L. R. 35 All. 227

17 C. W. N. 605

2. ——— Decision, inconsistent with former one—*Binding character*. The fact of a decision of the Judicial Committee not being consistent with an earlier one, cannot affect its binding character and the High Court is bound to follow it *MAHUR SUDAN MOYDAL v. RADHIKA PRASAD DAS* (1912)

17 C. W. N. 873

3. ——— Valuation—*Application for leave to appeal—Appellable value—Decision in directly involving amount*. Defendants who were co sharers of the plaintiff in the zemindari having purchased certain holding from the tenants, the plaintiff sued them for their share of the rent due from one such holding, amounting to Rs 230. The High Court reversing the decree of the lower Court dismissed the suit on the ground that as there was no contract of tenancy between the parties there was no relation of landlord and tenant between them. The plaintiff in applying for leave to appeal to the Privy Council proved that there were other holdings similarly purchased by the defendants and that the decision of the High Court would have the effect of depriving him of rents of all such holding amounting to Rs 800 a year, which capitalized came up to over Rs 10,000. *Held*, that the decision indirectly involved a claim or question to or respecting property of the value of Rs 10,000 or upwards and leave ought to be granted *SHINATH PAL CHOWDHURY v. GIRINDRA CHANDRA PAL CHOWDHURY* (1906)

14 C. W. N. 651

4. ——— Leave to appeal—*Appellable value—Right of party to prove value of subject matter contrary to valuation in plaint or memo of appeal—Meane profits pending suit if to be added*. The valuation made in conformity with the stamp law do not prevent a party from obtaining leave to appeal by proving that the real value of the subject matter does not fall short of the appellable amount. But a defendant who had previously adopted the value given in the plaint for the purpose of an appeal preferred by him should not be allowed to contest that valuation on the principle that a party cannot both approbate and reprobate. In a suit for recovery of possession of immovable property with meane profits, the subject matter to be valued would include meane profits claimable from the instit

PRIVY COUNCIL, APPEAL TO—*contd.*

Final order—Interlocutory order—
Order rejecting an application for bringing on record
the legal representatives of a deceased party to a
pending appeal—Amended Letters Patent, cl. 39—
Civil Procedure Code (Act V of 1908), ss 109, 110.
The applicant, claiming to be the legal repre-
sentative of a deceased party to a pending appeal,
applied to have his name brought on the record.
The High Court disallowed the application and
ordered the names of the heirs of the deceased to
be substituted. The applicant applied for leave
to appeal to His Majesty in Council from the order
rejecting the application: *Held*, that the order
having been passed on an application in a pending
appeal, was not a final, but an interlocutory,
order, and that no appeal lay from it to His
Majesty in Council under the provisions of cl 39
of the Amended Letters Patent *GANGAPPA
REVASHIDAPPA v GANGAPPA MALESHTAPPA*
(1914) . . . I. L. R. 38 Bom. 421

PRIVY COUNCIL, PRACTICE OF.

See ADOPTION . I. L. R. 40 Calc. 879

See CONTRACT . I. L. R. 38 Mad. 509

See DECREE, ASSIGNMENT OF
I. L. R. 37 Mad. 227

See HINDU LAW—ENDOWMENT
I. L. R. 38 Calc. 528
I. L. R. 40 Mad. 709

See HINDU LAW—IMPARTIBLE ESTATE.
I. L. R. 37 Mad. 199

See LIMITATION ACT (XV of 1877)—
s 4, SCH II, ART 179 (2)
I. L. R. 38 All. 254

s 19, SCH II, ART 143
I. L. R. 35 All. 227

See MORTGAGE . I. L. R. 44 Calc 333

See PRACTICE
I. L. R. 45 Calc 994

See PRIVY COUNCIL.

See SALE FOR ARREARS OF REVENUE
I. L. R. 44 Calc. 573

1. ——— Alteration of decree appealed
from in respondents' favour without cross-appeal
by them. In a suit on a promissory note for
Rs 18 042 principal, and interest at $1\frac{1}{2}$ per cent
per mensem, and also for interest "on the decree
from the date of the institution of the suit until
realisation," the first Court passed a decree for
only Rs 500 "with interest as prayed." The
Chief Court of Lower Burma ordered that "the
decree of the Original Court be altered to a decree
for the full amount claimed," and said nothing
about interest. The plaintiffs (respondents)
applied by petition to the Chief Court to amend
its decree by adding a specific statement that
"interest as prayed for in the plaint" was pay-
able on the decretal amount, but the application
was dismissed. The defendant appealed to the
Privy Council, and shortly before the case came
on for hearing, the respondents petitioned for
special leave to enter a cross appeal so far as the
decree of the Chief Court had failed to include
interest after the institution of the suit. A con-
sent order in Council was made on 6th March 1910
that the respondents should have leave on the
hearing to appeal on the question raised in their

PRIVY COUNCIL, PRACTICE OF—*contd.*

petition, and their Lordships, while dismissing
the appeal, altered the decree of the Chief Court
as prayed in the petition, without a cross appeal
being entered. *CASSIM AHMED JEW v NARAIAN
CHETTY* (1910) . . . I. L. R. 37 Calc. 623

2. ——— Stay of execution—of decrees
pending appeal—Power of High Court where appeal
has been admitted by special leave—Civil Procedure
Code (Act V of 1908), O XLV, r 13, (Act XIV
of 1852), s 608. The High Court has power,
under r 13 of O XLV of the Civil Procedure Code
(Act V of 1908), to stay execution of a decree
pending an appeal to His Majesty in Council, in a
case where the appeal has been admitted by special
leave. *NITYA MONI DASGI v MODIR SUDAN SIV*
(1911) . . . I. L. R. 38 Calc. 335

3. ——— New point of law as a ground
of appeal which had not been dealt with by the
Courts below—Appeal heard ex parte. It is con-
trary to the practice of the Judicial Committee
to allow a point to be raised on appeal before them
which had not been discussed in the Courts below,
and on which their Lordships have not got the
assistance of those Courts. *JIT SINGH v MANARAJ
SINGH* (1911) . . . I. L. R. 34 All. 57

4. ——— Appeal in criminal cases—Case
where some substantial and grave injustice has been
done—Conviction on partly inadmissible, and un-
reliable evidence—Principles governing interference
with verdict of Criminal Court in India—Costs
where appeal of accused person succeeds. Special
leave to appeal in a criminal case may be granted
where "by some disregard of the forms of legal
process, or by some violation of the principles of
natural justice, or otherwise, some substantial
and grave injustice has been done." *In re Diller*,
L. R. 12 A C 459, per LORD WATSON, followed.
In this case in which the appellant had been
tried with others and convicted of abetment of
murder, and sentenced to death, their Lordships
in allowing the appeal, were of opinion that in-
justice of the kind above mentioned had been
done, inasmuch as a vast body of inadmissible
evidence, hearsay and other, had been admitted;
that when admitted it had been used to the grave
prejudice of the appellant; and that at the end of
the hearing before the Judge of first instance
there did not exist any reliable evidence upon
which a capital conviction could be safely or justly
based. *Held* that under these circumstances
whatever doubts their Lordships might have of
the appellant's innocence, or whatever suspi-
cions they might entertain of his guilt, or however
great might be their reluctance to interfere with
or overrule the decisions of the Indian Courts in
criminal matters, the conviction should not be
allowed to stand. *Held*, also, that this case was
not one of disturbing the verdict of the Judge of a
Criminal Court in India, who having seen and heard
the witnesses had believed them and founded his
decision on their testimony; it was the reverse
of that, because in this case the Judge who saw
and heard the witness upon whose evidence the
conviction was mainly based, did not think his
evidence so reliable that he could act upon it
alone and had, therefore ordered the discharge
of the other accused implicated by it. Costs of a
successful appeal were not allowed as against the
Crown. *JOHNA v RAO* (1909), A C 317, 324,
followed. *VAITHATHA PILLAI v KING EMPEROR*
(1913) . . . I. L. R. 38 Mad. 501

PRIVY COUNCIL, PRACTICE OF—*contd*

5. ———— *In Criminal case—Grounds for refusing special leave to appeal* In this case the main grounds of appeal were that the Judge had, during the trial, wrongly amended the charge to the prejudice of the petitioners, improper admission of evidence, misdirection, and that the sentences contravened the provisions of a 71 of the Penal Code (Act XLV of 1860). But their Lordships were of opinion that in what had been done there was nothing grossly contrary to the forms of justice nor any violation of fundamental principles, and therefore refused to grant special leave to appeal to His Majesty in Council on the ground that they had no power to interfere. *Dhill, In re, L R 12 A C 453*, followed. *CLIFFORD v KING IMPROVER* (1915)

I L. R. 41 Cal. 568

6. ———— *Of newspaper for publication of criminal libels—Penal Code (Act XLV of 1860), s 499, Exceptions 1, 2, 9 and s 52—Position of members of the Press and of Judges—Libel on Magistrate in respect of conduct of criminal trial—Charge to Jury—Misdirection—Powers and functions of Judicial Committee in criminal cases* No kind of privilege attaches to the profession of the Press as distinguished from the members of the public. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever length the subject in general may go, so also may the journalist, but apart from statute law his privilege is no other and no higher. The responsibilities which attach to his power of dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful, but the range of his assertions, his criticisms, or his comments is as wide as and no wider than, that of any other subject. No privilege attaches to his position. Nor does any privilege or protection attach to the public acts of a Judge which exempts him, in regard to these, from free and adverse comment. He is not above criticism, his conduct and utterances may demand it. Freedom would be seriously impaired if the judicial tribunals were outside of the range of such comment. The appellant, the Editor of the *Burma Critic*, a newspaper published in Rangoon, was charged under s 499 of the Penal Code with having in certain articles entitled "A Mockery of British Justice" defamed a District Magistrate with reference to his alleged conduct in the trial of a case in which a European resident in the district was acquitted on charges of abduction and rape of a native girl of 11 or 12 years. His defence was under the 9th exception to s 499, and he pleaded admitting the libels to be false that he published them in good faith for the public good and believing them to be true after having taken due care and attention in the matter of their publication. He did not, however, disclose what were the actual things upon which he founded his own beliefs, nor what the steps, if any, were he took to investigate their truth before giving them to the public. He was tried in the Chief Court of Lower Burma before the Chief Judge with a jury, and was found guilty and sentenced to one year's imprisonment, after serving four months of which he was discharged, the rest of the sentence being remitted. He obtained special leave to appeal mainly on the ground that there had been misdirection resulting in an exceptional miscarriage of justice which had caused him substantial wrong. *Held*, on the facts, that a fair and statable case in support of the statutory

PRIVY COUNCIL, PRACTICE OF—*contd*

defence, and his belief that the libels were true, had been put forward for the appellant; and for the respondent a case was made which was also fair and statable, so that there was material before the jury on both sides, and the determination was on a subject peculiarly within the jury's province. The case was not improperly withdrawn from the jury's domain on fact, and they were not misdirected in law. A charge to a jury must be read as a whole. If there are salient propositions of law in it, these will of course be the subject of separate analysis. But in a protected narrative of fact, the determination of which is ultimately left to the jury, it must needs be that the view of the Judge may not coincide with the view of others who look upon the whole proceedings in black type. It would, however, not be in accordance with usual or good practice to treat such cases as cases of misdirection if, upon the general view taken, the case has been fairly left within the jury's province. But in any case in the region of fact their Lordships of the Judicial Committee would not interfere unless something gross amounting to a complete misdescription of the whole bearing of the evidence has occurred. The appellant's defence being as above, and involving an admission that the libels were false, his counsel at the trial by statements and innuendoes which were reiterated throughout the case, endeavoured to withdraw the pleaded defence and to persuade the jury that what was stated in the defamatory articles was true. *Held*, that it could not be considered misdirection for the Judge in charging the jury to put before them a narrative of the real facts of the case as disclosed by the evidence, showing what was in accordance with the pleaded defence, namely, the falsity of the libels, and the consequent innocence of the Magistrate on the charges against him. The letters put in evidence as to the charges that the Magistrate had conspired to suddenly leave the complainants in the abduction and rape case without an advocate, and to furnish them with a false interpreter, though not before the appellant when he wrote the defamatory articles, were before him in the course of his trial, and when it was discovered that they were not true and that a gross mistake on a matter of fact had been made, those libels should not have been adhered to for a moment: the mistake should have been acknowledged and an apology tendered; instead of which the case was conducted to its close upon the footing that an unstated defence was the real and good defence, namely, that all the libels were true. The question of the special position and functions of the Judicial Committee, and their powers and practice as advisers of the King in criminal matters is not truly one of jurisdiction. The power of His Majesty under his Royal authority to review proceedings of a criminal nature, unless where such power and authority have been parted with by Statute, is undoubted. On the other hand, there are reasons both constitutional and administrative which make it manifest that this power should not be lightly exercised. The overruling consideration upon the topic has reference to justice itself. If throughout the Empire it were supposed that the course and execution of justice could suffer serious impediment which in many cases might amount to practical obstruction, by an appeal to the Royal Prerogative of review on judicial grounds, then it becomes plain that a severe blow would have been dealt to the ordered administration of law within the King's dominions.

PRIVY COUNCIL, PRACTICE OF—*contd*

The views expressed by Dr Lushington in *The Queen v Joykisen Mookerjee, 1 Moo P O N S 272*, and the principle and practice laid down by Lord Kingsdown in *The Falkland Islands Company v. The Queen, 1 Moo P O N S 299*, still remain those which are followed by the Judicial Committee in appeals in criminal matters. The principle laid down in *Pe Dillet, L R 12 A C 439* that the course of criminal proceedings will not be reviewed or interfered with by the Privy Council "unless it is shown that by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise substantial or grave injustice has been done," is not to be interpreted in the sense that where ever there had been a misdirection in any criminal case leaving it uncertain whether that misdirection did or did not affect the jury's mind, that then in such case a miscarriage of justice could be affirmed or assumed. The Judicial Committee is not a Court of Criminal Appeal. In general its practice is to the following effect. It will not interfere with the course of criminal law unless there has been such an interference with the elementary right of an accused as has placed him outside of the pale of the regular law, or within that pale there has been a violation of the natural principles of justice so demonstratively manifest as to convince their Lordships, first, that the result arrived at was opposite to the result which they themselves would have reached, and, secondly, that the same opposite result would have been reached by the local tribunal also if the alleged defect or misdirection had been avoided. *Malis v. Attorney General for New South Wales, (1894) A C 57, Vaidyanatha Pillay v. The King Emperor, 1 L P 38 Mad 601, L R 40 I A 193, and Laurer v. The King, (1914) A C 227*, distinguished. It must be established demonstratively that justice itself in its very foundations has been subverted, and that it is therefore a matter of general Imperial concern that by way of an appeal to the King it can be restored to its rightful position in that part of the Empire. The authority of decisions of the Court of Criminal Appeal in England which apply to a different system, a different procedure, and a different structure of principle must stand out of the reckoning of any body of authority in the matter of the procedure of the Judicial Committee in advising His Majesty. *Clifford v. The King Emperor 1 L R 41 Cal 668, L R 40 I A 241*, approved. *Arnold v. King Emperor (1914)*

1 L. R. 41 Cal. 1923

7. ——— Criminal cases—application for—Petitioners sentenced to death—Stay of execution of sentences pending hearing of petition, refusal of—Tendering advice as to exercise of King's Prerogative of Pardon. On an application for special leave to appeal in a case in which the petitioners had been sentenced to death, their Lordships of the Judicial Committee, not being a Court of Criminal Appeal, declined to interfere with regard to staying execution of the sentences pending the hearing or to express any opinion as to whether they ought to be suspended. The tendering of advice to His Majesty as to the exercise of His Prerogative of pardon is a matter for the Executive Government, and is outside their Lordships' province. *BALMURDEN v. KING EMPEROR (1915)* 1 L. R. 42 Cal 739

8. ——— Invasion of liberty and just rights of a citizen—Embezzlement—Criminal and Civil

PRIVY COUNCIL, PRACTICE OF—*contd*

habduly distinction between—Costs against Crown in criminal appeal. The appellant, who was a member of a firm, was authorized by the guardian of two minors by a power of attorney to act for the guardian in collecting and investing the minors' property. Acting under this authority, funds were received and remittances made from time to time by the appellant a firm with whom an account was opened in the name of the minors. A certain amount due to the minors from a creditor was paid by him in the shape of crediting it to the appellant's firm in their account with their bankers which account was overdrawn. The minors' account with the appellant's firm was duly credited with that amount. The appellant being thereafter asked to give a guarantee for the funds of the minor in his hand gave security to the satisfaction of the authorities. Thereafter criminal proceedings were instituted against the appellant who was tried by the Chief Justice without a jury and convicted of having embezzled the minor's money. *Held*, that the facts did not on any just or legal view of them warrant a conviction, and the grounds of distinction between the categories of liability in a civil as distinguished from a criminal suit appeared in the present case to have been left out of judicial view. That the Judicial Committee of the Privy Council does not lightly interfere in criminal cases but in the present case, although the proceedings taken were unobjectionable in form, justice had gravely and injuriously miscarried and the sentences pronounced against the appellant formed such an invasion of liberty and such denial of his just rights as a citizen that their Lordships felt called upon to interfere. Having regard to the exceptional nature of the case their Lordships directed the Crown to pay to the appellant the costs of the appeal. *LAMAR v. THE KING (1913)* 18 C. W. N 68

9. ——— The general principle is established that the King in Council does not act in exercise of his prerogative to review in criminal cases in the free fashion of a fully constituted Court of Criminal Appeal. The exercise of the prerogative takes place only where it is shown that injustice of a serious and substantial character has occurred. A mere mistake on the part of the Court below, as for example, in the admission of improper evidence, will not suffice if it has not led to injustice of a grave character. Nor do the Judicial Committee advise interference merely because they themselves would have taken a different view of evidence admitted. Such questions are, as a general rule, treated as being for the final decision of the Courts below. Under s 172 of the Criminal Procedure Code (Act V of 1898), every police officer making an investigation is to enter his proceedings in a diary which may be used at the trial or inquiry not as evidence in the case but to aid the Court in such inquiry or trial. And by s 374 when the Court of Session passes sentence of death the proceedings are to be submitted to the High Court for confirmation, and the sentence is not to be executed unless it is confirmed by that Court. In this case which was one of murder the accused was convicted by the Sessions Judge and sentenced to death and that sentence was substantially in every material particular confirmed by the Court of the Judicial Commissioner (as the High Court) on appeal. After confirming the sentence, the High Court of Appeal took into consideration the police diary, made

PRIVY COUNCIL, PRACTICE OF—contd

during the preparation of the case for the purpose of testing the credibility of some of the witnesses for the defence and treated the entries therein as being evidence in the case discrediting them. *Hill v. the Judicial Committee* that the fact was clearly wrong in so treating the entries in the police diary in a manner which was inconsistent with the provisions of s. 172 of the Criminal Procedure Code. *Queen Empress v. Maseun, I L R 19 All 306*, approved. But such improper admission of evidence was not a "sufficient reason why their Lordships should recommend interference with the judgment and sentence. The conditions of the case as to jurisdiction had been complied with; the Court of Appeal had before it evidence on which it placed its opinion and on which it could properly have based its affirmation and confirmation of the conviction. An error in procedure may be of so grave a character as to warrant the interference of the Sovereign, as for instance if it deprived an accused of a constitutional or statutory right to be tried by jury or by some particular tribunal; or it may have been essential to such an extent as to cause the outcome of the proceedings to be contrary to fundamental principles which justice requires to be observed. Even if their Lordships thought the accused guilty they would not hesitate to recommend the exercise of the prerogative were such the case. But here the error consisted only in the fact that evidence had been improperly admitted which was not essential to a result which might have been come to wholly independently of it. Substantial justice had been done, and that being so it would be contrary to the general practice to advise the Sovereign to interfere with the result. *Dat Seng v. King Emperor* (1917). L. L. R. 44 Cal. 878

10 ——— The King in Council is not a Court of Criminal Appeal and the power of the Sovereign to entertain appeals of this character should only be exercised where there is a gross denial of material justice. *Munoo Goudan v. King Emperor* 23 C. W. N. 57

11 ——— Dismissal of appeal for want of prosecution—No judicial decision of suit—*Limitation Act (XV of 1877) Sch. II, Arts 179-187—Application for order of sale under Transfer of Property Act (XV of 1882), s. 69—Final decree or order of Appeal Court—An order of His Majesty in Council denying an appeal for want of prosecution does not deal judicially with the matter of the suit, and can in no sense be regarded as an order adopting or confirming the decision appealed from. It merely recommends authoritatively that the appellant has not complied with the conditions under which the appeal was open to him and that therefore he is in the same position as if he had not appealed at all. Where, therefore, in a suit to enforce a mortgage a preliminary decree for sale was made by the Subordinate Judge on the 17th of May 1890, which was confirmed by the High Court on the 8th of April 1893 and an appeal to the Privy Council was admitted but was dismissed for want of prosecution on the 13th of May 1901: Held (reversing the decisions of the Courts in India) that the period of limitation for an application under s. 69 of the Transfer of Property Act (XV of 1882) to make absolute the decree for sale was not 12 years under Art. 180 of Sch. II of the Limitation Act 1877, but three years under Art. 179 and limitation ran not from the dismissal of*

PRIVY COUNCIL, PRACTICE OF—contd

the appeal for want of prosecution but from the order of the High Court confirming the decree which was "the final order of the Appeal Court" and did not become merged in the order of the Privy Council. *See Bank of India v. London Dock, I L R 35 All 461*. The result is to force the decree but it therefore been turned into the passing of the final appeal in Code 1908 (under which the present application is brought to be made), and no provision of that Act compels it to revive it. *Abich Mas v. Jaganath Das* (1914).

I L R. 35 All 350

12 ——— in cases of contempt filed by lower courts—Where there are concurrent findings of the Courts below on an issue affecting the jurisdiction of the Court of appeal it is established that the jurisdiction of the Courts below are hardly wrong. *Adani v. Gulab Haroon Company, 12 C 191* referred to. *SEEMA KANTA AGARWAL v. SARAT CHANDRA BOY CHAUDHURY* (1914) 13 C. W. N. 1291

13 ——— Compromise as to which persons under disability are concerned—Application for appeal should be moved before the High Court in India in the first instance. In all cases where it is desired to bind persons under disability by a compromise which is proposed to be entered into in any appeal pending before the Judicial Committee, it is of the utmost importance that there should be a clear expression of opinion by the proper Court in India that such compromise is a beneficial one for these persons. Such a question is essentially and necessarily the proper subject for consideration of the Courts in India who are in a position to institute the inquiries, to ask the questions and to obtain the information which must always be required before sanctioning proceedings on behalf of persons who are unable to assent for themselves. And though the Judicial Committee may in rare cases in their desire to avoid the multiplication or prolongation of proceedings entertain in the first instance an application to sanction a compromise in which persons under disability are interested this is not the regular and usual course. *COBINTA CHANDRAN KALLASS CHANDRA* 28 C. W. N. 105

14 ——— Omission to appeal to High Court—In case of a subordinate Court not subordinated to High Court—Point taken in grounds of appeal to High Court but not pressed—*Postponing appeal from interlocutory decision and appeal from final decree*. It is a well settled rule of practice of the Judicial Committee that an appeal when bringing up the actual decree of the High Court for review shall not be allowed to ask to have it set aside on the ground that it has wrongly accepted a decision of the subordinate Court if he himself has never brought that decision before the High Court for its consideration. Such a request would be fairer to the Court of appeal than, nor to the Board of appeal to. The High Court ought not to be liable to have its intervention overruled upon matter never submitted to it. The Board ought not to be called on to adjudicate finally upon matters where they have not the advantage of knowing and weighing the view taken by the learned Judges of the High Court. This had nothing to do with waiting to question an interlocutory decision until an appeal is taken from a subsequent final decree. The same rule applies where, on appeal to the High Court the point was mentioned in the notice of appeal, but the judgment

PRIVY COUNCIL, PRACTICE OF—*contd*

of the High Court says of it that the appellants' advocate "stated that he did not desire to press it," and so no more is said about it. *KALYAN DAS v MAQBUL AHMAD* (1919)

I. L. R. 40 All. 497

15. ———— **Directions—application for—**
All applications for directions for the preparation of paper books in Privy Council appeals should be made to the Bench taking Privy Council business. *SHIVA PRASAD SINGH v RANI PRAYAG KUMARI DEBI*.

20 C. W. N. 849

PRIZE.

See **CONFISCATION** I. L. R. 42 Calc. 334

PRIZE COURT.

——— adjudication by—

See **SALE OF GOODS**

I. L. R. 45 Calc. 28

——— *Seizure of ship as prize*
—Claimant a Persian subject—Commercial domicile of the claimant in enemy territory—Claimant failing to establish intention of removing domicile to a neutral country—Declaration of London, Article 57, effect of—Condemnation of ship as lawful prize. On the 5th November 1914, war was declared between Great Britain and Turkey. On the 13th November 1914, the S.S. "Karadeniz", then lying in Bombay Harbour, was captured as an enemy vessel under Government Orders. On the 19th November 1914, the ship's papers were lodged in Court with the usual affidavit. On the 21st November 1914, the writ was issued against the ship and the goods laden therein for the condemnation thereof as lawful prize. On the 15th January 1915, the claimant filed his claim to the ship. His petition in support of his claim alleged that he was a Persian subject and had purchased the ship on the 15th August 1914 from a Turkish Company at Constantinople where he resided and carried on business, that the sale had been completed the same day, that the ship on its arrival in Bombay on the 19th August 1914, was not permitted to leave the Port by the Port Officer at Bombay and that at the time of its capture or at any other time material to the matter in cause, no subject of the Turkish Government or enemy of Great Britain had any share, right, title or interest in the said ship. He prayed for the restitution of the ship and damages for her detention. *Held*, that the ship must be condemned as lawful prize, inasmuch as on the outbreak of war the claimant had his commercial domicile in Turkey, and that at the time of the capture and for months after he had no intention of removing that domicile to a neutral country and preventing the ship from reaching enemy territory. Decisions of the English and American Prize Courts, referred to. Effect of Art. 57 of the Declaration of London considered in view of the decisions in *The Zamora* (1916) 2 A. C. 77 and *The Protos* (1915) A. C. 573. The "Karadeniz" (1919). I. L. R. 44 Bom. 61

PRIBATE.

See **COURT FEES ACT, 1870—**

s. 19 (c). . . 5 Pat. L. J. 36

s. 19 AND 1191, SCH. I AND III.

I. L. R. 43 All. 275

PRIBATE—*contd*

See **EVIDENCE ACT** (I OF 1872), s. 41.

I. L. R. 23 Bom. 399

See **EXECUTOR** . . . 14 C. W. N. 256

See **GUARDIAN** . I. L. R. 42 Calc. 853

See **HINDU LAW—STRIDHAN**

I. L. R. 40 Calc. 82

See **HINDU WILLS ACT** (XXI OF 1870),

ss. 2 AND 6 I. L. R. 34 Bom. 508

See **INAM LANDS** I. L. R. 33 Bom. 272

See **JOINT PRIBATE**

See **LIMITATION** I. L. R. 43 I. A. 113

20 C. W. N. 830

See **LIMITATION ACT** (XV OF 1877), ss. 5

AND 7 I. L. R. 34 Bom. 589

See **LIMITATION ACT, 1908**, s. 17

I. L. R. 37 Mad. 175

SCH. I, ART. 95

I. L. R. 37 Bom. 158

See **MAHOMEDAN LAW—WILL.**

I. L. R. 37 Calc. 839

See **OFFICIAL TRUSTEE**

I. L. R. 38 Calc. 53

See **PRACTICE** (33)

See **PRIBATE AND ADMINISTRATION ACT.**

See **PRIBATE PROCEEDINGS**

See **SECOND PRIBATE**

I. L. R. 43 Calc. 625

See **SUCCESSION ACT** (X OF 1865), s. 214.

I. L. R. 35 All. 449

See **WILL** . I. L. R. 38 Calc. 327

——— as evidence of right—

See **SUCCESSION ACT** (X OF 1865), s. 187.

I. L. R. 33 Mad. 983

——— conditional order for grant of—

See **SUCCESSION ACT** (X OF 1865), s. 187.

I. L. R. 33 Mad. 983

——— dismissal of application, for

default—

See **WILL** . . . 14 C. W. N. 324

——— obtained by one executor—

See **HINDU LAW—WILL.**

I. L. R. 39 Mad. 363

——— suit to revoke—

See **DECLARATORY DECREE, SUIT FOR**

I. L. R. 43 Calc. 694

——— will signed by 3rd party in presence

and by direction of Testator—

See **SUCCESSION ACT, 1908**, s. 50

I. L. R. 45 Bom. 939

1. ——— Jurisdiction of High Court—
Letters of Administration—High Court and District Court, jurisdiction of—Concurrent jurisdiction—Probate and Administration Act (V of 1881), ss. 2, 51, 56, 87—"High Court," meaning of, ss. 37—
Practice—Rule 710 of the High Court Rules and Orders The High Court has jurisdiction to grant probate and letters of administration, on the Original Side, in any case which could have been brought before any District Judge in either of the two Provinces of Bengal. "High Court" mentioned in s. 87 of the Probate and Administration Act,

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(V of 1831) is not merely confined to the Appellate Jurisdiction of the Court, but it includes its Original Jurisdiction. *In the goods of Mahendran Varman Roy, 5 C W N 377*, referred to S 87 of the Probate and Administration Act does not require that any portion of the property should be within the limits of the Original Jurisdiction of the High Court, and Rule 710 of the High Court cannot override the express provisions of this section giving the High Court concurrent jurisdiction with the District Court. *NACKTRABALA DEBI v KASHIPATI CHOWDHRY (1909)*

I L R 37 Cal 224

2 ——— Jurisdiction—Testamentary and Intestate Jurisdiction of High Court—Probation—Probate and Administration Act (I of 1831) s 50—Official Trustee of Bengal—Official Trustee's Act (XII of 1864) Where a Judge exercising the original testamentary and intestate jurisdiction of the High Court granted probate to the Official Trustee of Bengal the probate being expressed to be granted to the Official Trustee of Bengal for the time being assuming the order to have been erroneous it cannot be said that the Judge acted without jurisdiction so as to bring the matter within the scope of s 50 of the Probate and Administration Act. *OFFICIAL TRUSTEE OF BENGAL v KUMODINI DAS (1910)* I L R 37 Cal 337

3 ——— Grant of probate on compromise, it may be revoked—Persons not parties but cognisant of grant of bond—Infringement of bond—Acquiescence—Delegation of powers by District Judge to District Delegate—Probate and Administration Act (I of 1831), s 57 Proceedings in a Court of probate are proceedings *quasi in rem* and a probate granted in solemn form is binding not only on the parties who have appeared or have been formally cited but also on privies *in re*, persons who being cognizant of the proceedings and having an opportunity to intervene have chosen not to do so. *Veell v Weeks 2 Phillim 224* *Hitcherley v Andrews, L R 2 P & D 377* *Yong v Holloway (1895) P 37*, relied on. It may be taken as settled law that in a contentious proceeding probate may be granted in common form in consequence of a compromise between the disputants resulting in the withdrawal of opposition and that it cannot afterwards be revoked except on proof of fraud or circumvention practiced either upon the Court or upon the parties. *Veell v Weeks 2 Moo P C C 85*, followed. When a probate is granted in common form by reason of a compromise between the parties as the terms of the compromise cannot be embodied in the order, for the reason that a Court of Probate cannot in many instances enforce the terms. *Evans v Saunders 30 L J P M & A 131* *Rodlight v Carter, 3 W & R 44*, *Carrut v Christ an L R 2 P & D 191*, referred to. But they may be enforced by an action if otherwise unobjectionable. But though a probate obtained in common form as the result of a compromise is binding upon the parties to the compromise it is not binding upon those who are not parties to it, even though they have been cognizant of the former proceedings. *Hitcherley v Andrews, L R 2 P & D 327*, referred to. When the terms of the compromise are agreed to by the parties *in toto sui juris*, the Court of probate will not make an order binding infants to the terms of the compromise. *Norman v Straine L R 6 P D 219*,

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referred to. But though an infant has a right in such cases to apply after he comes of age for revocation of probate obtained by consent yet he may be barred by acquiescence and delay for a long time or by the subsequent ratification of the dispositions of the will from putting the executor to the proof of the will in solemn form or from contesting its genuineness. *Hoffman v Morris, 2 Phillim 230* note. *Mohan v Broughton (1900) P 56*, relied on. Where the caveators having by reason of a compromise, withdrawn their opposition the District Judge sent the case to the District Delegate for enquiry and report. *Held* that the District Judge had acted within the powers conferred on him by s 52 of the Probate and Administration Act. *KUNJA LAL CHOWDHRY v KALASH CHANDRA CHOWDHRY (1910)*

14 C. W. N. 1063

4 ——— Bequest to Idol—Probate and Administration Act (I of 1831)—Shela appointed executor by implication—Letters of administration with will annexed if should be revoked and probate ordered to issue Where the testator having bequeathed his estate to an idol the *shela* who was opposed by the testator's heirs was granted letters of administration with the will annexed—*Held*, that although the applicant might probably have been granted probate as being executor by implication the estate being very small and letters of administration having been actually issued and the objector who appealed having no sort of interest in the matter, the order of the District Judge should be maintained. *Brojo v Raj Kumar, 6 C W N 310*, referred to. *KALI CHARAN THAKUR v ANNANDA KANTA BHATTACHARJEE (1910)*

15 C W. N. 1

4 (a) ——— Mahomedan Will—It is not necessary to take out probate to a Mahomedan Will which may be tendered in evidence and proved in any proceeding although no Probate has been taken out in respect of it. *SAKINA BIEZE v MAHOMED ISHAQ*

15 C W. N. 185

5 ——— Party entitled to object to grant of—Attaching creditor has interest sufficient to oppose grant Where an application is made for the grant of probate of the will of A, a judgment creditor of A's son who in execution has attached the son's interest in the property of his deceased father has an interest sufficient to justify him in opposing the grant. *ABRAHAM BASTIAN ANSAR v NARAYANA ARIAN (1910)* I L R 34 Mad 405

6 ——— Standard of proof—Testamentary capacity—Evidence to execution—Presumptive—Expert evidence, relevancy and weight of—Practice—Succession Act (X of 1865) ss 44, 45, 50—Evidence Act (I of 1872) ss 3, 10, 45, 101, 135 The standard of proof to establish a will required by the Indian Statutes is that of the prudent man and not an absolute or conclusive one. The doctrine in *Tyrell v Pounton (1894) P 151*, and *Parry v Butler, 2 Moo P C 480* disapproved. *Shama Churn Kundu v Khitromoni Das I J B 27 Cal 621 L R 27 I A 10*, referred to. The presumption against misconduct exists in a Civil case, though it may be rebutted by a lower standard of proof than that in a criminal trial. *Cooper v Stude, 6 H L Cas 746*, and *Dervine v Wilson 10 Moo P C 509*, referred to. The admissibility, relevancy and weight of the evidence of experts,

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discussed *Per Woodroffe, J.*—If the cross examining counsel, after putting a paper into the hands of a witness, merely asks him some question as to its general nature or identity, his adversary will have no right to see the document, but if the paper be used for the purpose of refreshing the memory of the witness, or if any question be put respecting its contents or as to the hand writing in which it is written, a right of it may then be demanded by the opposite counsel. *Peck v Peck, 21 L T R 670, referred to JARAT KUMARI DAS v BISSASSUR DUTT (1911)*

I. L. R. 39 Cal. 245

7. ——— *Caveat*—*if may be entered by widow of a predeceased son*—Maintenance of widow of predeceased son, if may be affected by probate proceedings—*Obligation of the heir*—*Sufficient interest* The widow of a predeceased son of the testator has in fact no interest sufficient to enable her to appear on probate proceedings. Her right to maintenance will not be affected by anything that may take place on the hearing of an application for probate. *Bai Parbati v Tarwadi Dolat ram, 1 L R 25 Bom 263, dissented from Yamunbai v Manubai, 1 L P 23 Bom 606, approved Panguimal v Echammal, 1 L R 22 Mad 305, followed Suddeshury Das v Janardan Sarkar, 1 L R 29 Cal 557 C C II N 530, referred to In the goods of GOVINDA CHANDRA BABAJEE (1913), 17 C. W. N. 1141*

8. ——— *Limitation*—*Limitation Act (IX of 1908), s 161*—*Its applicability to probate proceedings*—*Probate and Administration Act (V of 1881), s 83* S 161 of the Limitation Act does not apply to the case of one who is not a defendant in a probate proceeding. Merely citing a person in a probate application does not make him a defendant. Under s 83 of the Probate and Administration Act the case must be contentious and the person cited must appear to oppose the grant before he becomes a defendant. The limitation laid down in Art 104 of the Limitation Act applies to the case of a defendant as understood by s 83 of the Probate and Administration Act. *Bai Manabai v Manabai Kavasi, 1 L R 7 Bom 213, Tiluk Singh v Parsotam Prasad, 1 L R 22 Cal 924, Rahmat Karim v Abdul Karim, 1 L R 34 Cal 672, referred to SAROJA SUNDARI BASAK v. ADHOT CHARAN BASAK (1914)*

I. L. R. 41 Cal. 819

9. ——— *Joint Hindu family, Ancestral property*—*Will*—*Payment of full probate duty* In a case where there was admittedly a joint Hindu family consisting of a father and a minor son, the father made a will in effect bequeathing the whole property to his minor son. It was not disputed that the property covered by the will was joint family property. The executors contended that the deceased testator had no beneficial interest in any part of the property devised, and therefore they were exempted from the payment of any probate duty. *Held*, that where the matter in question was probate, the parties claiming under the will could not go behind its terms, or claim any exemption whatsoever upon allegations utterly inconsistent not only with the fact of the will itself, but with the express statements made therein and that the executors must pay full probate duty upon the will. *Collector of Kara v Chandal, 1 L R 22 Bom 161, distin-*

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guished *KASHINATH PANDURAMAN v GOWDARAYAN (1914)* . . . I. L. R. 39 Bom. 245

10. ——— *Revocation*—*Will, validity of*—*Proof in common form*—*Knowledge*—*Acquiescence*—*Delay*—*Probate and Administration Act (V of 1881), s 50* It does not matter by what facts knowledge of the grant of probate and acquiescence in it are established, for neither knowledge nor acquiescence, nor lapse of time are of themselves operative as a bar to the proceeding which every person interested in the estate of the testator has a right to bring, if he was not made a party in the probate proceeding. His application must be *bona fide* and he must give some reasonable and true explanation of the delay. *Hoffman v. Morris, 2 Phillim 230, Merryweather v Turner, 3 Curt 802, and Kunja Lal Choudhury v Kailash Chandra Choudhury, 11 C W N 1068, referred to MANORAMA CHOWDHURANI v SHIVA SUNDARI MOZENDAR (1914)* . . . I. L. R. 42 Cal. 450

11. ——— *Revocation*—*Probate or letters of administration, revocation of*—*Effect on alienation under revoked grant*—*Void or voidable grant*—*Mortgage to pay off debt due by estate, if subsists after revocation* A purchaser of property sold under a grant of probate or letters of administration, subsequently revoked, in order to discharge a debt which the true executor or administrator was compellable to pay, acquires an indefeasible title. There has been a divergence of judicial opinion on the question of the effect of revocation of a probate or letters of administration, the effect being made to depend upon whether the grant was void or voidable. A view more favourable to the rights of a *bona fide* transferee for value without notice has been taken in recent decisions where grants have been treated as operative until revoked even when obtained by fraud and by suppression of the fact that the deceased had left a will. *Dhendra Nath Dutt v Administrator General of Bengal, 1 L R 25 I A 109 s c, 1 L R 35 Cal 955 12 C II 802, referred to* Where a co proprietor of the executor having satisfied the entire Government revenue obtained a decree for contribution against him, and in execution thereof a property belonging to the estate was sold at an inadequate price, and meanwhile the probate having been revoked administrators appointed in his place with the Court's sanction mortgaged the property to procure money which they applied in setting aside the sale under s 310A of the Civil Procedure Code of 1882, and subsequently on appeal by the executor, the latter was restored to office and the letters of administration were cancelled. *Held*, that the mortgage held good. *SAILAJA PRASAD CHATTERJEE v JADU NATH BOSE (1914)* . . . 19 C. W. N. 240

12. ——— *Succession duty*—*Court Fees Act (VI of 1879), s 19 (c) as amended by Act XIII of 1875, s 19 (c)*—*Death of the first executor*—*Application for second probate*—*Duty payable, if any, on second probate* When an executor, to whom probate has been granted, dies leaving a part of the testator's estate unadministered, and a new representative is appointed for the purpose of completing the administration there being no new succession and no new devolution of the estate, no fresh succession duty should be levied. What the legislature appears to have intended is that where the full fee, chargeable under the Court Fees Act on a probate, at the time it is granted,

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has been paid, no further fee shall be chargeable when a second grant is made in respect of that property as comprised in that estate. *In the goods of Chaimera*, 21 W R 246n. *In the goods of Gaspar*, 1 L R 3 Cal 733. *In the goods of James*, 18 W R 253. *In the goods of Hailin or*, (1903) 18 W R 257. *In the goods of American*, 15 W R 403. *Webster v Spencer*, 3 B & Ald 360. *Cummins*, 3 Jo 4 Lat 63. *In the goods of Bell*, 1 L R 3 P & D 247. *Anon*, 1 Freeman, 313. *Anon*, 1 Ch Cas 265 and *Haskins v Brent*, 1 Mst & Cr 104, referred to *SWAKMA LAYA DEUT v SECRETARY OF STATE FOR INDIA* (1917).

1 L R. 43 Cal 623

13. ———— **Executor not renouncing on citation must take out probate** *Letters of Administration can otherwise issue*. An executor called upon by citation to accept, or renounce is strictly compellable if he accepts to take out probate within a limited time. If he does not do so, Letters of Administration with copy of the will annexed may be granted to any competent applicant. *KATANJI SOBANJI v HAJI JINBAI* (1916).

1 L R. 40 Bom. 656

14. ———— **Granted after service of citation upon father of testator's childless widow who was appointed her guardian ad litem**—*Application for revocation by widow who received benefits under Will*—*Proceedings whether can be re-opened*—*Appointment of guardian ad litem*—*His consent whether necessary*—*Civil Procedure Code (Act V of 1908), O XXXII, r 4, effect and applicability of*—*Citation whether summons*—*Object of citation*—*Probate and Administration Act (V of 1881) r 83*. Where the mother of the testator as executrix applied for probate, citation was issued upon the father of the testator's childless widow who was appointed guardian ad litem for the widow. The father refused to accept the citation and it was fixed on the door of his house. Probate was granted on the 13th March 1912. The widow came of age in 1913. On the 18th November 1914 a petition for revocation of probate was filed. The District Judge revoked the probate on the ground that the father of the widow entered no appearance. *Held*, that the widow for several years having received benefits under the Will the proceedings could not be re-opened. *Kunja Lal v Kailash*, 14 O W N 1069 (1916) and *Monorama v Shiva*, 19 O W N 365 (1916), referred to. Where a Will of which probate is sought affects the interests of a minor it may be expedient as a rule of practice to appoint a guardian ad litem for the minor. But it does not follow that every rule in O XXXII is thus made strictly and legally applicable. A citation for probate is not a summons to appear. The object of citations, whether general or special is to give those interested an opportunity of coming in if they so chose, and if contesting the application for probate. Until a caveat is entered, the proceedings are not contentious. S 83 of the Probate and Administration Act shows that up to that stage there is no "lit" and no suit. Until contest arises, O XXXII of the Civil Procedure Code would seem to have no application to the proceedings. The effect of r 4, O XXXII is that no person can be appointed a guardian ad litem without his express consent. The question whether the person appointed guardian ad litem consented to act will always be one

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of importance on the merits. *PADMAHATYAK DAS v PADMA SUNDARI DAS* . 24 C. W. N. 541

15. ———— **Compromise of probate proceedings, valid if of withdrawal of application for probate, effect of—whether second application for probate can be made**. An application for probate cannot legally be disposed of by a compromise. The law imposes on the court itself the duty of determining whether the will is genuine or not. The provision in O XXXII, r 1, to the effect that if a plaintiff withdraws from a suit he shall be precluded from instituting a fresh suit in respect of the same subject matter does not apply to an application for probate. The circumstances of a probate case do not properly admit of the withdrawal of an application for probate by an executor. *JITHUNATH NATH SARKAR JAGAT-PRASAD* . 2 Pat L J. 535

16. ———— **Will by two persons**. Two persons can make a joint will. *JITHUNATH GOKHLE v LALA HOTAL HAYAT* (1920).

1 L R. 45 Bom. 987

17. ———— **Executors—Executor, under a Hindu will carrying on family business—Duties incurred therein—Creditor's remedy against executor personally**—*Executor's right to indemnity*—*Executor, if sufficiently represents estate when his interest accrues to beneficiary's—Minor represented by nominee of party having adverse interest*. An executor appointed under Act V of 1881, is in many respects in a different position from a Hindu widow succeeding to her husband's estate, a guardian of a minor, or a trustee of an idol. The executor who borrows money in the course of the administration for the purposes of the estate is personally responsible for the payment of such debts though he is entitled to be indemnified out of the estate for such borrowing if he shows it was reasonably and properly made. This principle has been accepted by the Calcutta High Court as applicable to Hindu executors. The principle applies equally to borrowings by the executors in conducting a family business which in India is regarded as a heritable asset, and the executor is personally responsible for them, subject to his right of indemnity against the estate upon proof that the borrowing was in all respects proper and for the benefit of the estate. Where certain bonds sued on were rejected as being insufficiently stamped: *Held*, that the plaintiffs were entitled to sue for the cancellation. Ordinarily speaking executors would fully represent the estate but not in a case where their personal interest as executors were diametrically opposed to those of the beneficiary and the estate. A minor represented as guardian by a nominee of a party whose interest is adverse to the minor's is not properly represented in the suit. *SURESH CHANDRA DAS v GORISDA CHANDRA POY* (1917).

1 L R. 45 Cal 538

21 C. W. N. 1043

18. ———— **Delay—Delay in taking out probate of a will, if justified by circumstances and reasons**—*Probate applied for on necessity arising*. Where a long time elapsed between the death of the testatrix and the date on which the will was put forward for probate, and the testatrix was an illiterate Hindu lady, the prior history of the case was worthy of consideration. When there were reasons for the delay in presenting the will,

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although in such a case the Court was bound to scrutinize the evidence very carefully, there was no rule of the law of evidence that such a will was incapable of being proved *Prabhu Prasad v. Hriday Nath Ghosal* (1917) 22 C. W. N. 424

19 ———— **Accounts—Probate and Administration (Act) of 1881, s. 59, clause 5 of the explanation and s. 98, sub s. (1)—Liability to submit accounts, if periodical—Incorrect accounts for period antecedent to the final grant of probate, if just cause for revoking the probate** The statute contemplates the submission of one account only and the executors are under no liability to submit accounts periodically. Untrue accounts submitted for the period antecedent to the final grant of probate is not a just cause for revoking the probate under clause 5 of the explanation to s. 59 of the Probate and Administration Act *CHANDRA KUMAR CHAKRAVARTI v. PRASAD KUMAR CHAKRAVARTI* (1921)

I. L. R. 43 Calc. 1051

PROBATE AND ADMINISTRATION ACT (V OF 1881).

See HINDU LAW—WILL

See LIMITATION ACT

I. L. R. 37 Mad. 175

See RECEIVER I. L. R. 37 Calc. 754

————— **Sale by executor before probate—**

See EXECUTOR, SALE BY

I. L. R. 36 Mad. 575

————— **whether obtaining of Probate necessary before Executor can sue—**

See LIMITATION ACT (IX OF 1908)

I. L. R. 37 Mad. 175

————— **ss. 2 and 4—**

See EXECUTOR, SALE BY

I. L. R. 36 Mad. 575

See HINDU LAW—WILL

I. L. R. 39 Mad. 365

————— **ss. 2, 51, 56, 87.**

See PROBATE I. L. R. 37 Calc. 224

————— **s. 3—**

See WILL I. L. R. 43 Bom. 641

————— **ss. 3, 51, 53—**

See TRANSFER

I. L. R. 42 Calc. 842

————— **s. 4—**

See EXECUTOR, SALE BY

I. L. R. 36 Mad. 575

See HINDU LAW—WILL

I. L. R. 38 Mad. 369

See LIMITATION ACT, 1908

I. L. R. 37 Mad. 175

See MAHOMEDAN LAW—PROBATE

I. L. R. 37 Calc. 839

See SETTLEMENT BY A HINDU WOMAN

ON TRUSTS I. L. R. 40 Bom. 341

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd.*

————— **s. 5—*contd.***

Chandernagore executed a mystic will according to the provisions of the French Code. On his death a general legatee applied to the Court at Chandernagore for having the will deposited according to the French law. After the usual proceedings were taken the French Court recognised the will and made it over to a Notary with power to give copies to the parties. The trustees under the will applied to the District Judge of Hughly for letters of administration with a copy of the will annexed. Held, that s. 5 of the Probate and Administration Act does not require that the will should have been deposited once and remain in Court for all time. The fact that the will was deposited in the French Court and the Court had before it the original will at the time it made a judicial pronouncement as to the validity of the will under the French law was a sufficient deposit within the meaning of s. 5. That the French Court having so provided, a copy authenticated by the notarial seal was a properly authenticated copy within the meaning of s. 5 *SUSHILABALA DASGI v. ANUKUL CHANDRA CHOUDHURY* (1918)

22 C. W. N. 713

————— **ss. 5, 59, 62, 64 and 76—Probate valuation for—**

• See PROBATE DUTI. 6 Pat. L. J. 411

————— **ss. 13, 19, 31, 33 and 41—“Legal guardian”—Disqualified proprietor whether entitled to grant—Procedure when grant applied for by minor’s guardian—Statutory person powers of Court of Wards, whether manager of, is entitled to grant** The words “legal guardian” in s. 31 of the Probate and Administration Act, 1881, mean a guardian appointed under the authority of law, i.e., a guardian appointed under the Guardian and Wards Act. S. 19 does not deprive a disqualified proprietor from obtaining a grant of letters of administration provided such proprietor is not a minor or a lunatic. Letters of administration cannot be granted to a minor but under s. 31 they may be granted to the legal guardian of minor if the minor is the sole residuary legatee, and under s. 33 they may be granted to the person to whom the care of the minor’s estate has been committed by competent authority if the minor is the sole universal or residuary legatee or a person who would be solely entitled to the estate of the intestate. When an application is made under s. 31 or 33 it must be made on behalf of the guardian and not on behalf of the minor through the guardian, and the guardian must in the first place apply to be appointed the minor’s guardian for the purpose of enabling him to obtain letters of administration for the use and benefit of the minor. Until he has obtained an order of the Court appointing him guardian he cannot be considered a legal guardian within the meaning of s. 31 or a person to whom the care of the minor’s estate has been committed by a competent authority within the meaning of s. 33. Although the granting of letters of administration is discretionary the discretion must be exercised in accordance with rules formulated and acted upon in the courts for many years. The main object of a grant being the protection and benefit of the estate the court has a discretion to refuse the grant to the person having the largest interest if it considers that in

————— **s. 5—“Deposited in Court,” meaning of—Will proved in French Court and kept with Notary if deposit within the meaning of section—Copy given by Notary, if authenticated copy within the meaning of section. A French subject of**

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd.*

ss. 13, 18, 31, 33 and 41—*contd.*

his hands the estate will suffer irretrievable loss and damage but the court is not entitled to pass over a person entitled to the grant on the ground that it is more satisfactory to make the grant to someone else. When dealing with a statutory person such as the manager of the Court of Wards it is necessary to examine the statute to see what powers he can properly exercise under the statute and to regard that as impliedly prohibited which is not conferred on him expressly or by necessary implication. Although the manager of the Court of Wards has wide powers of management over the estate of a disqualified proprietor there is nothing in the Act which entitles him as such manager, and by virtue of his office to apply for letters of administration to the estate of a deceased person in which the disqualified proprietor has a larger interest. **BHAGWATI KUKER v. BHATERIA RAMAKRISHN KUKER** 5 Pat. L. J. 347

s. 18—

See **LETTERS OF ADMINISTRATION**
I L. R. 47 Calo. 838

s. 19—

See s. 13 5 Pat. L. J. 857

ss. 19 and 24—

See **WILL**.
18 C. W. N. 527

s. 23—*Grant of Letters of Administration—Title to property if Court would go into, in granting administration—Practice.* It is not the practice of the Court in its Testamentary and intestate jurisdiction to go into questions of title in an application for the grant of letters of administration. The Court would not frame issues or go into evidence to decide as to who is entitled to the property. Letters of administration were ordered to be issued to the husband in respect of his deceased wife's estate upon furnishing security upon allegation in the husband's petition that part of such estate was *jeastuka shudhan*, although it was denied by his wife's brother who entered caveat, but did not apply for letters of administration himself. *In the goods of Rishubhar Hazam*, 3 C. W. N. 423, *Raghunath Nasser v. Musal Pate Koor*, 6 C. W. N. 345, and *Obayiram v. Dokatram* I L. R. 23 Bom. 644 relied on. **NAHAI KANTA CHATTERJEE v. ANANTH MOHUNJEE** (1912) 17 C. W. N. 613

ss. 23, 64, 69, 70 and 73—

See **LETTERS OF ADMINISTRATION**
5 Pat. L. J. 107

ss. 26, 64.

See **LETTERS OF ADMINISTRATION**
14 C. W. N. 463

ss. 31, 33 and 25—

See s. 13 5 Pat. L. J. 847

s. 34—*Wrongful alienation of deceased estate, apprehended by executor—Temporary injunction, application for, if dies—Civil Procedure Code (Act V of 1908) O XXXIX, r. 1, 7—Administrator pendente lite, appointment of proper course—Injunction when may be granted—English practice.* A probate proceeding is not a suit in which there is property in dispute as contemplated by r. 1 of O XXXIX of the Civil Procedure Code, as the

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd.*

s. 34 *contd.*

only question in controversy in such a proceeding is that of representation of the estate of the deceased and no question of title thereto, i.e., the title of the deceased or of the conflicting titles alleged by the parties to the proceeding can be investigated by the court. But the Court of Probate is not therefore incompetent to grant a temporary injunction in any circumstances. The proper procedure to follow in cases of this description is for the aggrieved party to apply to the Court for the appointment of an administrator *pendente lite*. When such an application has been made the Court may, in case of necessity, grant a temporary injunction either in exercise of its inherent power or under r. 7 of O XXXIX of the Civil Procedure Code. English practice referred to and contrasted **MIRZA HAJIAB DUTT v. CHAMATKARINI DEVI** (1914) 18 C. W. N. 205

s. 37—*Mohunt of math—Death—*

Application by claimant to office for letters of administration—Trust estate—Fiduciary—Shakti and idol, relation of. A mohunt is not the owner of the property of the math and on his death a person claiming to be his successor in office cannot apply under Act V of 1881 for letters of administration in respect of the math property. s. 37 of the Act is intended to apply only to property in which the deceased person had ownership so as to constitute it a portion of his estate although he held it in trust. **Jagjit Singh v. Jagannath Jivraj Gupta**, I L. R. 12 Calo. 375 distinguished. **MORHUT JIA LAL GIR v. MORHUT JAGA MORHUT GIR** (1908) 16 C. W. N. 793

s. 41—This section does not apply where there is no want of persons entitled to letters of administration. It does not empower the court to make a merely arbitrary selection from among persons contending for the grant. In a proper case, but not merely by virtue of his office, a nominee of the Court of Wards may come within the phrase 'some person' within the meaning of s. 41. **BHAGWATI KUKER v. BHATERIA RAMAKRISHN KUKER** 5 Pat. L. J. 347

s. 50—

See **LETTERS OF ADMINISTRATION**
3 Pat. L. J. 415
I L. R. 40 Calo. 50
See **PROBATE** I L. R. 37 Calo. 287
I L. R. 43 Calo. 480
I L. R. 48 Calo. 1551

Revocation of grant—'Just cause,' mal-administration of—Quarrels between co-administrators making grant useless and inoperative, if ground for annulment. Mal-administration is not on less s. 50 Expl. (4) of the Probate and Administration Act a *just cause* for revocation of probate. **Ananda Jivraj v. Kalirishna**, I L. R. 24 Calo. 90, followed. The words 'become useless and inoperative' in s. 50 Expl. (4), of the Act imply the discovery of something which if known at the date of the grant would have been a ground for refusing it, e.g., the discovery of a later will or codicil or a subsequent discovery that the will was forged or that the alleged testator was still living. **Raj Gopandhar Triak v. Kalwar** I L. R. 26 Bom. 792, approved. One of two joint administrators applied for the revocation of

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*cont L*

s. 50—*contd*

the grant to the other on the ground that in consequence of quarrels between them it had become impossible to carry on the administration and the grant had in this way become inoperative and useless *Held*, that this was no ground for revoking the grant **GOVU CHANDRA DAS v SARAT SUNDARI DASIA (1912)** . . . **I. L. R. 40 Calc. 50**

18 C. W. N 883

Grant, revocation of—Creditor's rights to contest Will propounded in fraud of creditors—Order holding applicant his right, if appealable—Interlocutory order Where eight years after the death of *B* one of his sons *L* obtained letters of administration with a copy annexed of an alleged will left by *B* which if genuine, would deprive another son *S* who had meanwhile become heavily involved in debt, of a very large share of his inheritance *Held*, that the creditors of *S* were entitled to apply for revocation of the will, their application being based on the ground that the probate had been obtained in fraud of creditors. **Shesha Azim v Chandra Nath Namdas, 8 C W N 743, Simons Singh Deo v Umanath Moherjee, 1 L R 10 Calc. 29, Kishan Das v Satyendra Nath Dutt, 1 L R 28 Calc. 441 referred to** *Semle* No appeal lay from an order of the trial judge holding that the creditors had locus standi to contest the will, the same being merely interlocutory **Shesha Azim v Chandra Nath Namdas, 8 C W N 743, Ahiram Das v Gopal Das, 1 L R 17 Calc. 48 referred to** **LAKSHI NARAYN SHAW v MULTAN CHAND DAGA (1912)**

16 C. W. N 1099

Civil Procedure Code (1908), ss 114 and 151—Letters of Administration—Cancellation of order—Procedure A Court which has once granted letters of administration cannot revoke them without notice to the person in whose favour they have been granted Where letters of administration have been granted *ex parte* and an application is made to revoke them, it is open to the court concerned to proceed either under s 114 or s 151 of the Code of Civil Procedure or under s 50 of the Probate and Administration Act (1881) **PARMAN v BOHRA NEK RAM (1915)**

I. L. R. 37 All. 380

Revocation, appli-

cation for—Question of genuineness of will if arises—Just cause—Fraudulent concealment from Court by person cited of transfer of his interests—Assignee not cited in consequence—Assignee if may apply for revocation, when assignment subsequent to testator's death No question of the genuineness of the will arises for consideration till the Court has decided that the probate must be revoked on one or more of the grounds specified in s 50 of the Probate and Administration Act. The only matter for consideration upon an application for revocation of probate is whether the applicants have made out a just cause for revocation. The application could not be thrown out at this stage on the ground that the evidence adduced by the applicant was not sufficient to throw doubt upon the genuineness of the will. A person interested by assignment in the estate of the deceased may, where a will has been set up and proved at variance with his interests, apply for revocation of the probate of the will so set up. He need not show that he had an interest in the estate of the deceased

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

s. 50—*contd*

at the time of his death. An interest acquired subsequently by purchase of a part of the estate is sufficient. Where *A* having applied for probate of a will, caused citation to be issued on *B* his father who but for the will would inherit a portion of the estate, but the notice was served on *B* a week after *B* had assigned his interests to *C*, but neither *B* nor *A*, who presumably knew of the transfer by *B*, brought the fact of the assignment to the Court's notice, and probate was granted without the assignee getting any notice of the proceedings *Held*, that the proceeding, if not defective in substance was bad because the grant was obtained fraudulently by making a false suggestion or by concealing from the Court some thing material to the case **MOEHADAYISI DASSI v KARNADHAN MANDAL (1914)**

19 C. W. N. 1108

Application for rescission of grant of probate—Explanation, cl 4, circumstances in which a grant of probate is to be deemed to have become useless and inoperative—cl 5 explaining inventory and accounts significance of the expression—Period during which executor entitled to continue in possession—s 98 (1), executor if liable to submit accounts periodically—Necessity of giving full and specific details in objections to executor's inventory and accounts An application under sec 50 of the Probate and Administration Act for evocation of a probate was made on the allegations, firstly that the grant had become useless and inoperative through circumstances, and secondly, that the persons to whom the grant had been made had wilfully omitted to exhibit an inventory and accounts in accordance with the provisions of Chap VII of the Probate Act, and had further exhibited an inventory and accounts which were untrue in material respects *Held*—That so long as the person entitled to the estate has not taken it out of the possession of the executors, they are entitled to continue in occupation of the estate **Bombay Burma Trading Corporation, Ltd v Frederick York Smith L. R. 211 A 139 s. c. 1 L R 19 Bom. 1 at p 9 (1894)** referred to That as under the terms of the will there were duties still to be performed by the executors it could not be maintained that the grant had become inoperative through circumstances **Taran Singh v Ramratan Tewari 1 L R 31 Calc. 89 1903 and Sankarnath v Buddulata, 23 C L J 261 (1918), distinguished** *Held*, further—That the statute contemplates the submission of one inventory and one account and not periodical accounts. What is contemplated is that an account should be filed within one year from the grant showing the assets which have come to the hands of the executor or administrator and the manner in which such assets have been applied or disposed of. The fact that time has been extended by the Court does not enlarge the scope of the account. The account of the estate which is required to be exhibited, whether it is exhibited within a year or there after, is the account contemplated by the second paragraph of sub sec 1 of sec 98 **Mohesh v Bawa Nath, 1 L R. 25 Calc. 200 s. c. 7 C W N 646 (1897) and Sarat Sundari v Uma Prasad 1 L R 31 Calc. 623 s. c. 8 C W N 578 (1904), followed** It is

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

s. 57—*contd.*

essential that objections to the inventory and the accounts should specifically state what items in the inventory and in the accounts are untrue and in what respects the items challenged are untrue; it is not enough to make vague allegations that the inventory and the accounts are untrue. **CHANDRA KUMAR CHAKRAVORTI v. PROBUNNA KUMAR CHAKRAVARTI** 25 C. W. N. 877

—s. 50 (4), 78—*Application by beneficiaries for fresh securities to be furnished by executors—Sureties insolvent and heavily indebted—Fresh securities being not given, grant of probate cancelled and probate ordered to be returned for cancellation—Whether orders valid—Inherent power* Upon an application by the beneficiaries, the District Judge, after notice to all the parties concerned, held an enquiry and after recording that the security given by the executors was no longer sufficient inasmuch as one of the sureties had become bankrupt and the other had heavily mortgaged his properties ordered the executors to furnish fresh security. The executors having failed to furnish fresh security the Court ordered the executors to return the probate for cancellation. *Held*, that both orders were within the competence of the Court and were properly made. The circumstances which make the grant useless and inoperative within cl (4) of s. 50 of the Probate and Administration Act and justify revocation may have come into existence after the original grant was made. *Held*, that apart from s. 50 of the Probate and Administration Act, the grant having been made subject to the condition of furnishing proper security, the Court had inherent power to enforce obedience to its direction and on failure to withdraw the grant. **SURENDRANATH PRAMANIK v. AMRIT LAL PAL** (1919) 23 C. W. N. 763

—s. 50, 62, 69—*Hindu reversioner if to be specially cited in probate proceeding—If an Court misled by wrong information refrained from issuing special citation, proceeding defective in substance—Person not party, when bound—Full knowledge of proceeding and capacity to intervene to be proved—Onus of proof* Although a reversioner under the Hindu Law has no present alienable interest in the property left by the deceased, he is substantially interested in the protection or devolution of the estate and as such is entitled to appear and be heard in a probate proceeding. Although omission in an application under s. 62 of the Probate and Administration Act to set out the names and residences of the family or other relatives of the deceased may not affect the validity of the proceeding, where the applicant makes an incorrect statement on these points and the Court being misled thereby does not direct the issue of special citation in the exercise of its discretion under s. 69, the proceeding to obtain probate is defective in substance within the meaning of the first clause of the Explanation to s. 50 of the Act. The rule that a person is bound by probate proceedings to which he is no party and of which he has received no notice from Court depends upon proof of his full knowledge of the proceeding and his capacity to make himself a party; and the burden of proof is on the person who alleges it. It is not necessary for the party who applies for revocation to prove not only that no special citation was served

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ss. 50, 62, 69—*contd*

on him but also that he had no knowledge of the proceedings. **Premchand Das v. Surendra Nath Baha, 9 C. W. N. 199**, followed. **SYAMA CHAKRAVARTY v. PRATULLA SUNDARI GUTTA** (1915) 19 C. W. N. 833

—s. 50, 69—*Letters of Administration to the estate of Hindu widow—Locus standi to apply for revocation of person denying property left to his testatrix's stridhan* When letters of administration were granted in respect of the will of a Hindu widow purporting to convey her stridhan property, a petitioner for revocation who had no interest in the estate of the deceased but who on the other hand alleged that she had no stridhan property but that what property she had belonged to the joint family of which she was a member, was not competent to make the application, not being "a person having an interest in the estate of the deceased" within s. 69 of the Probate and Administration Act. **ABHIRAM DAS v. GOPAL DAS, 1 L. R. 17 Cal. 43** followed. **SRIGONISH PERNAS v. LALBHAI KOER** (1909) 14 C. W. N. 119

—s. 50 and 78—*Probate and Administration Act (V of 1881), ss. 50, 78—Change of circumstances necessitating a second bond with sureties—Power of Court to call for a second bond* The Court of Probate is competent to require a new bond or additional security where the interest of the estate requires it and specially where some new situation arises such as an unforeseen increase of assets or the unexpected break down of one or both sureties. If an order made in this behalf is not carried out, the Court may cancel the original grant. **Raj Narain Moolraj v. Fulkaram Debi, 1 L. R. 29 Cal. 63** and in the goods of **Love day, (1900) P. 141**, **Sudhaya Chetty v. Peggannall, 1 L. R. 11 Cal. 161**, **Kandham Lal v. Manji, 1 L. R. 11 Cal. 58**, in the matter of **Arthur Knight, 1 L. R. 33 Mad. 373** in the goods of **Stark, 1 R. 1 P. & D. 76**, in the goods of **Kanai Lal Khan, 13 C. W. N. 330**, referred to. **Giribala Datta v. Bepoy Krishna Haldar, 1 L. R. 31 Cal. 688**, distinguished. **SURENDRANATH PRAMANIK v. AMRITA LAL PAL CHATTERJI** (1919) 1 L. R. 47 Cal. 115

—s. 51—
See PROBATE 1 L. R. 37 Cal. 224

—ss. 51 and 53—
See TRAVENEN 1 L. R. 42 Cal. 842

—s. 62—
See PROBATE 14 C. W. N. 1058

—s. 65—
See INTERROGATORIES 1 L. R. 41 Cal. 301

See PROBATE 2 Pat. L. J. 535

—s. 66—
See PROBATE 1 L. R. 37 Cal. 224

—s. 69—
See EVIDENCE ACT, 1872, ss. 40 and 44 1 L. R. 23 Bom. 427

See PROBATE

—ss. 50 and 62—
See PROBATE DIT 6 Pat. L. J. 411

PROBATE AND ADMINISTRATION ACT (V OF 1881)—contd.

s. 62—

See s. 50 . . . 19 C. W. N. 882

ss. 62, 64 and 78—

See PROBATE VALUATION FOR
I. L. R. 43 All. 411

s. 64—

See LETTERS OF ADMINISTRATION

14 C. W. N. 463

5 Pat. L. J. 107

s. 69—

See s. 50 . . . 14 C. W. N. 119

19 C. W. N. 882

See LETTERS OF ADMINISTRATION.

5 Pat. L. J. 107

ss. 70 and 73—

See LETTERS OF ADMINISTRATION

5 Pat. L. J. 107

s. 78—

See s. 50 . . . 23 C. W. N. 763

I. L. R. 47 Calc. 115

ss. 78, 79, 86—

See ADMINISTRATION BOND.

I. L. R. 39 Calc. 563

ss. 79, 80—Administration bond—Assignee not enforcing bond—Second assignment of valid—Order if appealable An administration bond can be assigned by the District Judge upon conditions, under s. 79 of the Probate and Administration Act. But there is no provision in the law authorising the District Judge to assign it again while the first assignment is still in force. Where the first assignee having come to terms with the administrator, other persons interested in the estate applied to have the bond transferred to them and the application was granted. *Held*, that no appeal lay from the order, but the order being without jurisdiction could be set aside in revision. *Brigo Nath Pal v Dasmoni Das*, 2 C. L. R. 539. *Abhiram Das v Gopal Dass*, I L. R. 17 Calc. 48, followed. *Umacharn v Muktaleshi*, I L. R. 23 Cal. 149, commented on. *SHEIKH KALIMUDDIN v MUHAMMAD MAHUMI* (1912)

16 C. W. N. 662

s. 81—Indian Succession Act (X of 1865), s. 259—Will—Probate—Caveator—Interest possessed by the caveator The provision of s. 81 of the Probate and Administration Act, 1881 (which correspond with those of s. 259 of the Indian Succession Act, 1865), enact that the interest which entitles a person to put in a caveat must be an interest in the estate of the deceased person, that is, there should be no dispute whatever as to the title of the deceased to the estate, but that the person who wishes to come in as the caveator must show some interest in the estate derived from the deceased by inheritance or other wise. *Abhiram Das v Gopal Dass*, I L. R. 17 Calc. 48, followed. *PIROJSHAH BHUKAJI v PRATAPJI MERWANJI* (1910) I. L. R. 34 Bom. 459

s. 82—

See HINDU LAW—WILL.

I. L. R. 39 Mad. 365

ss. 82 and 92—

See HINDU LAW—WILL.

I. L. R. 39 Mad. 365

PROBATE AND ADMINISTRATION ACT (V OF 1881)—contd.

s. 83—

See EVIDENCE ACT (I OF 1872), s. 41

I. L. R. 23 Bom. 309

See PLEADER'S FEE

I L. R. 41 Calc. 637

See PROBATE . I. L. R. 41 Calc. 819

See WILL

14 C. W. N. 924

Probate case—Procedure S. 83 of the Probate and Administration Act read with O. XXIII, r. 3, Civil Procedure Code, merely means that in a probate case the Civil Procedure Code so far as possible determines the procedure of the Court. These sections nowhere say that it is competent to the Court to allow the parties to divide the testator's property without proving the will. *Kunja Lal Choudhury v Karish Chandra Choudhury*, 14 C. B. 2, 1063, and *Saroda Kanta Dass v Gobinda Mohan Dass*, 12 C. L. J. 91, referred to. There can be no dismissal of a probate case in accordance with the terms of a petition of compromise between the propounder and objector. The main issue in such a case is whether or not the will has been proved and the only effect of a compromise is to reduce a contentious proceeding into one which is not contentious, but this does not absolve the Court from the task of their granting probate or refusing it. If a compromise has been made and the objector withdraws from the contest, the Court will grant probate in common form, but the Court cannot dismiss the case altogether and embody the terms of the compromise as if the decree was one capable of execution by him. *JANAKBATI THAKUR RAY v GAJANAND* (1916) . 20 C. W. N. 886

1 Pat. L. J. 377

s. 86—

See ADMINISTRATION BOND

I. L. R. 39 Calc. 563

ss. 86, 90—Administrator's application to sell, granted against opposition—Appeal—Order if appealable as decree or irrespective of whether order decree or not—Interlocutory orders under the Act, if appealable A Hindu widow who had obtained Letters of Administration to the estate of her deceased husband applied under s. 90 of the Probate and Administration Act for permission to sell the dwelling house for the purpose of satisfying debts. The application which was opposed by the reversioner having been granted, the latter appealed. *Held*, per D. CHATTERJEE, J., that the order was a decree as defined in the Civil Procedure Code and was appealable as such. *Quere*, Whether s. 86 of the Probate and Administration Act in making orders of the Probate Court "appealable under the rules contained in the Civil Procedure Code" means only that the procedure in such appeals would be as in appeals under the Civil Procedure Code. *Per BEACH CROFT, J.*—An appeal lay under the terms of s. 86 of the Probate and Administration Act irrespective of whether the order was a decree or not. *SARAT CHANDRA PAL v BENODI KUMARI DAS* (1915) . . . 20 C. W. N. 28

s. 87—

See PROBATE . I. L. R. 37 Calc. 224

s. 89—

See CIVIL PROCEDURE CODE, O. XXII.

r. 1

I. L. R. 44 Mad. 357

PROBATE AND ADMINISTRATION ACT (V OF 1881)—contd

s. 89—contd

See MAHOMEDAN LAW—PRE-EMPTION

I L. R. 38 Bom. 144

I L. R. 41 Bom. 636

See MALICIOUS PROSECUTION

4 Pat. L. J. 676

See PENAL CODE, s. 322

I L. R. 41 Mad. 417

ss. 304-323

L. L. R. 1 Lah. 27

See also appoint ed sheba to—Heirs of such Shebans if liable to render accounts de bonis non. S by will appointed A and B his executors as well as Shebans of an idol in whose favour the will created a trust in respect of the whole of his properties. S left a widow and a daughter. The daughter obtained administration *de bonis non* of the estate of S and brought a suit against the heirs of A for delivery to her of the Debutter estate and for accounts. *Held* that the suit was misconceived. As soon as debts, legacies and funeral expenses were paid the executors would hold the property upon the trusts of the Will and there would be no property administered by the executors which would pass to any administratrix *de bonis non* appointed by the Probate Court. If the property became trust property it was not for the administrator to ask for accounts and the administratrix *de bonis non* could not maintain a suit of this nature. GOVIND CHANDRA DAS v. SEKHARI MOHAMMAD.

25 C. W. N. 332

s. 90—

See s. 86

20 C. W. N. 23

See COMPROMISE DECREE

14 C. W. N. 451

See HINDU LAW—PARTITION

I L. R. 43 Calc. 1118

Based on of Court obtained in respect of principal but not of interest—Stipulation as to interest, if binding—Post de interest. s. 90 of the Probate and Administration Act which authorises an administrator to grant a mortgage of immovable property vested in him only with the previous permission of the Probate Court implies that sanction of the Court should be taken or all the essential elements of the mortgage transaction including the provision for payment of interest. Where the principal amount only was mentioned in the application for sanction, but in the mortgage actually executed the administrators stipulated to pay compound interest at 30 per cent. per annum with half yearly rests, the Court reduced it to simple interest at 9 per cent. per annum, and it was directed that the interest should be added to the mortgage money as was done in *Chajmal v. Dufi Bhatnagar*, L. R. 22 I A 192; s. c. I L. R. 17 All. 511. SATYAJIT PRASAD CHATTERJEE v. JADU NATH BOSH (1914).

18 C. W. N. 210

Power of Hindu widow

He rose to sell as administratrix if restricted—Order of Judge granting her leave to sell, if may be collaterally attacked in Land Acquisition proceedings. There is nothing in the Probate and Administration Act which would justify a differentiation between the powers of an administratrix who happens also to be a Hindu widow and heiress

PROBATE AND ADMINISTRATION ACT (V OF 1881)—contd

s. 90—contd

of her husband and those of any other administrator under the Act. *Kamakhya Nath v. Hari Churn*, I L. R. 26 Cal. 607, followed. The validity of an order by a District Judge granting leave to an administrator to sell property cannot be challenged collaterally in Land Acquisition proceedings. *Quare*: Whether the order can be so challenged on the ground of fraud. *CHAND LAL HALDAR v. MUKSHADA DEBI* (1919).

23 C. W. N. 652

s. 92—

See HINDU LAW—WILL.

I L. R. 33 Mad. 265

s. 98—

See GOVTY BILL AMENDMENT ACT, 1899,

s. 191f

I L. R. 41 Calc. 556

s. 112—

See LEGACY

I L. R. 30 Bom. 111

PROBATE DUTY.

See CLERGY FEES ACT 1870.

2 Pat. L. J. 611

Based on of estate for

Probate and Administration Act (V of 1881) ss. 5, 59, 62, 64 and 76—Court fees Act (VII of 1870) Sch. 1, Art. 11 Sch. 111. Probate duty is calculated on the value of the estate at time of application for Probate or Administration and not at the date of the death of the Testator or intestate and for purposes of Court fees the present value is the basis of reckoning and not possible future value. THE DEPUTY COMMISSIONER OF SIMLA v. JAGADISH CHANDRA DEO BHABAL DEB.

6 Pat. L. J. 411

PROBATE PROCEEDINGS.

See INTERROGATORIES.

I L. R. 43 Calc. 300

See LETTERS OF ADMINISTRATION

3 Pat. L. J. 415

See FLEADER'S FEES

I L. R. 41 Calc. 637

See PROBATE.

Issue of citations on infant—Guardian of infant if must consent to appointment—Proof of consent—Civil Procedure Code (Act V of 1908) O. XXXII, r. 4—Probate and Administration Act (V of 1881) s. 59. O. XXXII, r. 4, of the Civil Procedure Code which provides that no person shall without his consent be appointed guardian *ad litem* of a minor does not apply to probate proceedings which have not arrived at the contentious stage. Nevertheless, when citation is issued upon an infant, it is necessary for the protection of the interest of the infant that the Court should see that the person appointed guardian to receive such citation on behalf of the infant has consented to accept the appointment and take upon himself the onus that by virtue of the appointment falls upon him on behalf of the infant, and it is for the person who got the guardian appointed to show the Court that that person accepted the appointment and took upon himself the burden thereof. *SACHINDRO NARAYAN SARKAR v. HIRSHOMYEE DASGI*.

24 C. W. N. 533

PROCEDURE.

- See* ADMINISTRATION SUIT
I. L. R. 44 Calc. 890
- See* APPEAL TO PRIVY COUNCIL
- See* ARBITRATION I. L. R. 33 All. 743
- See* CIVIL PROCEDURE CODE 1852—
ss 373, 375 I. L. R. 36 All. 172
- See* CIVIL PROCEDURE CODE, 1909—
s 4. I. L. R. 45 Bom. 718
s 47 I. L. R. 35 All. 243
ss 47, 52 I. L. R. 39 All. 47
s 92 I. L. R. 35 All. 98
s 98 I. L. R. 43 Bom. 493
s. 103, O ALI, ss 23 AND 24. I. L. R. 43 All. 377
s 151, O IA, R 13 I. L. R. 39 All. 8
O I, R 3, O XXIII, R 1 I. L. R. 40 All. 7
O II, R 2, O XXIV, R 14 I. L. R. 36 All. 264
R 2 I. L. R. 37 All. 646
O V, RR 1 AND 2, O IX, R 13 I. L. R. 35 All. 163
O VI
O IX, RR 3, G I. L. R. 40 All. 590
R 8 I. L. R. 35 All. 105
RR 8 AND 9, O XXII, RR 3 9 I. L. R. 35 All. 331
R 13; O XXVI, R 3 I. L. R. 39 All. 143
O XI, R 21 I. L. R. 38 All. 5
O XVII, R 3, O IX, R 4 I. L. R. 34 All. 123
I. L. R. 41 All. 663
O XXI, R 23 I. L. R. 34 All. 612
RR 92, 93 I. L. R. 39 All. 114
O XXIV, R 8 I. L. R. 39 All. 396
O ALI, R 21 I. L. R. 39 All. 838
R 33 I. L. R. 34 All. 32
SCH. II, PARA 5 I. L. R. 41 All. 573
- See* COMPROMISE I. L. R. 43 Calc. 469
- See* CONTEMPT OF COURT I. L. R. 42 Calc. 1169
- See* CRIMINAL COURT I. L. R. 43 All. 283
- See* CRIMINAL PROCEDURE CODE—
ss 107 AND 145 I. L. R. 34 All. 449
I. L. R. 36 All. 143
ss 110 AND 123 I. L. R. 40 All. 29
s 125 I. L. R. 35 All. 103
s 133 I. L. R. 37 All. 26
ss. 157, 159 AND 476 I. L. R. 32 All. 80
ss 105, 537 I. L. R. 37 All. 223
s 239 I. L. R. 28 All. 311

PROCEDURE—contd

- ss. 244, 540 I. L. R. 36 All. 13
s 250 I. L. R. 34 All. 354
ss 250, 537 I. L. R. 36 All. 132
s 282 I. L. R. 36 All. 491
s 339 I. L. R. 37 All. 331
I. L. R. 39 All. 306
s 340 I. L. R. 40 All. 307
s 476 I. L. R. 43 All. 180
s 477 I. L. R. 41 All. 197
s 478 I. L. R. 40 All. 32
- See* DEFENCE OF INDIA ACT (IV OF 1915),
s 2 I. L. R. 41 All. 164
- See* EXCISE I. L. R. 41 Calc. 694
- See* EXECUTION OF DECREE
I. L. R. 44 Calc. 1072
I. L. R. 35 All. 119
- See* FALSE INFORMATION
I. L. R. 43 Calc. 173
- See* GUARDIANS AND WARDS ACT (VIII
OF 1890), ss 5 TO 20, CHAP. II
I. L. R. 36 All. 282
- See* HABEAS CORPUS
I. L. R. 44 Calc. 76, 459
- See* INSOLVENCY I. L. R. 47 Calc. 56
- See* LAND ACQUISITION ACT (I OF 1894)—
s 9 I. L. R. 39 All. 534
ss 9, 18 AND 20 I. L. R. 37 All. 69
- See* LETTERS OF ADMINISTRATION
I. L. R. 47 Calc. 838
- See* LIMITATION ACT (IX OF 1908) s 5
I. L. R. 36 All. 235
- See* LUNACY ACT (IV OF 1912)
I. L. R. 43 All. 459
- See* MAHOMEDAN LAW—MARRIAGE
I. L. R. 42 Calc. 351
- See* MINOR I. L. R. 32 All. 237
- See* OFFENCE COMMITTED ON THE HIGH
SEAS I. L. R. 39 Calc. 437
- See* PARTIES I. L. R. 43 Calc. 43
- See* PARTITION, SUIT FOR
I. L. R. 33 Calc. 631
- See* PENAL CODE—
ss 182, 211 I. L. R. 34 All. 522
s 494 I. L. R. 40 All. 613
I. L. R. 32 All. 78
- See* PRACTICE—
See PROBATE AND ADMINISTRATION ACT,
(V OF 1931), s 5 I. L. R. 37 All. 330
- See* PROVINCIAL INSOLVENCY ACT (III OF
1907)—
ss 13 (3), 47 I. L. R. 36 All. 65
ss. 18, 36 AND 47 I. L. R. 37 All. 65
ss 22, 26, 46 I. L. R. 38 All. 8
s 36 I. L. R. 39 All. 331
- See* PROVINCIAL SMALL CAUSE COURTS
ACT (IX OF 1887) s 17
I. L. R. 38 All. 425

PROCEDURE—contd

See RATEABLE DISTRIBUTION

I. L. R. 43 Calc. 1

See REGISTRATION ACT (XVI of 1908),

ss 31, 32, 52, 87

I. L. R. 35 All. 34

See REVIEW I. L. R. 45 Calc. 60

See PEVINO I. L. R. 43 Calc. 903

See SANCTION FOR PROSECUTION

I. L. R. 37 Calc. 714

I. L. R. 44 Calc. 818

14 C W N 895

See U P COURT OF WARDS ACT (III of 1890) ss 16 and 20

I. L. R. 37 All. 585

See UNITED PROVINCES MUNICIPALITIES ACT 1900—

ss 87, 152 I. L. R. 36 All. 329

s 167 I. L. R. 35 All. 450

See WASTE LANDS ACT, 1813, s 18

I. L. R. 41 Calc. 328

See WORKMEN'S BREACH OF CONTRACT (XIII of 1859) I. L. R. 35 All. 61

— in partition Suit.

See CIVIL PROCEDURE CODE ss 110 and 112 I. L. R. 42 All. 648

— Security for good behaviour—

See CRIMINAL PROCEDURE CODE ss 110 and 112 I. L. R. 43 All. 648

— When accused believed of unsound

mind—

See CRIMINAL PROCEDURE CODE, ss. 464 and 465 I. L. R. 42 All. 137

— When question at issue in Criminal proceedings is also sub-judice in a Civil case—

See CRIMINAL PROCEDURE CODE s. 476 I. L. R. 43 All. 180

1. ——— Right to set aside consent decree.—A consent decree once duly obtained cannot be set aside by a rule, but if it is sought to impeach it upon grounds of fraud that must be done in a regular suit. The only alternative when the law allows is an application for review of judgment. *PATNABAI v. SONBARI* (1911)

I. L. R. 38 Bom. 77

2. ——— Appeal to High Court—*Jurisdiction—Record of rights—Standard of Measurement—Code of Civil Procedure* (Act XIV of 1899), s 531—*Bengal Tenancy Act* (VIII of 1855), s 109A, sub-s (3) The right of appeal to the High Court given by a 109A sub-s (3), of the Bengal Tenancy Act 1855, is subject to s. 531 of the Code of Civil Procedure, 1882 and can only be exercised upon the grounds therein mentioned. The High Court has therefore no jurisdiction under the sub-section to set aside the decree of a District Judge upon the ground that he had applied the wrong standard of measurement to land of which the rent was in question. *NARAYAN CHANDRA PAL v. SURENDR* (1918)

I. L. R. 45 I. A. 181

3. ——— Appeal—Security Bond for Decree Holder—*Duration of Liability—Obligor not named in Bond—Enforcement—Civil Procedure Code* (XIV of 1899), s 538—*Civil Procedure Code*

PROCEDURE—contd

(V of 1908) ss 47, 144 An appeal to the Court of the Judicial Commissioner having been preferred against a decree of the Subordinate Judge for possession, the Judge ordered, under s. 515 of the Code of Civil Procedure, 1882, that the successful plaintiff should be let into possession in execution of the decree upon furnishing security so that any order made by the said Appellate Court might be made binding upon the security for the sum secured. The present appellants entered into a bond meeting the order and hypothecating property to secure the sum provided; no obligee was named in the bond. The Appellate Court in the first instance affirmed the decree, but, as the result of a successful appeal to the Privy Council, they subsequently dismissed the suit save as to certain villages and directed the Subordinate Judge to ascertain the meane profits due to the defendants. Upon an application made to the Subordinate Judge in 1909 the appellants being made parties, he made a decree finding the amount of the meane profits and declaring the liability of the appellants upon the bond to the amount secured. *Held*, that the liability upon the bond (which was not a personal liability) did not terminate upon the first order of the Appellate Court, but extended to the final determination and that the Subordinate Judge had jurisdiction to declare the appellants' liability upon the bond. *RAGHUBAR SINGH v. JAI INDRA BAHADUR SINGH* (1919)

L. R. 46 I. A. 228

4. ——— Failure to comply with order for security for costs—*Application for leave to appeal in forma pauperis—Civil Procedure Code* (Act V of 1908) O XLI, r 10 The Code of Civil Procedure, 1908, and the rules therein contained apply to proceedings in the High Court at Calcutta under the Letters Patent save so far as the Code expressly provides to the contrary. The appellant appealed to the High Court at Calcutta under s. 15 of the Letters Patent of 1865 against the rejection by the Court in its original civil jurisdiction of a petition under the Probate and Administration Act (V of 1831). She failed to comply with an order that she should give security for costs within two months, and subsequently applied for leave to continue the appeal in forma pauperis. The High Court, acting under O XLI, r 10 of the Code of Civil Procedure, 1908 dismissed the application and the appeal. That rule provides that upon a failure to comply with an order for security of costs the Court 'shall dismiss the appeal'. *Held*, that O XLI, r 10, applied to the appeal, and that under that rule the High Court was bound to dismiss the application and the appeal for even if the inherent power declared by s. 151 to make 'such orders as may be necessary for the ends of justice' could be exercised in the face of the imperative words of the rule, the circumstances did not admit of an exercise of that inherent power. *Decision of the High Court affirmed. SASTRI TRAKURAY v. SAVI* (1921)

L. R. 43 I. A. 78

I. L. R. 48 Calc. 431

5. ——— Appeal to Privy Council—*Certificate of High Court—Code of Civil Procedure* (V of 1908), ss 109 (c), O XLY, r 3—*Madras Estates Land Act* (Madras Act of 1908), ss 52, sub sec. (3)—*Pattali decreed under earlier Act—Fos judicata—Special leave to appeal refused.* A certificate granted by a High Court upon a petition under O XLY, r 3, Code of Civil

PROCEDURE—*concl.*

Procedure, for leave to appeal to the Privy Council should show clearly whether it is intended to certify merely that the case falls within s. 110 of the Code or that it falls within s. 109 (c) and s. 110 as a case otherwise fit for appeal. Upon a petition under O. XLV, r. 3, for leave to appeal from a decree of the High Court in a suit for the recovery of Rs. 4,005 rent, the High Court certified 'that as regards the subject matter and the nature of the questions involved the case fulfils the requirements of ss. 109 and 110 of the Code of Civil Procedure and that the case is a fit one for appeal to His Majesty in Council' *Held*, that the appeal could not be maintained, since the value of the subject matter was under Rs. 10,000, and there was nothing in the certificate to show that the discretion conferred on the High Court by section 109 (c) was invoked or exercised. *Held*, further, that a contention that the provision in s. 52, sub s. 3 of the Madras Estates Land Act, 1908, for the remaining in force of decreed puttahs and muchalkas referred only to puttahs and muchalkas decreed under that Act, was not of sufficient weight to justify their Lordships in granting special leave to appeal. *RADHAKRISHNA AYYAR v SWAMINATHA AYYAR* (1921) L. R. 48 I. A. 31 I. L. R. 44 Mad. 293

8. ——— Amendment of Plaint—*New Case*
—Civil Procedure Code (V of 1908), s. 153, O VI, r. 17—*Limitation—Breach of Contract—Contract to sell three out of twelve sites to be granted—Time for performance—Limitation Act (IX of 1908), Sec. 1, Art. 115.* The appellant contracted in 1903 to sell to the respondent three out of twelve sites for oil wells which she expected to be allotted to her by Government for that year. In 1904, four sites were allotted for 1903, but the appellant did not obtain the whole twelve till 1912. The respondent in 1904 or 1905 after the four sites were allotted asked the appellant to transfer three to him but she refused; no sites were transferred to him. In 1913 the appellant sued the respondent for specific performance of a verbal agreement which he alleged that the appellant had made in 1912 in reference to the 1903 contract to transfer to him three sites allotted in 1912, but not being among those allotted for 1903. Both Courts found against the alleged verbal agreement, but the Appellate Court allowed the respondent to amend his plaint by claiming damages for the failure to deliver sites under the agreement of 1903. *Held*, that it was not open to the Court under the Code of Civil Procedure, s. 153, and O V, r. 17, to allow the amendment, as it altered the real matter in controversy between the parties. *Held*, further, that the claim as amended was barred by limitation, since the appellant became liable to perform the contract of 1903 as soon as three sites had been allotted to her for 1903, and there was a refusal by her to transfer in 1904 or 1905. Judgment of the Court of the Judicial Commissioner reversed. *MA SUREN MIA v MAUNG MO HNAUNG* (1921) L. R. 48 I. A. 214 I. L. R. 43 Cal. 832

PROCEEDINGS.

—pendency of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXI, r. 63
I. L. R. 38 Mad. 535

PROCESS OF COURT.

—abuse of—

See INSOLVENCY I. L. R. 44 Cal. 899

PROCESSION.

See HIGHWAY I. L. R. 35 Mad. 26

See PUBLIC ROAD RIGHT TO USE

I. L. R. 34 Bom. 571

See SPECIFIC RELIEF ACT (I OF 1877)

s. 42 I. L. R. 42 Bom. 433

—Right to be carried in cross palanquin procession—

See CIVIL PROCEDURE CODE 1908 s. 9

I. L. R. 45 Bom. 593

—Commissioner of Police

—Orders prohibiting a public procession and a particular individual from joining it—*Legality of such orders—Public notice of order, necessity of—Power of Indian Legislature to make police regulations regarding public processions—Calcutta Police Act (Beng IV of 1866), ss. 62A (4) 102A—Calcutta Suburban Police Act (Beng II of 1866), ss. 39A (4), 49A—Calcutta and Suburban Police (Amendment) Act (Beng III of 1910), ss. 16 and 31. Sub s. (4) of s. 62A of the Calcutta Police Act and of s. 39A of the Suburban Police Act must be strictly construed. It empowers the Commissioner of Police, when he considers it necessary to do so for the preservation of the public peace or public safety, to prohibit a procession or public assembly but not a particular individual from taking part in the same. The sub section does not require any public notice of an order passed thereunder to be given, within the meaning of ss. 102A of the Calcutta and 49A of the Suburban Police Acts. *Semle*. Indian Legislature is competent to make police regulations of the kind in the interests of public peace and safety. *LEAKAT HOSSAIN v EMERSON* (1913)*

I. L. R. 40 Cal. 470

PROCLAMATION.

See MORTGAGE I. L. R. 37 Cal. 897

See SALE FOR ARREARS OF RENT

I. L. R. 44 Cal. 715

—dated 5th August 1914—

See BILL OF EXCHANGE

I. L. R. 41 Bom. 566

PROCLAMATION OF SALE.

See CIVIL PROCEDURE CODE, 1882, s.

287, 293 I. L. R. 36 Bom. 329

See HIGH COURT (RULES AND ORDERS).

I. L. R. 37 Bom. 631

See SALE IN EXECUTION OF DECREE.

I. L. R. 39 Cal. 26

—irregularities in—

See APPEAL TO PRIVY COUNCIL.

I. L. R. 40 Cal. 635

See CIVIL PROCEDURE CODE, O XXI,

s. 54 I. L. R. 44 Mad. 293

PRODUCE RENT.

See APPRAISEMENT

I. L. R. 43 Cal. 1086

PROFESSION.

See PROSTITUTION

I. L. R. 37 Mad. 565

PROFESSIONAL CONDUCT OF COUNSEL.

See BAR COUNCIL, RESOLUTIONS OF
I L. R. 40 Calc 898

PROFESSIONAL ETIQUETTE.

See COUNSEL I L. R. 47 Calc 823

See COUNSEL, PROFESSIONAL CONDUCT OF
I L. R. 40 Calc 898

See PLEADER I L. R. 47 Calc 1115

PROFESSIONAL MISCONDUCT.

See LEGAL PRACTITIONER
I L. R. 42 All 125

See LETTERS PATENT (ALL) 8 8
I L. R. 42 All 450

See PLEADER I L. R. 47 Calc 1115

See UNPROFESSIONAL CONDUCT

Attorney, disciplinary jurisdiction over—Striking off the rolls—Letters Patent 1865, cl 10—Right of aggrieved person—Practice—Vivification Disciplinary action against an attorney, rests on the principle that the Court deems him an unfit person to act as an attorney and is not by way of punishment. Any person aggrieved by the misconduct of an attorney has the right to invoke the disciplinary jurisdiction of the Court. *In re A Solicitor, L. R. 25 Q. B. D. 17*, followed. On an application by an aggrieved party to have an attorney struck off the rolls of attorneys on the ground of professional misconduct *Held*, that where there was a positive sworn denial of the misconduct by the attorney coupled with an explanation which was not demonstrably false even a strong case of suspicion would not justify disciplinary action against the attorney on a summary proceeding. The procedure to be adopted in invoking the disciplinary jurisdiction of the Court against an attorney, enunciated. *In the Matter of AN ATTORNEY (1913)*
I L. R. 41 Calc. 113

*Legal Practitioners Act (XVIII of 1879 as amended by Act XI of 1896), as 13, 14—Scope of s 14—Contempt of Court—“Court” meaning of s 14 of the Legal Practitioners Act is not limited in its application to cases covered by cl (1) and (b) only, but covers cases of misconduct under all the clauses of s 13. Misconduct in the presence of the Court which shows disrespect of its authority and which obstructs and has a tendency to interfere with the due administration of justice is contempt. The principle is not limited to misconduct in the actual presence of the Judge. The Court is deemed to be present in every part of the place set apart for its use and for the use of its officers, jurors, and witnesses and therefore misbehaviour in such places is misconduct in the presence of the Court. *In the matter of Purna Chunder Pal, I L. R. 27 Calc 1023, In the matter of Sonthal Arisna Rao, I L. R. 15 Calc 157, Le Mesurier v Weidhausen, I L. R. 29 Calc 890, In the matter of Ashmamed Abdul Hal, I L. R. 29 All 61, In the matter of the Seca d grade Pleaders, I L. R. 34 Mad 29, In the matter of Ghulob Khan, 7 B L P 179, In the matter of Brijrangi Saha, 15 O. W. N. 269, In the matter of Kala Prasanna Choudhary, 11 C L J 164, In the matter of Roila Charan Chakravarti, 4 C L J 229, In the matter of an Advocate, a Vakil a Pleader and a Mukhtar, 4 C L J 262, The District Judge of Andhra v.**

PROFESSIONAL MISCONDUCT—contd

Hanumanth, (1915) Mad W. P. 1050 In the matter of Ganapathi Sastri, 19 Mad L J 504, French v French, 1 Hogan, 138, Rex v Carroll, 1 Wilson 75, Poach v Hall, 2 Atk 469, Ex parte Burrows, 3 Ves 535, Ex parte Jones, 13 Ves 237, In re Johnson, 20 Q. B. D. 68, Ex parte Nelson, 1 Dougl. & S 505, Kirby v Webb, 3 T. L. R. 763, Charlton's Case, 3 My & Cr 18, Hildmore v Smith, 25 Ch 449, referred to. RASEK LAL NAG, In the matter of (1916) I L. R. 44 Calc 839

Letters Patent, cl 10—Vakil—Improper advice to client—Obtaining from client a nominal sale deed for a low value—Misappropriation of client's property—Setting up false defence of ownership in a suit against him by the client for its recovery—Giving false evidence and suborning perjury A vakil was found guilty of: (a) improperly suggesting to a client, seeking his advice as to how to recover his properties from his adversary, the execution, in his (vakil's) own favour, of a nominal sale deed thereof for a low value, (b) setting up after the execution of such a sale deed, a title in himself, contrary to the terms of the agreement with the client (c) setting up a false defence of his ownership, in a suit against him by the client for a cancellation of the sale deed, (d) supporting the false defence by his own false evidence and (e) suborning perjured evidence in support of the same. Their Lordships held that the vakil was guilty of misconduct and suspended him under cl 10 of the Letters Patent, from practice for a period of two years. *In the matter of a VAKIL OF THE HIGH COURT (1916)*
I L. R. 40 Mad. 69

PROFITS

See OFFERINGS TO DEITY
I L. R. 38 Calc 387

— Derived from joint family property—

See HINDU LAW—JOINT FAMILY
14 C. W. N. 221

— suit for—

See ADVERSE POSSESSION
I L. R. 32 All 389

See AGRA TENANCY ACT, (II of 1901)
ss 160, 201 I L. R. 34 All 250

— suit for, against lambardar—

See AGRA TENANCY ACT (II of 1901).
ss 161 169 I L. R. 40 All 246

PROFITS A PRENDRE.

Profita a prendre in gross, acquisition of by fluctuating body. A right on the part of the members of a tribe such as the Bonthals, or a class such as the Chatswale inhabiting the village on and adjacent to the Riverward Hill, to hunt in a certain jungle for one day in the year, cannot be acquired by 20 years enjoyment under s 26 of the Limitation Act, 1908. Neither such a tribe, nor such a class is “a person” within the meaning of the General Clauses Act, 1897. Village communities in India bear the strongest resemblance to corporations and they may be regarded as corporate bodies capable of administering a trust in favour of particular classes residing within their jurisdictions. The law of India does not preclude the inference of legal origin in respect of such a right by grant in trust for the benefit of such a fluctuating body. In India there

PROFITS A PRENDRE—*contd.*

is nothing to prevent the acquisition by custom by such a fluctuating body, of a *profit a prendre* in gross so long as it can be shown that the exercise of the right is not unreasonable. Where the zamindar of Falganj bound himself and his heirs by an *ekranama* to convey, free of costs, to the Sitambari Jain Community, land for the purpose of constructing temples and guest houses, and further agreed that in the event of the executant and his heirs failing to convey such land the Sitambari Jains should be entitled to take such land, *held*, that this *ekranama* did not prevent the zamindar from permitting other persons to hunt in the jungles until the Sitambari Jains should select a plot for their buildings. *Held, further*, that the court ought not to give a party possessing such a remote interest a declaration affecting an entry in the Record of Rights. A person who sues under s. 42 of the Specific Relief Act, 1877, for a declaration that an easement recorded in a Record of Rights under s. 31 of the Chota Nagpur Tenancy Act, 1908, is incorrect, must show that he has some legal title or interest in the land over which the easement exists. *Query*, whether the manager of an unincorporated society is competent to sue, on behalf of the society, on an *ekranama* executed in favour of a previous manager of the society. **MAHARAJ BHAKDUR SINGH v. GANDADRI SINGH** 2 Pat. L. J. 323

PRO FORMA DEFENDANT.

See MORTGAGE I. L. R. 33 Cal. 342

PROGRESSIVE RENT.

— reservation of—

See LAND TENURE IN BENGALE. L. R. 46 T. A. 279

PROHIBITORY ORDER.

Excavation of a tank—Injury to adjoining house—Likelihood of a breach of the peace—Order passed on personal apprehension of the Magistrate without evidence taken or urgency recorded—Criminal Procedure Code (Act V of 1898), s. 144. The petitioner excavated a tank on his own land, adjoining the house of the opposite party, and the latter objected to the excavation on the ground that his house would be thereby rendered unsafe. No likelihood of a breach of the peace appeared from the police report or the written statements of the parties, but the Magistrate made the order under s. 144 of the Criminal Procedure Code without inquiry or recording any urgency. *Held*, that the order was illegal, and that s. 144 was not applicable without inquiry or recording any urgency. **KAMINI MOHAN DAS GUPTA v. HARENDRA KUMAR SARKAR** (1911) I. L. R. 33 Cal. 876

Jurisdiction—Execution of decree—Civil Procedure Code (Act V of 1908), O. XXI, r. 46—Competency of Court to issue prohibitory order outside its jurisdiction restraining a person from paying a debt due to the judgment-debtor. It is not competent to a Court, in execution of a decree for money to attach, at the instance of the decree-holder, a debt payable to the judgment-debtor outside the jurisdiction, by a person not resident within the jurisdiction of that Court. **BEND, DUNLOP & Co. v. JAGANNATH MAHARAJ** (1911) I. L. R. 29 Cal. 104

PROJECTION.

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III of 1901), ss. 70, 113, 122 . I. L. R. 42 Bom. 454
See FIXTURE I. L. R. 48 Cal. 602

PROMISE.

— branch of—

See CONTRACT. I. L. R. 42 Bom. 499

PROMISOR.

— heirs of—

See PAY EMISSION I. L. R. 33 Mad. 114

PROMISSORY NOTE.

See CAUSE OF ACTION

I. L. R. 42 All. 193

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII of 1879), ss. 13, 15D, 16

I. L. R. 39 Bom. 73

See EVIDENCE. I. L. R. 33 All. 371

See EVIDENCE ACT (I of 1872), s. 91

I. L. R. 34 All. 158

See HINDU LAW—MINOR

I. L. R. 34 Bom. 72

See KUMAON RULES (1894) r. 17

I. L. R. 42 All. 642

See LIMITATION ACT, 1908, AR's 73 AND 80 . I. L. R. 42 All. 55

See NEGOTIABLE INSTRUMENT ACT, 1885 ss. 4 and 80 5 Pat. L. J. 538

See PARTNERSHIP I. L. R. 40 Mad. 727

See PRACTICE—CAUSE OF ACTION I. L. R. 41 I. A. 142

See VARTHAMANAM I. L. R. 38 Mad. 660

— acknowledgment contained in—

See LIMITATION ACT (IX of 1908), SCH. I, ARTS. 116 AND 66, s. 19

I. L. R. 33 Bom. 177

— contemporaneous oral arrangement

See EVIDENCE ACT (I of 1872), s. 92, PROV. 3 I. L. R. 45 Bom. 1155

— executed by father before parti-

tion—

See HINDU LAW—DEBT I. L. R. 41 Mad. 136

— payable on demand—

See LIMITATION ACT (IX of 1908), SCH. I, ART. 80 . I. L. R. 39 Mad. 129

See PRINCIPAL AND SURETY I. L. R. 44 Cal. 878

— payable to a person or order or bearer, illegality of—

See PAPER CURRENCY ACT, s. 28 I. L. R. 40 Mad. 535

— suit on—

See ALIENS ENEMY I. L. R. 46 Cal. 526

See EVIDENCE ACT (I of 1872) s. 92, AND PROV. (2) I. L. R. 39 Bom. 399

See LEYDER AND BORSOWER 23 C. W. N. 233

PROMISSORY NOTE—*contd*

1 ———— **Construction—Acknowledgment—Deed, construction of.—Unconditional undertaking and the document styled as promissory note** It is no doubt true that the question whether an instrument is a promissory note or not should be judged by the words used, and the instrument must contain in words an unconditional undertaking to pay a sum of money and it is not enough that the substantial effect of the instrument should be to make the executant liable to pay a sum of money. *Held* that the following document wherein the executant not only made an unconditional undertaking to pay but also styled it a promissory note was a promissory note and not a mere recital of a liability and as such was not admissible in evidence for want of a proper stamp:

Promissory note executed on _____ in favour of _____ by _____ In the matter of the purchase of piece goods by me from your shop on this date, the sum found due by me as per *gatty* (lit) is Rs 600 _____ which sum I promise to you or to your order on demand with interest at 1½ per cent. To this effect *Tarupathi Gowdan v Rama Reddy* 1 I L R 21 Mad 49, *Gownd v Balwant Rao* 1 I L R 22 Bom. 96 *Horne v Redfern & Ring* 1 C 433 and *Häve v North*, 3 Erex 689, distinguished. *Morris v Lee*, 22 F R R 409 referred to. *KARTHASAPPA ROWTHAN v BAVA MOIDREY SAHIR* (1913)

I L R. 38 Mad. 570

2. ———— **Joint execution—Consideration—Surety** The consideration paid to any one of several joint promisors is legally sufficient to support the promise of all the joint promisors. *Naraindas v Ramaswami* 24 Mad L J 91 applied. *Serka Aiyar v Mangal Das Jee*, 20 Mad L J 144 distinguished. *Per CURRIE*: S 97 of the Indian Evidence Act precludes an executant from setting up a contemporaneous oral agreement that he should not be made liable on the promissory note. *Per SPENCER J*—S 127 of the Indian Contract Act states that the value received by the principal debtor is a sufficient consideration to bind the surety and a 12s makes his liability co-extensive. *BORVALINGA MUDALI v. PACHAI NATHEAN* (1913)

I. L. R. 38 Mad. 680

3 ———— **Suit by Assignee of promissory note against executant.—Payment of consideration by assignee, irrelevant** *Held* that in a suit by the assignee of a promissory note against the executant the latter are not concerned with the question whether the assignment was for consideration or not. All that they are entitled to have ascertained is that the plaintiff is the legal holder of the note and able to give them a good discharge. *BALDEO SARAI v BEHARI LAL* (1914)

I L R. 37 All. 99

4 ———— **By guardian of minor not signing as such whether binding on minor's estate.—Negotiable Instruments Act (XXVI of 1881) ss 23 and 30 scope of** A negotiable instrument executed by the guardian of a Hindu minor for purposes binding on the minor is enforceable against the minor's estate though the instrument was not signed by the executant in his capacity as guardian. There is no personal liability on the principles of Hindu Law and ss 23 and 30 of the Negotiable Instruments Act (XXVI of 1881) are not applicable. *Subramania Aiyar v*

PROMISSORY NOTE—*contd*

Arumuga Chetty 1 I L R 26 Mad 330, followed. *KRISHNA CHETTIAR v NAGANANI AMMAL* (1915)
I L R. 39 Mad. 915

5 ———— **Surety—Promissory note payable on demand.—Liability of surety—Guaranteeing such note when arises** *Held* that the liability of the surety rose immediately on the execution of the guarantee and limitation ran from that date. *SREEWATH ROY v PEARY MOHAN MUKHERJEE* (1890)
21 C. W. N. 479

6 ———— **Executed in Hyderabad State but stamped with British India Stamp.—Hyderabad State Stamp Act s 35—Suit on the promissory note in British Indian Court—Maintenance of suit in British India—Lex Fori—Lex Loci Contractus** A promissory note was executed in Hyderabad State. It was stamped with a British India Stamp. A suit having been brought on the promissory note in a Court in British India, it was contended that the promissory note not having been stamped with the stamp required by the laws of the Hyderabad State no suit will lie upon it in the British Indian Court. *Held* that though the promissory note be inadmissible in evidence under Hyderabad State Stamp Act that law did not declare the agreement as void and the agreement could therefore be sued upon and enforced in a Court in British India. *Brulows v Sequenville* 3 Erex 275 relied on. If the law of the foreign country in which the document was executed provides no more than that the agreement shall not be received in evidence because it is not stamped then the agreement may be used upon and enforced in a Court in British India, but if the law of the foreign country provides that, by reason of the want of stamp, the agreement itself which is contained in the unstamped document shall be void then the plaintiff cannot succeed in a Court of British India. *UNOUDRAM CHATRAPATI v SADASUK SATYATHAM* (1918)

I L R. 42 Bom 522

7 ———— **In favour of the managing trustee of a charity.—The trustee succeeded by another—Latter's right to sue on the note without any assignment or endorsement.** A promissory note executed in favour of a trustee can be sued on by his successor without endorsement or assignment, the Negotiable Instruments Act not affecting devolution of rights by operation of law. *Cuthers v Chabaud* 1 B & C 160 applied and followed. *Sourcar Ladd Gownda Doss v Munerappa Naidu*, 1 I L R 31 Mad. 531 referred to. *RAMA MADHAN CHETTI v KATTA VELAK* (1917)

I L R. 41 Mad. 353

8. ———— **When overdue.—Negotiable Instruments Act (XX of 1881) s 115** Where a promissory note payable on demand is negotiated it is not deemed to be overdue for the purpose of affecting the holder with defects of title of which he had no notice by reason that it appears that reasonable time for presenting it for payment has elapsed since its issue. The analogy of the rules applicable to questions of limitation is not to be followed in such cases. *Arton v Ellam* 2 M & W 461 *Roe v Young* 2 B & B 165 *Mally v Murrell* 5 H & N 813 *Brooke v Mitchell* 9 M & W 15 *Borough v White*, 4 B & C 325 *Glascock v Balls* 24 Q B D 13 referred to. *Brundjandra Kishore v Hindustan Co-operative Insurance Society* 1 I L R. 44 Cal. 978 distin

PROMISSORY NOTE—*contd*

granted D N SHAHA & Co v THE BENGAL
NATIONAL BANK LTD (1900)
I L R. 47 Calc 861

PROMPT DOWER

See MAHOMEDAN LAW—DOWER.

I L R. 35 Bom. 386

PROOF

See CUSTOM I L R. 45 Calc 450 835

See CUSTOM OR USAGE.

I L R. 45 Calc 285

See MAHOMEDAN LAW—LEGITIMACY

I L R 48 Calc 856

— standard of—

See LIMITATION I L R. 40 Calc. 898

See PROBATE I L R. 39 Calc 245

1 ————— Per WOODROFFE
J—A Court cannot assume that a document
was proved from the refusal of opposing counsel
to cross-examine on it. The latter is entitled
to wait until the Court ruled whether the docu-
ment was proved or not. In the goods of GOPESCHER
DUTT (1911) I L R. 39 Calc 245
16 C W N 265

2 ————— Title evidence of
direct proof when not available—Conduct and
admissions of defendant as proof of title—Mulkis
papers evidentiary value of—Registers kept under
Reg VIII of 1890 entries in—Statements against
proprietary interest—Statements in read-cess returns
as to character of interest—Burden of proof when
established—Effect of erroneous statement as to nature
of tenure by unauthorised person—Purchase at
execut on sale held under s 124 (Beng Act I of
1879) I mised to interests actually sold When
owing to lapse of time and other causes direct
evidence of title e.g. a *sanad* or grant is not
available it is enough for the plaintiff to estab-
lish a *prima facie* case if the evidence on which
it is based is corroborated by the conduct and
admissions of the defendant or his predecessors
in interest or unrebutted by any positive evidence
which can be relied on KALI SANKAR SAHAI v
PRATAP UDAY NATH SAHAI DO (1911)
16 C W N 633

3 ————— Penal Code (Act
XLV of 1860) s 147 & 304 read with s 143—Pro-
secution on evidence mostly *de bene*—Hypothetical
case made by the Court—Propriety of conviction on
Where the depositions Judge discarded almost in
the entirety the accounts of the occurrence given
by the witnesses for the prosecution and substi-
tuted a narrative of his own founded for the most
part on surmise and conjecture and the story
of the origin of the occurrence and the course of
events as reconstructed by the Sessions Judge
were wholly inconsistent with the story told by
the witnesses, and the appellants were convicted
under s. 147 and s. 304 read with s. 140 Penal
Code; Held, that the conviction should be set
aside. KALU KHALASHI v THE KING EMPEROR
(1912) 17 C W N 538

4 ————— Suspicion and
proof of inference between Where a decree-holder
sued for a declaration against a purchaser for
the judgment-debtor that the purchase was a
benami Held that the burden of proof lay on
the decree holder and though there were elements
of suspicion the burden had not been discharged

PROOF—*contd*

It is essential to take care that the decision of the
Court does not rest on suspicion but legal testi-
mony SETH MANIKLAL MANSUKHBAI v RAJA
BHOY SINGH DUDHORIA 25 C W N 409

PROOF IN COMMON FORM.

See PROBATE I L R. 42 Calc 480

PROOF OF DOCUMENT

See EVIDENCE ACT 18 2 s 68

1 Pat. L J 369

PROOF OF TITLE.

See EJECTMENT SUIT

I L R. 42 Bom. 357

PROPAGATION OF DISEASE

See NUISANCE I L R. 38 Calc. 294

PROPER COURT

See LIMITATION ACT (IX of 1908) ART
18^o EXPL II I L R. 45 Bom. 453

PROPERTY

See ANCESTRAL PROPERTY

I L R. 39 Mad 830

See CRIMINAL PROCEDURE CODE (ACT V
OF 1908) s 5th

I L R. 42 Bom. 664

— disposal of—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1908) s 517

I L R. 40 Bom 186

— transfer of, to another jurisdic-
tion—

See CIVIL PROCEDURE CODE (ACT V OF
1908) ss 27 38 1st

I L R. 37 Mad. 462

— vesting of—

See EVIDENCE ACT (I OF 18) s 9^o,
PROVS 1 AND 3

I L R. 38 Mad. 226

PROPERTY TITLE

— question of—

See AGRA TENANCY ACT (II OF 1901)
s 177 (c) I L R. 38 ALL 183

PROPRIETARY TITLE.

See AGRA TENANCY ACT (II OF 1901)—
ss 58 70th I L R. 35 ALL 157

s 109 I L R. 37 ALL 91

See UNITED PROVINCES LAND REVENUE
ACT (III OF 1901) s 115 (1) (b)

I L R. 41 ALL 211

— question of—

See AGRA TENANCY ACT (II OF 1901)
ss 58 1 (c)

I L R. 38 ALL 465

PROPRIETOR.

See AGENCY PROPRIETORS.

See DISQUALIFIED PROPRIETOR.

PROSECUTION.

See COLLECTOR V L. L. R. 40 Calc. 463

See CRIMINAL PROCEDURE CODE, s. 478.
15 C. W. N. 691

See EVIDENCE L. L. R. 42 Calc. 784

See FIXTURE L. L. R. 48 Calc. 602

See JUDGES, PROSECUTION BY
L. L. R. 45 Calc. 169

See RECEIVER L. L. R. 46 Calc. 432

duty of—

See CHARGE, L. L. R. 42 Calc. 957

See EVIDENCE ACT, 1872, s. 33
L. L. R. 39 Mad. 449

duty of, to call all witnesses—

See PEVAL CODE, s. 114
19 C. W. N. 28

for instituting a false case—

See JURISDICTION OF CRIMINAL COURT
L. L. R. 37 Calc. 250

onus on—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898), s. 256
L. L. R. 39 Mad. 503

order for—

See JURISDICTION OF CRIMINAL COURT
L. L. R. 40 Calc. 380

what amounts to—

See MALICIOUS PROSECUTION
L. L. R. 37 Mad. 181

withdrawing from—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898)—
ss. 243, 248, 345 L. L. R. 37 Bom. 378
s. 494 25 C. W. N. 615

See WITNESS L. L. R. 46 Calc. 700

See WITHDRAWAL OF PROSECUTION
L. L. R. 45 Calc. 1105

PROSECUTION WITNESS.

cross-examination of.

See CROSS EXAMINATION
L. L. R. 37 Calc. 235See CHARGE, CANCELLATION OF
L. L. R. 39 Calc. 885right of accused to recall and cross-
examine—See CRIMINAL PROCEDURE CODE (ACT V
OF 1898), s. 256.
L. L. R. 39 Mad. 503

PROSECUTOR.

See CONSENT OF COURT
L. L. R. 41 Calc. 173

PROSPECTIVE LEGISLATION

See ASSESSMENT L. L. R. 43 Calc. 973

PROSTITUTE'S PROPERTY.

See HINDU LAW—SCHRIMAN
L. L. R. 40 Calc. 650See HINDU LAW—SUCCESSION
L. L. R. 38 Calc. 493

PROSTITUTION.

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898), s. 448 (f)
L. L. R. 37 Mad. 565See HINDU LAW—IMMUNITY
L. L. R. 38 Mad. 1149

PROTECTION.

doctrine of—

See OCCUPANCY HOLDING
L. L. R. 42 Calc. 745

PROTECTION OF JUDICIAL OFFICERS.

See TRESPASS L. L. R. 39 Calc. 953

PROTECTION ORDER.

See PRESIDENCY TOWNS INSOLVENCY
ACT (III OF 1909) ss. 8, 8, 23, 38, 39
(2) (a), (b), (c) (d), (f), (i)
L. L. R. 40 Bom. 461

Presidency Towns Insolvency Act (III of 1909) s. 25—Previous decisions on applications for interim orders—Discretion—Practice. It has never been the practice of Commissioners in Insolvency under the Indian Insolvency Act (II and 12 Vict. c. 21) to consider themselves bound by their previous decisions on applications for interim orders when it has been a matter for their discretion, and it by no means follows that because an application has been refused on the first occasion it must also be refused on the second occasion. S. 25 of the Presidency Towns Insolvency Act (III of 1909) clearly intends that while an insolvent deliberately performs the duties prescribed by the Act he should not be harassed by execution creditors, and should not be rendered liable to pressure whereby one creditor may get undue advantage over another. The section does not deprive the Court of its discretion in granting or refusing protection, but sub-s. (4) indicates clearly the lines along which that discretion should be exercised when a creditor opposes the grant. If an insolvent can produce the certificate referred to the onus is thrown on the opposing creditor of showing cause why the

Prosecution—Calcutta Municipal Act (Beng III of 1929), ss. 539 (15), 541 (b), 631—Non-compliance with notice to remove encroachment on public street—Institution of prosecution more than three months after expiry of notice—Limitation—Continuing offence—Bye-laws validity of—Ultra vires. A prosecution for failure to comply with a notice by the Chairman to remove an obstruction on a public street, instituted more than three months after the expiry of the date fixed therein, is barred under s. 631 of the Calcutta Municipal Act. A bye-law must conform to the provisions of the law under which it purports to be made. Rule (1) of the bye laws framed under s. 539 (18) of the Act is ultra vires, in as far as it creates a continuing breach after notice in violation of the terms of a 561 (b). NARAYAN CHANDRA CHATTERJEE v CORPORATION OF CALCUTTA (1909) L. L. R. 37 Calc. 545

To prove charge truth or falsehood of defence immaterial. If the case for the prosecution is false on the whole the accused is entitled to an acquittal whether his defence be true or not. GOUBI NARAYAN BANHULA v TILAKRAM CHETEL. 25 C. W. N. 838

PROTECTION ORDER—contd.—

protection order should not be granted. In the matter of *MEGHNA GANGARUX* (1910)

I. L. R. 35 Bom. 47

PROTHONOTARY.

See HIGH COURT RULES, BOMBAY,

RR 81, 321 I. L. R. 36 Bom. 418

PROTRACTION OF LITIGATION.

See GRANT I. L. R. 44 Calc. 585

PROVIDENT FUND ACT (IX OF 1897 AS AMENDED BY ACT IV OF 1903).

See EXECUTION OF DECREE

I. L. R. 46 Calc. 982

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s 43 I. L. R. 44 Bom. 673

PROVIDENT INSURANCE

Company with share capital carrying on business of a provident insurance society—Liability to registration as such before receiving premiums—*Provident Insurance Societies Act* (V of 1912), s 2 (3) 6, 7, 21 A company having a share capital divided into shares must, if it intends to carry on the business of a provident insurance society, be registered under the *Provident Insurance Societies Act* (V of 1912) before it receives any premium or contribution *Oriental Government Security Life Assurance Co v Oriental Assurance Co*, I. L. R. 40 Calc. 570, explained. *DEPUTY LEGAL REMEMBRANCE v SITAL CHANDRA PAL* (1914)

I. L. R. 42 Calc. 300

PROVIDENT INSURANCE SOCIETIES ACT (V OF 1912)

ss. 2 (3), 6, 7, 21—

See PROVIDENT INSURANCE.

I. L. R. 42 Calc. 300

ss. 5, 6—

See TRADE NAME I. L. R. 40 Calc. 570

PROVIDENT INSURANCE SOCIETY.

See TRADE NAME I. L. R. 40 Calc. 570

PROVINCIAL INSOLVENCY ACT (III OF 1907)

See LIMITATION ACT (IX OF 1908), s 29

(1) (b) I. L. R. 41 Mad. 169

No bar to a suit to establish rights in property attached by Insolvency Court as belonging to the insolvent—

See INSOLVENCY I. L. R. 2 Lah. 147

One petition in Insolvency against several joint debtors if proper—Application against partners of a firm—Amendment A declaration of insolvency cannot be asked for in one petition against several joint debtors—There is no provision in the Provincial Insolvency Act for proceeding against two or more persons being partners in the name of the firm. *KALI CHARAN SAHA v HANI MOHAN BASAK*

24 C. W. N. 481

ss 2 (c) and (g), 22, 48 and 52—

Dismissal of insolvency petition by Official Receiver—Application to District Court to revise, under s 22, whether an appeal—Official Receiver, whether a Court—Appeal to High Court from order of

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd—

ss. 2 (c) and (g), 22, 48 and 52—

contd

District Court, maintainability of A District Judge transferred a petition of a debtor to be adjudged an insolvent to the Official Receiver. The petition was dismissed by the Receiver on the grounds that the debtor had no realizable assets, that he might be concealing his assets, ready cash and outstandings, that he was not likely eventually to get his discharge and that therefore the petition was an abuse of process of Court On an application by the debtor under s 22 of the Provincial Insolvency Act (III of 1907) the District court confirmed the order Held, that an appeal lay to the High Court under s 46 of the Act, from the order of the High Court Held, further that the Official Receiver is not a Court subordinate to the District Court within s 46 (1) of the Act and that an application to the District Court under s 23 of the Act to revise the order of the Official Receiver is not an "appeal" within s 46: Held, also, that the order of dismissal was based on a misconception of the Insolvency Procedure and should be set aside *Jee Chetti v Rangaswami Chetti*, 22 Mad L J 52, followed *ALLA v KUPPA* (1916)

I. L. R. 40 Mad. 752

ss 2 (1) (g), 18, 20 (c), 40 (1), 44,

47—

See RECEIVER I. L. R. 40 Calc. 678

ss 3, 16, 18, 36 and 37—Order of adjudication—Appointment of Receiver by District Court—Sale in execution of money decree held by District Munsif's Court subsequent to appointment of Receiver—Application by Receiver to the District Court for cancellation of sale and for delivery of possession—Application whether competent—Jurisdiction of District Court Where after the appointment of a Receiver for the estate of an insolvent had been made by a District Court some of the properties of the insolvent were sold in auction by a District Munsif's Court in execution of a decree for money passed by the latter Court prior to the order of adjudication Held it was competent to the Receiver to make an application to the District Court for annulment of the sale and for delivery of possession of the properties from the purchaser, under s 18, cl (3) of the Provincial Insolvency Act (III of 1907) *OFFICIAL RECEIVER, TIRUNELVELLY v SANKARALINGA MUDALIAR* (1921)

I. L. R. 44 Mad. 524

ss 3, 43 (2)—Subordinate Judge in vested with jurisdiction under s 3 declines to take action under s 43 (2) against insolvent—Whether appeal lies to District Judge against the order under s 43—Creditor if an aggrieved person. The appellant was adjudicated an insolvent by a Subordinate Judge invested with jurisdiction under the proviso to s 3 of the Provincial Insolvency Act and thereafter certain creditors of the insolvent made applications before the Subordinate Judge to the effect that the insolvent had concealed certain properties and prayed that he should be punished under s 43 (2). The Subordinate Judge after hearing the creditors and the insolvent rejected the applications, whereupon some of the creditors applied to the District Judge who, after examining witnesses on both sides, sentenced the insolvent to three months' simple imprisonment Held,

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd—

ss. 2, 43 (2)—contd

per TAYLOR, J. The orders made by the Subordinate Judge while he has seisin of the case could be interfered with by the District Court only under the provisions of s. 45 which in the matters therein dealt with subordinate all other Courts to the District Court or under the powers conferred by the Code of Civil Procedure in regard to Civil suits as provided in s. 47. That no appeal lay against the order of the Subordinate Judge declining to take action against the insolvent under s. 43 (2). *See NAWROTHI J.* The word "Court" in s. 43 of the Act does not mean the Court of original jurisdiction only and the District Judge's order in this case was an original and not an appellate order. *DINDRA (DANDRA) HANAR v. RAMANI MORAN GOSWAMI* (1918)

22 C. W. N. 958

s. 4—*Division of question of title, how far discretionary with Court—Subor.* (3) Court is bound to take evidence on questions for refusing to decide questions of title or for holding that the insolvent has a saleable interest in any property and ordering its sale—*Nature of materials upon which Court may come to such decision.* A was adjudicated an insolvent, and a Receiver was appointed. After various intermediate proceedings the insolvent's brother B appeared in Court and laid claim to certain properties. The Judge put to him certain questions and elicited certain answers. The Receiver also submitted a report and a petition on the same date. The Judge, after considering the report and the petitions submitted and after hearing pleaders refused to go into the question of title and decided that the insolvent had a saleable interest in the properties. He thereupon directed the Receiver to sell the insolvent's right, title and interest in the properties under the provisions of subsec (3) of s. 4 of the Provincial Insolvency Act. Lower under subsec (1) of s. 4 to decide a question of title, it had full discretion to follow the course laid down in subsec (3), i.e., to refuse to decide questions of title and to direct sale of insolvent's right, title and interest, whatever that might be. Where the Court has reason to believe that the debtor has a saleable interest in any property, it may without further enquiry sell such interest. The matters stated in the report of the Receiver and the answers given by the claimant when questioned by the Judge, were sufficient materials for his coming to the conclusion that the debtor had a saleable interest in the property. *JITENDRA NATH BHATTACHARYA v. PATEL SINGH DAXER*

25 C. W. N. 922

ss. 4 to 6, 11 to 16, 28, 43, 44 and 47—*What matters are necessary to be enquired into before adjudication.—What are proper subjects of enquiry before deciding on final discharge.* Before passing an order of adjudication under the Provincial Insolvency Act, it is not for a Court to decide whether the debts stated in the petition for insolvency are real, whether the petitioner has not concealed any property of his from his list of assets or whether he is unable to pay his debts and similar questions. All these are properly subject that ought to be enquired into before giving a discharge. The only things that are necessary to be decided before adjudication, are

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd—

as 4 to 6, 11 to 16, 28, 43, 44 and 47—contd

whether the creditor or debtor is entitled to present the petition, whether the required notices have been served and whether the debtor has committed the alleged act of insolvency. *Per CHAKRA*: s. 18 (2) provides that "the Court shall also examine the debtor if he is present, as to his conduct, dealings, and property in the presence of such creditors as appear at the hearing, and the creditors have the right to question the debtor thereon." There is no doubt that both these clauses require that the acts referred to therein should be done. But it does not follow that every matter, which forms the subject of the examination of the debtor should be decided before an order of adjudication is made. The scheme of Act III of 1907 is to make an order of adjudication at first and then to make a full enquiry into all matters connected with the insolvency before the final discharge is decided. The Court has power to refuse to make an order not only on non-compliance of matters stated in s. 14 (1) but also on other grounds (e.g.) pretention of abuse of process of the Court, unnecessary harrasing of a debtor by the creditor. *See SHAMBA AYYAR, J.*—The object of the provision for examination in s. 14 (2) is as in England, to obtain information at as early a stage as possible of the property and the whole conduct of the debtor in their relations to the insolvency proceedings. *I Lal Chand Mehta v. Ram Kumar Khara, 15 C. W. N. 213, Ghose dhar v. Jai Narain I L. R. 32 All 613 and Nathu v. The District Judge of Benares I L. R. 32 All 547, disapproved.* Various sections of the Act and of the English Bankruptcy Act, considered. *JEAN v. PRASADWAMI* (1913)

I L. R. 36 Mad. 402

ss. 4 clz. (b), (2), 16—

See *MIXON* I L. R. 42 Cal. 225

s. 5—

See s. 4 I L. R. 36 Mad. 402

ss. 5, 6, 15, 16—

See *INSOLVENCY* I L. R. 44 Cal. 433

Insolvency—Petition by debtor—Grounds for dismissing petition—Possibility of assets exceeding liabilities. Where an insolvency petition is presented by a debtor whose debts amount to Rs. 500 and such petition fulfils the requirements of s. 11 of the Provincial Insolvency Act, 1907, it is not a valid ground for dismissing the petition that there may exist some reason for supposing that the debtor may not after all be unable to pay his debts in full, unless there are circumstances indicating that the presentation of the petition was fraudulent and an abuse of the process of the Court. The provisions of a 15 of the Act are intended to apply to a creditor's petition and not to one presented by a debtor. *I day Chand Mehta v. Ram Kumar Khara, 15 C. W. N. 213, Kali Kumar Das v. Gopi Arulana day 15 C. W. N. 590, (uradkari v. Jai Narain, I L. R. 32 All 613 Bishola Dn v. Jagannath, 9 All L. J. 593, referred to. Nathu Mol v. The District Judge of Benares I L. R. 32 All 547, distinguished. Ponnusami Chetti v. Araramma Chetti, 25 Mad. L. J. 545 not followed. THILOKI NATH v. RADHI DARS* (1914)

I L. R. 36 All 230

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd

ss. 5, 6, 15, 16, 42—Insolvency—
Petition by debtor—Debtor's right to order of adjudication—Dismissal of application on ground of alleged misappropriation of property belonging to a creditor It is no ground for the rejection of a petition to be declared insolvent filed by the debtor that the petitioner may perhaps have been guilty of criminal misappropriation in respect of property belonging to one of his creditors. *Chhatrapat Singh Dugar v Kharay Singh Lachmram, I L R 44 Calc 535, and Triloki Nath v. Badri Das, I L R 36 All 250, referred to* JAGAN NATH v GANGA DAT DUBE (1919)

I L R. 41 All. 486

ss. 5, 15, 16—Insolvency—Grounds for dismissing petition to be adjudged an insolvent. A petition to be adjudged an insolvent presented under the provisions of the Provincial Insolvency Act, 1907, can be dismissed only upon one or other of the grounds mentioned in s 15 of the Act. It is not a good ground for dismissing such a petition that the petitioner's brother, being joint with the petitioner, has not been made a party to it. *Chhatrapat Singh Dugar v Kharay Singh Lachmram, I L R 44 J 87, and Triloki Nath v Badri Das I L R 36 All 250, referred to* NER RAM v BHAGIRATHI SAH (1917). I L R. 40 All. 75

s 6—

See INSOLVENCY I L R. 44 Calc. 535

Application by debtor—
"Residence" within jurisdiction—Temporary residence It is not necessary for a petitioner applying to be declared an insolvent to have resided for a long time at a place within the jurisdiction of the Court. Even temporary residence for a time and for a particular purpose is enough to give the Court jurisdiction to deal with an application for insolvency. *Ex parte Heegard, 24 Q B D 71, followed. ABDUL KEMAL v BASIRUDDIN AHMED (1911)* 17 C. W. N 405

Jurisdiction of Court—
"Ordinarily resides," meaning of—Order of adjudication by Court not having jurisdiction—S 47, sub-s. (1), effect of—Civil Procedure Code (Act V of 1908), s 21, if applies to proceedings under the Provincial Insolvency Act The respondent lodged an application for insolvency in the Court of the District Judge of Midnapur and obtained an order of adjudication. It appeared that the respondent, who was employed as a guard on the Bengal Nagpur Railway, resided at Dungaigarh in the Central Provinces and ran his train ordinarily from Dungaigarh to Nagpur and only occasionally from Dungaigarh to Kharagpur, where he stopped with his son in law having no permanent residence there. The application for insolvency was filed immediately after the appellant had obtained a decree against the respondent in the Court of the Munsif of Midnapur. *Held*, that it could not be held that the respondent ordinarily resided or personally worked for gain at Kharagpur within the meaning of sub s (2) of s 6 of the Provincial Insolvency Act, and consequently the Court of the District Judge of Midnapur had no jurisdiction to deal with the application for insolvency filed by the respondent. That sub s (1) of s 47 of the Provincial Insolvency Act does not directly or by implication make s 21 of the Civil Procedure Code of 1908 applicable to proceedings under the

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd

s. 6—contd.

Provincial Insolvency Act and consequently the doctrine that no objection as to the place of suing shall be allowed by an Appellate Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and unless there has been a failure of justice, could not be applied to proceedings under the Provincial Insolvency Act. Meaning of the term "resides" in sub s (2) of s 6 considered. *MADHO PRASHAD v A L. WALTON (1913)* 18 C. W. N. 1050

ss. 6, 15, 16—Insolvency—Petitioner examined and evidence taken—Case adjourned—Petitioner absent on adjourned date—Petition dismissed for want of prosecution When a petition for a declaration of insolvency has once been presented conformably to the requirements of Act No III of 1907, the Court is bound after completing the necessary inquiries to come to a decision in respect of the various matters spoken of in s 15 of the Act and either to dismiss the petition under the provisions of that section, or to make an order of adjudication. But it cannot dismiss the petition merely because, on an adjourned date the petitioner does not appear. *LACHMI NARAYN DUBE v KISHAN LAL (1918)*

I L R 40 All. 665

s. 11—

See s 4 I L R. 36 Mad. 402

s. 12—

See s 4 I L R. 36 Mad. 402

See s 16 I L R 39 Mad. 693

s 13—

See s 4 I L R. 36 Mad. 402

ss. 13, 16, 34—

See INSOLVENCY I L R. 42 Calc. 289

ss. 13 (3), 47—Attachment of property as that of the insolvent before adjudication of insolvency—Civil Procedure Code (1908), O XXI, r 53, O XXXVIII, rr 5 to 12—Procedure—Appeal Where certain property was attached under s 13 (3) of the Provincial Insolvency Act, 1907, by a Court exercising jurisdiction under that Act, before the petitioner was declared an insolvent and a receiver appointed, it was held that the Court was bound to hear and adjudicate upon any claims which might be preferred by persons alleging themselves to be in fact the owners of such property. *Procedure under s 13 (3) of the Provincial Insolvency Act was analogous to attachment before judgment under the Code of Civil Procedure* It might have been open to the objectors to wait until the receiver had taken some action in respect of the property attached and then to apply under s 23 of the Act, but this they were not bound to do. *HASHMAT BIBI v BHAGWAN DAS (1913)*

I L R. 36 All. 65

s 14—

See s 4 I L R. 36 Mad. 402

Provincial Insolvency Act (III of 1907), s 16—Debtor's application for adjudication, if may be refused because of his acts of bad faith—Adjudication as of course when ss 5 and 6 complied with—Civil Procedure Code (Act XIV of 1882) Chap XX Where an application by a debtor to be declared an insolvent being

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—contd.

s. 14—contd.

opposed by a creditor, the debtor was examined under s. 14, cl (3) of the Provincial Insolvency Act and the application was dismissed on the ground that one of the creditors mentioned in the application was fictitious and that the applicant was concealing the real facts: *Hill*, that where the requirements of ss. 6 and 8 of the Act have been complied with, an order of adjudication should follow almost as a matter of course, and the application dismissed on the grounds stated. Whether the debtor has or has not committed acts of bad faith is to be determined by the Court not at the stage when the order of adjudication has to be made, but at the final stage when an application is made for an order of discharge, the provisions of the Provincial Insolvency Act differing in this respect from those of Chap. XX of Act XIV of 1892 which have been repealed by the Act *In re Patten*, [1907] 1 K. B. 32, relied on *Uday Chand Mehta v. Ram Kumar Khanna* (1910)

15 C. W. N. 213

ss. 14, 5 and 47—Civil Procedure Code (Act I of 1908) O. 17, r. 3—Single petition by creditor to adjudicate debtors as insolvent—Debtors, members of a joint Hindu family—Joint debt—Joint acts of insolvency—Single petition against joint debtors whether maintainable—Multifariousness in suits—Test of The members of a joint Hindu family can be adjudicated insolvents on a single petition by a creditor if they are liable on a joint debt and have been guilty of a joint act or acts of insolvency. The test is whether, if the application were treated as a suit, the suit would be bad for multifariousness, that is, for misjoinder of different causes of action against different defendants, if no such objection can be successfully advanced, a single application for adjudication is maintainable. *Darshan Prasad Lal v. Ram Sukh Chandra* (1905) 2 C. L. J. 318, disapproved from. *MAMATTA v. K. R. HIRZ* Muz. Co. (1921) 1 L. R. 44 Mad 810

s. 15—

See s. 4 . . . 1 L. R. 36 Mad. 403

See s. 5 . . . 1 L. R. 40 All. 75

See s. 6 . . . 1 L. R. 40 All. 665

See INSOLVENCY 1 L. R. 44 Calo. 835

Insolvency—

Grounds for dismissing petition Under the Provincial Insolvency Act, 1907, transfer of property by the debtor with intent to defraud his creditors or recklessly contracting of debts or giving unfair preference to any of his creditors or committing any other act of bad faith are grounds for refusing an absolute order of discharge but not grounds for refusing to make an order of adjudication. Where, therefore, a petitioner for a declaration of insolvency feigned ignorance about the existence of his account books and perjured about other matters: *Hill* that his petition could not be dismissed on these grounds, the object of the Legislature, by enacting the Insolvency Act, being to make it easier to obtain an order of adjudication. *Ex parte King & Davies*, L. R. 3 CA D. 467, *Ex parte Griggs & Adams*, L. R. 12 CA D. 430, and *Ex parte Tynne*, L. F. 15 CA D. 125 referred to. *ORWARDHART v. JAI NARAYAN* (1910) . . . 1 L. R. 32 All. 645

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—contd.

s. 15—contd.

2. — Insolvency—Debtor's application for adjudication—Inability to pay debts of amount to be proved A debtor's application to be adjudicated an insolvent cannot be dismissed on the ground that he could not satisfy the Judge that he was unable to pay his debts. *Kasi Kumar Das v. Gopi Krishna Ray* (1911).

15 C. W. N. 990

3. — Insolvency not made bond firm—Adjudication if may be refused *Quare* Whether if upon the facts before the Court it is clear to the Judge that the debtor applying for insolvency is not an insolvent he is bound to adjudicate him an insolvent. *Gurwardhar v. Jay Dharma*, 1 L. R. 32 All. 645, *Iday Chand Mehta v. Pim Kumar Khanna*, 15 C. W. N. 213 *Abdulla Khamriddin v. Dismat Kadamayy* 15 C. W. N. 211 and *Kali Kumar Das v. Gopi Krishna Ray*, 15 C. W. N. 990 referred to. *MURRI GOLAN HANNAH v. SHAHEER WAFER* All. (1912) 16 C. W. N. 833

4. — Application by debtor to be declared insolvent—Acts of bad faith, if ground for rejecting petition An application by a debtor to be declared an insolvent cannot be rejected on the ground of his having committed acts of bad faith. *Iday Chand Mehta v. Pim Kumar*, 15 C. W. N. 213, 12 C. L. J. 400, and *Khamriddin v. Kadamayy*, 15 C. W. N. 211, 12 C. L. J. 413 followed. *ABDUL KHAIR v. MAMATTA* Muz. Co. (1911) 17 C. W. N. 405

5. — Provincial Insolvency Act (III of 1907) ss. 15, 46, 46—Order for adjudication, if may be refused on ground of improper alienation of property by debtor—Fictitious statement of debt Neither an order for adjudication nor one dismissing a petition for declaring a person an insolvent can be treated as a decree between the parties in a contested or uncontested suit, and a creditor who did not oppose the debtor's application to be declared an insolvent need not be a party to an appeal preferred by the debtor under s. 46 of the Indian Insolvency Act against an order dismissing the application. Where an application by a debtor to be adjudged an insolvent was refused on the ground that the debtor had transferred a portion of his property in lieu of dower and had thus committed an act of bad faith: *Hill*, that questions of bad faith or improper dealing by the debtor with his property do not arise for consideration until after the order for adjudication has been made and the insolvent applies for final discharge, and the order for adjudication could not have been refused on the ground stated. *Iday Chand Mehta v. Pim Kumar Khanna*, 15 C. W. N. 213, and *Gurwardhar v. Jay Dharma* 1 L. R. 32 All. 645 referred to. *Abdumal v. District Judge of Benares*, 1 L. R. 32 All. 647, disapproved. That it was open to the opposing creditor to prove that the debt shown to be due to another creditor was fictitious so as to show that the petitioner's debts did not really amount to Rs. 500 as required by s. 5 of the Act. *RAMCHANDAN v. KADHOMI DAS* (1910)

15 C. W. N. 244

ss. 15, 16, 18, 20, 22, 46 and 52—Official Receiver's order dismissing insolvency petition—No appeal direct to

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—*contd.*ss. 15, 16, 18, 20, 22, 46 and 52—*contd.*

High Court—Practice—No interference in revision where other remedy open No appeal lies under s. 46, cl. (2), of the Provincial Insolvency Act to the High Court from the order of an Official Receiver dismissing an insolvency petition; but an appeal against orders passed by the Official Receiver lies, under s. 22, only to the District Court. The language of s. 22 read with s. 52, cl. (2), shows that such right of appeal is not confined to orders made under ss. 18, 19 and 20, but extends to all orders of the Receiver. *Obiter* An Official Receiver invested with the power mentioned in cl. (a) of s. 52 (1) has the power to dismiss an insolvency petition under s. 15. The Court will not interfere under s. 115, Civil Procedure Code, in a case where other adequate remedy was open. *CHIDAMBARAM v. NAGAPPA* (1912)

I. L. R. 38 Mad. 15

s. 16—

See s. 3 . I. L. R. 44 Mad. 524

See s. 4 . I. L. R. 38 Mad. 402

See s. 5 . I. L. R. 40 All. 75

See s. 6 . I. L. R. 40 All. 685

See s. 15 . I. L. R. 38 Mad. 15

See INSOLVENCY I. L. R. 42 Calc. 239

I. L. R. 44 Calc. 535

See LIMITATION ACT, 1908

s. 15. I. L. R. 42 Mad. 219

See MINOR . I. L. R. 42 Calc. 225

See RAILWAY RECEIPT

I. L. R. 38 Mad. 664

sub-s. (1)—Adjudication by Official Receiver—No order vesting property in Receiver, effect of—Action for money had and received, scope of—Privilege of plaintiff and defendant, necessity for—Nature of priority The Official Receiver in the insolvency of R put up for sale the debts of a firm in which R and the second, third and fourth defendants were partners, and the first defendant purchased them from the Receiver and afterwards recovered a debt due to the firm. The plaintiff having attached three fourths of the money so recovered by the first defendant in execution of a decree obtained by him against the second, third and fourth defendants for a debt due by the firm and having been appointed Receiver in the execution proceedings sued the first defendant to recover the said three fourths of the money as money had and received to the use of the second, third and fourth defendants. *Held*, that the plaintiff had no cause of action against the first defendant, because in an action for 'money had and received' there must be, as shown by the English decisions, privacy of a legally recognizable nature between the plaintiff and the defendant and no such privacy existed in this case and that the suit also failed as regards the shares of the second and third defendants by reason of their adjudications as insolvents prior to the attachment. Scope of the action for money had and received, pointed out, English and Indian cases reviewed. *See* *Clair v. Brougham*, [1914] A. C. 398, explained. *Sankar v. Govinda*, I. L. R. 37 Mad. 281, referred to. *Per* SADRIVA AYYAR, J. While privacy of contract between the parties is of course not necessary to sustain an

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—*contd.*s. 16—*contd.*

action for money had and received, there must be what might be called some privacy of a legally recognizable nature as such some knowledge of particular facts in the man who received the money and some mistake or ignorance of fact on the part of the man who paid the money or some relation of trust and confidence between them on which the Court could fasten as creating the relation of principal and agent (though by fiction) between the plaintiff and the defendant. *Per* OLDFIELD, J. *Obiter* It may be permissible in India as it is in England to sue only the solvent members of a firm when a decree is sought against it. *Hastings v. Ramabottom*, 6 Taunton, 179, referred to. *RAMASAMI NAIDU v. MUTHUSAMI PILLAI* (1918) . . . I. L. R. 41 Mad. 923

sub-s. (2)—Whether bar to the passing of a decree in a pending suit—Meaning of the words "remedy" and "commence any suit or legal proceeding" in the section, explained K C was adjudicated insolvent in January 1911. At that time he was defending a case for recovery of Rs. 69,346 on a mortgage deed. In spite of his adjudication he continued the defence of the suit and the first court decreed it against him. On appeal to the Chief Court the decree was modified to this extent that a preliminary decree for the sale of the mortgaged property was passed, but plaintiff was left at liberty to apply subsequently for a personal decree against K C in the event of the sale proceeds proving insufficient, to meet the mortgage debt. The sale proceeds did prove insufficient and the plaintiff moved the Court of first instance to take action under O XXXIV, r. 6 Civil Procedure Code, and a personal decree for the balance due issued against K C the defendant, who appealed against that decree. *Held*, that the application by the plaintiff under O XXXIV, r. 6, was not a new proceeding but a continuation of the original suit, and the decree passed thereon was not a "remedy" against the person of the insolvent and did not therefore contravene the provisions of s. 16 (2) of the Provincial Insolvency Act, 1907. *Held* further, that a decree is not a remedy for a civil wrong, but merely a step towards the remedy. The remedy is the benefit accruing to the creditor through the execution of his decree and that remedy he can secure only through the Insolvency Court by proving his debt. *Mamraj v. Bri Lal* (I. L. R. 34 All. 106), dissented from. *KISHAN CHAND v. BUKHA LAL*

I. L. R. 2 Lah. 95

Secured Creditor—Landholder and tenant—Suit for arrears of rent—Declaration of insolvency in force at date of suit A land holder is not, as regards an agricultural tenant, a secured creditor within the meaning of s. 16 (5) of the Provincial Insolvency Act, 1907. Although he possibly may be in a position to detain even whilst a declaration of insolvency is in force, he cannot without the leave of the Court sue for arrears of rent. *RAGHUPATH SINGH v. RAM CHANDAR* (1911) I. L. R. 34 All. 121

Civil Procedure Code (1908), s. 60—Insolvency—Attachment of half the salary of the insolvent One of the creditors of a person who had been declared an insolvent by the Small Cause Court of Cawnpore, but who had since obtained employment in the Government Press in

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—contd

s. 16—contd

Calcutta, applied to the Court for attachment of half the insolvent's salary for the benefit of his creditors. *Held*, that it was no valid reason for rejecting the creditor's application that its allowance would not leave the insolvent enough to live on. *Ram Chandra Neogi v. Shyama Charan Bose*, 18 C. W. N. 1050, and *Tulsi Lal v. Giraham*, 38 Indian Cases, 410, followed. *DUTT PRASAD v. LEWIS* (1918). I. L. R. 40 ALL 213

Effect of order of adjudication on institution of suits by creditors to set aside fraudulent alienations by insolvent. The effect of an order adjudicating a person an insolvent under s. 16 (1) of the Provincial Insolvency Act is to vest the administration of his estate including the realization of his assets under the control of the Court. Hence after such an order a creditor (whether decree holder or otherwise) is by s. 16 (3) (b) of the Act prevented from instituting without the leave of the Court of Insolvency, a suit to set aside a transfer made by the insolvent as being in fraud of creditors. *VASUDEVA KAMATH v. LAKSHMINARAYANA RAO* (1918). I. L. R. 42 Mad. 684

Mortgage executed, without objection on the part of either the receiver or the Court, by insolvent to pay off principal or only creditor—Heirs of insolvent not entitled to object. During the pendency of proceedings in insolvency, the insolvents, whose principal, if not the only, creditor was a mortgagee, executed another mortgage in favour of a third party and paid off the first mortgage. Neither the receiver nor the court in which the insolvency proceedings were took any objection to the execution of the second mortgage. *Held*, on suit brought by the second mortgagee on the mortgage in his favour against the heirs of the mortgagee that it was not open to the defendants to contest the suit upon the ground that the execution of the mortgage involved a breach of the insolvency law. *SRIAM SARUP NAND RAM*. I. L. R. 43 ALL 555

ss. 16 (c), 18 (3)—*Property alleged to be held by stranger in benami for insolvent if may be recovered without suit—Judge's power to order inquiry by Receiver.* Where a creditor of an insolvent alleged that certain Government promissory notes were being held by the insolvent's brother in benami for the insolvent and the insolvent's brother denied that the insolvent had any title to the Government promissory notes and alleged that they were his own property, and the Judge called for a report on the matter from the Receiver. *Held*, that it was open to the Judge to direct the Receiver to enquire and report to him for his own information. That on receipt of such report, it was for the Judge to consider whether upon the facts before him, he should direct the Receiver to bring a suit in order that the question of title may be decided or whether the case is so clear (that is to say, the title is not really in dispute) that it can be dealt with in the insolvency without the necessity of a suit. If the question of title be seriously in dispute the Judge should direct the Receiver to bring a suit to have the question determined. *SATYA KUMAR MUKHERJEE v. MANAGER, BENARES BANK, LD* (1917). 22 C. W. N. 700

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—contd

s. 16, sub-s. (2), cl. (a): ss. 27, 42, sub-s. (1).—*Direction for deposit in Court of one fourth of insolvent's monthly salary which exceeded Rs 40, if legal—Order for adjudication when can be subsequently annulled—“Salary” if “property” of insolvent—Jurisdiction of High Court to give directions regarding order of adjudication, when only the order annulling it is under appeal.* A debtor who was arrested in execution of a decree applied to be and was adjudged an insolvent. In the order of adjudication the insolvent was directed, pending realisation by sale of his assets, to pay a quarter of his monthly salary of Rs 100 a month into Court until the sum realised from him should equal one third of the debts for which the creditor had obtained a decree. Subsequently, the District Judge annulled the order of adjudication on the ground that the insolvent had failed to abide by the condition regarding payment of one fourth of his salary. *Held*, that the direction regarding the payment of one fourth of the insolvent's salary could not have been given under the Provincial Insolvency Act. The proper course for the District Judge would have been to direct the Receiver to arrange for payment to him of one half of the salary earned by the insolvent, “salary” being “property” of the insolvent within the meaning of s. 16, sub-s. (2), cl. (a), only one half of the salary which exceeded Rs 40 a month being exempt from attachment under s. 60, Civil Procedure Code. That the subsequent order of the District Judge annulling the order of adjudication could not have been made under sub-s. (1) of s. 42, the conditions required by that section being absent in the present case. That when setting aside, at the instance of the insolvent the order of the lower Court whereby it annulled the adjudication and which was the only order under appeal, it was open to the High Court to consider what directions should be given regarding the order of adjudication which was modified to the extent that the condition imposed was discharged, the District Judge being ordered to give the necessary direction according to law. *RAM CHANDRA NEOGI v. SHYAMA CHARAN BOSE* (1913). 18 C. W. N. 1052

ss. 16 (2 and 6) and 38—*Insolvency—Date of vesting of insolvent's property in the Receiver—Alienation of property by insolvent between the dates of the representation of the petition and the order of adjudication.* The effect of sub-s. (2) and (6) of s. 16 of the Provincial Insolvency Act, 1907, is that while no vesting of the property of the insolvent in the Receiver takes place until an order of adjudication is made and it is order of adjudication which vests the property *per se* the less by a legal fiction, the vesting of the property of the insolvent in the Receiver must be deemed to have taken place when once an order of adjudication has been made at the date of the presentation of the petition, or, in other words, the commencement of the insolvency. It follows, therefore that the insolvent cannot make a valid alienation of his property between the dates of the presentation of the petition and the order of adjudication. *T. V. Sankaranarayanan v. Alogri Aiyar*, 49 Indian Cases, 233, referred to. *SHRI NATH SINGH v. MUKESH RAM*. I. L. R. 42 ALL 433.

ss. 16 (2), 18 (2), and 19 (2)—*Adjudication of a person as insolvent—Necessity of an*

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—*contd.*ss. 16 (2), 18 (2), and 19 (2)—*contd.*

order appointing a person as Receiver of the insolvent's estate. S 18 (2) of the Provincial Insolvency Act (III of 1907) contemplates on every adjudication of insolvency an order by the Court appointing a Receiver for the insolvent's estate and without such an order the estate does not vest in the Official Receiver under s 19 (2). Hence a sale of the estate by the Official Receiver without such an order does not give the vendee any title. *Official Receiver of Trichinopoly v. Somasundaram Chetty* (1916) 30 M L J 415, followed *Mothuswami Swamikal v. Somoo Kandiar* (1920) I L R. 8. 43 Mad. 869

Sub-s 4—*Muhammadan law*—Bequest to an heir—Consent of other heirs to bequest—Such consent not affected by insolvency of other heirs—When the consent of the heirs of a Muhammadan to a bequest in a will in favour of an heir has been signified, the legatee takes from the testator and the consent does not operate as a transfer by the heirs of a right which has in the meantime vested in them. Such consent would not be affected by the fact of the consenting heirs being insolvents. *Aziz-un-Nissa Bibi v. Chirine*

I L R. 42 All. 593

ss 16 (6), 36—

See *INSOLVENCY* I L R. 46 Calc. 991

Order of insolvency, if relates back to date of presentation of petition—Transfer made within two years of date of petition, if comes within s 36—The provisions of s 36 are to be read with s 16 (6) of the Act and an order of adjudication relates back to and takes effect from the date of the presentation of the petition for the purpose of making the properties of the insolvent liable to the creditors, and a transfer made within two years of the date of the petition comes within the provisions of s 36. *Rakhal Chandra Purkait v. Sudhishdro Nath Bose*

24 C. W. N. 172

ss 16, 22—*Mortgage of factory—*

Decree for sale—Appointment of receiver to get in profits for benefit to decree holder—Insolvency of judgment-debtor—Profits appropriated by creditors of insolvent—Suit by mortgagee decree holder to recover profits—One J L being the mortgagee of a cotton ginning factory, obtained a decree for sale on his mortgage, but, instead of the factory being sold in execution of this decree, a receiver was appointed for the period of one year by consent of the decree-holder. The receiver was to work the factory, receive the profits and hand them over to the decree holder. Notwithstanding that no fresh order was passed by the executing court, the receiver remained in possession of the factory for more than two years. He received the profits, but in accordance with the local practice of the trade made them over to a certain association for the collection and distribution of the profits of cotton ginning factories. Meanwhile the mortgagor became insolvent, and creditors holding simple money decrees against him proceeded to attach the profits of the factory in the hands of the association, and the profits were divided rateably between these creditors. The mortgagee then sued to recover the profits of the factory earned whilst the receiver had been in charge, making defendants (i) the receiver

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—*contd.*ss. 16, 22—*contd.*

originally appointed by the Court, (ii) the creditors of the insolvent mortgagor and (iii) the receiver in insolvency. *Held*, that the appointment of the original receiver having been made with the consent of the decree holder and the judgment debtor was not made without jurisdiction, that the profits of the factory for the year for which the receiver was appointed were assignable entirely to the satisfaction of the mortgage decree and that the suit as against the receiver in insolvency was not barred by either s 16 or s 22 of the Provincial Insolvency Act 1907. *In re Patts Ex parte Taylor*, [1893] 1 Q B 618, and *Groshaw v. Lyndhurst Ship Company*, [1897] 2 Ch D 151, distinguished. *Jitunku Lal v. Puri Lal* (1916) I L R. 39 All. 204

ss. 16, 31—*Civil Procedure Code, 1908*, O XXXI, r 6—Application for decree over against two judgment debtors one of whom had been declared insolvent—Where one of two mortgagors against whom a decree under O XXXIV, r 6, of the Code of Civil Procedure was otherwise obtainable had been declared an insolvent under the provisions of the Provincial Insolvency Act, 1907, but the other had not. *Held*, that the decree holders could not be granted a decree over as against the insolvent but could only prove their debt in the insolvency proceedings. *Bartley v. Dubouze and Company*, L R 7 Q B D 413 referred to. *Mamraj v. Beli Lal Chakravart* (1911) I L R. 34 All. 106

ss. 16 and 34—

Decree holder and Receiver—priority between title of, in respect of assets realized by date of adjudication—S 16 of the Provincial Insolvency Act, 1907, is controlled by s 34 of that Act. The title of a decree holder in respect of assets realized before the date of the order of Insolvency prevails over the title of a Receiver appointed on or after such date. *Pati Pam v. Sreemath Prasad* 2 Pat L J. 235

Execution of decree against insolvent during pendency of insolvency proceedings—Right of decree holder in respect of property attached and sold and money attached before adjudication—Whilst proceedings in insolvency under the Provincial Insolvency Act 1907, were pending certain immovable property of the insolvent was attached and sold in execution of a decree against him, and the proceeds deposited in Court for the benefit of the decree holder. The decree-holder also attached certain moneys which had been paid into Court to the credit of the insolvent but up to the date of the order of adjudication had taken no further steps to possess himself thereof. *Held*, that the decree holder was entitled as against the receiver to the benefit of the proceeds of execution of his own decree, but not to the moneys of the insolvent which he had attached. *Prasack v. Madan Goyal*, I L R 29 Cole 428 followed *Sri Chand v. Murali Lal* (1912)

I L R. 34 All. 628

ss. 16 and 35—

See *TRANSFER OF PROPERTY ACT, 1882*

s 56 I L R. 42 All. 236

ss 16, 36, 43—*Insolvent—Property of insolvent which does not vest in the receiver—Cen*

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—*contd.*—ss. 16, 36, 43—*contd.*

pancy holding—House of agriculturist. A person who was an agriculturist by occupation was adjudicated an insolvent. Shortly before his insolvency he had granted a lease of his occupancy holding. The zamindar was the principal creditor. The District Judge ordered the land to be surrendered to the zamindar and the insolvent's house to be sold. *Held* that the property of the insolvent which is exempted by an enactment for the time being in force from liability to attachment and sale in execution of a decree does not vest in the Court or the receiver, therefore the District Judge had no jurisdiction to direct the receiver to surrender the tenancy and to set aside the lease. Further the order directing the sale of the house was illegal inasmuch as the house being that of an agriculturist and being exempted from attachment and sale in execution of a decree, never vested in the Court or the receiver. *SAGAR MAL v RAO GURRAJ SINGH* (1916)

I. L. R. 39 ALL 223

—ss. 16, 41, 42, 45—*insolvent—Assets declared by receiver not realisable—Discharge of insolvent—Subsequent sale by insolvent of assets declared unrealisable.* Part of the apparent assets of an insolvent consisted of mortgage rights in certain property. These rights were not dealt with by the receiver because he considered that it would be impossible to realize anything on them. The insolvent was accordingly discharged. Thereafter the insolvent managed to sell the mortgage rights which had been declared unsaleable by the receiver. *Held* that in the circumstances the sale was good and passed whatever rights the discharged insolvent had to the purchaser. *SHYAMNANDAN v KASHT* (1916)

I. L. R. 39 ALL 223

—ss. 16, 47, 12, cl. (3), and 51—*Insolvency Rules XXI, cl. (3) and V, cl. (2) and (3)—Creditor's Petition by creditor to adjudicate debtor an insolvent—Service of notice on agent, if sufficient—No notice sent by Court if rough registered post, effect of—Acts of insolvency committed by agent, if sufficient—Difference between English and Indian Law.* Where a petition was filed in a District Court by a creditor praying for an order to adjudicate his debtor an insolvent under s. 16 of the Provincial Insolvency Act and a notice of such petition was served on his local agent with a general power of attorney from the debtor who was residing outside the jurisdiction of the Court: *Held* that the service of notice on the agent was in law sufficient though no notice was sent by the Court to the debtor through registered post. Effect of s. 47 of the Provincial Insolvency Act, and r. XXI, cl. (2) and (3) and r. V, cl. (2) of the Insolvency Rules, considered. Under s. 4 of the Provincial Insolvency Act, a debtor can be adjudicated an insolvent upon acts of insolvency committed by his agent. In the matter of *Brimmohan Dubay* 2 C. W. N. 306 referred to. Under the English law, an act of bankruptcy must be a personal act or default of the debtor and could not be committed through an agent. *Ex parte Blain*, 12 Ch. D. 695, and *Cooke v Charles A. Toxler Co.*, [1907] A. C. 102. Though, under s. 4 of the Provincial Insolvency Act, an adjudication of the debtor as an insolvent relates back to the

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—*contd.*—ss. 16, 47, 12, cl. (3), and 51—*contd.*

date of the petition, the power of the debtor's agent under a general power of attorney ceases only with reference to his dealings with the debtor's property and the carrying on of the trade but not with reference to other acts of the agent and one of those acts must be taken to be to stave off bankruptcy orders against the principal. *In re Pollitt* [1893] 1 Q. B. 455 referred to. *KALIANJI v THE BANK OF MADRAS* (1915)

I. L. R. 39 Mad. 693

—ss. 16 and 56—*Act (Local) No. 11 of 1901 (Agra Tenancy Act), ss. 103 and 20—Insolvency—Occupancy holding—Position of insolvent occupancy tenant.* An occupancy holding being altogether outside the provisions of the Provincial Insolvency Act, 1907, that Act is no bar to a suit for arrears of rent brought by the zamindar pending proceedings in insolvency. *Roohmeh Singh v. Ram Chander*, I. L. R. 34 All 121, overruled. *KALKA DAS v GANJU SINGH*

I. L. R. 43 All. 510

—s. 18—

Sec s 3

I. L. R. 44 Mad. 524

Sec s 15

I. L. R. 38 Mad. 15

Sec s 16

22 C. W. N. 700

see Receiver

I. L. R. 43 Mad. 869

see Receiver

I. L. R. 40 Cal. 678

1. —*Sole deed executed benami by the insolvent—Proceeds entitled to remove the so-called purchasers from possession of properties sold—Indian Limitation Act (X of 1908), Sch. I Art. 91.* Where insolvents, in order to save their property from their creditors, had executed fictitious sale deeds thereof in favour of relations, but never gave, and never intended to give, the so-called purchasers possession: *Held* that such transaction was no bar to the receiver taking possession of the property comprised in the said sale-deeds as the property of the insolvents. *Pathermal Chetty v. Munonda Srinivas* I. L. R. 35 Cal. 551, referred to. *JAGAT SINGH v RAMANAND SINGH* (1917)

I. L. R. 39 All. 633

2. —*Decree obtained by insolvent before adjudication—Attachment of decree—Effect of subsequent adjudication on right of attaching creditor to execute decree.* Where a decree has been attached by a creditor of the decree holder and subsequently the decree-holder is adjudged an insolvent, the right to execute such decree vests in the receiver in insolvency, and is not retained by the attaching creditor. *Faghwanth Das v. Sundar Das Ahluja*, I. L. R. 42 Cal. 72 referred to. *DAMPAT SINGH v. MICHAEL ALI KHAN* (1917)

I. L. R. 40 All. 88

3. —*Creditor alleging property of insolvent being kept in tenami by his wife—Court if may summarily enquire into allegation—Proper procedure—Court to authorise Receiver to sue on creditor putting him in funds and indemnifying him for costs.* Where a creditor of an insolvent applied to the District Judge complaining that the insolvent had concealed certain properties by having them vested in the name of his wife and prayed that certain persons and the insolvent and his wife be examined in regard to the matter:

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s. 18—contd.

Held, that such a summary inquiry is not supported by any provision of the Provincial Insolvency Act; and the Judge was right in refusing to order such an inquiry. But the creditor could not be told to bring a suit for title against the alleged *benamidar*. The proper procedure was for the creditor to apply to the Court to direct the Receiver to institute and continue a suit against the wife of the insolvent to recover the property in question, making it a condition precedent that the creditor so applying put the Official Receiver in funds and properly indemnify him against the costs of the suit, and the Court should make such an order if in its opinion the creditor has a *prima facie* case. *JOY CHANDRA DAS v MAHOMED AMIN* (1917) . . . 22 C. W. N. 702

ss. 18 (3), 20—Transfer by insolvent

challenged as benami—Judge, if may order transferee to be dispossessed without suit—Judge, if may direct Receiver of insolvent's properties to hold a judicial inquiry—Receiver may report administratively—Judge when he directs a suit should order creditor to put Receiver in funds and indemnify him Where a transfer, dated the 16th March 1913, by a person who was adjudicated an insolvent on 11th February 1916, having been attacked in the interest of his creditors as *benami*, the Judge ordered the Receiver appointed to take over the insolvent's properties (who was not the Official Receiver appointed by the Local Government under s. 19 of the Provincial Insolvency Act) to enquire and report, and the Receiver after holding an enquiry of a judicial character submitted his report, which however the Judge did not accept, but directed the enquiry to be reopened in Court. *Held*, that the duties of an ordinary Receiver under s. 20 of the Act are executive in their character and the Receiver is not a Judicial Officer and has no jurisdiction to make anything in the nature of a judicial inquiry. S. 18 (3) of the Act is not intended to authorise the removal of any person whom the insolvent himself could not remove without the aid of legal proceedings. When the *benami* character of the title is admitted or when the veil is transparent, and the insolvent is in substantial beneficial possession, the Court may order the delivery of the property to the Receiver. But where the alleged *benamidar* is in possession claiming adversely to the insolvent, then any claim made by the Receiver or the creditor that the property is really the property of the insolvent can only be enforced by suit in the regular court. The Court may direct an administrative inquiry by the Receiver for the purpose of informing his mind and deciding what action should be taken, and if in the result he is of opinion that a suit should be brought, he should make the order on terms requiring the creditor at whose instance the suit is directed to put the Receiver in funds and indemnify against the costs of the suit. —*NIL MOVI CHOWDHURY v DURGIA CHAKRAVARTY* (1918) . . . 22 C. W. N. 704

ss. 18, 20 (a)—Receiver, sale of insolvent's properties by—Procedure Sales by the Receiver in whom the property of an insolvent vests under s. 18 of the Provincial Insolvency Act are really sales by the owner, and may be held either by public auction or by private treaty. The procedure for sales in execution of decrees

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ss. 18, 20 (a)—contd.

under the Civil Procedure Code does not apply to them. —*ENTAZUDDI SHAIKH v RAM KRISHNA BANIK* . . . 24 C. W. N. 1072

ss. 18, 20 (a) (c) and 23—*Not vesting order in favour of Receiver—Order to Official Receiver to adjudicate and administer the insolvent's estate, effect of* On an application for adjudication of insolvency the District Court passed the following order:—"The petition is transferred to the Official Receiver for adjudication and for the administration of the estate." After adjudication by the Receiver no separate order vesting the insolvent's estate in the Receiver was passed by the District Court under s. 18 of the Provincial Insolvency Act. *Held*, that by the combined effect of s. 20 (a) and (c) and s. 23 of the Act, the order to administer the estate empowered the Receiver to sell the insolvent's estate. —*Muthuswami Swamiar v. Somoo Kandiari*, (1920), 1 L. R. 43 Mad. 869 distinguished. —*SUBBA AIYAR v RAMASWAMI AIYANGAR* (1921) . . . I. L. R. 44 Mad. 54

ss. 18, 36, 47—*Power of Court to dispossess third person of property belonging to an insolvent—Inquiry as to ownership of property alleged to belong to the insolvent—Procedure* A Court exercising jurisdiction under the Provincial Insolvency Act, 1907, has power to inquire whether property in the possession of a third party and alleged by the receiver to be property of the insolvent is really so or not, and if it finds that such property is the property of the insolvent, to order its delivery to the receiver. But in making such an inquiry the Court should follow the procedure of a Civil Court in a civil suit, should require the receiver and the party in possession to state their respective cases in writing, should fix issues, and should give the parties an opportunity of producing evidence. —*BAKSHIDAR v KHARAGIR* (1914) . . . I. L. R. 37 All. 65

s. 19 (2)—

See s. 16 (2) . . . I. L. R. 43 Mad. 869

ss. 19—20, suit against a Receiver

—Necessity of notice—

See CIVIL PROCEDURE CODE, 1908, ss. 2 AND 80 . . . I. L. R. 44 Bom. 895

s. 20—

See s. 2 . . . I. L. R. 40 Calc. 678

See s. 15 . . . I. L. R. 33 Mad. 15

See s. 18 (3) . . . 22 C. W. N. 704
24 C. W. N. 1072

ss. 20, 22—*Properties advertised for sale by the Official Receiver as subject to mortgage—Change in the sale proclamation on the day of sale—Sale free of incumbrance—Irregularity vitiating the sale* S. 22 of the Provincial Insolvency Act gives unfettered discretion to the Court to set aside a sale held by the Official Receiver if the change in the conditions of the sale proclamation had the effect of preventing intending bidders from coming forward. —*In re Bhukhandas*, 7 Bom. L. R. 954, distinguished. —*Ex parte Lloyd, Pe Peters*, 47 L. T. 164. A creditor who is entitled to a dividend in respect of the sale of the property of the insolvent is a person aggrieved if the decision goes against him. —*In re Lau* Ex parte, Board of Trade, (1884) 2 Q. B. 305, and *ex parte Official Receiver*, 15

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ss. 20, 22—contd.

Q. B. D. 174, followed *THIRUVENKATACHARIAR v. THENTAYIAMMAL* (1915) I. L. R. 39 Mad. 479

ss. 23, 22, 43—*Civil Procedure Code* (1908), O. XXI, r. 58—*Insolvency—Property taken by receiver as property of insolvent—Objection by third party claiming to be owner—Procedure—Appeal* A receiver appointed under the Provincial Insolvency Act, 1907, took possession at the instance of one of the creditors, of certain property which was believed to be that of the insolvent. A third party came into Court and applied under O. XXI r. 58, of the Code of Civil Procedure, claiming the property as his, and when his application was rejected appealed to the High Court. *Held*, that the applicant's proper remedy was under s. 22 of the Provincial Insolvency Act, and that an appeal did not lie as of right, but only by leave of the District Court or of the High Court. *Quære* Whether an Additional District Judge, to whom a matter under the Provincial Insolvency Act had been made over by the District Judge was a District Court within the meaning of the Act. *MUL CHAND v. MURARI LAL* (1913)

I. L. R. 36 All. 8

ss. 20, 47—*Sale by receiver of property alleged to belong to an insolvent—Property in possession of third person—Obstruction by such third person—Summary enquiry by District Judge—Order directing delivery of possession, irregularity of—Proceedings in s. 47 of the Act, meaning of* Certain property alleged to belong to an insolvent was sold by the receiver under s. 20 of the Provincial Insolvency Act. The purchaser whilst attempting to take possession, was obstructed by the appellants who claimed to be in possession of the property as owners thereof. The District Judge, purporting to act under s. 47 of the Act, after a summary enquiry ordered possession to be given to the purchaser. *Held*, that the District Judge had no jurisdiction to pass such an order as s. 47 only lays down the procedure to be followed by the Insolvency Judge with regard to proceedings under the Act. *Held*, also, that the word 'proceedings' in s. 47 of the Act means the proceedings of the Court and not the act of the receiver under s. 20 of the Act. *Manaloonnessa Bibee v. Akhatoonnessa Bibee*, I. L. R. 21 Cal. 479, and *Gulam Hossein Cassim Arif v. Fatima Begum*, 6 I. C. 300, explained. *Choda Lal v. Luckman Parshad*, 37 I. C. 339, approved. *NARASIMHAYA v. VENKATACHARYA* (1917) I. L. R. 41 Mad. 440

s. 21—whether Insolvency Court can proceed against the land of an insolvent who is a member of an agricultural tribe—

See *INSOLVENCY*. I. L. R. 2 Lah. 78

s. 22—

See s. 2. I. L. R. 40 Mad. 752

See s. 15. I. L. R. 38 Mad. 15

See s. 16. I. L. R. 39 All. 204

See s. 20. I. L. R. 39 Mad. 479

I. L. R. 36 All. 8

1. — *Status of any person to bring conduct of Official Receiver to notice of Court to rectify* *Debtor as an insolvent* *Held*, that any

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—contd.

s. 22—contd.

person, and not merely the insolvent or the creditors or any other aggrieved person, can take action to bring the conduct of a Receiver in any particular respect to the notice of the Court with a view to having his act or decision in any particular matter reversed or modified. Also that the Court has inherent powers to rectify the Receiver's errors or mistakes or to reverse or modify his acts or decisions. *Hanshur v. Rakhal Das*, 18 C. W. N. 266, followed. *Held*, further, that where the Court acts upon information supplied by persons who are outside the scope of s. 22 of the Insolvency Act, the time-limit prescribed in that section would be no bar to action being taken by the Court. *DATTA RAM v. DEOKI NAYDAN*

I. L. R. 1 Lah. 307

2. — *Receiver of adjudicated insolvent's estate, issue of sale proclamation by—Property belonging to stranger included in sale—Right of stranger to move Court—Stranger, if a person 'aggrieved'—Limitation—Inherent power of Court to restrain its officer from acting in excess of authority* When during the pendency of insolvency proceedings against the judgment-debtor, the decree holder executed his decree which was a mortgage decree and in execution purchased the mortgaged properties and the judgment-debtor was subsequently adjudicated an insolvent and a Receiver was appointed who sent to Court a sale proclamation which included the properties purchased by the mortgagee, and more than 21 days after the sale proclamation was served the mortgagee presented a petition in Court urging that the Receiver had no authority to sell the properties purchased by him: *Held*, that the mortgagee was not a person 'aggrieved' by the Receiver's act within the meaning of s. 22 of the Insolvency Act and his objection was not subject to the limitation provided in that section. That the Court was competent to deal with the objection, as the Court has inherent authority to review the conduct of a Receiver appointed by it and to make an appropriate order so that a stranger may not be prejudiced by any act of the Receiver in excess of his authority. That it was competent to such stranger to bring any such act of the Receiver to the notice of the Court and it was the duty of the Court to inquire into it. "A person aggrieved" is a person who has suffered a legal grievance—a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully affected his title to something and does not mean a person who has lost a benefit which he might have obtained if an order had been made. *Ex parte Subbatham*, 14 C. D. 455, referred to. *HANSUR v. RAKHAL DAS GHOSH* (1913)

18 C. W. N. 266

3. — *Attachment of property as that of an insolvent—Decision of Insolvency Court as between rival claimants to property attached that the property belonged to one of the claimants—Suit by the other to recover possession—Res judicata* *Held*, that the decision of an Insolvency Court, as between two rival claimants to property attached by a receiver as the property of the insolvent that the property belongs to one or the other claimant does not operate as res judicata in respect of a suit on title by one claimant

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—contd

s. 22—contd

ant against the other for the recovery of such property *HUKUMAT RAI v PADAM NARAY (1917)* . . . I. L. R. 39 All 353

Insolvency—

Execution of decree—Attachment—Objection of claimant to attach property disallowed—Judgment debtors declared insolvent—Suit by claimant for declaration of title Certain property was attached in execution of a decree *M.*, claiming that the property attached belonged to her and not to the judgment-debtors filed an objection to the attachment. Her objection was disallowed. She then filed a suit for a declaration of her title, and, as the judgment-debtors had meanwhile been adjudicated insolvents, joined as a defendant the receiver of their property. *Held*, that the suit was maintainable and was not barred by s. 22 of the Provincial Insolvency Act, 1907. *Mul Chand v Mewar Lal, I I P 36 All 8*, distinguished, *Jhanku Lal v Puri Lal, I L R 39 All 204*, referred to. *MOHNI R BALI NATH (1918)* I. L. R. 40 All 582

Insolvency—Dismissal of objection to attachment of property by receiver—Subsequent suit by objector for declaration of title—Res judicata Upon certain property, namely, a share in a house, having been attached by a receiver in insolvency as the property of the insolvent, a claim thereto was preferred by the son and nephew of the insolvent who filed an application under s. 22 of the Provincial Insolvency Act, 1907. Evidence of the title of the applicants was produced before the Insolvency Court, but the application was rejected and an appeal from the order of rejection was dismissed on the merits. The applicants then filed a regular suit for a declaration of their title to the same property. *Held*, that the suit was barred by reason of the previous order of the Insolvency Court. *Pala Ram v Jujhar Singh, I L R 39 All 676*, referred to. *IRSHAD HUSAIN v GOPI NATH (1919)* . . . I. L. R. 41 All 378

s. 22, 46—

See CIVIL PROCEDURE CODE (1908), s. 11 . . . I. L. R. 39 All 626

Person aggrieved—Right of appeal—Necessary parties *Held*, that any creditor or any other person who is a creditor of an insolvent has no locus standi in an application in the Insolvency Court made against the estate of the insolvent, represented by the receiver, by a person claiming adversely to the insolvent's estate. He has, therefore, no right of appeal against the decision on such an application. *Ex parte Subbatham, 14 CA D 468*, and *Bali v Vaid Lal 33 Indian Cases 773*, referred to. *Kelokey Churan Banerjee v Srimanthy Sarat Kumari Debi, 20 C R N 993* distinguished. *JHABEA LAL v SHRI CHARAN DAS (1916)*

I. L. R. 39 All 152

Appeal—Per son aggrieved. In the course of proceedings in insolvency before a District Judge the insolvent filed an application in court complaining of a sale of property which had been held by order of the receiver and urging that it should not be confirmed. His objections having been disallowed and the sale confirmed, the insolvent appealed

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—contd

ss 22, 45—contd

to the High Court, having obtained leave to appeal under s. 46 (3) of the Provincial Insolvency Act, 1907. *Held*, that no appeal lay, inasmuch as the insolvent could not be held to be a "person aggrieved" in the legal sense of the term, and the fact that he had obtained leave to appeal from the Court below could not give him a right which was not conferred by the Act. *Jhabba Lal v Shri Charan Das, I L R 39 All 152*, *Ladu Ram v Mahabir Prasad, I L R 39 All 171*, *Ex parte Sheffield, 10 CA D 434*, and *In re Leabitter 10 CA D 389*, referred to. *SARHAWAT ALI v RADHA MOHAI (1918)* . . . I. L. R. 41 All 243

ss. 22, 36, 52—Limitation Act (IX of 1908), s. 5—Insolvency—Application to Court to rescind act of receiver—Limitation. *Held*, that s. 5 of the Indian Limitation Act 1908, does not apply to applications contemplated by s. 22 of the Provincial Insolvency Act, 1907. *Droopad v Hira Lal, I I R 34 All 496*, distinguished. *THAKUR PRASAD v PANTO LAL (1913)*

I. L. R. 35 All 410

s. 23—

See s. 18

I. L. R. 44 Mad. 547

Insolvency—Attachment of applicant's property prior to adjudication—Effect of adjudication on the attachment After an adjudication in insolvency, an attachment of property, though made before the adjudication, ceases to have any effect, and the property of the insolvent vests in the receiver, who is the person to maintain all proceedings. Where no receiver is actually appointed the Court is the receiver under s. 23 of the Provincial Insolvency Act. *GORIND DAS v KARAN SINGH (1917)*

I. L. R. 40 All 197

ss. 23 and 25—Where a plaint is returned under s. 23 the High Court will not interfere under s. 25 nor s. 115 of the Civil Procedure Code nor s. 107 of the Government of India Act unless the Court of first instance has exercised its discretion ignorantly or perversely or has refused to exercise it and thereby caused injury to the parties which would be irreparable if not set right. *GANGA PRASAD v NANDU RAM*

I. Pat L. J. 465

ss. 24, 26—Insolvency—Application by a creditor to have his name entered in the schedule of creditors—Right of the scheduled creditors to make objections—Revision. Creditors whose names are already in the schedule prepared under s. 24 of the Provincial Insolvency Act, 1907, are entitled to be heard before the debt of a creditor who comes in at the last minute under s. 24 (3) of the Act is entered in the schedule. *ALLAHABAD BANK LTD v MURLIDHAR (1912)* . . . I. L. R. 34 All 442

ss. 24, 26, 36, 52—Rules—Official Receiver—Delegation of powers—Framing of schedule by Receiver—Enquiry, nature of—Order of Receiver, if judicial or final—Entry of name of a creditor in schedule—Subsequent application by Receiver to Court to expunge name—Power of Court, to entertain application. An Official Receiver under the Provincial Insolvency Act in framing a schedule of creditors, does not decide judicially or finally upon contested claims. Where, therefore, an Official Receiver passed an order upon the claim of a creditor of an insolvent to rank as a secured

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ss 24, 26, 36, 32—contd.

creditor under a mortgage which was disputed by another creditor, the action of the Receiver amounted only to an entry of the name of the creditor in the schedule framed under s. 24 of the Act, and did not preclude the Court from entering an application by the Receiver under ss 26 and 36 of the Act to expunge the name of the creditor from the schedule. *ANADINSHAW MAHAIKAR v THE OFFICIAL RECEIVER, TINSVELLY* (1917) . . . I. L. R. 41 Mad. 30

ss 21, 27, 47—

See INSOLVENCY I. L. R. 43 Cal. 57

s. 26—

See s. 4 I. L. R. 36 Mad. 402

See s. 21 . . . I. L. R. 34 All. 442

I. L. R. 41 Mad. 30

s. 27—

See s. 16 (*) (a) . . . 18 C. W. N. 1052
I. L. R. 43 Cal. 57

—ss 28, 33, 24—*Proposal for composition subsequent to adjudication of insolvency rejected by District Judge—Private arrangement with creditors and payment in accordance therewith—Subsequent petition by creditors alleging misdeeds by misrepresentations—Such creditors are entitled to prove claim as on date of adjudication on deposit in Court of sums received by them—Person making payment to such creditors, if entitled to be substituted in place of creditors—Duty of Court to prepare schedule of creditors and debts After being adjudicated insolvent the Appellants proposed a scheme for composition which was rejected by the District Judge. They subsequently represented to the Court that a majority of the creditors had accepted from one M half their respective dues in full satisfaction of their claims as suggested in the scheme for composition. These creditors subsequently filed petitions in Court stating that they had been induced by false and fraudulent misrepresentations of the insolvents to accept from them half of the principal sums due to them and prayed that on payment by them into Court of the said sums they should be permitted to prove their claims—Held—That in view of the provisions of ss. 28 and 33 of the Act these transactions could not be recognised in insolvency proceedings and the petitioning creditors were entitled to prove their claims as they stood on the date of adjudication. That the framing of the schedule of creditors and debts under s. 24 of the Act is the duty of the Court which is to decide on each claim on evidence and in case of doubts after hearing necessary parties. *BEHARY LAL SIKDAR v. HANSMAN DAS CHAKMAL* 25 C. W. N. 137*

s. 30—

See SET-OFF . . . I. L. R. 45 Bom. 1219

s. 31—

See s. 16 . . . I. L. R. 34 All. 106

—“Secured creditor”—

Insolvency—Agreement appointing creditor agent for sale of debtor's goods—Proceeds to be paid to creditor. The owners of a printing and publishing business who owed money to a bank entered into an agreement with the bank, the substance of which was that all books then in stock and all

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s. 31—contd.

books to be published thereafter were to be made over at once to the bank; that a commission at a certain rate was to be allowed to the bank on the sale of the books, and that the sale-proceeds of the books were to be credited to the debtor's loan account every month after deducting the commission due to the bank. There was also other clauses, and finally one item Charan Shukul agreed to act on behalf of the bank as sole agent for the sale of the debtor's books. *Held*, that the bank was, on this agreement, entitled to rank as a secured creditor of the owners of the printing and publishing business in the insolvency of the latter. *ALLAHABAD TRADING AND BANKING CORPORATION, Ltd v. SHULAM MOHAMMAD* (1915) . . . I. L. R. 37 All. 283

s. 34—

See s. 16 . . . I. L. R. 34 All. 625

2 Pat. L. J. 235

See INSOLVENCY I. L. R. 42 Cal. 289

1. —Attachment before judgment—Plaintiff obtaining decree if executed on money deposited to have attachment withdrawn—Defendant adjudicated insolvent before money could be realised in execution of decree—Receiver in insolvency if may claim money deposited. Where defendant's properties were attached before judgment in plaintiff's suit but the Court directed the attached properties to be released from attachment on the defendant's paying Rs. 500 as cash security, and after the same was paid and the properties released, the defendant was adjudged an insolvent under Act III of 1907, but not before the plaintiff's suit was decreed. *Held*, that the plaintiff acquired no lien or charge upon the money deposited as security for getting the attachment before judgment withdrawn, and the Receiver in insolvency was entitled to have the money paid to him. The money not having been realised in execution of a decree prior to the adjudication order, s. 34 of Act III of 1907 did not apply. *PROMOTHA NATH CHAKRAVARTI v. MONTE MOHAR SEN* (1913) . . . 19 C. W. N. 1200

2. —Decree for sale of certain property was obtained by one of the creditors—Prior to sale judgment-debtor was adjudged insolvent—Position of other creditors. R. 34 of the Provincial Insolvency Act was intended to put the creditors of the insolvent who have not actually attached the property before the date of the order of adjudication in as good a position as creditors of the insolvent who but for his insolvency would have been entitled to a rateable distribution of the assets realised on an execution sale. Certain property was attached before judgment and a decree was subsequently obtained for its sale but prior to a sale actually taking place the judgment debtor was adjudged an insolvent. *Held*, that as the order of adjudication was passed prior to the sale of the property it must be regarded as the property of the judgment-debtor and as such was available to the general body of creditors. *KANAI NATH v. KANHAIA LAL SHARMA* (1917) . . . I. L. R. 37 All. 452

3. —Right of execution creditor to assets realised before adjudication. Where the assets have been realised in the course of execution by sale or otherwise as mentioned in s. 34

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—contd

s. 34—contd

before the date of the order of adjudication an execution creditor is entitled to the benefit of the execution against the Receiver **GURAN GANDA CHARAN SAHA v TOYEBUDDIN AHMED** (1918) 23 C. W. N. 461

ss 34, 35—Application for declaration of insolvency—Property of applicant attached—Power of Insolvency Court to stay proceedings in execution An Insolvency Court has no power to interfere with execution proceedings pending in another Court against a person who has filed his petition to be declared insolvent, at least, until either the debtor has been declared insolvent or until a receiver has been appointed. **ANUR KUMAR v KESHO DAS** (1917)

I. L. R. 39 All. 547

ss 34, 35, and 37—

See INSOLVENCY PROCEEDINGS

3 Pat. L. J. 456

s. 35—

See TRANSFER OF PROPERTY ACT, 1882, s. 56 I. L. R. 42 All. 336

See s. 34 . . . I. L. R. 39 All. 547

s. 36—

See s. 3 . . . I. L. R. 44 Mad. 524

See s. 16 . . . I. L. R. 39 All. 120
24 C. W. N. 172

See s. 18 . . . I. L. R. 37 All. 65

See s. 21 . . . I. L. R. 41 Mad. 30

See INSOLVENCY I. L. R. 46 Cal. 591

1 ss 36, 46 (2) 50—

Order cancelling alienation of property by insolvent—Transferee, if may appeal—Appointed person—Receiver if necessary party to appeal—Property outside local limits, if may be dealt with—Calling in the aid of Court in whose jurisdiction property situate Where an alienation of property made by an insolvent prior to his adjudication as such is annulled under s. 36 of the Provincial Insolvency Act, the transferee is an 'aggrieved person' within s. 46 (2) of the Act and is entitled to prefer an appeal against the order. The transferee is moreover a necessary party to the proceeding and entitled to appeal as such. The proper person to make an application under s. 36 is the Receiver in whom the insolvent's properties have vested, and he is a necessary party to such a proceeding and to an appeal arising out of it. But where the application was made and prosecuted in the lower Court by the creditors, the Receiver not having been joined as a party, and the creditors were represented on the appeal and were fully heard in support of the order, and the order proposed to be made did not in any way affect the position of the Receiver, the appeal, to avoid needless delay, was heard and disposed of in the Receiver's absence. Under s. 36 of the Provincial Insolvency Act, the Court had jurisdiction to deal with alienations made by the debtor of properties situated outside its local limits and such jurisdiction is not affected by the provisions of s. 16 of the Civil Procedure Code. A proceeding under s. 36 of the Act is not in the nature of a suit. It is only an incidental proceeding in the course of a more comprehensive one for adjudging a person an insolvent. Regard being had to the fact that the petitioner

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—contd

s. 36—contd

under s. 36 lived in Calcutta, that the Court in which the proceedings in insolvency were pending was at Dacca, that the property in question was situated at Monghyr and the transferee and the principal witnesses to the transfer were residents of that place, and that three of the petitioners own witnesses were residents respectively of Bhagalpur, Bardwan and Calcutta held, that this was a fit case for proceeding under s. 50, and the case was remanded to the lower Court with directions to call in the aid of the Court at Bhagalpur in regard to the matter **LALJI SARAI SING v ABDUL QAWI** (1910) 15 C. W. N. 253

2 Insolvent—Question of bona fides of transfer by insolvent—District Judge not competent to refer to subordinate Court Held, that a Court exercising Insolvency jurisdiction under Act No. III of 1907 has no power to refer for inquiry to a subordinate Court a question arising under s. 36 of the Act as to whether a mortgage executed by an insolvent was bona fide or not **JAGANNATH v LACHMAN DAS** (1914)

I. L. R. 38 All. 549

3 Insolvency—Right of one creditor to challenge claim of another—Duty of Court to inquire—Jurisdiction Held, that it is open to any creditor of an insolvent to challenge the validity of a debt set up by another creditor and if he does so the Judge is bound to inquire into the truth of his allegations in the insolvency, and cannot merely refer the applicant to his remedy by suit **KHUSHALI RAM v BHOLAN MAL** (1915)

I. L. R. 37 All. 252

4 Insolvent—Transfer of property by insolvent—Validity of such transfer s. 36 of the Provincial Insolvency Act is wider in its scope than s. 53 of the Transfer of Property Act Under the former Act it is not necessary to show that the transfer was made with intent to defeat or delay a creditor. All that it is necessary to show is that the transfer was made within two years of the adjudication of the insolvency of the debtor unless it is a transfer made before and in consideration of marriage. In order to determine the validity of a transfer by a debtor of all his property in lieu of a debt it is a matter for consideration whether a real transfer was intended by the transferor, or it was merely fictitious, and whether it was made in good faith the onus of proving good faith being upon the transferee **MUHAMMAD HANIF ULLAH v MUSHTAQ HUSAIN** (1916)

I. L. R. 39 All. 95

5 Insolvency—Procedure—Application by receiver to have annulled a transfer made by the insolvent Where a receiver in insolvency seeks to have set aside, under the provisions of s. 36 of the Provincial Insolvency Act, 1907 a transfer made by the insolvent, he should file a written statement (similar to a plaint in ordinary suits) setting forth the grounds on which the transfer is challenged, the transferee should put in a written reply, and the proceeding should continue very much as in a suit. Such matters should not and cannot properly be disposed of in a summary manner **CHUNNOO LAL v LACHMAN SONAR** (1917)

I. L. R. 39 All. 391

6 Mortgage, if made in good faith—Onus Under s. 36 of the Provin-

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—contd

§ 36—contd.

cial Insolvency Act, the onus of proving that a mortgage executed by an insolvent within two years before his adjudication as such was made in good faith and is therefore binding on the Receiver is on the mortgagee. *NILMONI CHAUDHURI v BASANTA KUMAR BANERJI* (1911)

19 C W N 865

7 ———— *Proceeding questioning transfer—Onus* In a case arising under s 36 of the Provincial Insolvency Act the burden of proving that the transaction impugned was carried out in good faith and for valuable consideration is on the transferee. *BASIBUDDIN THAYADAR v MORIMA DIBI* (1918)

22 C. W. N 709

8 ———— *Fraudulent transfer, whether creditor may institute suit to set aside* Under s 36 of the Provincial Insolvency Act 1907, if a transaction by way of transfer of an insolvent's property takes place within two years prior to the act of insolvency or to the declaration of insolvency, then nothing more is necessary on the part of the person impeaching the transaction than to prove that it took place within two years prior to the act itself. When this has been done the onus is shifted on to the transferee to establish the bona fides of the transaction which he seeks to maintain. S 36 contemplates that the Receiver is the proper person to impeach a fraudulent transfer by the insolvent of his property. If the Receiver refuses to do so then it is open to any creditor to apply to the court for leave to institute a proceeding under s 36 on his own behalf and on behalf of the other creditors. Until however the Receiver has refused or declined to act no one else is entitled to do so as the Receiver is the proper person to institute a proceeding under s 36. *HEMRAJ SHAMPA LALL v RAMKESHUN RAM*

2 Pat L J. 101

9 ———— *'Void' meaning of—Exclusive jurisdiction of Insolvency Court to avoid transfers falling under the section* A transfer of property falling under s 36 of the Provincial Insolvency Act remains valid unless and until set aside at the instance of the Official Receiver. The word 'void' in that section means only 'voidable.' It is only the Official Receiver and not anybody else, e.g., a purchaser from him, that can get such a transfer set aside. After an adjudication in insolvency the only Court that has jurisdiction to annul a transfer voidable under the Law of Insolvency is the Court of Insolvency and no other Court can adjudicate upon the voidable character of such a transfer in any other proceeding e.g., a suit either at the instance of a plaintiff or of a defendant. *MARIAPPA PILLAI v RAMAN CHETTIYAR* (1918)

I L. R. 42 Mad. 322

§ 37—

See s 3. I L. R. 44 Mad. 521

See COMPANIES ACT, 1913. s 231

I L. R. 2 Lah 102

See FRAUDULENT PREFERENCE

I L. R. 43 Cal. 640

1.

Subsections (1),

(2)—*Fraudulent preference how determined—Debtor's intention and motive material—Preference due entirely to preserve from creditor of fraudulent—Creditor, if may plead good faith—Onus* Under

PROVINCIAL INSOLVENCY ACT (III OF 1907)
—contd

§ 37—contd.

s 37 of the Provincial Insolvency Act, good faith on the part of the creditor affords him no protection where the intention of the debtor to give him preference is established, although sub-s. (2) of the section protects a person who in good faith and for valuable consideration has acquired title through or under a creditor of the insolvent. "Preference" implies an act of free will, and there can be no 'preference' where the act is the result of pressure brought to bear on the debtor by the creditor, though there would be fraudulent preference where, notwithstanding that the payment or disposition might never have been made but for the importunity of the creditor, it is also a fact that the payment never would have been made but for the desire to prefer. The presumption of fraudulent intention may be repelled, if it is apparent that the debtor acted in fulfilment of a prior agreement, but it will not suffice to prove that the debtor was moved by a mere sense of honour or a sense of duty or of moral obligation or that he acted from motives of kindness or gratitude. The intention of the debtor is the paramount consideration and if the transaction can be properly referred to some other motive than that of giving the particular creditor a preference over the others, the payment is not fraudulent. In the determination of the question whether a person is able or unable to pay his debts as they become due from his own money, the fact that he has money locked up which at a later period may be available for the payment of his debts is immaterial. Where an act is impeached as a fraudulent preference, the onus of proof lies on the Receiver, even if the debtor was insolvent at the time of the payment and knew himself to be so, though in such a case the onus may shift. *KRISHNADATH NATH SARU v ASHUTOSH GHOSH* (1914)

19 C W N 157

2 ———— *Insolvent—Effect of lease of occupancy holding granted shortly before filing petition of insolvency* S 37 of the Provincial Insolvency Act, 1907, has no application to the case of a lease granted for good consideration by an insolvent shortly before the filing of his petition unless the object thereof is to give a preference to one creditor over the others. If the lease is found to be a merely colourable transaction, the insolvent still retaining possession of the property leased, it can be avoided and the property placed in the hands of the Receiver; otherwise the rents should be paid to the Receiver for the benefit of the creditors. The leased property being an occupancy holding held that there was no reason for directing the surrender thereof to the zamindar. *DASRAJ v SAGAR MAL* (1915) ?

I L. R. 38 All. 37

3 ———— *Surety for debt of insolvent whether "creditor"* A person who stands surety for the payment of a debt by the insolvent is a creditor within the meaning of that expression in s 37 of the Provincial Insolvency Act (III of 1907). *Nalam Venkannatham v Official Assignee of Madras 32 I C 795*, overruled. *RODRIGUES v RAMASWAMI CHETTIAR* (1916)

I L. R. 40 Mad. 733

§ 38—

See s 16 (2) AND (6)

I L. R. 42 All. 433

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—contd.

s. 40—

See RECEIVER I L R. 40 Cal. 678

s. 41—

See s. 16 . . . I L R. 39 All 223

s. 42—

See s. 16 . . . I L R. 39 All 223

See s. 16 (2) (a) . . . 18 C W N 1052

Adj. adication, annulment

of, if permissible on other than statutory grounds—*Failure of Receiver to pay debts—Consent of opposing creditor* The Court has no power to annul an adjudication of insolvency otherwise than in exercise of the authority vested in it by the statute. Where therefore none of the circumstances mentioned in s. 42 of the Insolvency Act as grounds for annulment had been established, the order of the Court annulling adjudication on the petition of the insolvents was erroneous, and the fact that the Receiver of the insolvents' property had been unable to satisfy the debts was no ground for annulment. The fact that the opposing creditors was proved to have at one time consented to a composition was not sufficient to authorise the Court to annul an adjudication. The consent of all the creditors is not by itself sufficient to justify an order of annulment. The Court had to consider not merely that what they have agreed to is for the benefit of the creditors as a whole but also that the annulment would not be detrimental to commercial morality. *Quere* Whether under s. 42 of the Provincial Insolvency Act the Court has discretion to refuse to annul an adjudication when the circumstances mentioned in sub s. (1) to that section are established. *MORI LAL v. GANAPATRAM* (1915) 21 C W N 938

s. 43—

See s. 4 I L R. 36 Mad 402

See s. 16 I L R. 39 All 120

Insolvent, acts of

1 *bad faith of—Proceedings in their nature criminal—Necessity of framing charge, etc.* A proceeding against a debtor under s. 43 (2) of the Provincial Insolvency Act is in the nature of a criminal proceeding and, as in all criminal cases, it is necessary in such a proceeding that there should be a charge, a finding and a conviction as a foundation for the sentence, and everything should be strictly and accurately pursued, and if on any of these three points a substantial defect should appear, it would be a ground for reversing the proceeding. *HARIBAR SINGH v. MAHESWAR PRASAD* (1912) 18 C W N 692

2

Receiver's report—

Insufficient to base a conviction on On report by a Receiver of an insolvent's property to the effect that the insolvent had fraudulently transferred certain property of his just before he was declared an insolvent and that he had concealed the fact that he was the owner of a certain shop, the Court convicted him under s. 43 of the Provincial Insolvency Act. *Held* that a Receiver's reports do not constitute legal evidence upon which an order under s. 43 of the said Act can be based, and therefore a conviction under s. 43 based only on a Receiver's report is bad in law. *Emperor v. Chiranjy Lal*, I L R 36 All 578, *Nathu Mal v. The District Judge of Benares*, I L R 32 All 547,

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

s. 43—contd.

Ex parte Campbell In re Wallace, 15 Q B D 213, referred to *NAND KISHORE v. SURAJ MAL* (1915) I L R 37 All 429

3

Insolvency—In

quiry as to alleged fraudulent acts committed by debtor—Procedure—Evidence *Held*, that proceedings under s. 43 (2) of the Provincial Insolvency Act 1907, should not be based merely upon the evidence given on behalf of the creditors when opposing the debtor's application to be adjudged an insolvent, but evidence as to the specific acts alleged against the debtor should be recorded *de novo*. *In the matter of Rask Bihari Roy*, I L R 17 Cal 209, referred to *NATHU MAL v. THE DISTRICT JUDGE OF BENARES* (1910)

I L R 32 All 547

4

Provident Funds

Act (IX of 1897), s. 4—Provident Fund—Railway employee drawing his Provident Fund after his adjudication as insolvent—Payment of the money to his wife—Fraudulent transfer The appellant who was in the employ of a Railway Company was adjudicated an insolvent under s. 16 of the Provincial Insolvency Act, 1907, and a Receiver was appointed. Subsequently the insolvent resigned his appointment and drew his Provident Fund from the Railway Company. A large portion of the amount so drawn was paid by the insolvent to his wife. The District Judge held that the transaction amounted to a fraudulent act within the meaning of s. 43 (2) of the Act and sentenced the insolvent to 3 months' imprisonment. He appealed. *Held* setting aside conviction that there was no fraudulent dealing by the insolvent with s. 43 in as much as neither the Receiver nor the creditor had any claim to the money drawn by insolvent for his Provident Fund having regard to the provision of the s. 4 of the Provident Fund Act. *Coker v. Mitchell* 1890, 25 Q B D 262 and *Official Receiver of Madras v. Mary Dalgas* 26 Mad 440 referred to *NAOR DAS BRUCKHANDAS v. JHELABHAI GULABDAS*, (1919) I L R 44 Bom. 673

ss 43, 46—

See CIVIL COURTS ACT, 1887, ss 8, 20

I L R 34 All 383

1 *Additional District Judge—Order punishing debtor for fraudulent dealings with account books—Appeal, whether civil or criminal and to what Court* *Held* by *RICHARDS, C J* and *BAYARJI J* (*KNOX, J* dissenting), that an appeal from an order of Additional District Judge under s. 43 (2) of the Provincial Insolvency Act 1907, lies directly to the High Court and not to the Court of the District Judge. *Mahlan Lal v. Sri Lal*, I L R 34 All 382, followed. *Held*, also, by *RICHARDS, C J*, and *KNOX* and *BAYARJI, J J* that such an appeal is an appeal on the civil side of the Court and not a criminal appeal. *EMPEROR v. CHIRANJY LAL* (1914) I L R 36 All 578

2 *Creditor's petition to inquire into commission of an offence—Inquiry and refusal to frame a charge—Appeal right of* In the course of a proceeding in insolvency, a creditor filed a petition alleging the commission of an offence by the insolvent and asking the Court to take action against him under s. 43, cl 2 (6) of the Provincial Insolvency Act (III of 1907). The Judge inquired into the petition but dismissed it

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

s 43, 46—contd.

refusing to frame a charge. *Held*, that the creditor had no right of appeal as he is not a "person aggrieved" within the meaning of s 46 of the Act. *Iyappa Nair v Manicka Asari* (1914).

I L R 40 Mad. 630

3 ———— *Creditor*—"Person aggrieved"—*Appeal* One of the creditors of an insolvent, in whose case no Receiver had been appointed applied to the Court making allegations that the insolvent had been guilty of an offence under s 43, sub-s (2) of the Provincial Insolvency Act 1907, the Court, however, held that no case was made out and refused to move in the matter. *Held*, that the creditor applicant was not a "person aggrieved" within the meaning of s 46, sub-s (2) of the Act and had no right of appeal against the Court's order. *Iyappa Nair v Manicka Asari* 27 Indian Cases, 251, referred to *Ladhu Ram v Mahabir Prasad* (1916) I L R 39 All 171

4 ———— *Order* refusing application by a creditor to take action against the insolvent—*Whether appealable* The appellant, a creditor, applied to the District Court to have action taken against the insolvent (the respondent) under s 43 of the Insolvency Act. This application was rejected by the Court and the present appeal was lodged in the High Court against the order of rejection. It was objected for the respondent that no appeal was competent. *Held* that an order refusing an application by a creditor to take action against the insolvent is not appealable, because—(a) the application is not one which the Insolvency Act entitles a creditor to make, and the applicant is therefore not a "person aggrieved" by the order refusing the application within the meaning of s 46 and (b) the order is not one under s 43 (2) which makes provision only for an order sentencing the debtor. *Iyappa Nair v Manicka Asari* (I L R 40 Mad 630) and *Ladhu Ram v Mahabir Prasad* (I L R 39 All 171), followed. *In re Parden, ex parte Wood* (21 Q J B D 24) distinguished. *Baldwin's Law of Bankruptcy and Bills of Sale*, p 35, referred to and explained. *Gitar Saha v Bannat Ali Khan* I L R 1 Lah 213

s 44—

See s 4 I L R, 38 Mad. 402

s 45—

See s 16 I L R, 38 All. 223

—s 45, 46—*Appeal time for*—*Limitation Act, applicability of*—*Period of limitation, commencement of*—*General principles*—*General Clauses Act (X of 1897), ss 9 and 10 applicability of*—*Twentieth day, dies non*—*Exclusion of* In computing the time for preferring an appeal to the High Court under s 46 of the Provincial Insolvency Act (III of 1907) though the general provisions of the Indian Limitation Act do not apply, the period of ninety days specified in s 45 of the Act should be reckoned from the date of the order appealed against; and thereupon the general principles contained in s 9 of the General Clauses Act (X of 1897) should be applied and the day on which the order appealed against is passed should be excluded. Further under s 10 of the General Clauses Act, the twentieth day,

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

s 45—contd.

if it be a *dies non*, must be excluded. *Rama Swami Pillai v Venkateswara Ayyar* (1918)

I L R 42 Mad. 13

s 46—

See s 2 I L R, 40 Mad. 752

See s 15 I L R, 38 Mad. 15

See s 20 I L R, 30 All. 8

See s 22 I L R, 41 All. 243

I L R, 35 All. 410

I L R, 39 All. 182

I L R, 39 All. 171

See s 43 (2) I L R, 36 All. 576

See s 43 I L R, 40 Mad. 630

I L R, 42 Mad. 13

See Bengal Civil Courts Act, 1897,

ss 8, 20 I L R, 34 All. 383

See Civil Procedure Code, 1908, s 11

I L R, 39 All. 626

1. ———— *Leave to appeal* refused by District Judge—*Concurrent jurisdiction of High Court to grant leave*—*Order to District Judge, if to be set aside before grant of leave*—*1 notice*—*Civil Procedure Code (Act V of 1908), O XXI, r 11*, hearing under, if necessary, after leave granted. The High Court having concurrent jurisdiction, with the District Judge, to grant leave to appeal from an order under the Insolvency Act, can do so when such leave has been refused by the District Judge. Where such leave is granted, there is no necessity for a further hearing under O XXI, r 11, of the Civil Procedure Code. *Madhu Sudan Pal v Parvati Sundari Dasgupta* (1914)

10 C. W. N. 760

2. ———— *Appeal out of time*—*Deduction of time for obtaining copy, if permissible*—*Delay, if excusable*—*General Provisions of Limitation Act if applicable*—*Limitation Act (IX of 1908) ss 12 and 29*—*Concession of Appeal into (and Revision Petition, when permissible*—*Order without notice to Official Receiver, illegal* An appeal under s 46, cl (3) of the Provincial Insolvency Act, which was preferred to the High Court beyond the period of time fixed therein, is barred by limitation as the time requisite for obtaining a copy of the order appealed against cannot be deducted under that Act or under ss 12 (2) and 29 of the Limitation Act. *Quere* Whether the Court can excuse the delay under s 5 of the Indian Limitation Act (IX of 1908). Case law on the subject considered. The High Court is competent to convert such an appeal into a Civil Revision Petition under s 15 of the Charter Act and to set aside the order where the lower Court passed the order in favour of a creditor of an insolvent without the notice to the Official Receiver. *Abdulla v Salari, I L R 13 All 4*, followed. *Sivaramayya v Bhuzanga Rao* (1915)

I L R 38 Mad. 593

3. ———— *Limitation Act* (IX of 1908) ss 12 and 29—*Appeal*—*Limitation*—*Time requisite for obtaining copies* The Provincial Insolvency Act was intended to be and is so far as matters governed by it are concerned a complete code in itself and contains its own limitation law. In computing therefore the period of limitation prescribed for presenting an appeal under the

PROVINCIAL INSOLVENCY ACT (III OF 1907)

—contd.

s 46—contd

said Act the time requisite for obtaining a copy of the order complained of cannot be excluded. *Behari Lal Mookerjee v Mungolnath Mookerjee* I L R 5 Cal 110 and *Nogendra Nath Mullick v Mathura Mohun Parhi* I L R 18 Cal 368 referred to *Beni Prasad Khari v Dukhi Rai* I L R 23 All 970 distinguished *Jugal Kishore v Gur Narain* (1911) I L R 33 All 738

4 Appeal—Limitation—Application of general provisions of the law of limitation—Limitation Act (IX of 1908) ss 12 and 29 The Provincial Insolvency Act is a special law within the meaning of s 29 of the Indian Limitation Act but inasmuch as it is not in itself a complete Code there is nothing to prevent the application thereto of the general provisions of the Indian Limitation Act Such general provisions do not affect or alter the period prescribed by a special law but only the manner in which that period is to be computed *Jugal Kishore v Gur Narain* I L R 33 All 738 overruled. *Beni Prasad Khari v Dharaka Rai* I L R 23 All 277 *Joti Sarup v Ram Chandar Singh Ali Wazir* Notes 1902 34 and *Veeramma v Adishai* I L R 18 Mad 99 followed *Poulson v Modhoooodun Paul Choudhry* 2 W R Act X, 21 *Unoda Persaud Mookerjee v Aristo Coomarr Moitra* 15 B L R 60 note *Nogendra Nath Mullick v Mathura Mohun Parhi* I L R 18 Cal 368 *Griya Nath Roy Bahadur v Palane Bibee* I L R 17 Cal 263 *Behari Lal Mookerjee v Mungolnath Mookerjee* I L R 5 Cal 110 *Golap Chand Aouluckha v Krishna Chundar Das Bhowm* I L R 5 Cal 314 *Nyabuttoka v Wazir Ali* I L R 8 Cal 210 *Khetter Mohun Chuckerbutty v Dina baski Shaha* I L R 10 Cal 265 *Guracharya v President of the Belgaurum Town Municipality* I L R 8 Bom 599 *Aullayappa v Lalsham pathi* I L R 12 Mad 467 *Abdul Hakim v Latifun neasa Khatun* I L R 30 Cal 637 and *Suraj Bahi Prasad v Thomas* I L R 23 All 48 referred to *Droopadi v Hira Lal* (1912)

I L R 34 All 496

ss 46 47—

See APPEAL TO PRIVY COUNCIL.

I L R 40 Cal 685

ss 46 47 (1) and (2)—Appeal under s 46 filed out of time—Dismissal of memorandum of objection as a right of respondent to file—Civil Procedure Code, s 108 (2) O XXI r 22 S 47 (2) of the Provincial Insolvency Act and s 108 (2) Civil Procedure Code apply the procedure of the Civil Procedure Code to appeals filed under s 46 of the Provincial Insolvency Act, hence a respondent in such an appeal is entitled to file a memorandum of cross-objections under O XXI r 22 Civil Procedure Code When an appeal is dismissed as filed out of time a memorandum of objections filed by a respondent under O XXI r 22, cannot be heard *Pamj van Mal v Chand Mal* I L R 10 All 537 followed *Decisions on O XXI r 22* (formerly s 501 Civil Procedure Code) reviewed. *ALAGAPPA CHETTIAR v CHOCKALINGAM CHETTIAR* (1918)

I L R 41 Mad. 904

s 47—

See s. 4 I L R 36 Mad. 402

See s. 13 (3) I L R 36 All 65

See s 16 I L R 39 Mad. 693

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—contd.

s 47—contd

See s 18 I L R 37 All 65

See s 20 I L R 41 Mad. 440

See s 24 I L R 48 Cal 87

See s 46 I L R 41 Mad. 904

See APPEAL TO PRIVY COUNCIL.

I L R 40 Cal 685

See INSOLVENCY PROCEEDINGS

3 Pat L J 456

See RECEIVER I L R 40 Cal 678

Civil Procedure Code (1908) O XXI r 71—Sale of property of insolvent by receiver—Default of purchaser—Re-sale—Order by Court on purchaser to make good deficiency—Proceeding S 47 of the Provincial Insolvency Act 1907 has not the effect of making the provisions of O XXI of the Code of Civil Procedure 1908 applicable to a sale of the property of an insolvent held by a Receiver under the orders of the District Judge If therefore the purchaser at such a sale defaults and the property is re sold for a sum less than the original bid the first purchaser cannot be called upon under O XXI r 71 to make good the deficiency *Mul Chand v Murari Lal* I L R 34 All 9 referred to *CHEDA LAL v LACHMAN PRASAD* (1916)

I L R 39 All 267

s 50—

See INSOLVENCY I L R 40 Cal 78

s 51—

See s 16 I L R 39 Mad. 693

s 52—

See s 4 I L R 40 Mad. 752

See s 15 I L R 38 Mad. 15

See s 24 I L R 41 Mad. 30

s 56—

See s 16 I L R 43 All 510

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56	Sch III

—ss 54 and 55—Insolvent—*Intention of insolvent to her than a true effect the fact whether a transaction amounts to a fraudulent preference. In order that a transaction entered into by an insolvent may be set aside as a fraudulent preference of one creditor over the others, it is not sufficient merely that it should in fact lead to that result. Where the transaction is entered into by the insolvent solely for the purpose of securing some ready money for himself it does not necessarily fall within the purview of s 54 of the Provincial Insolvency Act, 1920. Ex parte Hodgl, L. P. 20 Eq. Ca. 75. *See France and Garrard's Trustees v Hunting 2 Q. B. 79 and Sharp v Jackson A. C.* 419 referred to s 55 of the Act protects all transactions, unless they are in themselves acts of insolvency or fraudulent preferences, entered into with a debtor by third persons for valuable consideration and *bona fide* namely *bona fide* in the sense that the person with whom such transaction takes place had not at the*

PROVINCIAL INSOLVENCY ACT (V OF 1920)

—contd.

—ss 54 and 55—contd.

time notice of the presentation of any insolvency petition by or against the debtor. *Shaw v Day & Co v Chittan Lal, L. R. 43 All. 427*

—s 59 (6) (b)—Insolvent fraudulently making away with or concealing property—*Acting means of ascertaining tantamount to act or concealment. A man in the position of an insolvent who has the means of ascertaining where property of his has been disposed of even if he has not been a really a party to the making away with it and who does not use the means, is just as guilty of concealment within the meaning of s 59 (6) (b) of the Provincial Insolvency Act as if he actually concealed the property in which the property actually is. In the matter of Qasim Ali An Insolvent. I. L. R. 43 All. 406*

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1920).

See CRIMINAL PROCEDURE CODE, s 195.

4 Pat. L. J. 609

power of—

See ATTACHMENT BEFORE JUDGMENT

I. L. R. 46 Cal. 717

—s 1 (1)—Security on application for order to set aside *ex parte* decree—*Limitation Act (X) of 1877* Sch II Art. 151—*Notice under s 218 Civil Procedure Code (Act XIV of 1882)—Execution of process. When security is not deposited under s 17 of Act IX of 1887 until after the application to set aside the *ex parte* decree is disposed of the hearing of the application must be held to have been barred. But where no objection is taken on this ground at the hearing the High Court will not set aside the order in revision. *Pamson v Aurum I. L. R. 13 Mad. 174* explained. A process is executed when notice under s. 218 Civil Procedure Code (Act XIV of 1882), has been served and limitation under Sch II Art. 164 of the Indian Limitation Act will run from the date of service of such notice. *Emola Kondur Dasra v Kale Kasi v Noyamdar 22 H. R. 5* followed *See YANARAYANA v RAVANNA (1910).**

I. L. R. 34 Mad. 88

s. 13—

See CIVIL PROCEDURE CODE 1882 s. 104

I. L. R. 44 Mad. 697

—ss. 13, 33—*Set to recover a sum of money as the value of trees felled by the defendant—Ownership of the trees on the plaintiff's land on which they stood belonged to him—Incidental services to the plaintiff's property—*Justification of the Small Cause Court. The plaintiff brought a suit in the Court of Small Causes to recover Rs. 12 as the value of certain trees felled by the defendant. The plaintiff's claim to relief proceeded on the basis that the trees belonged to him because the land on which they stood also belonged to him. A question having arisen as to the jurisdiction of the Court of Small Causes to entertain the suit. Held by the Full Bench, that a Court of Small Causes could entertain a suit the principal purpose of which was to determine a right to immovable property provided the suit in form did not ask for that relief but for payment of a sum of money. *Puttarawada v KILKATH KALO DESHPANDE (1915)***

I. L. R. 37 Bom. 875

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

— s. 16—

See CRIMINAL PROCEDURE CODE s. 195
2 Pat L J 1

— ss 16, 27, 32, Sch II, cls (2) and (3)—*Suit for the recovery of certain sum representing a share in the produce of immovable property—Cognizance by the Court of Small Causes—Decree final—Appeal—Jurisdiction by consent of parties* A suit for the recovery of Rs. 12 11 8 representing plaintiff's share in the produce of immovable property is a suit for money had and received to the plaintiff's use and is cognizable by the Court of Small Causes and the decree in such a suit is final under s. 27 of the Provincial Small Causes Courts Act (IX of 1887). Notwithstanding its finality an appeal was preferred to the District Court of Ahmedabad which Court entertained the appeal and reversing the decree allowed the plaintiff's claim. The defendant, thereupon preferred a second appeal and at the hearing prayed that the second appeal might be treated as an application for revision under s. 115 of the Civil Procedure Code (Act V of 1908) on the ground that the District Court acted without jurisdiction in entertaining the appeal. The respondent (plaintiff) urged that a second appeal lay and further, that by reason of the conduct of the parties and the fact that the appellant (defendant) had not objected to the jurisdiction of the District Court, it was too late in second appeal to take the point. *Held*, that the District Court had no jurisdiction to try the case and the conduct of the parties could not give it jurisdiction. *Ledgard v Buli L. R. 13 I A 134*, and *Meenakshi Naidoo v Subramanya Sastry L. R. 14 I A 160*, referred to. Decree of the District Court reversed and that of the first Court restored. *DAVLAT SENSUJI (MAHARANA SHERI) v KHACHAR HAMIR MOY (1909)* I L. R. 34 Bom 171

— s. 17—

See LIMITATION ACT, 1908—

SCH I ART 161 24 C. W. N 380

SCH I, ART 164 15 C. W. N 102

See SMALL CAUSE COURT SUIT

I L. R. 44 Calc 950

1 ——— *Civil Procedure Code (1908) s. 21—Suit transferred from Subordinate Judge with Small Cause Court powers to Munsif—Ex parte decree—Procedure* *Held*, that s. 24 sub cl. (f) of the Code of Civil Procedure contemplates a Court vested with the powers of a Court of Small Causes and that when a suit is transferred from that Court to another Court the Court trying it is to be deemed a Court of Small Causes and its procedure is to be governed by the provisions of the Provincial Small Cause Courts Act. Therefore when such a suit is transferred to a Munsif from the Court of a Subordinate Judge vested with Small Cause Court powers and the former passes an *ex parte* decree in the suit an application to have the *ex parte* decree set aside must be accompanied by a deposit of the amount of the decree or a security in respect of the amount as required by s. 17 of the Provincial Small Cause Courts Act. The provisions of which are mandatory. *Mangal Sen v Rup Chand, I L. R. 13 All 470*, *Jagan Nath v Chet Pura, I L. R. 23 All 470*, referred to. *Sarju Prasad v Mahadeo Pande,*

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

— s. 17—*contd*

I L. R. 37 All 470 distinguished. *CHHOTY LAL v LAKHMI CHAND MAGAN LAL (1916)*

I L. R. 38 All 425

2 ——— *Decree ex parte—Claim decreed in full but incorrect amount entered—Application for re-hearing—Deposit of amount named in decree* Where an *ex parte* decree passed by a Court of Small Causes was incorrectly drawn up, inasmuch as the principal sum decreed was wrongly entered the costs were wrongly entered and no sum at all was entered on account of interest *pendente lite* it was held that the defendant in applying for a re-hearing had sufficiently complied with the terms of the proviso to cl. (1) of s. 17 of the Provincial Small Cause Courts Act 1887 when he deposited in court the sum which was in fact named in the decree. *BASDEO RAM SARUP v MUL CHAND NEMI CHAND*

I L. R. 43 All 438

3 ——— *Proviso—Ex parte decree, application to set aside—Whether proviso mandatory or directory—Time within which deposit to be made or security given* By the Full Bench (*SRESHAGIRI AYYAR, J.*, dissenting). The provisions of s. 17 (1), Provincial Small Cause Courts Act are mandatory. By the Full Bench—But the deposit of the decretal amount may be made or the security given, within the period prescribed by the law of limitation for applications under the section, namely thirty days from the date of the *ex parte* decree although it did not accompany the application itself. *Jewan Mucks v Budhiram Mucks (1905) I L. R. 32 Cal. 389* followed. *ASSAM MOHAMMED SAHIB v RAHIM SAHIB (1920)*

I L. R. 43 Mad. (F.B.), 579

— s. 23—

See s. 35

5 Pat L. J 243

1 ——— *Plaint in suit of Small Cause Court nature involving question of title returned by Small Cause Court for presentation in Civil Court—Refusal of latter to receive plaint—Remedy if by appeal or revision—Civil Procedure Code (Act V of 1908), O VII, r 10, O XIII, r 1 (a)* When a plaint originally presented in the Small Cause Court is under an order under s. 23 of the Provincial Small Cause Courts Act presented in the ordinary Civil Court the latter has no authority to refuse to entertain the suit. An order by the latter Court returning the plaint for presentation to the Small Cause Court was not an order under O VII, r 10 of the Civil Procedure Code as the plaint had not been originally filed in that Court and such an order did not require to be set aside by an appeal under O XIII, r 1 (a). The High Court in revision set aside the order as one made in violation of the provisions of s. 23 of the Provincial Small Cause Courts Act. (*MAN DEEBODAN DOKER v SHRODOR IFTKHAD (1912)*)

13 C. W. N 330

2 ——— *Return of a plaint under—High Court's power of interference—S. 25, Provincial Small Cause Courts Act s. 115 Civil Procedure Code (Act V of 1908) and s. 107 Government of India Act of 1915* Where a Provincial Small Cause Court returned a plaint for presentation to a proper Court on the ground that the suit involved a question of title which should be tried in a regular suit and the plaintiff thereupon

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—contd

— s. 23—contd

moved the High Court and obtained a rule, on a preliminary objection taken that the order under s. 23 (1) is not covered by s. 25 of the Provincial Small Cause Courts Act. *Held*, that there is a good deal of distinction between disposing of a case and deciding a case. A case is something less definite than a suit. The meaning of the word 'decided' as held in *Subal Ram Dutt v Jagadananda* 13 C W N 403, approved *Umesh Chandra v Rakhal Chandra* 15 C W N 666, referred to. Under s. 115 of the Civil Procedure Code the High Court would only interfere if the question were one of jurisdiction. The Calcutta High Court's powers under the Charter Act have been exercised, with few exceptions. Only in cases where jurisdiction has been exceeded or the Judge has ignorantly or perversely refused to exercise or made only a colourable pretence at exercising jurisdiction vested in him by law. This limited power should be exercised only when irreparable injury would be caused to one of the litigants if matters were not set right. *Chandi Roy v Kripal Roy*, 15 C W N 674, and *Amayal Ali v Husein Johar* 15 C W N 373 referred to. S. 23 (1) of the Provincial Small Cause Courts Act is designed to meet cases in which a Small Cause Court Judge is satisfied that the question of title raised is so intricate that it should not be decided summarily but in a Court in which the evidence is recorded in full and the decision is open to appeal, the matter is one of discretion and where discretion is vested in a Court it is not open to interference unless it has been exercised ignorantly or perversely. *GANGA PRASAD v NANDU RAM* (1910).

20 C W N 1080

— s. 23, 25—

Jurisdiction—

—*Suit for sacrificial goat based on plaintiff's title as shikari to a temple if may be decided by Small Cause Court.* Where the plaintiff claiming to be the shikari of a goddess sued the defendant for damages for unlawfully taking away a goat sacrificed at the altar of the goddess. *Held*, that the question could be properly tried in a Small Cause Court without any elaborate investigation into the general question of the title of the plaintiff as shikari. The plaintiff having been returned by the Small Cause Court for presentation to the proper court, under s. 23 of the Small Cause Courts Act. *Held* that the High Court had jurisdiction to revise that order either under s. 25 of the Provincial Small Cause Courts Act or under s. 15 of the Charter Act. *Quære* Whether 'decide' in s. 25 means 'finally adjudicate'. *UMESH CHANDRA PALOUDI v RAKHAL CHANDRA CHATTERJEE* (1911) 15 C W N 688

Questions of title

—*Return of plaintiff—Revision.* Where a plaintiff presented to a Small Cause Court is returned under s. 23 (1) of the Provincial Small Cause Court Act, the High Court will not interfere under s. 25 of that Act, nor under s. 115, of the Code of Civil Procedure, 1908 nor under s. 107 of the Government of India Act 1915, unless the Court of first instance has exercised its discretion ignorantly or perversely, or unless the Court has exceeded its jurisdiction or has ignorantly or perversely refused to exercise, or has made only a colourable pretence at exercising a jurisdiction vested in it by law, and has thereby caused injury to the parties which

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—contd

— s. 23, 25—contd

would be irreparable if not set right. *GANGA PRASAD v NANDU RAM* 1 Pat. L. J. 465

— s. 23, 27—*Small Cause suit—Question of title—Suit transferred to the ordinary jurisdiction of the Court—No substantial irregularity—Decree on title—Decree not final—Appeal.* In a suit which was originally filed as a Small Cause Court suit in the Court of the Subordinate Judge having both Small Cause and regular jurisdictions, the Judge transferred the suit at a very early stage to his file as ordinary Judge as the relief claimed by the plaintiffs depended upon proof or disproof of a title to immovable property. The Judge then passed a decree deciding the question of title. *Held*, that there was no substantial irregularity in thus effecting the transfer and that it must be taken that the powers conferred by s. 23 of the Provincial Small Cause Courts Act (IX of 1887) were put in force in a regular manner. *Held*, also, that as it was a decree which could not be passed by a Court of Small Causes it was not a decree falling within the terms of s. 27 of the Provincial Small Cause Courts Act (IX of 1887) and was therefore, not final but appealable. *HARI BALU v GANPATRAO LAKSHMINARAO* (1913) I. L. R. 33 Bom. 190

— s. 25—

See s. 23

See WITHDRAWAL OF SUIT

2 Pat. L. J. 682

1. —*Jurisdiction of High Court—Revision—Refusal of leave to amend plaint.* *Held*, that the refusal on the part of a Court of Small Causes of permission to amend a technical defect in the plaint amounted to an irregularity such as would justify the interference of the High Court in revision under s. 25 of the Provincial Small Cause Courts Act 1887. *HEYDORN AND COMPANY v MUHAMMAD SHARI* (1912) I. L. R. 34 All. 348

2. —*Revision—Jurisdiction of High Court—Execution of decree—Limitation—Application to Court to take a step in aid of execution—Application for extension of time.* A bond file application made by the decree holder praying for extension of time for the purpose of ascertaining the whereabouts of his judgment debtor is an application to take a step in aid of execution, and avers limitation. Where a Small Cause Court without any materials on the records gratuitously assumed that such an application presented by the decree holder was not bond file, and consequently that a subsequent application for the execution of the decree was time barred, it was *held* that there was ground for interference by the High Court in revision. *BRATHON PRASAD v AMITA BEGAM* (1915) I. L. R. 38 All. 690

3. —*Decision of a preliminary question of jurisdiction which does not dispose of the suit—Revision.* *Held* that no revision would be under s. 25 of the Provincial Small Cause Courts Act, 1887, from an order of a Court of Small Causes deciding a question of jurisdiction, which decision still left the suit undisposed of in the Small Cause Court. *Ramanathan Chetty v Marathappa Kone*, 25 Indian Cases 643, referred to. *MAHJAN LAL PARSOTAN DAS v CHENNI LAL BISHI LAL* (1914) I. L. R. 41 All. 4

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

§ 25—*contd*

4 *Revision—Suit filed before Munsif not having Small Cause Court powers, but decided by one who had, though as a regular suit—Appeal* A suit which according to the frame of it was a Small Cause Court suit was filed in the court of a Munsif at a time when the permanent incumbent, who was invested with Small Cause Court powers, was on leave, and the temporary incumbent was not invested with Small Cause Court powers. Before the suit came to a hearing the permanent incumbent returned. He tried the suit, and tried it as an ordinary suit and not as a Small Cause Court suit. *Held*, that the Munsif was right in so doing, and that an appeal lay from his decision to the Subordinate Judge, *Jag Mahon Lal v Lokha, 9 Indian Cases 264, Mahima Chandra Sarda v Kali Mondal, 12 C B N 167, Hari Ramayya v Hari Venkayya, 1 L R 26 Mad 212, and Sambhu Dhanraj v Ram Vishu, 1 L R 28 Bom 241*, referred to *BHINDESI v GANGA PRASAD* **I L R. 42 All 195**

5 *High Court—Revision—Jurisdiction to reverse findings of fact* under a 25 of the Provincial Small Cause Courts Act 1887, the High Court can interfere on questions of fact. *Poona City Municipality v Ramsy (1895) 21 Bom 250 and Turner v Jaamohan Singh (1900) 27 All 531*, referred to *Per FAWCETT, J* Interference in regard to appreciation of evidence should in general only be exercised when there appears to the Court to be a very clear case of misappreciation which has resulted in injustice to a party and makes the decree one that cannot be regarded by a Revisional Court as "according to law" *NATHURAM SHIVNARAYAN v DHULARAM HABIRAM (1920)* **I L R. 45 Bom 292**

§§ 25 and 23—*Provincial Small Cause Court Act, 1887—Deposit of arrears of revenue—Held* that in order to determine whether a mortgagee was entitled to deposit the arrears of revenue it was incumbent on the Court to determine whether the bond was genuine or not and that omission to do so amounted to an error in law so that the High Court had power to transfer under s 25 of the Provincial Small Causes Act, 1887 *RAJ KUMAR LAL v JAIKARAN DAS*

6 Pat. L. J. 248

§ 25, Sch. II, Art 41—*Jurisdiction—Debt of deceased person paid in whole by one of the heirs—Suit for contribution* Two heirs of a deceased Mahomedan became entitled to the property left by him in the proportion of eight-tenths and two tenths. The owner of the eight-tenths share paid off the whole of a debt due by the deceased and thereafter sued the owner of the two tenths share for contribution. *Held* that the suit was not excluded from the jurisdiction of a Court of Small Causes by Art (41) of the second schedule to the Provincial Small Cause Courts Act, 1887 *MAHMUD ALI v TAMEZ UN NISSA DINI (1918)* **I L R. 41 All. 51**

§ 27—

I L R. 38 Bom. 190

§§ 27, 32, 33 and 35—

See CIVIL PROCEDURE CODE, 1908, s 24
I L R. 38 Mad. 25

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

§ 32—

Sec s 16

I L R. 34 Bom. 171

Suits instituted in Court not invested with powers—Transfer of suits as money suits—Re transfer as Small Cause Court suits—Code of Civil Procedure (Act V of 1908), s 24 Fifty two suits were instituted against various tenants. These suits were cognizable by a Court of Small Causes but they were instituted in the Court of the Munsif of Motihari, who had not been invested with small Cause Court powers. This Munsif was transferred and another Munsif, invested with Small Cause Courts powers took his place. The latter held that by virtue of s 32 (2) of the Provincial Small Cause Courts Act, 1887, the suits were triable as money suits and he accordingly transferred them to the file of the Additional Munsif. Subsequently the plaintiff applied to the District Judge to re transfer the 52 suits under s 24 of the Civil Procedure Code 1908, to the Court of the Munsif who had transferred them and to direct him to hear them as money suits. The petition was filed with the Munsif's order in one of the suits only. The District Judge transferred all the suits to the Munsif's Court to be treated as Small Cause Court suits. *Held* (1) that, as there was no Small Cause Court in existence at Motihari when the suits were instituted the procedure to be adopted with regard to them was the procedure laid down in the Civil Procedure Code (2) that the District Judge had power to transfer a money suit from the Court of one Munsif to the Court of another Munsif, and (3) that the order transferring the 51 suits, in which no separate stamped application was made, was incompetent *UGAR SINGH v MOTIHARI COMPANY, LIMITED*

4 Pat. L. J. 13

§§ 32 to 35—

See CIVIL PROCEDURE CODE (1908), s 24 (f)
I L R. 29 All. 214
I L R. 38 Mad. 25

§ 33—

Sec s 15 **I L R. 37 Bom. 375**

§ 35—

See CIVIL PROCEDURE CODE (1908), s 24
I L R. 40 All. 525

1 *Jurisdiction*

Munsif vested with the powers of a Judge of the Court of Small Causes transferred by one substituted with such powers—Appeal When a Munsif vested with the powers of a Court of Small Causes is succeeded in office by a Munsif not vested with such powers, the latter under s 33 of the Provincial Small Cause Courts Act, bound to try the suits pending on the file as regular suits and an appeal lies against his decision. *Shyam Ekhari Lal v Kali, 12 All J R 109, followed Mangal Sen v Rup Chand, 1 L R 13 All 324*, dissented from *Kamta Prasad v Mahabul Singh, 6 O C 31, Dulal Chandra Deb v Ram Narain Deb, 1 L R 31 Cal 1057, Ram Chandra v Ganesh, 1 L R 23 Bom 382*, referred to *SARJU PRASAD v MAHADEO PANDE (1915)* **I L R. 37 All. 450**

2 *Decree passed by*

Small Cause Court—Small Cause Court abolished and execution transferred to a Munsif—Jurisdiction—Appeal—Indian Limitation, Act (IX of 1908), s 19—Acknowledgment Where a Court of Small

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

— s 35—*contd.*

Cases had passed a decree and was then abolished and the execution proceedings were taken in the Court of a Munsiff. *Held*, that the Munsiff's orders in execution were not the orders of a Court of Small Causes and were therefore open to appeal. *Sarju Prasad v Mahadeo Pande*, 1 L R 37 All 450, followed. *Mangal Sen v Rup Chand*, 1 L R 13 All 324, dissented from. *Held*, also, that an objection filed in answer to an application for execution of decree by the arrest of the judgment debtor, upon which a warrant of arrest had been issued, to the effect that the judgment debtor was a poor man and that the warrant should not be executed, could not be construed into an acknowledgment of the decretal debt within the meaning of s 19 of the Indian Limitation Act, 1908. *Ramhit Ras v Salgur Rai*, 1 L R 3 All 247, distinguished. *LACHMAN DAS v AHMAD HASAN* (1917)

1 L R 39 All 237

— ss 35 and 23—*Deposit of arrears of revenue by mortgagee—Suit to recover amount of arrears—Whether Court bound to decide validity of mortgage—Bengal Revenue Sales Act (XI of 1859), s 2—Transfer of Property Act (IV of 1882) s 100—Code of Civil Procedure (Act V of 1908) O XXXIV, r 15* A mortgagee who had paid the arrears of Government revenue in order to prevent the mortgaged property being sold, sued the defendant, who had purchased the property subsequently to the mortgage, in the Court of Small Causes, for recovery of the arrears paid. The defendant pleaded that the mortgage was not genuine. The court declined to decide the question of the genuineness of the bond on the ground that it was beyond the scope of the suit and decreed the suit. *Held* (1) that in order to determine whether the mortgagee was entitled to deposit the arrears of revenue it was incumbent on the Court to determine whether the bond was genuine or not, and that omission to do so amounted to an error in law so that the High Court had power to interfere under s 25 of the Provincial Small Causes Courts Act, 1887 (2) that if the court was of opinion that the question of the genuineness of the bond was beyond the scope of the suit it was incumbent on the court to exercise the discretion vested in it by s 23 and to return the plaint to be presented to the proper court, and failure to do so brought the case within the purview of s 25, (3) that if the alleged mortgage was genuine the amount paid as arrears of revenue should have been added to the mortgage debt under s 9 of the Bengal Revenue Sales Act, 1850 and that even if the plaintiff's lien was not in fact a mortgage it was a charge upon immovable property within the meaning of s 100 of the Transfer of Property Act 1882, read with O XXXIV, r 15 of the Code of Civil Procedure, 1908 and could only be enforced by a suit under O XXXIV, (4) that even if the plaintiff was entitled to relinquish his lien and claim a money decree, the present suit not having been framed as such, he could not succeed. *RAJ KUMAR LAL v JAIKARAN DAS* 5 Pat L J 243

Sch. II, Arts. 2 and 3—

See s 16 1 L R 34 Bom 171

Sch. II, Art. 3—*Failure to perform a contract whether 'an act' within Art. 3—Suit to recover money under a contract with Government,*

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

— Sch. II, Art. 3—*contd.*

whether of a small cause nature—Second appeal—Failure by Government to carry out a contract under which the plaintiff was entitled to a sum of money on account of certain constructions made by him, is not 'an act' purporting to be done by an officer of Government in his official capacity within the meaning of Art. 3, Sch. II of the Provincial Small Cause Courts Act (IX of 1887) The article applies only to a suit relating to some distinct act done by an officer of Government. *Rajmal Manikchand v Hanmant Anyaba*, 1 L R 29 Bom 697, and *Chaganlal Kshoredas v The Collector of Kaira* 1 L R 35 Bom 42, applied. *Bunwars Lal Mookerjee v The Secretary of State for India*, 1 L R 17 Cal 290, and *Moth Rangayya Chetty v The Secretary of State for India*, 1 L R 28 Mad 213, referred to. A suit to recover a sum of money being less than Rs 500 under such a contract is a suit of Small Cause Court nature, and no second appeal lies. *SECRETARY OF STATE FOR INDIA v RAMABRAHMAN* (1912)

1 L R 37 Mad 533

Sch. II, Art. 7—*Suit involving apportionment of rent whether a suit of small cause nature—Transfer of Property Act (IV of 1882) s 2 (d) and 36, applicability of, to transfer in execution* A suit the determination of which involves apportionment of rent by the Court, falls within Art. 7 of the second schedule of the Provincial Small Cause Courts Act and is exempted from the cognizance of a Provincial Small Cause Court. Though according to s 2 (d) of the Transfer of Property Act, the Act does not apply to sales in execution yet the principle of s 36 of the Act which embodies a rule of justice, equity and good conscience can be applied and rent apportioned from day to day as between a lessor and the transferee of his right in execution in the course of a year of the lease. *PANGIAH CHETTY v VAJRAVELU MUDALIAR* (1917)

1 L R 41 Mad 370

Sch. II, Art. 8—

See HOMESTEAD LAND

1 L R 42 Cal 633

See LANDLORD AND TENANT

2 Pat L J 97

1—*Grants of forest rights—Suit for rent by grantor, if may be entertained by Small Cause Court—Rent, what is—Bengal Tenancy Act (VIII of 1855) ss 144 193* A grant under which the grantee becomes entitled to cut and remove during a specified period trees which might during that period attain a prescribed size (whether it creates an interest in land or not) is a grant of forest rights within the meaning of s 193 of the Bengal Tenancy Act. The transaction cannot be regarded as a sale of timber, and the consideration payable for such rights in rent within the meaning of the terms as used in cl. (4) of Sch. II of the Provincial Small Cause Courts Act. Such a suit cannot be entertained by a Small Cause Court, and should be instituted under s 144 of the Bengal Tenancy Act in the Court which would have jurisdiction to entertain a suit for the possession of the trees. *RANDE ALI FAZLE v AMUD SARKAR* (1914) 19 C. W. N. 415

2.—*Special authority to try rent suits under Small Cause Court procedure, if may be conferred generally on the Court* Cl. 8

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

Sch II, Art 8—*contd.*

of Sch II of the Provincial Small Cause Courts Act requires that the Judge personally should have been invested with authority to exercise jurisdiction and not that jurisdiction should be conferred upon the Court. A notification of the Local Government vesting all Munsiffs of certain places with power to try, under the Small Cause Court procedure, suits for recovery of rent of homestead lands within their respective jurisdictions when the value did not exceed Rs 50 was insufficient to confer on the officers concerned the power referred to in cl 8 of Sch. II of the Provincial Small Cause Courts Act. **SAFER ALI MONDAL v GOLAM MONDAL (1915)** 19 C W N 1236

Sch II, Art 2—Suits for rent—Suits of a nature cognisable by the Court of Small Causes—Civil Procedure Code (Act V of 1908), s 102—Second appeal. A suit for rent for an amount less than Rs 500 was filed in the Second Class Subordinate Judge's Court. By a Government Notification contemplated by Art 8 of the Second Schedule of the Provincial Small Cause Courts Act, 1887, the Subordinate Judges of all districts in the Bombay Presidency proper were invested with authority to try on the Small Cause Side of their Courts all suits for the recovery of rent arising within the local limits of the ordinary jurisdiction of their Courts and falling within the pecuniary limits up to which suits are cognisable by them as Judges of Courts of Small Causes. Both the lower Courts decreed the claim. In the High Court a preliminary objection was taken that no second appeal lay on the ground that the suit in which it was preferred was of a nature cognisable by Courts of Small Causes within the meaning of s. 102 of Civil Procedure Code 1908. *Held*, allowing the objection that no second appeal lay. **RAKRISHNA YESHWANT v THE PRESIDENT OF THE VENGURIA MUNICIPALITY (1916)** I L R 41 Bom 367

Sch II, Art 13—

See CIVIL PROCEDURE CODE 1908 s 100
I L R 41 Mad 374

See GENERAL CLAUSES ACT s 3 (25)
I L R 35 All 156

See LIMITATION ACT (IX OF 1908) SCH 10
ARTS 4, 7, 101 102 and 120

I L R 41 Mad 523

See MADRAS ESTATE LANDS ACT 1908
s 3 I L R 36 Mad 126

1—Land Cess—Suits by zamindar against inamdar for recovery of not a suit of small cause nature. A suit by a zamindar for the recovery of land cess from the inamdar is not a suit of a small cause nature within Art. 13 of the Provincial Small Cause Courts Act. **MAHARAJA OF VIZIANAGRAM v VEPRANNA (1913)** I L R 38 Mad 18

2—Revenue Jurisdiction Act (Bom. X of 1876) s 5 cl (c)—Civil Procedure Code (Act V of 1908) O VIII v 6—Suits by an Inamdar against a Khatedar for recovery of sums—Dues—Suits not cognisable by a Small Cause Court—Set-off claimed in a capacity different from that in a suit, not allowable. Sums payable by a Khatedar to an Inamdar as superior holder are dues and a suit to recover such dues though

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

Sch II, Art 12—*contd.*

less than Rs 500, is not cognizable by a Court of Small Causes and a decree passed in such suit is subject to a second appeal. In a suit brought by an Inamdar against a Khatedar for the recovery of dues in respect of certain immovable property payable by the Khatedar the defendant, as a pujari (worshipper) claimed to set off the stipend payable to him by the plaintiff. *Held* that the defendant could not claim the set off which was due to him in a different capacity from that in which he held as tenant or Khatedar of the plaintiff. **MADHAVRAO MOHESHWAR v RAMA KALU (1914)** I L R 39 Bom 131

3—Small Cause Court—Jurisdiction—Suits by zamindar to recover a hagg cess or due from tenant. *Held* that a suit by a zamindar to recover from one of his tenants dues payable in kind under the provisions of the village wajib ul arz was excluded from the jurisdiction of a Court of Small Causes by Art. 13 of the second schedule to the Provincial Small Cause Courts Act 1887. **BARDEO v PARNALAL (1916)** I L R 40 All 663

4—Small Cause Court—Jurisdiction—Suits by zamindar to recover part of price of trees sold by tenant. *Held* that a suit brought by the zamindars of a village upon the basis of a custom recorded in the village wajib ul arz to recover from a tenant half of the price of certain trees alleged to have been sold by him was not a suit excluded from the jurisdiction of a Court of Small Causes. **BORRA BHUJ RAO v RAM CHANDRA** I L R 42 All 448

5—Suits for recovery of Haq chaharum cognisable by a Small Cause Court—Custom—Wajib ul arz—Halat dehi—value of the halat dehi as evidence of the discontinuance of a custom recorded in the Wajib-ul arz. A suit brought by a zamindar to recover money alleged to be due to him on account of haq chaharum is not a suit of the nature cognizable by a Court of Small Causes. **EOLRA BHUJ LAY v RAM CHANDRA** I L R 42 All 448 referred to. The evidential value of the document known as halat dehi on the question of the discontinuance of a custom recorded in a wajib ul arz of earlier date dismissed. **BECHAI v BADRI NARAIN** I L R 43 All 681

Sch II, Arts 15 and 16—

See SPECIFIC PERFORMANCE

I L R 43 Cal 59

Mortgage money— unpaid balance of suit by mortgagee for recovery of—Suits—Small Cause Court jurisdiction of. A mortgagor cannot sue for recovery of the balance of the amount promised to be advanced but not paid to him and such a suit is not cognizable by the Court of Small Causes but it is open to the mortgagor to sue in the Small Cause Court for damages for the breach of contract provided the damages claimed are within the pecuniary jurisdiction of the Court. **SHANK GALLIN v SADBARIAN DIBI (1915)** I L R 43 Cal 69
19 C W N 1332

Sch II, Arts 15, 24—Suits to enforce—part of an award or part of a judgment in a civil suit whether cognisable in a Court of Small Causes. A

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

Sch II, Arts 15, 24—*contd*

suit to enforce an award is in essence a suit for specific performance of a contract and is excluded from the cognizance of a Small Cause Court by Art 15 of the Provincial Small Cause Courts Act. A suit to enforce part of an award which amongst other things partitions immoveable properties if it lies at all, does not lie in a Provincial Court of Small Causes. *KUNJA BEHARY BARDHAN v GOSTA BEHARY BARDHAN* (1917) 1 L. R. 38 All 570 (11 22 C. W. N 66)

Sch II, Art 18—*Suits relating to Trusts*—*Suit by a company by its President to recover from defendants Nos 2 to 4 the subscriptions due under the Articles of Association of the Company*. The first defendant was a trust, defendants Nos 2 to 4 were the trustees of the trust and members of the plaintiff company, in their capacity of trustees. The plaintiff proved that the moneys due may be recovered from the trust property in the first instance and if not so recoverable from the defendants Nos 2 to 4 personally. The suit was instituted on the Small Cause side, and the Subordinate Judge returned the plainta on the ground that the suit was one relating to a trust within the meaning of Art 18 of Sch II of the Provincial Small Cause Courts Act and was not triable on the Small Cause side. The High Court was moved by petition under a 25 of the Act *Held per WHITE, CJ and SANKARAY NAIR, J* (BEVSOR J, dissenting) the suit was to enforce payment of moneys due under the Articles of Association and not one 'relating to a trust' within the meaning of Art 18. The fact that issues relating to the trust and the rights and liabilities of the trustees may have to be tried will not make the suit one 'relating to a trust'. *SRI VENKATACHALLAPATHY SARAYA VIVAYASAYA COMPANY v KAVASASABHAPATHIA PILLAI* (1910) 1 L. R. 33 Mad. 494

Sch. II, Art 24—

See SCH II ART 15

1 L. R. 38 All 570

Suit for money due under an award—*Jurisdiction of Small Cause Court*. A suit to recover money made payable by the terms of a private award is not a suit which is excluded from the jurisdiction of a Court of Small Causes. *Madho Prasad v Lalit Prasad, Weekly Notes 1881 p 159*, distinguished. *MIZARI LAL v PARTAB KUNWAR* 1 L. R. 42 All. 189

Sch. II, Art 28—

1. **Suit of a small cause nature—*Second appeal***. Plaintiff sued for the recovery of certain jewels which she had presented to her daughter and son in law at their marriage basing her claim on a caste custom by which she was entitled after the death of the pair to return of the jewels presented by her. *Held* that the plaintiff claimed was not a right to inherit the jewels as the property of the bridegroom or the bride and Art 28 of Sch II of Act IX of 1887 did not apply to such a case. No second appeal lay as the suit (being for the recovery of less than Rs. 500) was within the cognizance of the Small Cause Court. *CHITRAYYA v AGRAWAL* (1912)

1 L. R. 37 Mad. 538

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd*

Sch II, Art 28—*contd*

2. **Suit by heirs of intestate against wrongdoer, if within**. Suits for the "whole or a share of the property of an intestate" excluded by Art. 28 of Sch II of the Provincial Small Cause Courts Act from cognizance by the Small Cause Court are suits for the recovery of the property of an intestate between rival claimants to the estate or against persons administering the estate. The Article does not apply to suits by heirs against wrongdoers. *Kapalee Bewah v Keshram Kooch* 11 W. R. 93, *Moheshwar v Kailash Nath*, 7 C. L. R. 71, and *Chedi v Gulah*, 1 L. R. 27 All. 622, followed. *Gurash Chunder v Anna Dossie*, 17, W. R. 46, *Nobin Chunder v Drilomoyee*, 17 W. R. 520, and *Kapalee Bewah v Keshram Kooch* 11 W. R. 93 referred to. *TIKA SAHU v CHIKKAT SARU* (1914) 19 C. W. N. 614

Sch. II, Art 31—

See TRESPASS 1 L. R. 35 Mad. 726

1. **Small Cause Court—*Jurisdiction***—*Suit by joint owner to recover rent of a house recovered by the other joint owner—Money had and received—Revision—Objection to jurisdiction not raised in the Court below*. *See Note*. That a suit by one or two joint owners to recover from the other a share of the rent of a house recovered in the first instance by the defendant with the plaintiff's consent is a suit for money had and received and as such within the jurisdiction of a Court of Small Causes. But in any case, the question of jurisdiction not having been raised in the Court below and the case having apparently been correctly decided the High Court was not bound to interfere in revision. *Ram Lal v Keshvi Singh*, 1 L. R. 25 All 135, followed. *SUKH LAL v NANNU PRASAD* (1918) 1 L. R. 40 All. 666

2. **Suit for mesne profits of a grove—*Jurisdiction***. *Held*, that a suit for recovery of mesne profits of a grove from which the plaintiff had been wrongfully dispossessed is a suit the cognizance of which by a Court of Small Causes is barred by Art 31 of Sch II to the Provincial Small Cause Courts Act, 1887. *Prasada Lal v Imdad Hussain*, All Weekly Notes (1893) 10, distinguished. *Sheo Badi v Surjan*, 11 A. L. J. 238 followed. *DURGAL SINGH v KUNJAL* (1917) 1 L. R. 40 All. 142

3. **Jurisdiction of Court, determination of—*Suit for account, whether claim for ascertained sum***. The question whether a particular suit is cognizable by a Small Cause Court or not must be determined on a consideration of the plaint irrespective of the allegations made in the written statement. Where the plaintiffs claimed a definite ascertained sum representing in money the profits and produce of their share of certain land under the sole management of the defendants. *Held* that the suit was not barred by Art 31 of the Second Schedule to the Provincial Small Cause Act, 1887. It is not every case in which accounts have to be looked into which is a suit for accounts. *RAJIVA NARAYAN SARAY v KIRAT NARAYAN SIKOH* 3 Pat. L. J. 423

Sch. II, Art 32.

See REDEMPTION, SUIT FOR

14 C. W. N. 1001

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

Sch. II, Art. 35 (ii)—*Suit for compensation for removal of trees and crops—Jurisdiction—Want of jurisdiction not urged in defence—Decree, if should be set aside on review—Objection, if may be waived.* A suit for compensation for a tree alleged by plaintiff to have been grown by him and cut by the defendant and for crops of mustard raised by him and misappropriated by the defendant from land alleged to be plaintiff's property and in his possession is excluded from the jurisdiction of the Small Cause Court under the Art. 35, sub cl. (2) of Sch. II of the Provincial Small Cause Courts Act. Where no objection to the Court's jurisdiction having been taken at the original trial, the suit was decreed and an application by the defendant for review was dismissed on the ground that the objection was not raised at the trial. *Held*, that the review application should have been granted, as where there is an entire absence of jurisdiction no action on the part of the plaintiff or inaction on the part of the defendant can invest the Court with jurisdiction. *RAMFROD PRAMANIK v SRICHARAN MANDAL* (1917). I. L. R. 21 C. W. N. 1109

See CRIMINAL BREACH OF TRUST

I. L. R. 48 Calc 879

Sch. II, Art. 35 (g)—*Contract to marry, breach of—Loss of provisions and articles.* A suit by a father of a Mahomedan girl against the father of a minor boy for breach of contract to marry the boy to the plaintiff's daughter and for compensation for the loss sustained by the waste of articles and provisions in consequence of such breach, is governed by Art. 35, cl. (g) of the second schedule to the Provincial Small Cause Courts Act (IX of 1887) and is therefore not cognisable by a Provincial Small Cause Court. *Kali Sunker Dass v Koylakh Chunder Dass*, 1 L. R. 16 Calc 333, followed. *MOIDIN KUTTI v YOKER* (1913).

I. L. R. 38 Mad 274

Sch. II, Art. 35 (j)—

See EXECUTION OF DECREE

I. L. R. 33 All 308

Sch. II, Art. 35—(1)—*Threat to assault—'Injury to the person'—Exemption from the cognizance of the Court of Small Causes.* A suit to recover damages from the defendant who ran after the plaintiff with a shoe in hand threatening to beat him and using abusive language, but did not actually touch the plaintiff's person is a suit for "injury to the person" within the meaning of Art. 35, sub cl. (1) of the second schedule of the Provincial Small Causes Courts Act (IX of 1887), and is not within the cognizance of the Small Cause Court. *GOVIND BALKRISHNA v PANDURANG VINAYAK* (1912). I. L. R. 36 Bom. 443

Sch. II, Art. 35—

1. *Suit for money for maintenance under an agreement cognisable by a Small Cause Court.* A suit to recover from the defendant paddy expended by the plaintiff for the maintenance of their grand mother, for which under the agreement of partition between them the defendant was bound to pay a certain quantity is a suit of a small cause nature, the basis of the suit being the agreement. *Ramarasany Pantulu v Narayanasamoorthy*, 14 Mad L J 459, applied. *ANASIMINI SASTRIAL v RAMASAMI SASTRIAL* (1913).

I. L. R. 38 Mad. 553

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

Sch. II, Art. 38—*contd.*

2. *Suit relating to maintenance—Jurisdiction.* Plaintiff's father in law left by his will certain property to plaintiff & three brothers in law, charged with the payment of Rs. 36 per annum to the plaintiff during her life. Subsequently the brothers in law agreed amongst themselves to divide their liability for payment of this annuity, so that each became liable individually for the payment of Rs. 12 per annum. *Held*, on suit brought by the annuitant to recover arrears of her maintenance allowance against one of her brothers in law, that the suit was a "suit relating to maintenance" and that the cognizance thereof by a Court of Small Causes was barred by Art. 38 of sch. II to the Provincial Small Cause Courts Act, 1887. *Maladeo Rai v Deo Narain Rai*, 2 A. L. J 697, and *Masum Ali v Mohsin Ali*, (1890), All Weekly Notes, 201, distinguished. *MURKUN UD DIX v SAMIR UN NISSA BROT* (1917).

I. L. R. 40 All. 52

Sch. II, Art. 41—

See S. 25. I. L. R. 41 All. 51

Contribution, suit for—Pent decree—Execution by assignee against a joint tenant—Payment under compulsion—Suit, if cognisable by Small Cause Court—Bengal Tenancy Act (VIII of 1885) s. 145 (b)—Contract Act (IX of 1872), ss. 69, 70. Where an assignee of a rent decree having attached the moveables of plaintiffs who were joint tenants of the holding with the defendants, the plaintiffs satisfied the decree, and then sued the defendants for contribution. *Held*, that the suit was excluded from the cognizance of the Small Cause Court by Art. 41 of the Second Schedule to the Provincial Small Cause Courts Act. That if it were assumed that an assignee of a decree for rent is precluded from executing it even as a decree for money, the decree itself was not extinguished and could be executed on the assignee obtaining an assignment of the landlord's interests or on his retransferring the decree to the landlord. Where, therefore, on the assignee's application for execution the Court ordered execution to issue and the plaintiff paid in the decretal amount under compulsion of legal process. *Held*, that the plaintiff was entitled to sue for contribution under s. 70 as also under s. 69 of the Contract Act. The benefit which the defendants get was that they were absolved from the liability to be pursued either by the assignee or assignor of the decree. If a payment made to an assignee of a rent decree is accepted by him, the decree is satisfied and there is nothing in s. 145 (b) of the Bengal Tenancy Act to prevent it. *RAJANI KANTA GHOSH v RAMA NATH ROY* (1914).

[19 C. W. N. 458]

Contribution—Where a decree was obtained against 3 brothers for maintenance of fourth brother's widow and one paid and sued his brothers. *Held*, that the suit was one for contribution and cognizable by Small Cause Court. *ANT PAM v MITHAN LAL*.

I. L. R. 40 All. 135

PROVISIONAL APPOINTMENT.

See UNIVERSITY LECTURERSHIP

I. L. R. 41 Calc. 518

PROVISO

object of—

See PRESS ACT (I OF 1910) s 3 (1)
PROVISO I. L. R. 33 Mad. 1164

use of, to interpret section—

See LAND IMPROVEMENT LOANS ACT
(XIX OF 1883), s 7 (1) (c)
I. L. R. 41 Mad. 691**PROXY.**See CIVIL PROCEDURE CODE (ACT V OF
1908) O. XIII, r 3
I. L. R. 33 Mad. 850**PUBLIC AUTHORITY.**

See NEGLIGENCE . 5 Pat. L. J. 253

PUBLIC BODY

See ELECTION I. L. R. 40 Mad. 941

PUBLIC CHARITYSee CIVIL PROCEDURE CODE (ACT V OF
1908), s 92

See HINDU LAW RELIGIOUS ENDOWMENTS.

— Suit respecting public charities—
Civil Procedure Code (Act V of 1908), ss 92, 115—
Suit with Advocate General's sanction in respect of
public charities—Court fees—Court Fees Act (VII of
1873) s 11, Art 17 (v)—Striking off a prayer
for relief—Advocate General's sanction if necessary—
Interlocutory order—Revision by High Court—A
plaint in a suit under s 92 of the Civil Procedure
Code (relating to public charities) should bear a
Court fee stamp of Rs 10 only as required by
Art. 17, cl (vi) of Sch. II of the Court Fees Act
Thakur v Brahma Narain, 1 L. R. 19 All. 60
Girdhari Lal v Ram Lal, 1 L. R. 21 All. 290
rel'd on. Where the plaintiffs in such a suit
being ordered by the Judge to value the suit and
pay *ad valorem* Court fee on such value moved the
High Court without waiting for the dismissal of
the suit for non compliance with the order Held,
that the order in effect amounted to a denial of
jurisdiction, and though interlocutory was a fit
case for interference in revision by the High
Court A prayer for relief in a plaint in such
a suit not covered by those specified in s 92 may
be struck off on the application of the plaintiff,
the sanction of the Advocate General for striking
off such a prayer being unnecessary Babree Das
v Chandra Lal, 1 L. R. 32 Cal. 789 referred to
Ramprasad Das v Mohd Sheriff Shikram Das (1910)
14 C. W. N. 932

PUBLIC CONVEYANCE.

See BOATBY PUBLIC CONVEYING ACT

See HACKNEY CARPAGES ACT

**PUBLIC DEMANDS RECOVERY ACT (BENG;
I OF 1895)**See BIHAR AND ORISSA PUBLIC DEMANDS
RECOVERY ACT, 1914
4 Pat. L. J. 475

See TESHROSH I. L. R. 45 Cal. 368

See SALE FOR APPRAISE OF REVENUE
I. L. R. 42 Cal. 765

sale under—

See OCCUPANCY HOLDING.

16 C. W. N. 351

**PUBLIC DEMANDS RECOVERY ACT (BENG
I OF 1895)—contd.**

Suit for recovery of
possession on declaration that certificate sale void
ab initio—Secretary of State if necessary party
Where a plaintiff sues to recover possession of prop-
erty sold under the Public Demands Recovery
Act on the ground that the certificate and sale
under it had in no way affected his rights, being ab
initio null and void, and does not seek to set aside
the sale, he is not bound to make the Secretary of
State a party to the suit Gobinda Chandra v
Hemanta Kumari, 1 I. R. 31 Cal. 159 8 C. W. N.
657, distinguished. RAJESWAR SINGH v MAHARAJ
LAL (1910) . . . 14 C. W. N. 600

— s 9 (2), (3)—Certificates sale when is
vitiating by irregularities—Nullity and irregularity,
distinction between—Requisition not signed—Certi-
ficate not in due form—Certificate signed mechan-
ically—Certificate Officer to exercise discretion in
issuing certificate—Proof of service of notice—Entry
in order sheet if sufficient—Presumption in favour of
regularity of official acts, if arises when proceedings
shown to have been carried on carelessly and in
slovenly manner—No hard and fast line can be
drawn between a nullity and an irregularity and
when the provision of a statute has been contra-
vened, if a question arises as to how far the pro-
ceedings are affected thereby it must be deter-
mined with regard to the nature, scope and object
of the particular provision violated An Appel-
late Court should not dismiss a suit on the ground
only that the plaint was not duly signed and
verified, such a defect does not affect the merits
of the case or the jurisdiction of the Court. So
also proceedings taken upon a certificate should not
be treated as void merely because the requisition
under s 9 (2) of the Public Demands Recovery
Act was not duly signed and verified. But there
can be no valid sale on a certificate which did not
specify the amount due and otherwise did not
comply with the forms laid down by the Act and
which the officer issuing the certificate appeared
to have signed mechanically. The obvious inten-
tion of s 9 (3) of the Public Demands Recovery
Act is that the officer shall use his discretion as to
the issue of a certificate, determine whether the
case is a proper one for it, whether the money be
due or not. Banmath v Ramgal, 1 L. R. 23 I. A.
45, s c I. L. R. 23 Cal. 775, and Banmath v
Ramgal, 5 C. L. J. 637, followed. The mere entry
in the order sheet of the certificate case that notice
had been served is no proof that service was
effected. When the circumstances of the case
show that the proceedings have been carried on in a
careless or slovenly manner the Court will be slow
to apply the maxim *omnia presumuntur rite et
solennter esse acta donec probetur in contrarium*.
Mohammed v Pirichand Lal Chowdhury
(1914) . . . 19 C. W. N. 1159

— s 10—Public Demands Recovery Act
(Beng I of 1895), ss 10, 15, 17—Arrears of road-
case—Payment—Appropriation—Contract Act (IX
of 1872) ss 59, 60—Certificate and sale when no
arrears, if valid—Regular suit to set aside, if true—
Limitation—Special limitation not applicable—A
debt under the Public Demands Recovery Act is
nothing but a debt and the law laid down in
ss 59 and 60 of the Contract Act which is nothing
more than a codified statement of the general law
as to the appropriation of payments made by the
debtor is applicable to payments made on account

PUBLIC DEMANDS RECOVERY ACT (BENG I OF 1895)—contd**s 10—contd**

of arrears of road cess in the Collectorate *Ganga Bishan Singh v Mahomed Jan*, I L R 33 Cal 1193, s c 10 C W N 948 *Jogendra Mohan Sen v Uma Nath Guja*, I L R 35 Cal 636, s c 12 D. W. N 616, referred to. The Collector therefore has not authority to appropriate payments made in liquidation of specific arrears of road-cess towards previous arrears, and a certificate issued under the Public Demands Recovery Act in respect of the later arrears so paid off, is not a valid certificate under the Act. A sale held in pursuance of such a certificate is without jurisdiction the foundation for the exercise of jurisdiction by the Revenue authority being wanting in such a case. When the arrears in respect of which the certificate purports to have been issued did not exist a suit to set aside the sale held in execution of the certificate lies under the ordinary law, s 15 of the Act and the special limitation provided therein for suits to modify or cancel a certificate not applying to such a suit. *Janukdhari Lal v Gossain Lal Bharya*, 13 C W N 710 followed. *NANDAN MISHRA v LALA HARAKH NARAYAN* (1910) 14 C W N 607

—ss 10 and 31—What is a proper notice—Onus of proper service—Public Demands Recovery, Act (Beng I of 1895), ss 10, 31 Service of notice under s 10 of the Public Demands Recovery Act 1895, must be effected in strict conformity with that section. Where service of notice is effected by fixing it on the outer door of the judgment debtor's house, the onus is clearly upon the defendant relying on the notice to show that there was proper service as required by law. *Rakhal Chandra Rai Chowdhury v The Secretary of State for India*, I L R 12 Cal 603, and *Jogeswar Sahu v Debi Prasad*, 5 C L J 555, followed. *NEMAI CHARAN DE v SECRETARY OF STATE FOR INDIA* (1917) I L R 45 Cal 496

ss 12, 15, 17, 24, 26**See CERTIFICATE OF SALE**

I L R 37 Cal 107

—ss 20, 21—Sale without notice to representatives of a deceased judgment debtor, if a nullity—Failure of Collector to act under s 21, though deposit duly made, if a ground for treating sale a nullity—Irregularity—Sale, voidable only—Proper remedy On 14th March 1893 a Court holding a sale under the Public Demands Recovery Act was apprised of the death on 10th March 1893 of one of the judgment debtors but the property was nevertheless sold without notice to the legal representatives of the deceased judgment debtor. In a suit by the purchaser brought more than a year after to recover the land *Held* that the legal representatives of the deceased judgment debtor could not ask the sale to be treated as a nullity on this ground by way of defence in this suit. It was an irregularity which made the sale voidable by either a proceeding under s 311 of Act XIV of 1882 or a suit brought within one year as contemplated by Art 12 (a) of the Limitation Act of 1877. Nor could the sale be declared a nullity in such a suit upon proof only of improper rejection by the Collector of an application to set aside the sale, although the amounts mentioned in s 21 of the Public Demands Recovery Act were duly deposited. *BEJIN BEHARY PERRA v SAST BHUSAN DATTA* (1913) 18 C W N 766

PUBLIC DOCUMENT.**See EVIDENCE ACT (I of 1872) s 35**

I L R 36 All 161

See LIBEL I L R. 48 Cal 304**See REGISTER OF DEATHS**

I L R 46 Cal 152

PUBLIC DRAIN**House drains—Title—**

Calcutta Municipal Act (Beng III of 1899), ss 3, cl (16) 236, 337—Vesting of a street in a municipality—its effect—Rights of the owner The legal effect of the statutory vesting of a street in a municipality is not to transfer to the municipality the ownership in the site or soil over which the street exists. The effect of the statutory provision is merely to vest in them the property in the surface of the street, road or drain and in so much of the actual soil below and air above as may reasonably be required for its control, protection and maintenance as a highway or drain for the use of the public. The Court will not presume that the intention of the Legislature was to confiscate private property and vest it in a public corporation without compensation granted to the proprietor. The right of the owner was intended to be abridged only to the extent necessary for the discharge of the statutory duties imposed on the Corporation for the benefit of the public. The property of the local authority concerned does not extend further than is necessary for the maintenance and use of the highway as a highway, that subject to this qualification, the original owner's rights and property remain and that if the highway ceases to be a highway, the owner becomes entitled to full and unbridged rights of ownership in the property. *Sundaram Ayyar v Municipal Council of Madras*, I L R 25 Mad 635, and *Madathapu Ramaya v Secretary of State for India*, I L R 27 Mad 336, followed. *Chairman of the Nathals Municipality v Keshori Lal Gonsami*, I L R 13 Cal. 171, *Modhu Sudan Kundu v Promoda Nath Roy*, I L R 20 Cal 732, *Chairman of the Hootch Municipality v Khetra Krishna Mitter*, I L R 33 Cal 1299, *Nihal Chand v Azmat Ali*, I L R 7 All 362, *Nagar Valab Naras v The Municipality of Dhan-dhuka*, I L R 12 Bom. 490, *The Municipal Commissioners of Madras v Saravagopal Mudahar*, I L R 19 Mad 154, *Sundaram Ayyar v The Municipal Council of Madras* I L R 25 Mad 635 *Madathapu Ramaya v Secretary of State for India*, I L R 27 Mad 336, *The Mayor of Tunbridge Wells v David*, [1899] A C 431 *Municipal Council of Sydney v Young*, [1898] A C 457, *Finchley Electric Light Co v Finchley Urban Council*, [1903] 1 Ch 437, *Foley's Charity Trustees v Dudley Corporation*, [1910] 1 K B 317 *London and N W Ry Co v Westminster Corporation*, [1905] A C 426 *Lodge Holes Colliery Co v Wednesbury Corporation*, [1906] A C 323, *Batter sea Vestry v County of London*, [1899] 1 Ch 474 referred to. *GUVENDRA MOHAN GHOSH v CORPORATION OF CALCUTTA* (1916)

I L R 44 Cal 689

PUBLIC FERRY**—declaration of limits of—****See FERRY** I L R. 37 Cal. 543**PUBLIC GAMBLING ACT (III OF 1867).**

—ss 1, 3—"Place"—Fullock-run of disturbed well surrounded by low wall of loose bricks—Common gaming house—Held, that the lowest.

PUBLIC GAMBLING ACT (III OF 1867)—*contd.***ss. 1, 3—contd.**

end of a bullock run round which, in the shape of a semi-circle, was raised a low wall of loose bricks, was a 'place' within the meaning of the public Gambling Act, 1867 *King Emperor v Faisol Mahomed, Shermahomed* I. L. R. 37 Bom 651, followed *Powell v The Kempson Park Race Course Co., Ltd* [1899], A C 113, referred to *EMPEROR v MIAN DIN* (1915)

I. L. R. 39 All 47

ss. 3, 4—**1—Presumption—**

Warrant not in accordance with provisions of Act held, that a warrant authorising the search of any house which the police officer to whom it was issued might think proper to search, was not a legal warrant within the provisions of the Public Gambling Act, 1867 *EMPEROR v HARGONIND* (1912.)

I. L. R. 35 All 1

2—Common gaming

house—Order for confiscation of money found on the persons of accused. In the case of men convicted under s 3 or 4 of the Public Gambling Act, 1867, the law does not contemplate the confiscation of money found on the persons of the accused. *Emperor v Maturwa*, I. L. R. 40 All 517, referred to *EMPEROR v TOLLA* (1919)

I. L. R. 41 All 366

ss. 3, 4, 5, 10 and 11—Search warrant
—Endorsement of warrant by officer to whom it was issued—Procedure—Examination under s 10 of persons sent up as accused under s 4—Effect of order passed under s 11. When a search warrant has been issued by a Magistrate under the provisions of s 5 of the Public Gambling Act, 1867, the police officer to whom it is addressed may endorse it over to another police officer, provided that the latter is an officer to whom such a warrant might have been issued in the first instance. *Emperor v Aash Lath*, I. L. R. 39 All 69, followed. Effect of an order under s 11 of the Public Gambling Act, 1867, and procedure necessary to terminate the legal liability of persons in whose favour such an order is passed whilst proceedings under s 4 of the Act are still pending against them discussed. *EMPEROR v MAHADEO*

I. L. R. 42 All 385

ss. 3 and 10—Act (Local) No. 1 of 1917, United Provinces Public Gambling (Amendment) Act s 2—"Instruments of gaming"—Cowries
—Value of evidence of person examined under s 10. Cowries, if used for the purpose of carrying on gaming, are "instruments of gaming" within the meaning of s 1 of the Public Gambling Act, 1867, as amended by s 2 of Local Act No. 1 of 1917. A person examined as a witness under the provisions of s 10 of Act III of 1867 is not examined as an "approver" within the meaning of the Code of Criminal Procedure. *EMPEROR v PHAGO LAL*

I. L. R. 42 All 470

ss. 4, 8—Conviction for being found in a common gaming house—Forfeiture of money found in the house, legal. A conviction under s 3 or s 4 of the Public Gambling Act 1867, differs from a conviction under s 1d, in that in the case of the latter the forfeiture of money found with the persons convicted is not lawful, but in the case of the former the forfeiture of money or securities for money found in a common

PUBLIC GAMBLING ACT (III OF 1867)—*contd.***ss. 4, 8—contd.**

gaming house is lawful. *Emperor v Tola*, I. L. R. 26 All 270, referred to *EMPEROR v KIPATAT* (1918) . . . I. L. R. 41 All 272

s. 5—**Sec S 3 .**

I. L. R. 42 All 385

Jurisdiction—Power to issue search warrant—"Officer invested with the full powers of a Magistrate"—Sub divisional officer issuing warrant for search outside his sub-division held, that a search warrant issued under s 5 of the Public Gambling Act, 1867, by a first class Magistrate was not invalid by reason of the fact that the house to be searched was situated outside the limits of the tahsil in respect of which such Magistrate had been appointed sub divisional officer. *EMPEROR v ABHU SINGH* (1912)

I. L. R. 34 All 597

s. 8—**Sec S 4 .**

I. L. R. 41 All 272

ss. 10 and 11—**Sec S 3 .**

I. L. R. 42 All 385, 470

s. 12—"Mere game of skill"—Game of chance. Held, that a game which is in fact only to a very slight extent a game of skill and almost entirely a game of chance, is not a game which is excluded by reason of s 12 of the Gambling Act, 1867, from the previous provisions of that Act. *Hari Singh v King Emperor*, 6 C L J 708, distinguished. *EMPEROR v AHMAD KHAN* (1911)

I. L. R. 34 All 96

s. 13—

Gaming in public place
—Seizure of money as well as instruments of gaming, illegal. Where persons are found gambling in a public place in circumstances to which s 13 of the Gambling Act, 1867, is applicable, although instruments of gambling, etc., may be seized by the police, there is no authority for the confiscation of money found with the persons arrested. *Emperor v Tola*, I. L. R. 26 All 270 followed. *EMPEROR v MATURWA* (1918) . . . I. L. R. 40 All 517

PUBLIC GOOD

See DEFAMATION I. L. R. 41 Calc. 514

PUBLIC NAVIGABLE RIVER

Dry land appearing through recession, assessed with revenue—Sud to declare beds formed parts of permanently settled estate—Onus—Plaintiff to prove river non navigable at permanent settlement—River beds shown within boundaries of mouzas in thak and revenue maps, if sufficient to prove beds parts of estates—Thak and survey maps, evidentiary value of. Rennell's map which was based on surveys made between 1764 and 1773 indicated the existence of Kalaganja and Dhulia (which were surveyed in 1859-60 as large navigable rivers) as large navigable rivers and the map prepared by Alexander Hodges in 1831 indicated that at that time Dhulia was a large navigable river. Held, that it lay on the Plaintiff who sued for a declaration that lands recently the beds of these rivers but now dry by reason of the rivers receding from their beds were included in their permanently settled estates to prove their allegation that at the date of the permanent settlement of their adjoining zamindaries in 1793

PUBLIC GAMBLING ACT (III OF 1867)—
*contd***ss 1, 3—contd.**

end of a bullock run round which, in the shape of a semi-circle, was raised a low wall of loose bricks, was a 'place' within the meaning of the Public Gambling Act, 1867 *Emperor v Fattouh Mahomed, Shermahomed* I L R 37 Bom 651, followed *Powell v The Kempton Park Race Course Co., Ltd.* [1893] A C 143, referred to *EMPEROR v MIAN DIN* (1915)

I L R 33 All 47

ss. 3, 4—**1—Presumption—**

Warrant not in accordance with provisions of Act *Held*, that a warrant authorising the search of any house which the police officer to whom it was issued might think proper to search, was not a legal warrant within the provisions of the Public Gambling Act, 1867 *EMPEROR v MARGOBEND* (1912)

I L R 35 All 1

2—Common gaming

house—Order for confiscation of money found on the persons of accused. In the case of men convicted under s 3 or 4 of the Public Gambling Act 1867 the law does not contemplate the confiscation of money found on the persons of the accused *Emperor v Matunwa*, I L R 40 All 517, referred to *EMPEROR v TULLA* (1919)

I L R 41 All 386

ss 3, 4, 5, 10 and 11—Search warrant
—Endorsement of warrant by officer to whom it was issued.—Procedure.—Examination under s 10 of persons sent up as accused under s 4.—Effect of order passed under s 11. When a search warrant has been issued by a Magistrate under the provisions of s 5 of the Public Gambling Act, 1867 the police officer to whom it is addressed may endorse it over to another police officer provided that the latter is an officer to whom such a warrant might have been issued in the first instance *Emperor v Kashi Nath* I L R 30 All 60 followed. Effect of an order under s 11 of the Public Gambling Act, 1867 and procedure necessary to terminate the legal liability of persons in whose favour such an order is passed whilst proceedings under s 4 of the Act are still pending against them discussed. *EMPEROR v MAHADRO*

I L R 42 All 335

ss 3 and 10—Act (Local) No. 1 of 1917, United Provinces Public Gambling (Amendment) Act s 2—Instruments of gaming—Coveres
—Value of evidence of person examined under s 10. Covers if used for the purpose of carrying on gaming, are instruments of gaming' within the meaning of s 1 of the Public Gambling Act 1867, as amended by s 2 of Local Act No. 1 of 1917. A person examined as a witness under the provisions of s 10 of Act III of 1867 is not examined as an 'approver' within the meaning of the Code of Criminal Procedure *EMPEROR v BHAGGI LAL*

I L R 42 All 470

ss 4, 8—Conviction for being found in a common gaming house—Forfeiture of money found in the house. A conviction under s 3 or s 4 of the Public Gambling Act 1867, differs from a conviction under s 13 in that in the case of the latter the forfeiture of money found with the persons convicted is not lawful. But in the case of the former the forfeiture of money or securities for money found in a common

PUBLIC GAMBLING ACT (III OF 1867)—
*contd***ss 4, 8—contd**

gaming house is lawful *Emperor v Tola*, I L R 26 All 270, referred to *EMPEROR v KIRPATAT* (1918)

I L R 41 All 272

s 5—**Sec 8, 3**

I L R 42 All 385

Jurisdiction—Power to issue search warrant— Officer invested with the full powers of a Magistrate.—Sub divisional officer issuing warrant for search outside his sub-division *Held*, that a search warrant issued under s 6 of the Public Gambling Act, 1867, by a first class Magistrate was not invalid by reason of the fact that at the house to be searched was situated outside the limits of the sub-division in respect of which such Magistrate had been appointed sub-divisional officer *EMPEROR v ABUL HUSSAN* (1912)

I L R 34 All 697

s 8—**Sec 8, 4**

I L R 41 All 272

ss 10 and 11—**Sec 8, 3**

I L R 42 All 385 470

s. 12— Mere game of skill.—Game of chance *Held*, that a game which is in fact only to a very slight extent a game of skill and almost entirely a game of chance, is not a game which is excluded by reason of s 12 of the Gambling Act 1867, from the provisions of that Act *Hari Singh v King Emperor* 6 C L J 703 distinguished *EMPEROR v AHMAD KHAN* (1911)

I L R 34 All 98

s 13—

Gaming in public place
—Seizure of money as well as instruments of gaming, illegal. Where persons are found gambling in a public place in circumstances to which s 13 of the Gambling Act 1867, is applicable although instruments of gambling etc., may be seized by the police, there is no authority for the confiscation of money found with the persons arrested *Emperor v Tola*, I L R 26 All 270 followed *EMPEROR v MATUNWA* (1918)

I L R 40 All 517

PUBLIC GOODSee **DEFAMATION** I L R 41 Calc 514**PUBLIC NAVIGABLE RIVER**

Dry land appearing through recession, assessed with revenue—Suit to declare beds formed parts of permanently settled estate—Onus— Plaintiff to prove river not navigable at permanent settlement.—River beds shown within boundaries of mouzas in thak and revenue maps of sufficient to prove beds parts of estates.—Thak and survey maps, evidentiary value of. Rennell's map which was based on surveys made between 1764 and 1773 indicated the existence of Kal ganga and Dhulia (which were surveyed in 1859 60 as large navigable rivers) as large navigable rivers and the map prepared by Alexander Hodges in 1831 indicated that at that time Dhulia was a large navigable river *Held*, that it lay on the Plaintiff who sued for a declaration that lands recently the beds of these rivers but now dry by reason of the rivers receding from the river beds were included as their permanently settled estates to prove their allegation that at the date of the permanent settlement of their adjoining zemindaries in 1793

PUBLIC NAVIGABLE RIVER—contd

they were narrow channels. Plaintiff having failed to show that the rivers must be held to have been navigable at the date of the permanent settlement held further that the fact that in the thak and survey maps of 1840, the beds of the rivers were shown as within the boundaries wholly or in part of plaintiff's permanently settled estate was not sufficient to establish the plaintiff's case that the beds were included in lands charged with the assessment permanently fixed in 1793. *Jagadindra v Secretary of State for India*, L P 30 I A 44 s.c. I L R 39 Cal 291 7 C W 193 (1902). *Doboo Coomar v Govinda Chandra* 9 C L P 395 (1881) and *Secretary of State v Bujoo Chand* 22 C W 1872 (1915) referred to. The decisions in *Kali Krishna v Secretary of State* L P 15 I A 156 s.c. I L R 16 Cal 173 (1883) *Abdul Hamid v Kuran Chandra* 7 C W 1849 (1903) *Masood Ali Khan* 15 C W 1876 s.c. 13 C I J 293 (1919) *Gokul Chandra v Hara Sundari* 9 C W 1333 (1901) *Ananda Hari v Secretary of State* 3 C L J 316 (1916) *Dunwar v Dharam Karla* I L R 35 Cal 621 (1908) *Fa Lal Pahim v Lalendra Krishna* 17 C W 151 (1917) *Shyam Lal v Lachman*, I L R 15 Cal 353 (1885) and *Hari Das v Secretary of State* 26 C L J 599 (1 C) (1917) do not lay down any general inflexible rule of law that the facts stated on the thak or survey map must be presumed to have been in existence at the time of the permanent settlement. The question is essentially one of fact and must be determined on the facts and circumstances of each case. **PROFULLANATH TAGORE v SECRETARY OF STATE FOR INDIA**

24 C. W. N. 839

PUBLIC NUISANCE

See CIVIL PROCEDURE CODE, 1908 s 91

See CRIMINAL PROCEDURE CODE 133

I L R 34 All 345

See NUISANCE

See TORT I L R 33 All 267

In respect of the carrying on of a trade—

See CRIMINAL PROCEDURE CODE 1894

s 133 I L R 1 Lah 163

1. Encroachment on public pathway—Application to District Magistrate by letter—Preference of applicant by letter to Civil Court—Subsequent petition to the Subdivisional Magistrate regarding the same pathway—Issue of conditional order—Appearance of opposite party and claim of title to the path—Dropping proceedings without filing evidence—Criminal Procedure Code (Act I of 1898) ss 133 137 When a Magistrate makes a conditional order under s 133 of the Criminal Procedure Code against a party who appears in a house cause he is bound under s 137 to take evidence as in a summons case. It is open to him thereafter to consider whether there is a complete answer to the case or whether it is not a proper one for reference to the Civil Court. **SAROJBASHINI DEBI v SRIPATI CHAKRABORTY** (1914) I L R 42 Cal 702

2.

Unlawful obstruction to public way—Bona fide question of title—Duty of Magistrate to determine the question—Criminal Procedure Code (Act I of 1898) ss 133 137 **PER SHAHJAHAN J.**—When a party against whom an order under s 133 of the Criminal Procedure Code is contemplated, appears and raises

PUBLIC NUISANCE—contd

the question that a pathway, alleged to have been unlawfully obstructed is not a public but a private one the Magistrate should not only decide whether it is public or private but he should determine whether the claim is bona fide or a mere pretence set up only to oust the jurisdiction of the Court. If he finds that the claim is a mere pretence he may proceed to pass a final order but if he finds that the claim, though not substantiated has been raised bona fide he should stay his hand and refer the party to the Civil Court and if the party does not have recourse to such Court within a reasonable time the Magistrate may then proceed to make the order absolute. *Belat Ali v Abdur Rahim* 8 C W 143 *Matukdhari Tewari v Hari Madhab Das* 9 C W 172 *Luckhee Narain Banerjee v Kam Kumar Mukherjee* I L R 15 Cal 564 and *Pronath Dey v Golordhone Mahto*, I L P 25 Cal 278 referred to. The provisions of s 133 of the Code should be sparingly used. **TEJENDU J.** in the circumstances of the case, assented to the order proposed. **MANINDER DEY v BIDHU BISHWAN SAHAJAN** (1914)

I L R 42 Cal 158

3. Liability of absent proprietors for such nuisance committed by their servants—Applicability of the English Common Law in the construction of the Penal Code—*Penal Code (Act XL of 1860) ss 268 269* Where the use of premises gives rise to a public nuisance, the occupier for the time being who is liable for it and not the absent proprietor. The English cases under the Common Law are no authority upon the construction of the Penal Code in this respect. *Pez v Medley* 6 C B 707 and *Queen v Stephens* I P 1 Q 480 not followed. **BIHUTI PRISAN ISHAK v BIRHAN PAM** (1918) I L R 46 Cal 515

PUBLIC AND PRIVATE NUISANCE.

See NUISANCE I L R 38 Cal 296

PUBLIC OFFICER

See CANTONMENTS ACT (VIII of 1880), s 80 I L R 34 Bom 583

See CIVIL PROCEDURE CODE (Act I of 1908) s 80. I L R 37 Bom 243
I L R 41 Mad 792

syndicate a—

See SPECIFIC RELIEF ACT (I of 1877), s. 40 I L R 40 Mad 125

PUBLIC PATHWAY

encroachment on—

See PUBLIC NUISANCE

I L R 42 Cal 702

obstruction to—

See PUBLIC NUISANCE

I L R 42 Cal 158

Obstruction Proceeding against several without statement of particular acts of obstruction done by each—Initial and final orders vague—No reasonable opportunity given to show cause and adduce evidence—Legality of order based on local inquiry or information at time of conditional order—Criminal Procedure Code (Act I of 1898) ss 133 137 In a proceeding under s 133 of the Criminal Procedure Code against several

PUBLIC PATHWAY—*contd*

persons, alleging various acts of unlawful obstruction to a public way, the initial and final orders must state accurately the specific obstruction caused by each and which he is required to remove, unless it is alleged that all of them are jointly responsible for all the obstructions complained of. An order under the section should not be vague, indefinite or ambiguous, but such as to afford information by its terms to the person to whom it is directed what he is to do in order to comply with it. *Kail Mohan Kar v Sakari Chandra Das*, 11 C L J 114, followed. It is desirable that responsible opportunity should be given the parties proceeded against under s 133 to show cause under s 135 (b) or adduce evidence under s 137 (1). The report or other information on which the Magistrate has passed the conditional order under s 133 is not evidence against the person to whom it is directed. *Srinath Roy v Ananda Halder I I R 24 Calc 395*, approved. An order under s 137 cannot, even by consent of parties, be based on information gathered at a local inquiry. *Pandora Nath Mandal v Rampal*, 10 C L J 467, approved. *PAIMONAN KARMAKAR v EMPLOYER* (1916) I L R 44 Calc 61

PUBLIC POLICY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXIII s 3

I L R 38 Mad 850

See CONTRACT 4 Pat L J 542

See CONTRACT ACT, 1872—

S 23

S 24 I L R 42 Bom 339

S 25 I L R 37 Bom 280

See DEKKAN AGRICULTURISTS' RELIEF ACT (XII OF 1878) s 10B cl (2)

I L R 35 Bom 190

See PALMS OR TREES OF WORKSHIP

I L R 42 Calc 455

See SLAVERY BOND

I L R 42 Calc 742

See TRADE MARK I L R 40 Calc 814

See TRAFFICKING IN OFFICES

I L R 43 Calc 115

See TRANSFER OR PROPERTY ACT (IV OF 1882), s 54 I L R 37 All 631

Inducing Public Officers for consideration to use influence—

See CONTRACT 25 C W N 297

PUBLIC PROSECUTOR.

See CONTEMPT OF COURT

I L R 41 Calc 173

See SANCTION FOR PROSECUTION

I L R 41 Calc 446

Remembrancer—Practice and Procedure—Criminal Procedure Code (Act V of 1895) ss 4 (f), 417, 452—Acquittal, appeal from—The Legal Remembrancer of Bengal, as Public Prosecutor for Bengal, incompetent to prefer an appeal from acquittal, for the Government of Bihar and Orissa. By a notification published in the Calcutta Gazette on 24th June 1886 the Legal Remembrancer of Bengal was to be ex officio Public Prosecutor in all cases before the High Court on its Appellate side

PUBLIC PROSECUTOR—*contd*

except Calcutta cases. On 1st April 1912 the Government of Bihar and Orissa appointed Mr Adam to be the Legal Remembrancer of that Province. Under instructions from the Government of Bihar and Orissa contained in their letter dated 23rd April 1913 (which did not appoint him Public Prosecutor for that case), the Legal Remembrancer of Bengal (through his Deputy) presented this appeal to the High Court on 2nd May 1913. *Held*, that from 1st April 1912 the Legal Remembrancer of Bihar and Orissa became ex officio Public Prosecutor for that Province, and that the mere fact that a person had been directed to present an appeal to the High Court from an order of acquittal did not involve his appointment as Public Prosecutor for Bihar and Orissa for the purposes of the case and that accordingly, the appeal presented by the Deputy Legal Remembrancer of Bengal was incompetent. *DIPYAT LYDAL REMEMBRANCER, BENGAL v GAYA PRASAD* (1913)

I L R 41 Calc 425

*Appeal against acquittal presented by Legal Remembrancer—Legal Remembrancer whether a Public Prosecutor—Criminal Procedure Code (Act V of 1895) s 417—Admissibility of evidence of a similar but unconnected transaction to prove the presence of the accused at a certain place and to rebut an alibi—The Legal Remembrancer is a Public Prosecutor within the meaning of s 417 of the Criminal Procedure Code. Where the accused was charged with cheating a firm in Calcutta, under s 420 of the Penal Code, and it was alleged that he had on a certain date sent a telegram to the firm from Cooch Behar, purporting to come from their agents there, evidence that he had sent a similar telegram, on the same date, to another firm in Calcutta purporting to come from their branch establishment in Cooch Behar is admissible to disprove the case of the accused that he was in Calcutta on such date and to corroborate the evidence of the witnesses connecting him with the despatch of the first mentioned telegram. *LEGAL REMEMBRANCER, BENGAL v TILARAM BARODIA*, (1918)*

I L R 45 Calc 544
*Duty to produce all the evidence in his power bearing directly on the charge—Duty to call all the available eye witnesses in capital cases—Omission to examine material witnesses—Effect of—Inference in favour of the prosecution arising therefrom—Practice. The purpose of a criminal trial is not to support at all costs a theory, but to investigate the offence and to determine the guilt or innocence of the accused, and the duty of a Public Prosecutor is to represent not the police but the Crown, and this duty should be discharged fairly and fearlessly and with a full sense of the responsibility attaching to his position. It is not his duty to call only witnesses who speak in his favour. *Empress v Dhanno Kari I I R 25 Cal 225* discussed and explained. Two doubts in a capital case, place before the Court the testimony of all the available eye witnesses though brought to the Court by the defence, and though they give different accounts. The rule is not a technical one but founded on common sense and humanity. *Reg v Hadden 8 C & P 669*, followed. Where witnesses (who from their connection with the transactions in question must be able to give important information) are not called without sufficient reasons being shown the Court may properly draw an inference adverse to the*

PUBLIC PROSECUTOR—contd

prosecution *Empress v Dhunna Kari*, 1 L R 8 Cal 121, referred to. A conviction under s 114 of the Penal Code cannot stand where the abettor charged necessarily requires the presence of the abettor. To come within the section, the abettor must be complete apart from the presence of the abettor. *RAN RANIAN ROY v EMPTOR* (1914) 1 L R 42 Cal 422 19 C W N 23

PUBLIC RELIGIOUS TRUST

See PARTIES 1 L R 42 Cal 1135

Removal of—Civil Procedure Code (Act 1 of 1908), s 92—Advocate-General, consent of. A suit for the removal of a trespasser in possession of trust property is not a suit of the kind contemplated by s 92 of the Code of Civil Procedure and therefore, for the institution of such a suit no consent of the Advocate-General is necessary. *Budree Das Mulim v Choomi Lal Tehurri*, 1 L R 33 Cal 733 followed. *Veti Rama Jeyash v Venkatcharulu* 1 L R 26 Mad 459. *Sajjar Raja Chowdhuri v Gour Mohan Das Banikar*, 1 L R 24 Cal 418. *Bulh Singh Dushuria v Virubharan Roy* 2 C L J 437. *Muhammad Abdul Majid Khan v Ahmal Siad Khan*, 1 L R 35 All 459 referred to. *ANATUL NESSA BISI v KUEFL KHALIFA* (1914) 1 L R 41 Cal 749

PUBLIC RIGHT OF WAY

Obstruction—Special damage—Village pathway obstruction of—Special damage if need be proved. Where in a suit by the plaintiff for the declaration of a public right of way alleging special damage it appeared that a previous suit for a similar declaration had been dismissed on the ground that the plaintiff did not disclose any cause of action (there being no allegation that plaintiff had suffered special damage) but in dismissing the suit the Court had expressly stated that the plaintiff was not debarred from bringing a fresh suit properly framed. *Held* that the second suit was not barred by *res judicata*. Proof by the plaintiff that he and his servants had been compelled to go by a longer route and thereby incur additional expense was sufficient proof of special damage. *Infringement of a village pathway in which plaintiff had got a right with other villagers by reasons of a grant implied from long user does not require proof of special damage to give the plaintiff a cause of action.* *HARIHAR DAS v CHANDRA KUMAR GUHA* (1918) 22 C W N 21

Right of marching in procession with a car—Suit for declaration of right—Injunction restraining interference with the right. Plaintiffs sued on behalf of themselves and of other members of a religious community to have a declaration of their right of marching in procession with a car along a particular public road to certain temples and for an injunction restraining the defendants from interfering with the plaintiffs. The defendants contended that the plaintiffs had no right to march along the road. The lower Courts dismissed the suit on the ground that the road being public the plaintiffs could not sue unless special damage were shown and proved. On second appeal by the plaintiffs *Held*, reversing the decrees and allowing the claim, that the suit was not for removal of a public nuisance but for a declaration of the right of an individual community to use the

PUBLIC RIGHT OF WAY—contd

public road. Every member of the public and every sect has a right to use the public streets in a lawful manner and it lies on those who would restrain him or it to show some law or custom, having the force of law abrogating the privilege. *Sadgopachariar v A Rama Rao* 1 L R 26 Mad. 376 followed. *BASLINGAPPA PARAPPA v DHAR MAPPA BASAPPA* (1910) 1 L R 34 Bom 571

Metalled and unmetalled portions—
—Ejunct, part of road—Right of public way. Where the question is as to the breadth of a public road, it must be taken that all the ground over which if a public have a right of way is part of the road; the mere fact that part of the road may be metalled for the greater convenience of the traffic will not render the unmetalled portion on each side any the less a public road or street. *MUNICIPAL BOARD OF AGRA v SUDARSHAN DAS BHASTRI* (1914) 1 L R 37 All 9

PUBLIC SERVANT.

See PENAL CODE ss 21 161—190

ss 332 323 1 L R 27 All 253
1 L R 40 All 29

assaulting in execution of duty—

See PROVINCE 1 L R 41 Cal 838

instigating a—

See ABETMENT OF AN ABYMENT
1 L R 46 Cal 607

unpaid apprentice if—

See PENAL CODE s 21
15 C W N 319

PUBLIC STREET

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM III of 1901) ss 70 113 122 1 L R 42 Bom 454

See HIGHWAY

See RAILWAY COMPANY
L R. 43 1 A 310

See RAILWAYS ACT (IX of 1890) s 7
1 L R 28 Bom 565

definition of—

See PUNJAB MUNICIPAL ACT 1911 s 3
1 L R 1 Lah 117

PUBLIC TEMPLE

manager no right to remove idol—
See HINDU LAW 1 L R 44 Bom 466

PUBLIC TRUST

See CIVIL PROCEDURE CODE (1908), s 92

See HINDU LAW

See MUHAMMADAN LAW

Co-trustees—Act of one of two is void without consent of the other—Grant of mortgage—Transaction, whether valid—Rule of act of majority of trustees, applicable to, of, to cases of two co-trustees. One of two trustees of a public trust cannot grant a mortgage or effect any similar transaction in respect of the trust properties so as to bind the trust, without the consent of the other trustee even though the latter on consultation, wrongly refuses his consent. The rule that the act of a majority of the trustees is valid,

PUBLIC TRUST—contd

prev led they gave proper opportunity to the others to enter the liability of the act in question does not apply to cases where there are only two trustees as one of them alone cannot constitute a majority. *See Anirajam v Pannan Nambudri I L R 21 Mad 256* and *Hillman v Malin 2 C & J 616* followed *CHIEF v NARAYAN NAMBUDIRI (1914)*

I L R 42 Mad 335

PUBLIC WAY

See CIVIL PROCEDURE ACT 1908 s 91

See HIGHWAY

See WAY

— obstruction to, by building a wall—

See PENAL CODE (Act XLV of 1860)
ss 147 496 44

I L R 39 Mad. 57

— — — — — A action for obstructing a public road is not maintainable unless the plaintiff proves injury or damage peculiar to himself and different from the damage that would be suffered by other people who used the road. Special damage does not mean serious damage but means damage of special nature that is damage affecting the plaintiff personally or damage peculiar to himself in his trade or calling. *BATHAM HOTELS AND TOURS v SUBRAM IYER AND ANR 23 C W N 85*

PUBLIC WORKS DEPARTMENT

— negligence of servants of—

See I RT I L R 39 Mad. 351

PUBLICATION

See CONTEMPT v COURT

I L R 45 Cal 169

See COPYRIGHT I L R 35 All 434

— of picture copyright in England

See CONTRACT ACT 18 2 s 23

I L R 44 Bom 220

— of proceedings in pending case not permissible till case comes on for hearing—

See CONTEMPT OF COURT

I L R 44 Bom 443

— proof of—

See EVIDENCE

I L R 39 Cal 522, 600

— of notice of claims in Government Gazette sufficient for purposes of s 14 of Court of Wards Act—

See COURT OF WARDS ACT (BOM ACT I OF 1905) s 14

I L R 41 Bom 493

PUBLICITY

See BURMESE BUDDHIST LAW—ADDITION

I L R 45 Cal 1

PUISNE MORTGAGE

See MORTGAGE I L R 37 Cal 282

I L R 37 All 304

See TRANSFER OF PROPERTY ACT (17 OF 1887) s 67 I L R 40 Mad 77

— rights of—

See CIVIL PROCEDURE CODE (1908)
O XXXIV ss 4 AND 5

I L R 38 All 398

PUJARI

— dispute concerning to act as—

See CRIMINAL PROCEDURE CODE (1 OF 1898) s 11 I L R 37 Cal 578

See CIVIL PROCEDURE CODE (ACT 1 OF 1908) ss 9 AND 9.

I L R 45 Bom 683

PUNISHMENT

See PENAL CODE ss 67 TO 73

— Member of a Criminal Tribe—
Second conviction—

See CRIMINAL TRIBES ACT (III OF 1911)
s 27 I L R 45 Bom. 1082

PUNITIVE POLICE

— Costs appointment of
— Police Act (1 of 1861 as amended by Act I of 1843) ss 15 cl (4) 16—1 street Magistrate duty of—Amount realized on appointment of by a Deputy Magistrate effect of—Set off of 51 to for Indus and Canal Affairs to make An appointment of costs made by a Deputy Magistrate under s 15 cl (4) of the Police Act for maintenance of a police force is illegal. Where therefore, an appointment of costs having been made by a Deputy Magistrate and which on appeal having been affirmed by the District Magistrate the amount of costs awarded was recovered from a person under s 16 of the Act by distress warrant. Held that the amount not being legally realized, a suit for the recovery thereof would lie against the Secretary of State for India in Council. *Singh v The Secretary of State for India I L R 28 Bom 314* referred to *KAILASH CHANDRA NAG v SECRETARY OF STATE FOR INDIA (1912)*

I L R 40 Cal 452

PUNJAB

— Permanent Tenancy in—

See LANDLORD AND TENANT

I L R 47 Cal 1

PUNJAB ACT II OF 1913

See REDEMPTION OF MORTGAGES

I L R. 2 Lah. 234

PUNJAB ALIENATION OF LAND ACT XIII OF 1900—

— s 2 (3) (b)—whether right of a temporary lessee to take the produce of trees is agricultural land—

See PUNJAB PRESENTATION ACT 1913 s 3
I L R. 1 Lah. 567

— s 16—Prohibits only a sale and not a temporary alienation of agricultural land—

See EXECUTION OF DECREE

I L R 1 Lah 192

— s 18—whether Insolvency Court can attach land of an agriculturist insolvent—

See INSOLVENCY I L R. 2 Lah 78

— s 17—

See REGISTRATION ACT 1908 s 22
I L R. 2 Lah. 202

PUNJAB COLONIZATION OF GOVERNMENT LAND—

See COLONIZATION OF LAND.

PUNJAB COURTS ACT, 1914

See PUNJAB LAND REVENUE ACT, 1947,
s 117 . I. L. R. 1 Lah 387

s. 41 (3)—

Second appeal on point of custom—Limitation—Appeal filed beyond time on account of delay in obtaining a certificate—Custom—Khanadmasi—Langaryal Jats, Tahsil Kharian—Appointment by widow under instructions from her husband Appellant on 8th February 1919 filed a second appeal in the Chief Court against the decree of the District Judge dated 26th August 1918. She did not apply to the latter for a certificate till 21st November 1918 explaining that she was not aware of the necessity of a certificate till advised by a lawyer at Lahore. The District Judge granted a certificate on 3rd February 1919. Held that under the circumstances and having regard to the provision of cl (3) of s 41 of the Punjab Courts Act appeal should be held to be within time. Held, also that among Langaryal Jats of Tahsil Kharian, who recognise the practice of making a *Khanadmasi*, a widow who has received instructions in that behalf from her husband has full power to make a particular person a *Khanadmasi* *Pattigan's Digest of Customary Law, paragraphs 39 and 41, referred to* MESSAMMAT ALAM BI v LATTE . . . I. L. R. 1 Lah. 245

Second Appeal on question of onus probandi in custom cases—Necessity for certificate—Adoption of daughter's son among Brahmins of Amritsar Held, following *Messammat Bhari v Khanna* (7 P. R. 1918) that the question of onus probandi in a custom case is not a pure question of law, unconnected with custom and that, on the other hand it is not under all circumstances a question relating to the validity or the existence of a custom except in so far as in proving or disproving the validity or existence of a custom a party to a suit may be held to be entitled to an initial presumption in his favour on the strength of a generally accepted rule of custom. Held, also that in the present case having regard to the decision in *Lochmi Dhar v Thakur Das* (149 P. R. 1933), the onus probandi must be regarded as one relating to the existence of a custom governing the question of an adoption and therefore a certificate under s 41 (3) of the Punjab Courts Act was necessary. *Allah Din v Salim Din* (96 P. R. 1915), referred to. MESSAMMAT RAM RAKHI v MEHA RAM . . . I. L. R. 2 Lah. 167

PUNJAB COURT OF WARDS (ACT II OF 1905).

—ss. 8 and 19—*Court of Wards assuming superintendence of property in which the ward has no interest—Action ultra vires—Notice to Deputy Commissioner not necessary before filing a suit regarding such property* Held, that if the Court of Wards purporting to act under s 8 of Punjab Act II of 1905, wrongly assumes superintendence of the property of other persons in which the ward has no share, its action is *ultra vires*, and it cannot be said that it has assumed superintendence under the powers conferred upon it by the Act though it may have purported to act in accordance therewith. If the Deputy Commissioner acts *ultra vires* any person affected thereby can object. It is not necessary in such a case to give this officer notice under s 13 of the Act before filing a suit. *TARA SINGH v GANDA SINGH* . . . I. L. R. 2 Lah. 151

PUNJAB COURT OF WARDS (ACT II OF 1905)—contd

—ss 11 and 12—

See WAQF NAMA . I. L. R. 42 All 609

—Injunction against person out of Jurisdiction—

See REGISTRATION ACT 1877 ss 17, 87
25 C W N 123

PUNJAB LAND REVENUE ACT (XVII OF 1887)

—s 44—

See MAHONVEDAN LAW—ENDOWMENT

I. L. R. 40 Cal 297

—s 117 (2) (b)—*Decree by Revenue Officer trying cases as a Civil Court what it must contain—Appeal where there is no local decree—Civil Procedure Code Act V of 1908, s 33 O. XX. rr 1-6 and O XXI r 1* Held that a Revenue Officer who tries a suit under the procedure laid down in s 117 (2) (b) of the Land Revenue Act must record a judgment and a decree containing the particulars required by the Code of Civil Procedure to be specified therein, and that a decree sheet signed by the Court, in which only the amount of costs incurred by each party is specified but which otherwise has been left blank, is no decree at all and that a paragraph in the judgment not drawn up in the form of a decree and not embodied in a separate form is not a decree and therefore no appeal is competent. *Dulhian Golab Koer v Padma Dulhian Koer per PIRAT J* (I. L. R. 19 Cal 463 P. B.) approved. *GELA RAM v GANGA RAM* . . . I. L. R. 1 Lah. 223

—s 117 (2) (c) (As amended by the Punjab Courts Act III of 1914)—*Appeal from decree of Assistant Collector in determining a question of title lies to District Judge* Held, that since the substitution of the phrase "Subordinate Judge" for "District Judge" in s 117 (2) (c) of the Punjab Land Revenue Act by the Punjab Courts Act III of 1914 an appeal from the decree of an Assistant Collector in the matter of the determination of a question of title lies to the Court of the District Judge. *SADDA SINGH v KIRPALLA* . . . I. L. R. 1 Lah. 387

—ss. 144, 158—*Suit to recover price of barley sold by Revenue Officer.*

See JURISDICTION (CIVIL OR REVENUE)

I. L. R. 2 Lah. 302

—s. 158 (1) and (2) XVII—*Civil suit to rectify grievance arising out of a partition.*

See JURISDICTION (CIVIL OR REVENUE)

I. L. R. 1 Lah. 298

PUNJAB LAWS ACT, 1872—

—No bar to suit to establish rights to property attached by Insolvency Courts as belonging to the insolvent—

See INSOLVENCY I. L. R. 2 Lah. 147

—s 5—

See CUSTOM I. L. R. 45 Cal 450

—Where custom not proved whether Court can apply personal law

See CUSTOM (SUCCESSION)

I. L. R. 2 Lah. 98

—s. 27.

See INSOLVENCY . I. L. R. 37 Cal 418

PUNJAB MUNICIPAL ACT, 1911—

s 3 (10)—*Bye Laws of Delhi Municipality inconsistent with the provisions of the Act and unreasonable whether enforceable* By one of the bye laws of the Delhi Municipality framed under s 188 of the Punjab Municipal Act 'occupier' of stables used for more than six animals were required to obtain a license from the Committee and the word 'occupier' was defined as meaning 'the person who is responsible for the letting or sub letting of the premises to the person in charge of animals and may include the owner.' The Municipal Act itself in paragraph (10) of s 3 however defined 'occupier' as including an owner in actual occupation of his land or building, etc. The petitioner was owner of stables which he had leased to one B. M. and in which more than six animals were stable without a license. The petitioner was fined Rs. 10 for a breach of the bye laws. *Held* that the definition of 'occupier' as given in the bye laws cannot be enforced in so far as it is inconsistent with that given in the Act itself. *Narayan Chandra Chatterjee v Corporation of Calcutta (4 Indus Cases 259) followed. Held*, also that the bye law making the owner responsible in a case where he is not in actual occupation and has no power to control the acts of his tenant with regard to the use of the premises leased, is manifestly unjust to the owner and hence unreasonable and that the English law as to the necessity of bye laws being reasonable is applicable to bye laws framed in the exercise of their statutory powers by Municipal Board in India. *Emperor v. Bal Kishan (1 I. R. 24 All 429) followed. JOTT PERSHAD I THE CROWN I L. R. 2 Lab. 239*

s 3 (13) (b)—*Definition of "public street"*—*Presumed dedication of road in a private market (Gany) to the public—Dedication for a limited purpose* The plaintiff appellants were the absolute owners of Nawab Gany a market in the City of Karnal. The Gany was built in the form of a *Katra* or rectangular close, to which entrance was obtained by four gates. One of the gates was missing at the time of institution of the suit. The others existed and were shut at night. Round the close was a series of shops which were leased to grain merchants. The enclosure thus formed was a narrow courtyard, on the floor of which the tenants piled up their grain in separate heaps, and under the courtyard were masonry bins for storage. The courtyard was neither drained lighted nor cleaned by the Municipality, and was by its nature accessory to the shop property and let by the appellants as such to their shop tenants. Recently the Municipal Committee constructed a metalled road through the Gany on the plea that the area over which the road was laid was a "public street" under the Municipal Act. The Chief Court held that there existed through the Gany a public right of way, and that this had been acquired by reason of dedication as such by the owner. There was admittedly no dedication expressly or in writing but the Chief Court considered that as the space between the shops had been used by all members of the public who came in to buy and sell grain without any interruption there was a presumption that the owner intended the members of the public to make use of the space left vacant or a part of it as a highway. *Held* that in such cases it is of crucial importance to distinguish between the grant to the public as such of a right of way and the permission which naturally flows from the use of the ground as a passage for visitors to or traders with

PUNJAB MUNICIPAL ACT, 1911—*contd*

the tenants whose shops abut upon it. That it was extremely doubtful in the present case whether the term "dedication" could with propriety be applied to what took place. If the term be employed, it could only be in this sense that the dedication of the *entire* of the courtyard was dedication, not to the public, but to the uses of the shopkeepers and their customers, the principal use being the storing and display of grain. *Held*, also that the fact that members of the public get access to a place which is used by customers, and might or might not pass through it did not justify an interference of dedication. A person dedicating land to public use may place such limits as he wishes upon the dedication if he makes those limits clear and definite although there can in law be no such thing as a public right of way, constituted by dedication to only a section of the public. *J. Pool v Huskinson (M and B 827) per BARON PARKE, referred to. NAWAB BANADUR MUHAMMAD RUSTAM ALI KHAN v MUNICIPAL COMMITTEE OF KARNAL I L. R. 1 Lab. 117*

s 188—

See s 3. I. L. R. 2 Lab. 239

PUNJAB PRE-EMPTION ACT, I of 1913

s. 3—*Whether the right of a temporary leasee to plant trees and take their produce (sardrakht) is "agricultural land" or "rillage immovable property" within the meaning of the Act—Punjab Alienation of Land Act, XIII of 1900, s 2 (3) (b)—General Clauses Act, X of 1897, s 3 (2)* The vendor in this case was the tenant of certain land under a lease made in 1888 in which it was stated that the land was leased *scilicet* *logane sardrakht*, i.e., for the planting of a grove of trees or plantation. The lease was for seven years and after expiry of that period the lessor was to receive 1/10 of the produce of flowers, fruits, etc., of the land. Another condition was that if the lessor wanted to evict the lessee after the expiry of the seven years he would pay the latter the value of his *sardrakht*. By a deed of sale made in 1914 the vendor sold his *sardrakht* in the land, i.e., the rights owned by him in the trees. The plaintiff sued for pre-emption in respect of this sale and the questions for decision were, whether the subject of the sale came within the definition of (1) "agricultural land" in the Punjab Pre-emption Act, s 3 read with the Punjab Alienation of Land Act, 1900, s 2 (3) (b), as being a share in the profits of an estate or holding, or (2) "immovable property" under the Punjab Pre-emption Act, s 3. *Held*, that the temporary rights which the vendor had in the produce of the trees under the lease did not constitute him owner of a share in the profits of the holding and that consequently the subject of the sale was not "agricultural land" within the meaning of s. 2 of the Punjab Pre-emption Act. *Held*, also that the temporary rights sold were not immovable property under the Punjab Pre-emption Act, taking the definition as given in the General Clauses Act, 1897, viz., that it includes "land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth", and the plaintiff had therefore no *locus standi* to bring a suit for pre-emption. *Shepherd and Brown's 12d on Transfer of Property Act, 7th Edition, page 13 referred to. MUHAMMAD ISMAIL v SHAMSH UD DYN I L. R. 1 Lab. 597*

PUNJAB PRE-EMPTION ACT, I OF 1913—
confid.

s. 15—

Whether a Christian can be heir to the son of a convert to Islam—

See ACT XXI OF 1850.

I. L. R. 1 Lah. 376

Owner of a small plot of land, unassessed to revenue—Whether one of the owners of the estate. Plaintiff claimed pre-emption in respect of a sale of a house in the village *abadi*. He based his claim on the plea of being one of the owners of the estate. Plaintiff was a *malik kabza* and owned only a small plot of land of 8 *marlas*, unassessed to revenue and uncultivated except to a trifling extent and clearly destined to be a building site. Held, that the plaintiff was not one of the "owners of the estate" within the meaning of s. 15 (c), thirdly of the Punjab Pre-emption Act and that his claim to pre-emption was consequently inadmissible. *Phallu v. Mularab* (153 P. R. 1835), *Man Singh v. Dip Singh* (95 P. R. 1835), *Edam Sunder v. Sodhi Hardans Singh* (109 P. R. 1908), and *Narain Singh v. Gopal Singh* (106 P. R. 1913), followed. *Lal Khan v. Nayab Ullah* (14 P. R. 1842) *Dasu v. Jowala* (13 P. R. 1885), *Jasbir Singh v. Rahmatullah* (7 P. R. 1896), distinguished. *Harjalla Mai v. Nathu Ram* (51 P. R. 1907), disapproved. *JAWALA SINGH v. TARA SINGH* I. L. R. 1 Lah. 503

PUNJAB RULING CHIEFS.

See KUNJPURA, STATE OF

I. L. R. 39 Calc. 711

PURCHASE.

See BEYANI PURCHASE.

See TITLE, PROOF OF

I. L. R. 45 Calc. 909

by Husband—

See RESULTING TRUST

I. L. R. 48 Calc. 260

free of incumbrances—

See SALE FOR ARREARS OF REVENUE

I. L. R. 39 Calc. 353

PURCHASE MONEY.

See LIMITATION ACT (IX OF 1908), SEC.

I, ARTS. 97, 62

I. L. R. 37 Bom. 538

See MORTGAGE. I. L. R. 44 Calc. 542

See RATEABLE DISTRIBUTION

I. L. R. 44 Calc. 789

payment of—

See PRE-EMPTION I. L. R. 35 ALL. 582

refund of—

See SALE IN EXECUTION OF DECREE

I. L. R. 37 Calc. 67

suit to recover—

See CIVIL PROCEDURE CODE (1832), s. 315.

I. L. R. 40 ALL. 411

PURCHASE OF ARMS.

See FORGERY. I. L. R. 43 Calc. 421

PURCHASER.

See LIMITATION ACT (IX OF 1908) s. 22

I. L. R. 33 Mad. 837

PURCHASER—*confid.*

Sch. 1 Art. 12A I. L. R. 45 Bom. 45

See OCCUPANCY HOLDING.

I. L. R. 42 Calc. 745

in Court auction—

See SUBSTITUTION OF PROPERTY AND

SECURITY. I. L. R. 39 Mad. 233

in puisne mortgagee's suit, right of—

See TRANSFER OF PROPERTY ACT (IV OF

1882), s. 67 I. L. R. 40 Mad. 77

liability of—

See SALE FOR ARREARS OF REVENUE.

I. L. R. 40 Calc. 89

of a share—

See SALE FOR ARREARS OF REVENUE.

I. L. R. 43 Calc. 46

of equity of redemption—

See MORTGAGE. 14 C. W. N. 576

rights of—

See PRE-EMPTION I. L. R. 44 Calc. 675

See SALE FOR ARREARS OF REVENUE.

I. L. R. 40 Calc. 89

title of—

See CHAKKIDARI CHAKRAN LANDS

I. L. R. 45 Calc. 765

Widow claiming right of residence against purchaser for value from husband—

See HINDU LAW I. L. R. 45 Bom. 337

Sale by Revenue Courts for arrears of revenue—

See LIMITATION ACT (IX OF 1908), ART.

12A. I. L. R. 45 Bom. 45

PURCHASER FOR VALUE.

See VENDOR AND PURCHASER

I. L. R. 42 Calc. 56

PURCHASER IN EXECUTION

See TRANSFER OF PROPERTY ACT (IV OF

1882), s. 67 I. L. R. 40 Mad. 77

PURCHASER, PENDENTE LITE.

See MENSUE PROFITS

I. L. R. 39 Calc. 220

PURDANASHIN.

See PARVANISHIN

PUTATIVE FATHER.

right of, to inherit his illegitimate son's property—

See HINDU LAW—INHERITANCE

I. L. R. 41 Mad. 44

PUTNI.

See PUTNI LEASE

See PUTNI REGULATION

See PUTNI TENURE

See SALE. I. L. R. 41 Calc. 148

See TRANSFER OF PROPERTY ACT, s. 73

14 C. W. N. 128

consideration for—

See ILLEGAL CESS I. L. R. 45 Calc. 259

PUTNI.

purchase of—

See SALE FOR ARREARS OF RENT

I. L. R. 41 Calc. 715

Putni Regulation (Reg VIII of 1919) s. 9—Agreement of putniar to let stranger for purchase by latter and reconveyance to former—Legal title—Contract let (IX of 1872), s. 23
A contract entered into by a putniar with a stranger stipulating that the latter would purchase the putni which had been advertised for sale under Reg. VIII of 1919, and reconvey it to the putniar receiving the amount of the purchase money with interest and a further sum in addition from him is invalid under the provisions of s. 23 of the Contract Act as being in contravention of the provisions of s. 9 of the Putni Regulation. MOHAN LAL BABU v. UDAI NARAIN BHADRAI (1910)

14 C. W. N 1031

(Chowkidari chakran land—Resumption and transfer to zemindar—Right of putniar to settlement—Conditions of settlement—Suit by putniar to recover—Limitation—Limitation Act (XV of 1877), Sec. 11 Arts. 147, 144—Putniar is must register himself in zemindar's sheristha before suing—Purchase of putni in demand by default, if void—Reg. VIII of 1919 s. 9
The effect of the transfer by the Collector to the zemindar of resumed chowkidari chakran lands is not to separate them from the parent estate and grant a new title to them in favour of the proprietor of the estate. A putniar if these lands were included within his putni has the right to recover possession of the lands from the zemindar on condition of his agreeing to a fair and reasonable settlement with the landlord. The terms of the settlement of the resumed chowkidari chakran land with the putniar would depend upon the conditions under which the putni was originally created. *Hari Narain Mazumdar v. Mukund Lal Mundil* 4 C. W. N. 511, relied on. A suit by the putniar to recover possession of chowkidari chakran land resumed and transferred to the zemindar is governed by Art. 142, or Art. 144 of the Second Schedule of the Limitation Act. *Bunwari Mukunda Deb v. Bishu Rautar Thakur*, 1 L. R. 35 Calc. 316, *see* 12 C. W. N. 459, followed. The absence of registration of the plaintiff's name in the zemindar's sheristha is no bar to such a suit. *Gowain Mungul Doss v. Roy Dhunpal Singh*, 25 B. R. 152, disapproved. *Chunder Pershad Poy v. Sharada Kumari Shastri*, 1 L. R. 12 Calc. 622, *Jay Krishna Mookhopadhyay v. Sarjan Sena*, 1 L. R. 15 Calc. 345, relied on. The purchase of the putni by the defaulting putniar in the absence of notice in contravention of s. 9 of Reg. VIII of 1919 is voidable only and not void. *Matangini Debroy v. Prasanna Moyi Debroy*, 3 C. L. J. 93, followed. HARAK CHAND BABU v. CHAPT CHANDRA SINGHA (1910)

15 C. W. N. 5

Putni title, sale of, for arrears of rent—Suit by purchaser for recovery of possession of lands within taluk brought within 12 years from date of purchase—Limitation—Applicability of Art. 121, Limitation Act—Adverse possession prior to creation of putni, effect of—Cause of action—Adverse possession if arrested by creation of subordinate tenure, when proprietor out of possession of—Doctrine of possession following title, application of, where plaintiff has to prove possession at a particular point of time—Ancient documents showing exercise of right to property, consideration of, as presumptive evidence of possession—Sale under

PUTNI—contd.

s. 159, Bengal Tenancy Act, status of purchaser in—Encumbrance, meaning and annulment of
The plaintiff who was the purchaser of a putni taluk at a sale held in 1899 in execution of a rent decree under the Bengal Tenancy Act brought suits against the defendants within twelve years from date of his purchase for declaration of his title to the lands held by them within the putni taluk and for recovery of possession thereof. There was ample evidence in the record that the adverse possession of the defendants and their predecessors commenced before the creation of the putni. Held, that the suits were barred by limitation and Art. 121 of the Second Schedule of the Limitation Act did not apply to them. That the plaintiff not having established that the possession of the defendants commenced after the creation of the putni or that the proprietor of the estate was in possession at the time when the putni was granted, the interests acquired by the defendants could not be deemed to be an encumbrance within the meaning of Art. 121 nor was it an encumbrance within the meaning of s. 11, cl. (1) of Reg. VIII of 1919. That the cause of action did not arise on the date on which the plaintiff purchased the taluk at the sale held under the Bengal Tenancy Act. That the adverse possession contemplated in the decisions *Nasir Chandra v. Ripendra Lal*, 1 L. P. 25 Cal. 167, *Womark Chandra Goopla v. Raj Narain Poy*, 10 B. R. 15, *Khinto Mori Datta v. Ripoy Chandra*, 1 L. R. 19 Cal. 187, and *Karim Khan v. Broja Nath Das*, 1 L. R. 22 Cal. 241, is possession which commences after the creation of the putni tenure. These cases are founded on the principle laid down in s. 11 of Reg. VIII of 1919 which is that the purchaser of a putni taluk at a sale held under Reg. VIII of 1919 takes the taluk in the state in which it was initially created and the judicial decisions above referred to lay down the doctrine that the purchaser takes the property not free merely of all encumbrances that may have accrued upon the tenure by act of the defaulting proprietor, his representatives or assignees, but also free of the interest acquired by an adverse possessor who has been able to acquire such interest by the action of the defaulting proprietor. This doctrine is plainly limited in its application to cases where the adverse possession commenced after the creation of the putni. That in a case like the present in which the proprietor of the estate is out of possession he cannot merely by the device of the creation of a subordinate taluk arrest the effect of the adverse possession which has already commenced to run against him and such possession would be effective not only as against the subordinate tenure holder but also as against the superior proprietor. That the plaintiff before he could succeed must prove that the proprietor was in possession when the putni was created. That the doctrine that possession follows title has no application to a case like the present. That as laid down by the Judicial Committee in *Ranjit Ram v. Golderhan Pann*, 20 B. R. 23, 29, the Court may in the decision of the question of limitation if there is conflicting evidence on both sides presume that possession was with the party whose title has been established but it does not follow that when the plaintiff has to establish possession at a particular point of time he is entitled to call upon the Court to presume that because his title has been established possession must be presumed to have been with the holder of the title at the

POTNI—contd

specified period of time This contention is clearly opposed to the decision of the Judicial Committee in *Hohima Chandra v Moheah Chandra* L P 16 I A 23 s c I L R 16 Cal 473 That the plaintiff having made his purchase at a sale held in execution of a rent decree under the Bengal Tenancy Act under s 150 of the Act he made his purchase with powers to annul the interests defined as encumbrance in s 161, encumbrance as used in that section includes a statutory title acquired by a trespasser by adverse possession of the land of the defaulting tenure provided such act of possession commenced after the tenure had been created That even if he had succeeded in establishing that such adverse possession commenced after the creation of the *putni taluk*, before he could succeed he would have to prove that under sub s (1) of s 167 he had annulled the encumbrances by service of notice within one year from the date of the sale or the date on which he first had notice of the encumbrance and in the present case the plaintiff had failed herein *Held* (as to the contention that the grant of the *putni* tenure itself was evidence of possession) that the principle that ancient documents produced from proper custody and by which any right to property purports to have been exercised may rightly be treated as presumptive evidence of possession has no application to the circumstances of the present case **KALKAYEND MUKERJEE v BIPRODAS PAL CHOWDRY (1914) 19 C W N 18**

Suit by purchaser to recover land from encumbrancer—Onus to prove that land was in zemindar's possession at date of putni In the absence of anything to show that there was any change between the date of the quinquennial register for a period immediately preceding the permanent settlement and the permanent settlement, the Court would be justified in holding that the area stated in the former was the area permanently settled with the zemindar Without considering the correctness of the principles laid down in *Kalkayend Mukerjee v Biprodas Pal Choudhury* 19 C W N 18 *Held* that on the facts of the present case the onus was on the plaintiff (purchaser of a *putni taluk* at a rent sale) to prove that at the date of the creation of the *putni* the zemindar was in possession of the land sought to be recovered by annulment of defendant's alleged encumbrance **KEDAR NATH PAI v BIPRA DAS PAL CHOWDHURY (1918) 23 C W N 182**

In a suit for the possession of land within the zemindari by purchaser of putni at sale for arrears of rent onus of proof is on plaintiff to prove zemindar's possession prior to creation of putni Possession of as a tenant however long cannot be adverse to the landlord and cannot be held to be an encumbrance **MOMOTHA NATH MITTER v ANATH BENDU PAL 25 C W. N 107**

POTNIDAR

See CHAUKIDARI CHAKRAN LAND
14 C W N 995

right of—

See CHAUKIDARI CHAKRAN LAND.
I L R 44 Cal 841

Part of rent payable by putnidar assigned for payment of revenue—Separate account opened by a co-sharer zemindar—

POTNIDAR—contd

Suit to apportion assigned rent and to order putnidar to pay plaintiff's share of same to plaintiff's account if maintainable—Transfer of Property Act (I of 1882) s 37 Where a putnidar as part of the consideration for the use and occupation of the land undertook to pay the revenue payable by the zemindar direct in the Collectorate on account and to the credit of the landlord *Held*, that the revenue so paid by the putnidar was part of the rent paid to the landlord The owners of a share in the zemindari having got a separate account opened in respect of their share under s 10 of Act XI of 1850 sued the putnidar and his co-sharers for an apportionment as between the co-sharers of the revenue payable by the putnidar, and for an order directing the putnidar to make separate payment in the Collectorate to the account and credit of the plaintiffs of the amount due in respect of their share *Held*, that upon the principle underlying s 37 of the Transfer of Property Act and on the authority of *Sreenath Chunder v Moheah Chunder*, 1 C L R 453 *Isaur Chandra v Ramkrishna* 1 L R 5 Cal 902 and *Raj Varan Mitter v Ekanath Das* 1 J R 27 Cal 479 s c 4 C W N 491, the suit was maintainable and should be decreed the objection of the putnidars that the apportionment would impair the value or affect the character of their permanent lease being groundless and the objection that at each of the four lists they would have to write two challans instead of one being frivolous. **GOUT GOPAL SINHA v GOSTA BEHARY PRAMANIK (1916) 21 C W. N 214**

POTNI LEASE

See CHAUKIDARI CHAKRAN LANDS
I L R 41 Cal 685

See LANDLORD AND TENANT
I L R 45 Cal 693

whether conveys underground right—

See MINERALS 5 Pat. L J 563

Construction of—Covenant in contravention of the rule against perpetuities—Contingent covenant in a lease when operative. Where a lessor by a *putni taluk* after leasing a *monazah* exempted from its operation certain lands and covenanted that on certain contingencies happening the lessee should acquire a right there to as putnidar but no time was specified within which the contingency was to happen in order to vest the right in the putnidar *Held* that such covenant was void as offending against the rule against perpetuities even as between the parties to the covenant **Chandi Churn Barua v Biheswari Deb, 1 J R 16 Cal 71 Panasaam Iatter v Chunan Asari** 1 L R 24 Cal 419, and **Nalin Chandra Soot v Nabob Ali Sarfar, 5 C W N 343**, referred to **ANATH NATH MAITRA v KEMAN KESHAB CHANDRA POY (1910) 14 C W N 601**

Chota Nagpur Encumbered Estates Act (Bengal VI of 1876 as amended by Act V of 1884) s 17—Rules under s 19 of Act, Rule 16—Putni lease executed by Deputy Commissioner as manager of Barabhum Estate under the Act—Sanction of Commissioner—Objection that putni lease had not been submitted to Commissioner after he had sanctioned all the details—Sanction granted for lease to a firm and lease given to a Limit,

PUTNI LEASE—contd

ed Company—Stipulation for payment of bonus—Payment after time fixed. The grant of a *putni* lease under the Chota Nagpur Encumbered Estates Act (Bengal Act VI of 1875 as amended by Act V of 1884) s. 17, and r. 18 of the rules made under the Act necessitate the sanction of the Commissioner. In a suit to have a *putni* lease, executed by the Deputy Commissioner as the manager under the Act of the Barabhum Estate on behalf of the proprietor, the father of the plaintiff (appellant) declared void and inoperative as not having received a valid sanction. *Held*, that where it has been affirmatively established that a transaction itself in all its essential particulars has obtained the sanction of the Commissioner, and then it becomes requisite that the transaction be carried into effect by the preparation of an appropriate deed, an objection merely on the ground that the document ultimately prepared has not been submitted for sanction, cannot be sustained. In administrative and departmental action it must necessarily be the case that formal details may have to be entered upon in order to carry into effect, and put into legal shape the arrangement to which the sanction was given. Where such a sanction was given for a *putni* lease to be granted to 'Robert Watson and Co. a firm of individual men, and the actual lease was executed in favour of "Robert Watson and Co. Limited" the firm having been converted into a Limited Company. *Held* on the facts of the case that when the negotiators in the course of the correspondence mentioned Robert Watson and Co., they did in fact mean an I were perfectly understood to mean "Robert Watson and Co. Limited, the fact of the incorporation of the Limited concern being well known, and that therefore the misdescription did not, under the ordinary principle applicable to such matters, affect the validity of the sanction or of the *putni* lease. In this view it was unnecessary to dole as to the effect in law of the difference in the persons of the two descriptions. *Held*, also, that the sanction of the Commissioner in this case was not merely a sanction of a proposal to grant a *putni*. The proposal had been made, it had been accepted; a contract was accordingly completed on the subject, and it was that contract so completed that was sanctioned. The *putni* lease stipulated for the payment of a *salami* or bonus and the letter granting the sanction contained the clause, "provided the amount be paid before the end of March 1890". Some delay occurred owing to an exchange of views being necessary as to the actual wording of the draft *putni*, but the lease was finally settled by both parties and the *salami* was paid on 21st June 1890. *Held*, that the lease would not afterwards have been open to a challenge to be made by the Deputy Commissioner himself, or for the Commissioner's sanction to be withdrawn, and a fortiori there was no ground for sustaining such a challenge when put forward long afterwards on behalf of the debtor's successor by whom the suit was brought. **RAM KANAI SINGH DEB DAN PASHARA v. MATTHEWSON, (1913)**

I L R. 40 Calc. 1029

PUTNI LEASE—contd

ernment revenue was payable by the zemindar or the *putnidar*. *Held*, that evidence of conduct was not admissible for the construction of the *putni* contract and the Lower Courts were wrong in relying on the fact that for many years the Government revenue was paid by the *putnidar*. **BHAGARI NATH ROY v. PURNA CHANDRA NATHAN**

25 C. W. N. 303

PUTNI REGULATION (VIII OF 1819).

See DEPOSIT IN COURT

I. L. R. 41 Calc. 1000

Position of a purchaser at sale under—Previous suit for rent by original talukdar dismissed on the ground that relation of landlord and tenant did not exist—Subsequent suit by purchaser, if barred by res judicata—Purchaser if bound to annul encumbrance before suit—'Incumbrance,' adverse possession when—Limitation. Although the position of a purchaser at a sale under Reg. VIII of 1819 may not be precisely that of a purchaser at a sale for arrears of revenue yet he is not privy in estate to the defaulting proprietor and he does not derive his title from him, as under s. 11 of the Regulation he has acquired the property free of all encumbrances that might have been created upon it by the act of the defaulter, his representatives or assignees and consequently a claim for rent by such a purchaser is not barred by res judicata by reason of the failure of a suit for rent by a previous *putnidar*, on the ground that the relationship of landlord and tenant between the then plaintiff and the defendants was not established. **Tatra Prasad v. Pam Arisungha Singh, I L R 233 and Radha Golind v. Rajkhal Das, I L R 12 Calc. 52, 56**, relied on. A purchaser at a sale under Reg. VIII of 1819 need not take any steps before the suit is brought to annul an encumbrance. The interest of an adverse possessor is an encumbrance only when the adverse possession has continued for the statutory period. Adverse possession is arrested by the sale, and limitation runs as against the purchaser from the date when the sale becomes final. **SATINA CHANDRA SINGH v. MUNJAMATI DEB (1912)**

17 C. W. N. 340

Itman and taluk tenures, if permanent and heritable—Marfatidari receipts if raise presumption of non transferability. Two *putni* tenures were granted in Chittagong for an indefinite period described in the *kalahyats* as an 'itman' and 'Taluk' respectively and there were no words of limitation or inheritance. The grantee transferred the tenures to a third person to whom rent receipts were granted 'marfatidari' in the names of the original grantees. *Held*, that the term 'itman' as applied to a tenure in permanently settled parts of Chittagong primarily imports a permanent heritable and transferable tenure and it is well settled that the word *taluk* primarily imports permanency. A grant for an indefinite term endures at least for the life time of the grantee. **JOSEPH CHANDRA ROY v. MORRILL ALI CROWDERY**

25 C. W. N. 537

2—*Stipulation in a mojarri mukarrar kabadul for the delivery of ghee and goat annually, if enforceable—Second clause of the section whether abrogates all previous restrictions on chowke as embodied in Regulation I of 1812, sec. 3.* In a *mojarri mukarrar kabadul* executed in 1817

tion of—Saranjams of such Government Revenue. In a *putni* lease it was stipulated that the *putnidar* would pay to the zemindar the rent besides *Saranjams*. In a suit for arrears of rent on the basis of the *putni* lease the question was whether Gov-

PUTNI REGULATION (VIII OF 1819)—*contd*s 3—*contd*

there was a stipulation at the end that the tenant should deliver annually one seer of ghee and one goat to the landlord *putnidar*. *Held* that in view of the clause imposing the delivery of the goat and the ghee standing completely isolated from the terms relating to the rent proper and its mode of payment, the goat and ghee were not part of the rent, and as such were not recoverable, being in the nature of an *abwab* and hence an illegal imposition. See 3 of the Putni Regulation did not restrict the application of the general law against *abwabs* as embodied in sec 3 of Reg V of 1812. **RAM TARAY TEWARY v SW KUMEDA DASSEE**. 26 C W. N 624

— ss 3, 5, 6—*Land Acquisition Act (I of 1894)*—*Non registration of putnidar's name in zemindar's books*—*Effect of an putnidar's title to share of compensation*—*Refusal of zemindar to allow proportionate abatement effect of an zemindar's title to compensation*. When the whole of the compensation money for land acquired under the Land Acquisition Act was awarded to the *putnidars* on the ground that as the zemindars had not allowed an abatement of rent on account of the land acquired, they were not entitled to a share of the compensation money and the zemindars' case was that as the *putnidars* did not get themselves registered in the books of the zemindars under the provisions of the Putni Regulation their title was not protected and they were not entitled to claim any portion of the compensation money. *Held*, that the *putnidars* were entitled to the compensation money and the zemindars to no portion of it. Under s 6 of the Putni Regulation the landlord may demand a fee for the registration in his books of the name of the purchaser of a *putni* as also security from him but the omission to pay the fee and the security does not affect in any way the title of the purchaser whose rights are perfected upon the transfer by the *putnidar* and are not in any way contingent for their validity upon the payment of the fee and security. If the zemindars allow an abatement of rent to the *putnidars* the rent abated primarily represents their annual loss and they may reasonably claim out of the compensation money the capitalised value of that rent but if they do not allow such abatement they do not suffer any immediate loss by reason of the acquisition. **GURPAT SINGH v MOTI CHAND** (1912)

18 C W. N 103

— ss 3, 11, 15—*Site of putni*—*Dur putnidar's interest stipio facto cancelled*—*Possession taken and proclamation obtained, effect of*. The purchaser at a *putni* sale under the provisions of Reg VIII of 1819 acquires the right to take possession immediately, and one who has a tenure or a middle interest between the resident cultivator and the late *putnidar* cannot bar or in any way prejudice the purchaser's right. **Mahin Chander Munim v Jotimoy Ghose** 4 C L R 422. **Wooton v Collector of Poyshahi**, 13 Moo L A 100, **Brinda Das Chunder Sircar Chowdhury v Brindaban Chunder Day Chowdhury** L P 114 178 followed. **Madhun Sudhin Kundu v Pandhuk Ganguly**, 12 H R 353; 3 H L P 431, dissenting. When the purchaser asserted his full right as such at the earliest possible occasion, took possession and obtained a proclamation as required by s 15 of the Regulation and then instituted a suit for rent against the cultivating tenant. *Held*,

PUTNI REGULATION (VIII OF 1819)—*contd*ss 3, 11, 15—*contd*

that she was entitled to a decree the interest of a *dur putnidar* who resisted the claim being considered as cancelled. **KRISHNA PRONODA DAS v DWARKA NATH SEN** (1913) 17 C W. N. 1092

ss 4, 10, 14—

See PUTNI SALE I L R. 47 Calc 337

— ss 5, 6—*Transference of portion of putni, if may claim recognition by zemindar under Bengal Tenancy Act (VIII of 1885), ss 12 17—S 19a (c)*. A partial transferee of a *putni* taluk is not entitled to be recognised by the zemindar. It is a form of transfer which under the terms of ss 5 and 6 of Reg VIII of 1819 the zemindar is not bound to recognise and under s 19a (c) of the Bengal Tenancy Act the transferee cannot claim recognition by reason of ss 12 and 17 of the latter Act. **PAKSHAL CHANDRA DAS v LMAFADO MISRI** (1913) I L R 36 All 187

18 C W. N 629

— s 2—*Publication of notices of the Collector's kutchery*—*Notices taken down and kept on a table for inspection of Muktears during office hours*—*Irregularity valuing site*—*Publication of list of putnis in arrears, defaults and arrears in zemindar's kutchery if sufficient*—*Publication in principal village*—*Sale in Collector's Court room if public sale when people prevented from coming in freely by chappras*—*Sale at an unusually early hour, if bad*. Where it appeared that applications for sales of *putnis* under Reg VIII of 1819 and notices thereof used to be taken down from the notice board on the verandah of the Collectorate by the Muktears during office hours and placed on the Nazir's table and hung up again on the board at the close of the day. *Held* that there was no proper publication of the notices which were meant for the public and not for Muktears alone and it was an irregularity which vitiated the sale. The law contemplates their unobstructed presentation to the notice of the public. **Bejoy Chand Mahapatra v Atitaya Charan Bora**, I L R 32 Calc 953, and **Sachin Nandan Dutta v Bejoy Chand Mahapatra**, 11 C W 729 referred to. Where instead of similar notices a list of the defaulting mahals with the names of the defaulters and the amounts due was stuck up in the zemindar's sadar kutchery, there was a substantial compliance with the law. Where the notice required to be served in the mofussil was served in the kutchery of the *dar putnidar* of three only out of six mauzas covered by the *putni* this was good service when the *dar putnidar's* kutchery was in the principal village of the defaulting tenure. The complaint that the public had not unobstructed access to the place of sale was made out when it appeared that though the sale was held in the Court room of the Collector (and therefore in public kutchery), the Collector's chappras who were placed at the wicket gate to keep order did not allow many persons to enter to prevent overcrowding. A defaulter cannot impeach a sale as illegal merely on the ground that it took place earlier than usual, he may however be permitted to show that he was misled to his prejudice by the deviation from the usual practice. Effect of irregularities in sales discussed. **Maharaja of Pudukkottai v Tara Sundara Dutt** L P 101. **A 19 s c** I L R 9 Calc 619, 622 and **Maharaja of Burdwan v Krishna Komari Pasi**, L P 111 A.

PUTNI REGULATION (VIII OF 1919)--contd

78 contd.

30 a c 1 1 P H Cale 15; referred to, RANJIT
SINGH: JYANENDRA (II) SINGH (1912)

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See also *commentary*.

¹ L. R. 37 Cal. 323

No. 11, 15, 17, cl. (7) para 2 and

cl. (5), para. 3—*Sale and Putsi*. In the case of mortgage a decree on mortgage of putsi and arrears is a decree for a antecedent debt.—*Putsi* is a mortgage proceeds—*Puti* duty—*Puti* charge—*Laminan* non.

There is nothing in the Putsi Regulation contrary to the principle which has been laid down in the Bengal Tenancy Act, the rent payable by the putadar to the zemindar being under ss. 11 and 15 of the Regulation as under s. 63 a first charge on the tenure. Where a putsi tenure is sold under the Regulation & the redemption, as the case may be, of arrears due for the year immediately expired or for the current year, the effect of such sale is not to reduce all former balances to personal debts of the putadar. The charge is not destroyed, but is transferred to the surplus sale price. The sale in any case would not destroy the charge attaching to arrears in respect of which the zemindar has already obtained a decree prior to the sale, for the second paragraph to the third clause of s. 17 of the Regulation even if it be opposed to the provision of s. 63 of the Bengal Tenancy Act, has no application to such a case, for it cannot contemplate the institution of a fresh suit for recovery as a personal debt of antecedent balances in respect of which the zemindar had already obtained a decree. *Prady Mahon Mookerjee v. Sircumar Chauden Bhow* C. I. N. 794 F. 37 Cal. 717 not approved. When before the putsi was sold under the Regulation both the zemindar and the mortgagee of the tenure had recovered decrees, the former for antecedent arrears and the latter on his mortgage. Held, that though under s. 73 of the Transfer of Property Act the latter had a charge in respect of the mortgage dues upon the surplus sale proceeds and this charge subsisted even after the decree, the charge in favour of the zemindar in respect of arrears in rent does have preference before it, as it was an Act. The zemindar was entitled to seek his repeated recourse to the Civil Court without fail down in the Regulation. *Bhandoo CA Surcar v. Prindho CA Dny L. P. 11 A 178 s. c.*

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The limitation of two months provided by the fifth clause to s. 17 of the Regulation applies to a suit by the mortgagee against the zemindar for a declaration of his own decree, not the surplus sale proceeds of his own decree, the surplus sale proceeds of his decree for antecedent balances. *Rasanta Kumar Bose v. Khatina Loan Co* (1914)

18 C. W. N 1001

s. 13—*Sale of putsi*—*Suit by vendor* for back rents not assigned—*Putsi* if may be sold free of ar putsi in execution of decree made—*Diprest of rent by dar-putadar*—*Dar-putadar's lien*, priority holder acquired under 13 of Reg VIII of 1819 by deprecating the putsi rents in arrears for which the

13—Sale of value, 1001

13—Sale of putai.—Suit by vendor for back rents not assigned.—Putai if may be sold free of said putai in execution of decree made.—Deposit of rent by dor-putendar.—Dor-putendar's lien, priority of. The special hen which a subordinate tenure holder acquired under 13 of Peg VIII of 1829 by depositing the putai rents in arrears for which the

PUTNI REGULATION (VIII OF 1919, —contd)

• 13-*cont'd*

patent has been advised of such by the respondent under that Regulation is not affected by proceedings taken in respect of the patent under the Bengal Tenancy Act; the latter Regulation is a self-contained Act specially excluded from the operation of Bengal Tenancy Act by a 245 of that Act. JUDGMENT MANABENDU BANERJEE (1918)

18 C. W. N. 767

to prevent such sales. But to reserve on the ground of intent of sale being illegal, of immovable and sold Sapper Encumbered Debt Act (11 of 1915), paragraph 2, 3, 4, 5, 14, 15, 16, 17 and 23 — The Act, if applied to immovable Chota Nagpur land out of the Act. The rule which prevents a person from recovering back money which he has paid on a claim in legal proceedings to which he will have set up a defence but has failed to do so has no application where a default is made in order to set proceedings aside. The proceedings before the collector at a public sale are of an administrative rather than a properly judicial character. The remainder who has the power of compelling a sale is to exercise this power through the instrumentality of the collector himself who acts not magisterially but ministerially, and who has, in the true view of his functions, no capacity to give effect to any enquiry in or make into it the comparable to the capacity possessed by an ordinary judicial tribunal. The Chota Nagpur Encumbered Estates Act is not a statute analogous to the Bankruptcy Act, the controlling purpose of which is provision for creditors in a liquidation. Its primary intention is that of providing a measure of local application, for the relief of the landless affecting the land with in Chota Nagpur owned by a class of landholders there. The Act has therefore no application to immovable property outside Chota Nagpur. Any provision which affects rights to enforce, in jurisdictions outside it, personal debts or liabilities, are merely ancillary to the main purpose of the Act. JYOTS PRASAD SINGH & KUMAR NATH CHATTERJEE (1918)

22 C. W. N. 1009

Fiduciary Regulation (1811
of 1819) s. 13 (4)—The defendant put in possession
for paying *pains* rent—Payment of further arrears
when in possession—Payments if first charge on the
pains—Fiduciary Tenancy Act (1811 of 1855) s. 171
(1), (2)—The plaintiff's prior right to surplus sale pro-
ceeds—Contract Act (1811 of 1822) s. 69—Where a
defendant having advanced certain arrears of
rent due on a *pains* which was already subject to
defendant's mortgage, was placed in possession of
the *pains* under paragraph 4 of cl. 13 of Regulation
1811 of 1819, and then the plaintiff, an assignee of
the *pains*, paid the next three instalments of
the *pains* rent, but failing to pay the fourth instal-
ment, the *pains* was sold under the Regulation of
1811, that the plaintiff was not entitled to recover
out of the surplus sale proceeds the instalments of
rent paid by him when he was in possession of the
pains. That as regards the arrears paid by the
defendant, assuming that the amount was a
charge on the *pains*, defendant's mortgage of prior
date had priority over it. *Quære* Whether it was
equity to the defendant to seek the relief provided
by s. 171, sub s. (1) of (5) of the Fiduciary Tenancy
Act, and if it was, whether the remedy was available.

POTNI REGULATION (VIII OF 1819)—could**s. 13—could**

able after election by him of the remedy under s. 13, cl (4) of the Putni Regulation. *Held*, further, that the plaintiff could not claim on the basis of s. 19 of the Contract Act. **RAMJIBAI BHANDRA v. TAZUDDIN KAZI (1911)** 15 C. W. N. 404

s. 14—Irregular sale under, if voidable or not?—Sale if may be impugned collaterally—Limitation Act (X of 1877) Sch II, Art 12 Where a putni has been sold under the Putni Regulation and no suit has been brought under s. 14 of that Regulation to set aside that sale. *Held*, that the sale cannot be impugned as invalid collaterally by way of defence in a suit brought by a purchaser of the putni for effectment. Irregularity in the service of notices in such sale does not make the sale a nullity. Irregular sales under the Regulation are voidable and not void and they can only be avoided by the procedure laid down in the Regulation and within the time allowed for such suit by Art 12, Sch II of the Limitation Act. **RANSOYA CHOWDHURI v. NAVA KUMAR SINHA CHOWDHURI (1911)** 16 C. W. N. 805

Where there is a second sale pending suit to set aside first sale the purchaser can acquire a good title if first sale is finally set aside, as the validity of the second sale is not dependent on the continuance of the first sale. **BEJOY CHAND MAHATAB v. ASHUTOSH CHAKRABORTY** 25 C. W. N. 42

s. 17, cl. (c).**See PUTNI TENURE****I. L. R. 37 Calc. 747**

Antecedent balances, if recoverable by resale of the tenure Under the provisions of s. 17, cl (c) of the Putni Regulation, arrears of rent for a period antecedent to the period to recover the rent of which the tenure had been sold, must be regarded as personal debts recoverable under the ordinary procedure for the recovery of debts and not by resale of the tenure. **Jogannath v. Mohiuddin Mirza, I. L. R. 37 Calc. 747**, followed. **Prady Mohun Mukhopadhyay v. Srerani Chandra Bose, 6 C. W. N. 794**, dissented from. **KUTISH CHANDRA ACHARYA CHOWDHURY v. KRULNA LOAN COMPANY, LTD (1912)** 16 C. W. N. 804

POTNI RENT**See DEPOSIT IN COURT****I. L. R. 41 Calc. 1000****POTNI SALE.****suit to set aside—****See LIMITATION ACT, 1877, s. 8****14 C. W. N. 128**

Regulation VIII of 1819—Suit to set aside putni sale—Second sale pending suit, if it may stand in case first sale set aside Where pending proceedings under the Regulation VIII of 1819 to set aside the sale of a Putni Taluk, a second sale under the Regulation took place owing to default in payment of rent. *Held*, that if the first sale be set aside as invalid the second sale cannot stand. **BEJOY CHAND MAHATAB v. MURTIJOY GHOSH (1920)** I. L. R. 47 Calc. 782

Sale for arrears not due—Suit to set aside sale—Day, how to be reckoned,

POTNI SALE—could

in a *status* mentioning *rights* and *dates* in *Bengali* style—*Payment to stop sale, where and by whom to be made—Nature of sale in the Collector's katchari, form and method of—Non publication of notice in manner prescribed, effect of—Putni sale and Revenue sale, difference of—Purchase by stranger at gular sale, effect of—Necessary parties in a suit to set aside putni sale—Costs in a suit to set aside sale—Appellate Court direction of in considering finding of fact of trial Judge who had witnesses before him—Conditional acceptance of arrears of putni rent, if deposit—Putni Regulation (VIII of 1819), s. 8, 10 14* The sale of a putni can be held only if the balance claimed by the zemindar on account of the rent of the putni remains unpaid upon the day fixed for the sale of the tenure, and if a sale is held after a valid payment of the rent due, it must be deemed to be a sale without jurisdiction. **Shroop Chunder Bhootch v. Farab Chunder Singh, 7 W. R. 218**, and **Laxsona Choudhury v. Naba Kumar Sinha, 16 C. W. N. 805** followed. **Barjath Sahu v. Suni Prasad, 2 B. L. R. F. B. I., 10 W. R. F. B. 66, Harlon Singh v. Bunsulur Singh, I. L. R. 25 Calc. 876 Baikushen Das v. Simpson, I. L. R. 25 Calc. 833, I. R. 25 I. A. 151, Mohomed Jan v. Gangai Bishun Singh I. L. R. 38 Calc. 537, I. L. R. 38 I. A. 80 Hajji Bakhsh Khan v. Durlav Chandra Kar, I. L. R. 39 Calc. 981 I. L. R. 39 I. A. 177, and Janakdhar Lal v. Cossain Lal Phana Gayal, I. L. R. 37 Calc. 107** referred to. When a Regulation mentions Bengali months and dates throughout, the Legislature must have intended that a day should be reckoned in the manner prevalent in Bengal that is from sunrise to sunrise. The fact that there was no balance due may be urged as a ground in support of a suit for reversal of a putni sale. A putnidar cannot stop the sale by a deposit in the Collectorate at the moment of sale. Payment to stop a putni sale may, however, be made into Court either by a subordinate talukdar under s. 13 of the Putni Regulation, or by a putnidar who has applied for a summary investigation under s. 14, cl (2) of that Regulation. **Arista Mohan Shaha v. Asfahooddeen Mahomed, 15 W. R. 569**, referred to. The notice of sale, required by the Putni Regulation, to be stuck up at a conspicuous part of the Collector's katchari, must be a self-contained notice, which comprises not only a specification of the arrears and a notification that the sale will be held on a particular date if the amount claimed be not paid before that date, and also a statement of the lots proposed to be sold in the order in which the sale will be held. s. 8 of the Putni Regulation must be read with s. 13. **Rajnarain Mitra v. Ananta Lal Mondul, I. L. R. 39 Calc. 703, Bejoy Chandra Mahatab v. Atinaga Chavan Bose, I. L. R. 32 Calc. 953, and Haricharn Das v. Pajani Kanta Lask, 15 Ind. Cas. 537**, followed. The requirements of the Putni Regulation in respect of the notice mentioned in ss. 8 and 10 of that Regulation must be strictly complied with, and a defective notice under s. 8 is a fatal objection to the validity of the sale. **Maharajah v. Byrdwan v. Arishan Komari Das, I. L. R. 14 Calc. 365, I. L. R. 14 I. A. 50, Abhoyulla Khan Bahadur v. Haricharan Mozoomdar, I. L. R. 20 Calc. 86, I. L. R. 19 I. A. 191, Abhoyulla Khan Bahadur v. Harri Charn Mozoomdar, I. L. R. 17 Calc. 474, Rajnarain Mitra v. Ananta Lal Mondul, I. L. R. 19 Calc. 703 Harro Doyal Roy Choudhry v. Mahomed Gazi Choudhry, I. L. R.**

PUTNI SALE—contd.

19 Cal. 629, and *Maharaja of Baroda v. Tarnadar Dada*, 1 L. J. 3 Cal. 619. L. R. 10 I. A. 19 referred to. A sale under the Putni Regulation stands on an entirely different basis from a sale for arrears of revenue inasmuch as s. 14 of the Regulation does not restrict the right of suit to narrow and specified grounds and the validity of the sale may be successfully challenged on proof that the conditions prescribed by the Regulation have not been fulfilled. A purchase even by a stranger at a putni sale may be set aside on the ground that the provisions of the Regulation were not complied with. The purchaser is only entitled to be indemnified against all loss at the charge of the vendor or other person at whose instance the sale may have been made such loss being ordinarily measured by costs of litigation and interest on purchase money. *Mohamed Ali v. Ameer Ali* 21 B. I. 257. *Barikata Nath Singh v. Mahabir Choudhary*, 9 B. I. 187, 17 B. R. 447 and *Deputy Commissioner v. Amrita Lal Mukherji* 1 I. F. 300 (C. 308 referred to). S. 14 of the Putni Regulation contemplates that the purchaser is to be made a party. If the purchaser has purchased in his own name or on behalf of himself and others he must be deemed to represent all such persons. Where the issue involves a question of fact to be decided chiefly if not solely on oral evidence a Court of Appeal should be slow to set aside the finding of the trial Judge who had the witnesses before him. *Bombay Cotton Manufacturing Co. v. Motilal Shastri* 1 L. R. 39 Bom. 330. 1 R. 42 I. A. 110, and *Dominion Trust Co. v. New York Life Insurance Co.*, [1919] 1 A. C. 231 followed. The acceptance of arrears of a putni rent with a qualification that if the sale did take place the money would be returned does not indicate that the acceptance was postponed to await the event of sale or otherwise and such a sum paid and accepted cannot be regarded as a deposit. *REGIA RAJESHA MOOREJI v. LAKSHMI NARAIN JIN* (1919) 1 L. R. 47 Cal. 337

PUTNI TALUK

See LANDLORD AND TENANT

1 L. R. 41 Cal. 683

sale of—

See CHOTA NAGPUR PCTUMBERED ESTATES ACT, APPLICATION OF

1 L. R. 46 Cal. 1

See LIMITATION 1 L. R. 46 Cal. 670

whether expression in a lease implies fixity of Rent—

See LANDLORD AND TENANT

24 C. W. N. 874

Sale for arrears of rent

Regulation 5, 555 of 1859—Sale in which vendor prior putni sale—Apparition of purchaser. An auction purchaser in a putni sale pending litigation to set aside a prior putni sale of the same property, brought a suit on the prior sale being set aside, against the vendor for refund of the purchase money and rent paid. Held, that he was the plaintiff so far as the vendor was concerned. The cancellation of the prior sale did not affect the subsequent putni sale. *Ramesh Choudhary v. Sonmala Choudhary*, 11 C. L. J. 491 referred to. *Deputy Commr. of Mohan Mohan Ghosh*, 21 C. B. N. 785, dissented from

PUTNI TALUK—contd.

DEPUTY CHIEF MAGISTRATE v. ANANTOSH CHAKRABARTY (1920) 1 L. R. 46 Cal. 454

PUTNI TALUK REGULATION (VIII OF 1819)

See PUTNI SALE

See PUTNI TALUK

s. 14, sale under—

See LIMITATION 1 L. R. 46 Cal. 670

PUTNI TENURE

purchaser of—

See INCUMBRANCE 1 L. R. 43 Cal. 558

1—Incumbrance—Customary right to cut and appropriate trees, whether an incumbrance—Putni Regulation (VIII of 1819) s. 11—Right of an auction purchaser of a sale held under the Putni Regulation to avoid such incumbrance—Bona fide engagement made by the defaulting proprietor with tenant and hereditary cultivators effect of A customary right to cut and appropriate trees is an incumbrance within the meaning of s. 11 of Regulation VIII of 1819. A purchaser of a putni taluk at a sale held under Regulation VIII of 1819 is not entitled to hold the property free from a customary right or a right recognised by usage which has grown up during the existence of the putni, and under which occupancy riyats are entitled to appropriate and convert to their own use such trees as they have the right to cut down, inasmuch as he is not entitled to cancel a bona fide engagement made by the defaulting proprietor with the resident and hereditary cultivators. *PRADYOTE KUMAR TAGORE v. GOPI KRISHNA MANDAL* (1910) 1 L. R. 37 Cal. 322

2—Putni Regulation

(VIII of 1819) s. 17, cl. (c)—Arrears of rent—Arrears prior to the current year for which the sale took place—Personal Debt—Bengal Tenancy Act (111 of 1885) s. 70—First Charge. Under the Putni Regulation VIII of 1819 s. 17 cl. (c) where the arrears of rent claimed are for balances due for periods prior to the current year for which the arrears are due when the sale is held in the middle of the year or prior to the year preceding if the sale be held at the commencement of the following year these balances must be treated as personal debts recoverable under the ordinary procedure for recovery of debts and not as rents recoverable under the provisions of the Tenancy law, and that in such a case the provisions of a 73 of the Bengal Tenancy Act would not have any application. *Pradyote Mohan Mukhopadhyay v. Sreeram Chandra Bose* 6 C. B. N. 791 commented on and distinguished. *JAGANNATH v. MOUNTED ON MIRA* (1910) 1 L. R. 37 Cal. 747

3—Successive rent

decree—Sale in execution of rent decree—Transfer of surplus sale proceeds for amounts of successive decrees—Putni Regulation (VIII of 1819) s. 3 (3) 17 (3)—Bengal Tenancy Act (111 of 1885) s. 65, 163 195—(c)—Transfer of Property Act (11 of 1882) s. 73 199—Nature of charge for arrears of rent. *Per N. P. CHATTERJEE J.* (Smith J., concur). Not only can a putni tenure be sold under the Bengal Tenancy Act but decrees for rent for earlier periods can be forced against the surplus sale proceeds of a putni tenure when sold in execution of a decree for rent under the provisions of the Bengal Tenancy Act. *Per*

R

RAFA TANKIDARS.

In the Kharidah Estate the Rapa Tankidars are occupancy raiyats and not tenancy holders. *HANAYAN PATNAIK v. RAGHUNATH PATNAIK* 5 Pat. L. J. 373

RAILWAY.

See RAILWAY COMPANY

See RAILWAYS ACT.

Liability of Railway Administration—

See LOSS OF GOODS

I. L. R. 44 Calc. 18

See SHAWL, MEANING OF

I. L. R. 39 Calc. 1029

Risk Note—

See RAILWAY COMPANY

See CONTRACT

I. L. R. 39 All. 418

I. L. R. 43 Bom. 789

RAILWAY COMPANY

See CARRIERS I. L. R. 39 Calc. 311

See CARRIERS, LIABILITY OF

I. L. R. 33 Mad. 120

See CONTRACT 15 C. W. N. 991

I. L. R. 39 All. 418

See CONTRACT ACT 1872 ss. 227 AND 237

I. L. R. 43 All. 621

ss. 151 and 152

I. L. R. 39 Bom. 181

See CONTRIBUTORY NEGLIGENCE

I. L. R. 34 Bom. 427

I. L. R. 41 Calc. 308

See EVIDENCE ACT, s. 103

I. L. R. 43 Bom. 789

See NEGLIGENCE I. L. R. 43 Calc. 757

Liability of—

See RAILWAYS ACT (IX OF 1890) s. 73.

I. L. R. 34 All. 656

I. L. R. 37 All. 463

See REMAND I. L. R. 42 Calc. 888

Loss or damage to goods—

1. —Risk Note B—Company absolved from liability in all cases except negligence or dishonesty of its servants—Onus Where goods were consigned to a Railway Company for carriage, the contract being embodied in a risk note, Form B, under which, in consideration of the Railway Company accepting a lower freight the consignor absolved the Railway Company from all liability for loss or damage to the goods, subject, however, to the proviso that the Company would be liable for loss due to wilful negligence on the part of their servants or due to theft by its servants or agents. *Hell*, that the onus lay on the person seeking to charge the Railway Company with damages for loss of goods to show that the case came within the proviso. *SNEOHABUT RAM v. THE BENGAL NORTH WESTERN RAILWAY CO.* (1912) 16 C. W. N. 788

2

Risk Note H—

Consignment under Risk note—Loss of portion

RAILWAY COMPANY—contd

of consignment—Onus of proving cause of loss—*Railways Act (IX of 1890)*, s. 72 Where a number of tins containing oil was consigned to the defendant railway company under risk note, Form H and the tins were delivered to the consignee, but the contents of some of the tins were missing. *Held* that the person who said that the case fell within the exceptions mentioned in the risk note, Form H, had to prove his assertion. *SNEOHABUT RAM v. BENGAL NORTH WESTERN RAILWAY COMPANY*, 16 C. W. N. 766, referred to *PART INDIAN RAILWAY CO. v. MILKANTA ROY* (1917)

I. L. R. 41 Calc. 576

3. —Contract Act (IX of 1972) ss. 151 and 152—Liability of Railway Companies for loss, damage or destruction of goods entrusted to them for carriage—Evidence necessary to exonerate Railway Company when the true cause of the loss, etc. cannot be ascertained—Provision of appliances to put out fires *Held* that the B. B. & C. I. Railway Company for the value of certain bales of cotton entrusted to the railway company for carriage and accidentally burnt while being so carried. *Held*, that the railway company, merely by getting the Court to believe that the wagon on which the goods entrusted to it had been loaded had been so loaded with ordinary care, had not done all that was needed to absolve itself but that in the absence of a definite known cause the railway company had to satisfy the Court that in the management of its engines, and in the whole course of drawing the wagon to the place where it caught fire, the railway company observed in all respects the same degree of care and prudence which an ordinary man conveying his own valuable goods might have been expected to take under the same circumstances. When anyone has entrusted goods to a railway company for carriage, and those goods are lost, damaged or destroyed while in the possession and under the control of the railway company, the fact of the loss, damage or destruction is enough to cast upon the company the burden of proving that that loss was not due to any negligence on its part. The standard of negligence is given in ss. 151 and 152 of the Indian Contract Act but no general rule universally applicable can be laid down as a rule of law defining the amount and quality of the proof in every case which will discharge the railway company's contract. *Lakshichand Roushchand v. G. I. P. Railway Company*, I. L. R. 31 Bom. 1, is an authority for the proposition that a decree ought not to be given against a railway company sued as bailee for loss, damage or destruction of goods limited to it the moment it admits that it is unable to assign the *vera causa* of the loss. The company as bailee is primarily liable for the loss, but it may exonerate itself in two ways. It may, while ignorant of the cause of the fire, show if it can, that that cause could not possibly be attributable to itself, that in other words it was altogether external and beyond the railway company's control. Second, the bailee, while ignorant of the *vera causa*, might point to the fact that he had taken such precautions against risk, had dealt with the goods entrusted to him with such care, that whatever the cause might be and although attributable to his own act, yet it must be presumed to have been of such an uncommon, or if such an unpreventable kind that he ought not to be held

RAILWAY COMPANY—contd

responsible for it. But such a defence could only be logically (if ever logically) established by the virtual exclusion of all causes of an ordinary kind attributable to the bailee or his servants or machinery. **HILMI KHETSY & COMPANY v B, B & C I RAILWAY COMPANY (1914)**

I L. R. 39 Bom. 191

4. ————— **Negligence—Common carrier—Negligence—Railway Company if may free itself from liability by contract—Statutory limits imposed on such contract—Duty of care, apart from contract and excluded by it, if arises—Contract through agent or person held out as such—Agent not carrying to acquaint himself with terms printed on ticket—Principal if bound by terms—Jury—Fact, finding of—Legal consequences flowing therefrom.** Apart from statute, a carrier is liable in Canada as in England for injury arising from negligence in execution of his contract to carry unless he has effectively stipulated that he shall be free from such liability. Under s 284 of the Canada Railways Act, railway companies are put under a general obligation to carry and deliver with the due care and diligence, and any one aggrieved by a breach of this duty is to have a right of action from which the companies are not to be relieved by any notice, condition or declaration if the damage arises from negligence or omission. S 310 of the Act provides that no contract restricting liability for carriage is to be valid unless it is of a kind approved by the Railway Board, which is empowered to determine the extent to which such liability may be impaired, restricted, or limited, and generally to prescribe by regulation the terms and conditions under which any traffic may be carried. *Held*, that where under s 340 and other sections which deal with special tariffs, forms of stipulation limiting liability have been approved by the Board, and the conditions for making them binding have been duly complied with, the companies are enabled in such cases to contract for complete freedom from liability for negligence. If a passenger has entered a train on a mere invitation or permission from a railway company without more and he receives injury in an accident caused by the negligence of its servants, the company is liable for damages for breach of a general duty to exercise care. Such a breach can be regarded as one either of an implied contract or of a duty imposed by the general law, and in the latter case is in form a tort. But in either view this general duty may, subject to statutory restrictions, be superseded by a specific contract which may either enlarge or diminish the liability. If the law without more, it, such a contract cannot be pronounced to be unreasonable by a Court of Justice. The specific contract, with its incidents, either expressed or attached by law, becomes in such a case the only measure of the duties between the parties. If the contract is one which deprives the passenger of the benefit of a duty of care which he is *prima facie* entitled to expect that the company has accepted, the latter must discharge the burden of proving that the passenger assented to the special terms imposed. This he may be shown to have done either in person or through the agency of another. Such agency will be held to have been established when he is shown to have authorised antecedently or by way of ratification the making of the contract under circumstances in which he must be taken to have left everything

RAILWAY COMPANY—contd

to his agent. In such a case, it is sufficient to prove that he has been content to accept the risk of allowing terms to be made without taking the trouble to learn what was being agreed to. The company may infer his intention from his conduct. If he stands by under such circumstances that it will naturally conclude that he has left the negotiation to the person who is acting for him, and intends that the latter should arrange the terms on which he is to be conveyed, he will be precluded by so doing from afterwards alleging want of authority to make any such terms as the law allows. If the person acting on his behalf has himself not taken the trouble to read the terms of the contract proposed by the company in the ticket or pass offered and yet knew that there was something written or printed on it which might contain conditions, it is not the company that will suffer by the agent's want of care. The agent will, in the absence of something misleading done by the company, be bound, and the principal will be bound through him. The company owes the passenger no duty which the contract is expressed on the face of it to exclude, and if he has appreciated that contract by travelling under it, he cannot afterwards reprobate it by claiming a right inconsistent with it. **GRAND TRUNK RAILWAY COMPANY OF CANADA v ALBERT NELSON ROBINSON (1916)**

19 C. W. N. 905

5. ————— **Liability of Railway Companies for damage to goods entrusted to them for carriage—Onus of proof of negligence—Railway Act (IX of 1890) ss 72 and 76—Contract Act (IX of 1872), ss 151, 152 and 161—Carriers Act (III of 1865), s 9—Responsibility of Railway Company for negligence in preventing damage from fire after discovery of the fire.** On the 3rd of March 1909, the 2nd plaintiffs consigned 80 bales of cotton to the defendants at Valkapur for delivery to the 1st plaintiffs at Lombay. There 10 bales along with 10 others belonging to a different consignor were loaded upon a waggon at Valkapur Station by the defendants and the waggon was then closed and dunnied on to a siding till the next day. On the 4th of March 1909 at 1.50 p.m., the waggon was attached to a train being placed next to the engine. On the arrival of the train at Varangum Station at 3.40 p.m., the said bales of cotton were found to be on fire. The waggon containing them was immediately detached and placed on a siding, the doors were opened, 37 bales were extricated and the engine driver, having unsuccessfully tried to put out the fire with water from his boiler, took the rest of the train on to Lhusaval, a station 8 miles distant. There not being appliances at Varangum for extinguishing fires, the remaining 72 bales continued to burn in the waggon till completely consumed. While the bales were being burnt communications passed between the Varangum and Lhusaval Station Masters as to the sending from Lhusaval of appliances to put out the fire. At 4.10, the Station Master at Varangum telegraphed to the Station Master at Lhusaval to send a fire pipe to put out the fire as it was burning very badly. This message was received at Lhusaval at 4.30 p.m. During the day the Station Master at Varangum sent several practice messages asking for assistance from Lhusaval and also sent a further telegram which

RAILWAY COMPANY—contd

was received at Bhuvaval about 8.30 p.m.—“Fire pump not sent yet; half the bales burnt, strong wind blowing, fire in great force, arrange sharp.” The Station Master at Bhuvaval did not send any assistance whatever. He made inquiries as to how far water was from the fire and on receiving the information that the nearest water was in a well some 200 yards from the fire and some 25 feet from the rails, came to the conclusion that the appliances at Bhuvaval Station would be ineffective. In fact the nearest well was some 200 yards from the fire but only some 55 feet from the nearest point on a siding to which the wagon containing the bales could have been brought. After the fire the defendants noticed the plain tiles that the 90 bales had been burnt, but afterwards offered to give delivery to the plaintiffs of 37 bales, slightly damaged, but the plaintiffs refused to accept delivery of the bales and subsequently they were sold by the defendants for the sum of Rs. 3213. The plaintiffs sued the defendants to recover the value of the 53 bales. No cause of the fire could be shown and no definite act of negligence on the part of the servants of the defendants or other fault on their part prior to the discovery of the fire was proved. *Held*, that the responsibility of the defendants for the loss, destruction or deterioration of goods delivered to them to be carried by them was, as provided by s. 72 of the Railways Act IX of 1890 that of a bailee under s. 151, 152 and 162 of the Contract Act, and that s. 70 of the Railways Act did not extend the principles contained in s. 9 of the Carriers Act 1803, to suits against Railway Companies and did not increase the onus of proof laid on the defendants under s. 151 of the Contract Act, namely to take as much care of the goods bailed to them as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality, and value as the thing bailed, but that in the absence of special contract the defendants were not responsible for the loss, destruction and deterioration of the goods if they had taken that amount of care. *Held*, further, that the defendants had exonerated themselves *quoad* the outbreak of the fire. *Held*, however, that the obligation on the defendants included not only the duty of taking all reasonable precautions to obviate risks but the duty of taking all proper measures for the protection of the goods when such risks had actually occurred and that the defendants servants had been guilty of default, the Station Master at Bhuvaval in not having sent appliances to extinguish the fire when requested by the Station Master at Varanasi, and the Station Master at Varanasi in having misled the Station Master at Bhuvaval as to the distance of water from the fire, and that the defendants had not taken the care a reasonable man would take to save his goods. *Held*, accordingly, that the defendants were liable to the plaintiffs to the extent of the damage which they might have prevented on the discovery of the fire. **LACHINDRAN RAMCHAND & CO. V. P. RAILWAY COMPANY (1911)**. I. L. R. 37 Bom. 1.

6. **Carriage of goods—East Indian Railway**—The sender's risk note used by the East Indian Railway by which the Company takes liability only for loss of a complete package due to the wilful negligence of their staff is not opposed to public policy. **KARI DAS MULLICK & EAST INDIAN RAILWAY COMPANY 21 C. W. N. 315**

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7. **Liability of, in respect of goods consigned for carriage and delivery—Obligation to grant advantage certificate**—A Railway Company is under no liability to furnish a receipt consigned to them for carriage and delivery and give a certificate of shortage, if the consignor alleges loss in the transit. **JOS ANANT MAYAPPA & EAST INDIAN RAILWAY CO (1915)**. 22 C. W. N. 502.

8. **Risk Note B—Contract—Delivery of goods to Railway Company—Risk note, Form B—Goods lost in transit—Admission of loss by Railway Company—Mere admission not sufficient to entitle Railway Company to protection of risk note—Infinite proof of loss required**—The plaintiffs consigned certain bags of rice to Bombay from that port under Risk Note B. The consignments being short delivered, the plaintiffs sued the defendant Railway Company for the value of the missing bags. The second defendant Railway Company admitted the loss but sought to escape liability under the risk note. The trial Judge, on the admission of the defendant Company and without receiving any evidence regarding the loss of goods, dismissed the plaintiffs' suit. The plaintiffs having applied to the High Court. *Held*, remanding the case for retrial, that it was necessary for the defendant Company to prove that the goods were lost, a mere admission in their own favour being insufficient. **CHENNAI & THE E. I. RAILWAY COMPANY (1921)**. I. L. R. 45 Bom. 1201.

9. **Duties of, as carriers—Goods allowed by consignee to remain on railway premises for an unreasonable time—Company not liable for loss or damage—Demurrage**—The consignee of goods sent by rail is bound to take delivery thereof within a reasonable time. If by his own neglect he omits to do so, he cannot hold the railway company liable for any loss or damage which may accrue. Inherent considerations would arise if there were any evidence to show an agreement on the part of the railway company to act as a warehouseman; but the mere fact of the company charging demurrage would not necessarily give rise to such an implication. **Clayman v. Great Western Railway Company, 5 Q. B. D. 273, referred to. PENNALL AND NORTH WESTERN RAILWAY & MELBOURNE 1 L. R. 42 All. 635**

10. **Death of passenger—Alleged to have been caused by negligence—Suit for damages by representatives of deceased—Nature of liability of Company—Bentley v. The Great Eastern Railway Co (1855)**—An action against a Railway Company for damages on account of the death of a passenger alleged to have been caused by the negligence of the Company's servants is not an action *ex contractu*, but is an action based on tort and on the provisions of the Indian Fatal Accidents Act, 1855 such an action, therefore, cannot be brought at the place where the deceased person's ticket was taken. There is no general obligation upon a Railway Company to carry passengers who have taken tickets “safely”. **Austin v. The Great Western Railway Company, 2 Q. B. 442, and the East Indian Railway Company v. Kaildas Mukherji, 1 L. R. 23 Cal. 401, referred to. SHRIAM NARAYAN TIKKOO & THE BOMBAY, BARODA AND CENTRAL INDIA RAILWAY (1919)**. I. L. R. 41 All. 438.

RAILWAY COMPANY—*contd.*

11. ——— Public Street—Power to Cross Land Acquisition Act (I of 1894)—Indian Railways Act, 1890, s 7, as amended by s 1 of Act IX of 1896, provides that, subject in the case of immovable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies a railway administration may, for the purpose of constructing a railway, (*inter alia*) construct across any streets such lines of railway as the railway administration think proper, the powers conferred by the section are made subject to the control of the Governor-General in Council. The respondents constructed lines of railway across a street vested by statute in the appellant Municipal Corporation without obtaining their consent and without taking proceedings under the Land Acquisition Act 1894. *Held*, that the construction of the railway lines across the street was not an acquisition of immovable property within the meaning of s 7 of the Indian Railways Act, 1890 and that the respondents had power under that section, as amended to lay the lines without obtaining the consent of the appellant corporation. BOMBAY CORPORATION v GREAT INDIAN PENINSULA RAILWAY CO. (L. R. 43 L. A. 310)

12. ——— Carriage of goods partly over railway line and partly by river—Local book-keeping form of railway receipt—Freight, for the whole journey—Privilege of contract—Loss of goods while in the custody of the Steamship Company—Negligence of the Steamship Company—Carrier's Act (III of 1865), ss 8 and 9—Common carrier, liability of, to owner—Definition of common carrier in the Carrier's Act (III of 1865)—Evidence Act (I of 1872) s 106. On or about the 11th November 1915 343 chests of tea belonging to the plaintiffs were delivered by the plaintiffs to the Railway Company (1st defendant) at the latter's station at Bordioli Road (Assam) for the purpose of transport to Chittagong, in consideration of one single and entire reward paid by the plaintiffs to the Railway Company. In the ordinary course of business such goods were carried by the Railway Company over its own line from Assam to Chittagong without recourse to any other companies or system of transport. Owing to a breakdown, however, of a section of the line, known as the hill section, in June 1915, arrangements were made between the Railway Company and the Steamship Company (2nd defendant) by which the Railway Company was to carry such goods over its own line to Gauhati and there hand over the goods to the Steamship Company to be carried by the latter (for a fixed reward to be paid by the Railway Company to the Steamship Company) by the river to Chandpur and there hand the goods handed back to the 1st for the purpose of transport over its own line of railway to Chittagong. The railway receipt given to the plaintiffs was in the form of the usual "Local Booking" receipt (which in normal times would be given for the all land transport from Bordioli Road to Chittagong) except that at the top thereof a note was made in writing "Packed as per manifest required for Chandpur and Chandpur". It also appeared that a receipt was given by the Railway Company to its customers in the 1st class carrying a goods

RAILWAY COMPANY—*contd.*

tariff stating the breakdown on the hill section and adding, all goods traffic to and from stations in Upper Assam north of Mura must be routed via Gauhati. Under this arrangement the plaintiffs' goods were carried by the Railway Company from Bordioli Road to Gauhati and put on board the Steamship Company's flat Quayery at the latter place. On the 21st December 1915 while the said goods were lying at Gauhati on the said flat, a fire broke out on the said flat at 6-15 or 6-30 in the evening and 96 of the plaintiffs' chests of tea were destroyed. In a suit by the plaintiffs which proceeded against the Steamship Company (the suit against the Railway Company having been dismissed by consent) for damages for the loss of 96 chests of tea so destroyed—*Held*, that there was no contract to carry safely from Gauhati to Chandpur between the plaintiffs (owners of the goods) and the Steamship Company as a common carrier. *Mitchell v Lancaster and Preston Paton & Co.*, 8 M & W 421, *Scott v South Staffs Railway Co.*, 8 Fr 311, *London and North Western Railway Co. v Collins*, 7 H L 691, *121 Hilby v West Cornwall Railway Co.*, 2 H L 703, referred to. *Seem* that, in the absence of any privity of contract, the plaintiffs as owners of the goods, cannot (apart from the Carrier's Act (III of 1865)) recover against the Steamship Company as an insurer of goods by reason only that it was a common carrier. *Britherton v Wood & Wood & Co.*, 51, 100 v *Shipton*, 8 Ad & El 973, *Marshall v York Newcastle & Hull Railway Co.*, 11 C B 655, *Twiss v Great Western Railway Co.*, 1 B 2 Q B 442 referred to. *Held* also that under the arrangement above described the Steamship Company was engaged in the business of a common carrier within the definition of the term in the Carrier's Act (III of 1865), and that although there was no privity of contract between the plaintiffs and the Steamship Company the latter as a common carrier, was liable to the plaintiffs as owner of the goods, by virtue of ss 8 and 9 of the Carrier's Act (III of 1865) for loss arising from its negligence unless it was able to exonerate itself from responsibility for such loss. *Chas. v P & Co.*, 1 L J 21 C 1 735, *R. S. A. Co. v Chas. R. & Co.*, 25 Cal 323, *Hughes & Co. v B. & Co.*, 1 P & W 101, *1 L J 101* referred to. *Held* further, in the circumstances of the case, that (apart from any rule of law as to common carriers) the Steamship Company was liable to the plaintiffs in tort by reason of the fact that the plaintiffs had a contractual obligation that the loss was caused by the negligence of the Steamship Company. *Fisher v Mid. Dir. Railway Co.*, 15 C P D 157, *Parker v L & N. Railway Co.*, 57 J Q B 103 followed. *Kelly v Metropolitan Railway Co.*, (1895) 1 Q B 245, *Menz v Great Eastern Railway Co.*, (1895) 2 Q B 337, referred to. Where, on a question of negligence the plaintiffs have adduced evidence sufficient to call upon the defendant to reply and the defendant has refused to do so under the burden of having the material facts before the Court, has refused to do so, the Court is entitled to find in favour of the plaintiffs. *11 L J 201* followed. *Durham & P. S. & Co.*, 2 C L J 612, referred to. *DURHAM TEA CO. v ASSAM PENINSULAR RAILWAY CO.* (L. R. [1916])

L. R. 47 Cal. 8

RAILWAY PASSENGER

See RAILWAY COMPANY

L. L. R. 41 All. 498

Fraud—Travelling

without a ticket but not with intent to defraud—
 Course open to Railway Administration in such
 case—Power to forcibly eject passenger—Assault
 —“Railway” —Falling stock —Railways Act
 (IX of 1890), ss 3 (4) (10), 68, 69, 113, 120, 122—
 Railways Act (IV of 1879), ss 31 and 32—Enhance-
 ment of sentence on hearing of Reference The main
 and primary purpose of ss 68 and 69 of the
 Railways Act (IX of 1890) is to prevent persons
 from travelling in fraud of the Company without
 payment of the fare, and the obligation to show
 their tickets, when required, is subsidiary only
 to such purpose Travelling without a ticket, in
 the absence of intent to defraud, is not an offence
 In such a case the only course open to the Rail-
 way Administration is that provided in s 113
 There is no provision in the Act for ejecting
 passengers except in certain circumstances such
 as are specified in s 120 S 122 does not apply
 to passengers travelling in a railway carriage,
 as the term “railway” in s 3 (4) excludes a
 carriage Where a person travelled without a
 ticket, not with intent to defraud but because
 he arrived as the train was about to start and
 was, therefore, unable to purchase one, and when
 asked for it by the travelling ticket checkers
 offered to pay the fare and excess charge on grant
 of a receipt, but refused to leave the compart-
 ment at the next station and purchase a ticket
 as he was directed to do by the ticket-checkers
 Held, that the ticket-checkers had no lawful
 authority to remove him thereupon forcibly
 from the carriage and to beat him with their
 fists and that they were guilty of an offence under
 s 323 of the Penal Code *Pratab Day v B B
 & C I Railway Co, I L R I Bom 52* distin-
 guished *Butler v Manchester Sheffield and
 Lincolnshire Railway Company, 21 Q L D 207*,
 referred to The Court cannot entertain an
 application for enhancement on the hearing of
 a reference under s 438 of the Code Such appli-
 cations ought to be made in the usual way, and
 are not ordinarily entertained on behalf of private
 parties *MOHAMMED HOBAIN v FARLEY* (1916)

L. L. R. 44 Calc. 279

RAILWAY PREMISES.

right to enter upon—

See PENAL CODE (ACT XLV OF 1860),
 s 188 . . . L. L. R. 35 All. 136

RAILWAY RECEIPT

See CONTRACT ACT (IX OF 1872), ss 4,
 53, 51 AND 103.

L. L. R. 38 Bom. 255

See RAILWAYS ACT (IX OF 1890), s 72

I L R. 39 Bom. 495

endorsement of—

See CONTRACT ACT 1872 s 103

I. L. R. 40 Bom. 639

not a delivery order—

See CONTRACT ACT (IX OF 1872), s 47

I L R 40 Bom. 517

possession of—

See ORION . . . I L R. 46 Calc 820

production of—

See DISHONESTLY RECEIVING STOLEN
 PROPERTY . . . I. L. R. 40 Calc. 880

RAILWAY RECEIPT—contd

—Title—Endorsee—Interest in the goods—Action

for damages A railway receipt is a mercantile
 document of title and the endorsee of the receipt
 has sufficient interest in the goods covered by it
 to maintain an action against the Railway Com-
 pany for damages in respect of the goods covered
 by the receipt *Amarchand & Co, v Ramdas
 Vukhadas, I L R 38 Bom 255* followed *DOLAT-
 RAM DWARAKAS v B, B & C I RAILWAY COM-
 PANY* (1914) I L R 38 Bom. 659

—Mercantile document

of title, pledge of—Local custom—Charge—Holder
 thereof—Provincial Insolvency Act (III of 1907),
 s 16, cl (3) A railway receipt is a mercantile
 document of title to goods and lawful possession
 as pledgee of such receipt enables the holder by
 virtue of local custom to get possession of the
 goods from the carrier, and the insolvents' right
 to get possession under s 16, cl (3), of the Pro-
 vincial Insolvency Act (III of 1907) ceases with
 the pledge *Amarchand & Co v Ramdas 15
 Bom L R 895*, followed *FAKERRA v THIR
 PANNA* (1913) I L R. 38 Mad. 664

RAILWAY RULE

See RAILWAYS ACT (IX OF 1890), s 72.

I L R. 39 Bom. 485

RAILWAY ACT (IX OF 1890).

ss 3, 68, 69, 113, 120, 122—

See RAILWAY PASSENGER.

I L R. 44 Calc 279

ss 3 and 121—Indian Railway Board
 Act (IV of 1905), rr 244, 229 and 231—Station
 master deputing signaller to collect tickets and
 excess fare—Assault on signaller by passenger
 Under rr 244, 229 and 231 framed under Railway
 Board Act (IV of 1905) a Stationmaster has power
 to depute a signaller subordinate to him to collect
 tickets and excess fares from passengers alighting
 at the station, and a signaller so deputed is a
 “Railway servant employed by a Railway ad-
 ministration” within the meaning of s 3 cl (7)
 of the Indian Railways Act (IX of 1890) An
 assault by a passenger on such signaller rightly
 demanding excess fare is an offence under s 121
 of the Indian Railways Act. *BERMANIA v
 WATSON* (1920) I L R 34 Mad. 348

ss 3 (6), 77, 140—

See LOSS OF GOODS.

I L R. 44 Calc. 16

ss 3 (6), 77, 140—

Railway adminis-
 tered by Government—Suit by consignee for price
 of goods consigned and misd. by railway—Action
 to Traffic Manager and to Collector for Secretary
 of State, of sufficient Limitation—Limitation Act
 (IX of 1908) Sch I, Arts 30, 31, 115 In the
 case of a railway administered by Government,
 notice under s 77 of the Railways Act is (in view
 of the definition of the words Railway Adminis-
 tration” in s 3 (6) of the Act) effective, if served
 on Government, and s 140 does not mean that
 the “Manager” is the only person on whom notice
 can be served, but that if notice is served on the
 Manager, it must be served on him in the manner
 provided in s 140 *The Secretary of State v.
 Dyband Poddar, I L R 24 Calc 306*, Great

RAILWAY ACT (IX OF 1890)—*contd*—s. 3 (6), 77, 140—*contd*

Indian Peninsula Railway v. Chandra Bai, 1 L. R. 23 All 552, Janaki Dass v. The Bengal Nagpur Railway Company 16 C. W. N. 356, Permannan Chellu v. South Indian Railway Company, 1 L. R. 22 Mad 137, and Aadar Chand Saha v. Wood, 1 L. R. 35 Cal. 191, considered Per D. CHATTERJEE, J. Semble. In the absence of evidence showing that the "Agent" of a railway administered by Government is the Manager, or that the "Traffic Manager" is not the Manager and regard being had to the rule printed and published in the Fare and Time Table of the Railway that "references regarding delay in transit to or loss of goods, parcels, luggage or other articles or claims for compensation and refunds should be addressed to the Traffic Manager," notice to the Traffic Manager may be considered sufficient under s. 140 of the Act. In a suit by consignors of goods which were not alleged to have been lost, but were found to have gone astray after they were delivered to the Railway, for recovery of their price with compensation, the defendant did not plead or prove any loss and on the other hand alleged that the goods had not been delivered at all, nor was there evidence when the goods were to be delivered. *Held, per CURRIE* that neither Art. 30 nor Art. 31 applied, and (*Per D. CHATTERJEE, J.*), that the suit was governed by Art. 115 of the 1st Schedule to the Limitation Act. *Monan Singh Chauhan v. Conder, 1 L. R. 7 Bom 478, and Danmull v. British India Steam Navigation Company, 1 L. R. 12 Cal. 477, referred to. RADHA SHAM DASAK v. THE SECRETARY OF STATE FOR INDIA (1916) 20 C. W. N. 790*

—s. 7—

RAILWAY COMPANY

City of Bombay Municipal Act (Bom. Act III of 1883) s. 394—Use by Railway Company of its premises for storing timber—License from the Municipal Commissioner for the use, not necessary. The Agent of the G. I. P. Railway Company having been charged in the Presidency Magistrate's Court at the instance of the Bombay Municipality under s. 394 (1) (d) of the City of Bombay Municipal Act (Bom. Act III of 1883) with having used the Company's premises for storing timber without a license granted by the Municipal Commissioner, the Presidency Magistrate recorded evidence and referred the following question under s. 432 of the Criminal Procedure Code (Act V of 1898)—"Do the statutory powers given to the Railway Company (s. 7 of the Indian Railways Act, IX of 1890) preclude the necessity of obtaining a license from the Municipal Commissioner, to use premises in such a manner as is necessary for the convenient making, altering, repairing and using the Railway?" *Held*, that no such license was necessary. S. 7 (1) of the Indian Railways Act (IX of 1890) authorizes the Railway Administration to do all acts necessary for the convenient making, maintaining, altering, repairing and using the Railway notwithstanding anything in any other enactment for the time being in force. The storing of timber was necessary for the convenient making, etc., of the Railway line. Under s. 7, sub s. 2 of the Indian Railways Act (IX of 1890) the Governor-General in Council and not the Municipal Commissioner has the control of

RAILWAY ACT (IX OF 1890)—*contd*—s. 7—*contd*

the Railway Administration in the exercise of its powers under sub s. 1 MUNICIPAL COMMISSIONER OF BOMBAY v. G. I. P. RAILWAY COMPANY (1909) 1 L. R. 34 Bom. 252

*City of Bombay Municipal Act, 1883, s. 239—Laying Railway lines by Railway Administration across public street vested in Municipality—Land Acquisition Act (I of 1894) provisions of, inapplicable S. 7 of the Indian Railways Act, 1890 (as amended by Act IX of 1896), enacts "(1) Subject to the provisions of this Act and in the case of immovable property not belonging to the Railway administration to the provisions of any enactment for the time being in force for the acquisition of land for public purposes, and for companies . . . a Railway administration may, for the purpose of constructing a railway notwithstanding anything in any other enactment for the time being in force, make or construct in, upon, across, under or over any lands, or any streets . . . lines of railway as the Railway administration thinks proper (ii) The exercise of the powers conferred on a Railway administration by sub s. (1) shall be subject to the control of the Governor General in Council." The respondents constructed Railway lines across a street vested in, and under the control of, the appellants by virtue of the provisions of the City of Bombay Municipal Act, 1883. In a suit by the appellants for a declaration that the respondents were not legally entitled to lay lines of railway across such street without either obtaining the permission, or acquiring the street under the provisions of the Land Acquisition Act, 1894. *Held* (affirming the decision of the High Court on appeal dismissing the suit) that the taking the railway on the level across the street was not acquisition of immovable property within the meaning of s. 7 of the Indian Railways Act, 1890, as amended. The provisions of the Land Acquisition Act were not so expressed as to cut down the power conferred by that section on the respondents to carry a line of railway across a street subject to the control of their powers by the Governor General, and that Act was inapplicable to such a case MUNICIPAL CORPORATION OF CITY OF BOMBAY v. G. I. P. RAILWAY COMPANY (1916)*

L. R. 43 I. A. 300

1 L. R. 41 Bom. 291

AFFIRMING

. 1 L. R. 38 Bom. 565

Level-crossing—Closing an old level-crossing and opening a new one—Diverting a road—License of a Railway Company. Plaintiff owned a bungalow on the west side of the defendant's Railway close to a station. To go over to the east side there was a level-crossing near the plaintiff's bungalow. The Railway Company, owing to the necessity of increasing sidings near the station, closed the level-crossing and opened a new one at a distance of few yards from the plaintiff's bungalow. This diversion of the road caused much inconvenience to the plaintiff as he had to go a longer distance if he wished to cross the Railway, and on the way there was a dip which made it impossible for the plaintiff to get at the new level crossing during the monsoon. The plaintiff, therefore, brought a suit against the Railway Company claiming a mandatory injunction directing the Company

RAILWAY ACT (IX OF 1890)—*contd.*s. 7—*contd.*

to have the old gateway at the level-crossing re opened, and be relied on s. 7 of the Indian Railways Act, 1890. *Held*, dismissing the suit, that the Railway Company were well within their powers in closing the old level-crossing and they had fulfilled all the requirements which the law imposed on them to provide another level crossing. A Railway Company has under Statute very wide powers in order to carry on its business for public purposes, and it has got to consider not only the convenience of individual owners of properties bordering near the line, but it has also got to consider the necessity for affording facilities to take the public who wish to travel on the Railway and send their goods by the Railway, and it cannot possibly consider separately the interest of each individual who happens to live in the neighbourhood of the Railway line. *HARILAL LALLUBHAI v. B. & C. I. RAILWAY COY* (1910) I L R 44 Bom. 705

ss 41 and 42—*Railway Administration—Powers—Compartment reserved for the use of Europeans and Anglo Indians only—Civil Court—Jurisdiction* Under s. 41 of the Indian Railways Act, 1890, a Civil Court has no jurisdiction to try the question whether a Railway administration can reserve accommodation for Europeans and Anglo Indians on a Railway train. Section 42 of the Act deals not only with goods traffic but also with passenger traffic. Opinions expressed in *Emperor v. Brydson Lal* (1920) 42 All 327 discredited from *Vishnavathi Ganesan v. G. I. P. RAILWAY COMPANY* (1921) I L R 45 Bom. 1324

s. 47—

See s. 72 I L R 39 Bom. 485

General rules published in Gazette of India—Adoption by a Railway Company—Sanction—Publication The general rules framed by the Governor General in Council and published in the *Gazette of India* by notification, dated the 3rd July 1902 do not become operative as the rules of any individual Railway Company merely upon their adoption by the Company. It must be shown that the particular Railway Company made rules and that those rules have received the sanction of the Governor General in Council and have been published in the manner prescribed by the Act. *HARI LAL SINGH v. THE BENGAL NAGPUR RAILWAY CO.* (1910) 15 C W N 195

Rules made by a Railway Company—*what are—Sanction of Government—Publication—General rules framed by Government*

Rules adopted by a Railway Company though not originally, prepared by it would satisfy the requirements of s. 47 of the Railways Act, if they were subsequently sanctioned by the Governor General in Council and published in the *Gazette of India*. *Hari Lal Singh v. The Bengal Nagpur Railway Co.*, 15 C L J 25 15 C W N 195 referred to *BENGAL NAGPUR RAILWAY CO. v. HAMPRATH GOVERNMENT DAs* (1912) 16 C W N 360

Rules made by Railway Company—sanction of Government—Publication Upon the finding of the Small Cause Court that the rules of the East Indian Railway Company in question regarding

RAILWAY ACT (IX OF 1890)—*contd.*s. 47—*contd.*

the recovery of demurrage charges from consignees of goods despatched by the Railway, were made, sanctioned, and published as prescribed by a. 47 of the Railways Act. *Held*, that there was no case for the exercise of the Court's power of revision with reference to the Small Cause Court's decision dismissing the suit for refund of demurrage charges paid. *STRAS MULL NAGAR MULL v. THE EAST INDIAN RAILWAY CO.* (1912) I L R 38 Cal. 923 16 C. W. N. 359

ss 47, 54 and 72—*Act No. IX of 1872 (Indian Contract Act), section 149—Liability of Railway Company for goods accepted by a servant of the Company for conveyance—Grant of receipt on behalf of the Company not essential to accrual of liability* Where goods are tendered to the appropriate official of a Railway Company for despatch to a particular destination and are accepted by him, the liability of the Company in respect of such goods accrues from the time when the goods are so accepted, and is not dependent upon the granting or withholding of a receipt for the same on behalf of the Company by the official who has accepted the goods. *Banaka Mal v. The Secretary of State for India*, I L R 23 All. 367, distinguished and doubted. *BORAY PAL MURHA LAL v. THE EAST INDIAN RAILWAY COMPANY* I L R 44 All. 218

s. 56—

See LIMITATION ACT 1909 ART 31 AND 32 I L R 44 Mad. 623

ss. 68, 69—

See RAILWAY PASSENGER I L R 44 Cal. 279

s. 72—

See CONTRACT I L R 19 All. 418 I L R 43 Bom. 769

See RAILWAY

See RAILWAY COMPANY I L R 41 Cal. 576 I L R 37 Bom. 1 18 C W N 768 I L R. 43 Bom. 1201

Risk note, Form B—Shortage in contents of consignments, suit for damage for, if lost—Except on a report to loss of whole consignment or package, if applies Where several tins of ghee consigned for carriage by the defendant Railway Company upon special terms as to rates and liability contained in a risk-note Form B, were found on arrival to have been cut open and there was a shortage in their contents. *Held*, that the loss was covered by the risk-note and the Company was not liable—the exception with regard to loss of a whole consignment or one or more packages out of a consignment not being applicable to the present case where all the packages arrived but with a deficiency in the contents of some of them. *EAST INDIAN RY CO. v. SHIV PRASAD BHAKAT* (1912) 17 C W N 569

Risk note now to be signed in order to bind consignee The provision of s. 72, cl (2), requiring risk-notes to be signed

RAILWAY ACT (IX OF 1890)—*contd*s 72—*contd*

by or on behalf of the person sending or delivering goods to a Railway Administration, should be exactly carried out. Where the person who delivered the goods signed not his own name but the name of the owner of the goods, there was not a sufficient compliance with the requirements of s 72 Cl (2). *Holtwood, J.*—The person who signs the risk note must write his own name either by his own hand or by the hand of an agent who must be disclosed and have authority. *MAYA BASHA BANGKORE v SECRETARY OF STATE FOR INDIA* (1915) . . . 20 C. W. F. 685

Liability of Railway Administration for loss of goods delivered for carriage, the same as that of bailee—Indian Contract Act (IX of 1872), s 151—Loss of goods delivered for carriage by act of God—Onus on Railway Administration to prove circumstances exonerating liability—Negligence co-operating with act of God. The plaintiff sued for the recovery of the value of goods made over to the Eastern Bengal Railway Administration but not delivered at the destination. The defendant pleaded in substance that the goods were destroyed while in course of transmission by an act of God, namely, a severe cyclone. *Held*, that under sub s (1) of s. 72 of the Indian Railways Act, 1890, the responsibility of a Railway Administration for the loss or destruction of goods delivered to the Administration to be carried by Railway is subject to the other provisions of the Act, that of a bailee under the Indian Contract Act. That the liability of the defendant must be measured solely by the test formulated in ss 151 and 152 of the Indian Contract Act. That when goods have not been delivered to the consignees at the place of destination the plaintiff need not prove how the loss occurred, the burden lies upon the bailee to prove the existence of circumstances which exonerate him from liability for the loss. That the defendant having discharged this burden the plaintiff's claim failed. That there is no foundation for the contention that a Railway Administration when it accepts goods for transmission is in the position of insurers as common carriers. That even if there was negligence on the part of the Railway Administration, if the act of God was the proximate cause the defendant Railway would not be liable. *SURENDRO LAL CHOWDHURI v SECRETARY OF STATE* (1916) . . . 21 C. W. N. 1125

Risk Note, Form

"B," framed under—Whether a consignor of goods covered by this Risk Note can make the Railway Administration liable for the loss thereof—Whether ss 151, 152 and 161 of the Indian Contract Act (IX of 1872) will apply in such a case—S 76 of the Indian Railways Act, whether it governs s 72 and the contract in the Risk Note—Proof of negligence onus on whom lies. Where goods were consigned to a Railway Company for carriage at a reduced rate of freight and the sender executed a Risk Note in Form "B," and several bags forming part of the consignment were missing and could not be delivered to the consignees; *Held*, that in a suit for compensation for the missing bags the defendant Railway Company would not be liable if the plaintiff (consignor) failed to prove that the loss was due to the wilful neglect of the Railway Administration or to theft by, or to the

RAILWAY ACT (IX OF 1890)—*contd*s 72—*contd*

wilful neglect of, its servants. *Held*, also that such a case would be guided by the terms of the special contract, embodied in the Risk Note Form "B," and not by ss 151, 152 and 161 of the Indian Contract Act or the other provisions of the Indian Railways Act. *EAST INDIAN RAILWAY CO v KANAK BEHARI HALDER* (1913) . . . 22 C. W. N. 622

Risk Note—Consignment

Meaning of goods—Loss, deterioration, or damage, meaning of—Liability of Railway Company—Insurers—Bailees—Competency of Company to contract for less liability than as bailees. A consignor sent a bale of gunny bags through the defendant Railway Company. The risk note provided that the company should not be responsible for any loss, destruction or deterioration of or damage to the consignment from any cause whatever, except for the loss of a complete consignment or of one or more complete packages forming part of a consignment, due either to the wilful neglect of a Railway administration or to theft by or to the wilful neglect of its servants, etc. The bale was damaged by the dropping of a package of acid by the negligent act of the Company's servant. On a claim against the Company for damages, the latter pleaded that they were not liable on the ground, *inter alia*, that there was no 'loss' of the article consigned within the meaning of the risk note. *Held* that the plaintiff could recover, only if the bale of gunnies was lost, that is, entirely deprived of value. The distinction between 'loss' and 'destruction, deterioration, and damage' pointed out. It cannot be said that there is no loss if the outer cover which encloses a parcel is delivered, whatever may happen to the contents. *EAST INDIAN RAILWAY COMPANY v VILAKANTH ROY* (1914) 1 L. R. 41 Cal. 576, B. B. & C. I. Railway Company v Ambalal Sewlal Ind. Ry. Co. 48 and C. S. 302 of 1914 Madras High Court, (unreported), dissented from. *Per SESHAGIRI AYYAR, J.*—The term 'loss' would include cases where the article consigned is lost to the consignor as such article or has lost its identity as such. *Aster & Co v Blundell* (1895) 1 Q. B. 123 and *Hearn v The London and South Western Railway Company* (1855) 10 Exch. 793, referred to. Under the Indian Law, a Railway Company has not the liabilities of an insurer, but only those of a bailee and, under s 72 of the Indian Railways Act, can enter into an agreement limiting its responsibility provided it is in a form approved by the Governor General in Council. *Sheikh Mahmud Rawther v The British India Steam Navigation Co* (1909) 1 L. R. 32 Mad. 55 (F.B.) commented on. Persons who undertake to do certain things and who employ servants to do those things must be held responsible for the carelessness or negligence of those servants in the course of their employment. *Joseph Rand v Craig* (1919) 1 Cal. J., referred to. *MADRAS AND SOUTHERN MAHARATTA RAILWAY COMPANY v SUBBA RAO* (1920)

I. L. R. 43 Mad. 617

R 2 made under s 47, sub-s (1), cl (f)—Rule not valid—Delivery of goods to be carried by Railway Administration—Grant of railway receipt not essential to complete delivery. The plaintiffs brought certain goods to the railway premises and handed a consignment

RAILWAY ACT (IX OF 1890)—*contd*— s 72—*contd*

note to the clerk of the railway company. No receipt was given as the goods were not weighed and loaded. In the meanwhile, a fire broke out on the premises and destroyed the goods. The plaintiffs having sued the railway company for the loss of goods, the lower Court held that the company was not liable for the loss in absence of a railway receipt as provided for in r 2 framed under s 47, sub s. (1) cl (f) of the Indian Railways Act (IX of 1890). On plaintiffs' application under Extraordinary Jurisdiction *Held*, that the commencement of the liability of the company for goods delivered to be carried under s 72 was in no way dependent upon the fact of a receipt having been granted but must be determined on evidence quite independently of r 2 under s 47 sub s. (1) cl (f) of the Indian Railways Act (IX of 1890). *Held*, also that inasmuch as r 2 sought to define and by defining changed what would otherwise be the meaning of s 72 of the Act the rule was bad. *Per HEATON, J.*

A 'delivery to be carried by railway' (within the meaning of s 72 of the Indian Railways Act, 1890) means something more than a mere depositing of goods on the railway premises, it means some sort of acceptance by the railway, a taking as well as a giving. When that taking occurs is a matter which depends on the course of business and the facts of each particular case, but it certainly may be completed before a railway receipt is granted. *Per SEAN, J.* 'The delivery contemplated by s 72 is an actual delivery and marks the beginning of the company's responsibility. That delivery would no doubt involve not merely the bringing of the goods on the railway premises but acceptance thereof by the company for the purpose of carrying the same by railway. Such acceptance may be expressed or implied in a variety of ways by the usual course of business, and may be quite independent of any receipt being granted by the company. Of course it will depend upon the circumstances of each case and the usual course of business of the Railway administration as to whether the goods can be said to be delivered to be carried by railway under s 72 of the Act.' *RAJCHANDRA NATHA v G I P RAILWAY COMPANY* (1915)

I. L. R. 39 Bom. 485

Risk Note B—Where a consignment of goods handed over to the Railway for carriage on risk note B were short delivered by 6 complete packages *Held* that though the effect of the evidence was not definitely to establish the suggested fact of robbery from a running train yet the theory of wilful neglect by the Railway servants had been sufficiently excluded. *B. R. & C I P RAILWAYS v. DATARAM PRICHARDAS* (1921)

I. L. R. 48 Bom. 11

s. 72, 77—Duty of Railway Company as a bailee under the Indian Contract Act (IX of 1872)—Delivery of goods to person entitled but without production or delivery of railway receipt—Subsequent pledge of railway receipt—Suit by plaintiff—Notice of claim whether necessary—Damage, cause of The liability of a Railway Company under the Indian Railways Act in respect of goods consigned for carriage is at an end when the goods are delivered to a person rightfully entitled to them, even though he is not the consignee and even if the delivery is not made against the rail-

RAILWAY ACT (IX OF 1890)—*contd*— ss 72, 77—*contd*

way receipt. After delivery of the goods to the rightful person, the railway receipt ceases to be a symbol of goods and ceases to be negotiable. Hence an innocent endorsee for value of the railway receipt after delivery to such a person has no cause of action for damages against the Railway Company. A Railway Company is not under any duty to the public to insist upon the return of the railway receipt. *Held*, further that delivery of goods by the Railway Company without getting in the railway receipt was not the proximate cause of the loss to the endorsee. *Barber v Meyerstein & E & Ir App 317*, followed. *Held*, also that the suit was barred for want of notice under s. 77 of Indian Railways Act which applies to claims for compensation arising not only from non delivery or accidental loss or destruction or deterioration of goods but also from wilful delivery to a person not entitled to them. The Indian Common Carriers Act III of 1865 and the Indian Railways Act are not in pari materia with the English Carriers Act of 1830 as to when notice of loss is necessary. Hence decisions under the English Act are not applicable to India. *M & S M. RY Co, Ltd v HARIDOSS BAKMALIDOSS* (1918)

I. L. R. 41 Mad. 871

Risk Note B—A case of a wrong label being attached to goods sent to and getting delivered at wrong destination after travelling on lines of various Railway administrations and getting damaged in so doing. All Companies were sued but notice under s. 77 only given to one. The action failed on account of want of notice and one line being held not liable for damage due on another. *SHANKAR BALKRISHNA v S I RAILWAY* (1921) I. L. R. 48 Bom. 176

— s. 75—

See *REMAND* I. L. R. 42 Calc. 883See *"SHAWIS," MEANING OF*

I. L. R. 39 Calc. 1029

Goods referred to in s 75 consigned on a "risk note"—Railway Company not liable for loss Where a person chooses to send goods referred to in s 75 of the Indian Railways Act on a "risk note" Form instead of declaring them and paying the extra percentage demandable under the terms of the section he cannot hold the Railway Company by which such goods are sent responsible for the loss thereof. *NARAIN DAS v THE EAST INDIAN RAILWAY COMPANY* (1912) I. L. R. 34 All. 656

Articles of special value lost in transit—Liability of Railway Company for the loss thereof The plaintiff who was a passenger on the defendant railway booked three packages from Howrah to Khorja. One of them contained silver and silk articles of the description mentioned in the second schedule to the Indian Railways Act in which such goods must be declared, but the plaintiff did not do so. The package was lost and the plaintiff brought this suit for damages. *Held*, that s 75 of Act IX of 1890 is one of general applicability to all classes of goods, and inasmuch as the plaintiff did not declare the contents of his trunk that was lost in transit the Railway administration was freed from all liability for the loss thereof both as regards scheduled and non-scheduled articles contained therein. *EAST INDIAN RAILWAY Co v N K. ROY* (1915)

I. L. R. 37 All. 463

RAILWAY ACT (IX OF 1890)—*contd.*s. 75—*contd.*

Interpretation of schedule—"Lace." *Held*, on an interpretation of the second schedule to the Indian Railways Act, 1890, that the word "lace" as therein used includes both machine-made and hand-made lace and is not confined to the latter. *Sarat Chandra Bose v. Secretary of State for India*, India, L. L. R. 33 Cal. 1029, dissented from. *SUDANSHAN MAHAJAI NANDRAM v. EAST INDIAN RAILWAY COMPANY*. L. L. R. 42 All. 70

"Value" and "true value" in s. 75 of the Indian Railways Act, meaning of—"Value" means intrinsic or market value—Value in some cases may mean special value to the owner—Loss means the value of property lost and nothing more—Loss does not include remote and consequential damage—Loss must be estimated by the same measure of damages in cases under s. 75 and in cases to which s. 75 not applicable—Object of s. 75 of the Indian Railways Act—s. 75, bar to an action for amount exceeding one hundred rupees for loss and consequences unless a declaration is made. On the 16th September, 1916, the plaintiff delivered to the defendant Railway Company at the Victoria Terminus Station, Bombay, a parcel containing twenty-four account books consigned to the plaintiff's firm at Nagpur. After the arrival of the parcel at Nagpur it was mis-delivered, on the 19th September, by a mistake of the defendants' parcel clerk to the Superintendent of the Central Jail, Nagpur. The mistake was discovered when the plaintiff's agent came to ask for delivery on the 21st September. Inquiries were made of the Jail Superintendent and it was ascertained that the books had been destroyed by him thinking that they were the papers consigned to him from Bhandwa for destruction. After some correspondence between the parties, the plaintiff sued the defendants stating that the account books which contained the record of all the dealings and transactions of the plaintiff's firm were lost to him by reason of the negligence of the defendants. The plaintiff estimated his loss at Rs. 25,000, and claimed that sum of such other sum as might seem just to the Court as damages. The defendants in their written statement repudiated the claim on the ground that the parcel containing the account books came under the head of "writings," an excepted article under s. 75 of the Indian Railways Act, 1890, and that the contents which exceeded in value one hundred rupees had not been declared and insured at the time of delivery of the parcel to the railway administration as required by the aforesaid section. By consent, the suit was placed on board for the trial of the preliminary issue "whether the defendants are protected from liability to the plaintiff under s. 75 of the Indian Railways Act, 1890." The trial Judge decided that the defendants were not protected from liability under the section inasmuch as the value of the account books which must be taken to mean intrinsic value was admittedly less than Rs. 100 and that the loss which occurred after delivery to the wrong person was not a loss within the meaning of the section. *Held*, reversing the decision of the trial Judge, by SCOTT, C. J.—(i) that s. 75 of the Indian Railways Act, 1890, was intended to apply to articles of special value declared by the Legislature in the Second Schedule or which may be added to the schedule by Noti-

RAILWAY ACT (IX OF 1890)—*contd.*s. 75—*contd.*

fication of the Governor General in Council in the Gazette of India, and that such articles must be free from any *prelim affectionis* on the part of the owner, that is to say, articles which could be valued by any sufficiently trained expert quite apart from the feelings of the owner; (ii) that the damages recoverable against the Railway Company was the value of the property lost and nothing more; (iii) that although s. 75 did not directly protect the Railway Company since the goods were not of the value of a hundred rupees, it would be entirely inconsistent with the Act to hold that if the goods had been of a value exceeding a hundred rupees the true value would be the limit of the defendants' liability, yet, since the goods were of a value less than a hundred rupees the plaintiff might sue for any remote and consequential damage which he might allege to have suffered from the loss; (iv) that the loss for which the Railway Company were liable must be estimated by the same measure of damages both in cases under s. 75 and in cases to which s. 75 was not applicable, and that the most which the plaintiff could claim successfully, having regard to the evidence was Rs. 70 the value of the articles, a sum for which he had not sued and could not sue in the High Court under cl. 12 of the Letters Patent. *Held*, by MACLEOD, J.—(1) that the protection afforded by s. 75 of the Indian Railways Act, 1890, lasted as long as the Railway Company were liable as carriers and their liability would continue after the goods had arrived at their destination for such reasonable time as would be required for the consignee to come to take delivery. (2) that the mere fact that the plaintiff was claiming more than Rs. 100 for the loss of an undeclared excepted article barred him under s. 75 of the Act from asserting that its value was under Rs. 100, and the question what was the value of the goods did not arise; (3) that the object of s. 75 of the Indian Railways Act was to protect a Railway Company from liability for the loss, destruction or deterioration of parcels entrusted to them for carriage containing articles of special value exceeding Rs. 100 unless they have notice of the contents, so that (a) they could demand a percentage on the value declared by way of compensation for increased risk and (b) they could take extra precautions for the safe carriage of such parcels; the whole object of the section would be defeated if the consignee could claim consequential damages for the loss of an excepted article without insuring it, on the ground that its market value was under Rs. 100; (4) that "value" in s. 75 of the Act did not necessarily mean "market value"; in some cases articles might have a special value to the owner beyond the market value and if the owner wished to recover this value, he must declare and insure the goods, the liability of the Company in the event of the loss being limited to the true value by s. 75 (2) of the Act. *Miles v. Brauch* 10 Q. B. D. 122, 115, *Graham v. The London and North-Western Railway Company*, 3 Car. & K. 789, *Riley v. Horns*, 5 Hag. 217, 225, referred to *Harris v. London and North-Western Railway Company*, 19 Ex. 723, distinguished. *G. L. P. Railway Co. v. RICHMOND JAGGERS* (1919). L. L. R. 43 Bom. 236

—s. 75 and 80—*Red for compensation for loss of through booked goods—Not delivery—*

PAILWAY ACT (IX OF 1890)—*contd.*

— 18 cont'd

Under red goods *Held* that where goods are booked for conveyance over more than one railway system the owner can only claim compensation for loss against a railway company other than the company with which they were booked if it is shown that the loss occurred on the system of the company in *Held* also that if goods, the insurance of which is obligatory are packed uninsured with other goods the insurance of which is not obligatory no compensation is obtainable for the loss of either class of goods *Found* that *J. J. Smith & Co. of Hudson Company* *111 R. R. Bldg. N.Y.* followed. *CREAT. BY LAW*
NEW YORK RAILWAY *111 R. R. BLDG. N.Y.*

17-

See "I L R 41 Mod. 871"

Sea Loss of 400 3

1 L R 44 Calc 16

East Asian Region

company. Notice Limitation - Limitation Act (IX of 1908) Sec 1 art 31 - Waiver of notice. Certain goods were despatched on the 6th of March 1908 from Bombay to a ship. The goods were lost in transit when in possession of the Great Indian Peninsula Railway Company. The company made a claim against the East India Railway Company as the result of which he was offered a certain sum as compensation by the assistant traffic manager of that company who stated that he did so with the authority of the deputy traffic manager of the Great Indian Peninsula Railway Company. There was, however, no proof that any such authority had been given as the offer was refused. On the 8th August 1909 the consnee brought a suit against the Great Indian Peninsula Railway Company of damages for the loss of his goods but did not give the notice required by 7 of the Indian Railways Act (IX of 1908). He claimed that certain conditions printed on the back of the railway receipt relieved him of the necessity of giving notice under s. 7. Held that this was not so nor did the action of the assistant traffic manager of the East India Railway Company amount to a waiver of notice. The suit was also barred by Limitation Act Art 31 of the first Schedule to the Indian Limitation Act 1908 (Great Indian Peninsula Railway Company v. Railway Rates) (1911) 1 L. R. 32 All 448.

16E 33 AM 514

Goods Superintendent of a station, freighter sale of 1st goods for conversion - Damage. Held that the notice of claim for loss of goods dispatched by rail given in this case to the Goods Superintendent did not comply with the requirements of ss 7 and 140 of the Railways Act. *Quere* Whether a failure to observe the provisions prescribed in the Railways Act with regard to sales of articles of which no del very has been taken would make the sale an act of conversion by the Railway. *JANKI DAS v THE BENGAL NAUGER RAILWAY CO* (1912) 18 C W N 356

Value of asset to

RAILWAY ACT (IX OF 1892).—contd.

— 77 —

pany were his and the trying Court found that the bags dispatched by the plaintiff were lost or missing. Hill that in the circumstan the plaintiff was bound to serve notice under s 7 of the Indian Railways Act upon the Agent of the defendant company. A notice given to the Goods Superintendent at which there was no evidence to show ever reached the Agent was not sufficient. Hoode v. Metherell & Partners 11 C B 211 (1843) holding no and doubted Janet Lee v. The Great Northern Railway Company 18 C B 256 (1846) and Indian Railway Co v. E. B. Mello 17 C B 211 (1846) approved. The company cannot be bound by any admission or statement by the Goods Superintendent such as is implied in a promise to make before the suit to pay a liquidated sum to the plaintiff for the value of the missing bags. Ladd v. Hurrey & Tins 18 C B 256 (1846) and Indian Railway Co (1846).

19 C. W N ES

Vol 1 to Memo 1

Agent but not a full-fledged Manager of the
 "Not a full-fledged" Manager not suffer as The
 Agent is the last in the line of the
 Manager with the meaning of the Manager
 Act and the notice is given by a 77 area
 Agent to the Agent; a rev. of notice on the
 Trade Manager is not sufficient. (191)
 BUREAU OF SECRETARY OF STATE (191)

21 C W N 51

ss. 77 and 140—

A. L. LOVIE & G. GORDON

I L R 44 Calc 18

20 C. W. N '90

Goods delivered in
damaged condition - Notice of claim given on
Traffic Manager sufficient - No further damage
claim maintain if finding a lot of claim in
respect of goods delivered by Railway Company
in damaged condition on the Divisional Traffic
Manager of the Company is in the state of
authority given by the Agent of the Company
to the Divisional Traffic Manager not sufficient
compliance with the provisions of a 110 of the
Railways Act, 1904 (Amended) and Section 110 of the
Railways Act, 1904 followed. Goods delivered
at Bhopal 13.6.1921 explained and dis-
tinguished. Part Indian Railway Company
at Madras 14.10.1921 17.6.21 W. N. 1123

7 C. W. N. 1134

Superintendant of R. S. E. on April 4 for con-
sent on for loss of goods consigned—1 mtr 9
—L mtr on 1st (17 of 1904) R. S. E. 1st 9
In the absence of evidence to prove that the
Calcutta Superintendent was authorized by the
Agent to receive notices on his behalf, I find
that a notice of claim served on the former was
not served in compliance with the provisions
of s. 140 of the Railways Act. The law requires
that the notice should be given to the Agent and
whether a particular officer is authorized by the
Agent to receive such notice on his behalf is a
question of fact that must be decided on evi-
dence. Woods v. Meher Ali 13 C. B. 1195
disapproved. *Janki Das v. The Bengal Nagpur*
Railway Co. 18 C. B. 358. *The East Ind*
Railway Co. v. Madho Lal, 17 C. B. 1137,
and *Rodha Asseer v. The East Ind* on *Railway*
Co. 19 C. B. 60 referred to. Where the

Agst—2 of a to Goods Super intended to make promise
—1 sets of Goods Super intended to make promise
bind on Company. Where the plaintiff who were
complaints of some bags of mustard seed and a
that ten bags offered by the defendant com

RAILWAY ACT (IX OF 1890)—*contd*ss. 77 and 140—*contd*

Consignor sued a Railway Company for compensation for loss of goods alleging the same to have been due to the wilful negligence or theft by its servants. *Held*, (*semble*), that the suit was governed by Art 30 of the 1st Schedule to the Limitation Act. **EAST INDIAN RY CO v RAM AUTAR (1915)** . . . 20 C. W. N. 696

s. 80—

See s. 75

I. L. R. 34 All 422

s. 80 and Chapter VII—*Meaning of the word "loss" explained includes loss by mis delivery—Indian Contract Act, IX of 1872, sections 151, 152 and 161—Claim for compensation for loss of through booked traffic—Which Railway responsible. *Held*, by the Full Bench (Abdul Raouf, J., dissenting) that the word "loss" in Chapter VII of the Indian Railways Act, includes loss to the owner of goods made over to a railway administration which have been misdelivered and so have been lost to the person entitled thereto and section 80 makes the railway administration on whose line the loss occurred equally liable with the railway administration to which the goods were delivered by the consignors. *The Madras and Southern Mahratta Railway Company v. Harilass* (I. L. R. 41 Mad 871) *The Madras and Southern Mahratta Railway Company v. Mattai Subba Rao* (I. L. R. 43 Mad 617), and *The Great Indian Peninsula Railway Company v. Panchardian Jaganath* (I. L. R. 43 Bom 396, 497), followed. *Chang Mai v. Bengal N. W. Railway Company* (6 P. R. 1897), overruled. *Mullen v. Branch and Company* (L. R. 10 Q. B. D. 144), distinguished. **HILL, SAWYERS AND COMPANY v SECRETARY OF STATE***

I. L. R. 2 Lah. 133

s. 101—

See GENERAL CLAUSES ACT, 1897 No. 2
supra I. L. R. 373

General Pr. 99 (c)

100—*Breach of the rules—Endangering the safety of persons—Disregard of the rules by the station master—Failing the line for which line clear is given—Driver of the approaching train disregarding danger signals and rushing into the derailed wagon on the line—Liability of the station master. The accused a station master, received an up goods train on the third line in his station yard. He then ordered the driver of the goods train to detach his engine and shunt 9 waggons which was standing on the loop line to a dead end siding in order to make room for the down mail. At that time the next station on the other side asked the accused for line clear in order to pass an up passenger train, which the accused gave at once. The 9 waggons were shunted from the loop to the main line, and while they were being taken from the main line to the dead end siding, one of the waggons got derailed at the points where the siding joined the main line. At this time the distant and home danger signals were up against the up passenger train. Still the driver of that train disregarded both signals, and dashed into the derailed wagon causing some injury to two of the passengers and the guard. The station master was tried under s. 101 of the Indian Railways Act (IX of 1890) for breach of rr. 99 (c) and 100 of the General Rules. The trying Magis-*

RAILWAY ACT (IX OF 1890)—*contd*s. 101—*contd*

trate acquitted the accused on the ground that it was the act of the driver of the up passenger that was immediately responsible for the collision. The Government having appealed. *Held*, setting aside the order of acquittal—that the disregard by the accused of r. 100 enhanced the danger to passengers, and it was the risk thus entailed which rendered the rule breaker liable to punishment. *Held*, also, that as regards the punishment, the gravity of the offence should be estimated not by the actual ultimate consequence but by the risk involved for the rule breaker might be punished even though no accident occurred. **EMPEROR v RAMCHANDRA HARI (1913)**

I. L. R. 37 Bom. 685

ss. 108, 121, 128, 131, 132—

See TORT I. L. R. 43 Bom. 103

s. 109—*Power of Railway administration to reserve accommodation—Legality of reservation in favour of a particular class of passengers. *Held* on a construction of s. 103 of the Indian Railways Act, 1890, that the section was wide enough to authorize a railway administration to reserve accommodation for any particular class of passenger by the name of the class. A person entering a carriage so reserved might be required to leave it, and if he refused, might be prosecuted under the provisions of the section. ss. 42 and 43 of the Act have no application to the case of the reservation of a particular passenger carriage for the use of any particular class of the travelling public. *EMPEROR v BRINDISI LAL**

I. L. R. 42 All 327

s. 113—

See RAILWAY PASSENGER

I. L. R. 44 Calc. 279

*Conviction without enquiry as to liability of accused to pay excess charge and fare in spite of accused pleading that he had not travelled by the train as alleged. The petitioner was prosecuted for an offence under s. 113 of the Railways Act and he pleaded in defence that he had not travelled by the train as alleged. The Magistrate without any enquiry disposed of the case by issuing distress warrant for the amount of penalty imposed. *Held* (in setting aside the order)—That the Magistrate should have passed orders in accordance with law after taking evidence on the question whether the accused was liable to pay and how much was payable. *STATUTUS VESTER, THAKURDAS v. HANU, & OTHERS**

24 C. W. N. 105

s. 120—

See NUISANCE

I. L. R. 48 Calc. 1042

See RAILWAY PASSENGER

I. L. R. 44 Calc. 279

*In a Railway shed reserved for the delivery of fish the Railway authorities prohibited the retail sale of fish. The Petitioners were convicted under cl. (b) of s. 120 of the Act for having sold to the public not allowed. *Held*, that in view of the fact that the retail sale of fish made the shed offensive in many ways the Act complained of was a nuisance within the section. *DEOKHINA v. KISHO EMPEROR**

25 C. W. N. 603

RAILWAY ACT (IX OF 1890)—*concl'd*

s. 121—

See s. 3. I. L. R. 43 Mad. 348

See TORT. I. L. R. 43 Bom. 103

s. 122—

See RAILWAY PASSENGER.

I. L. R. 41 Cal. 279

Unlawful entry upon

Railway and refusal to leave—Fines of offence
Unlawful entry constitutes the basis of the offence under both clauses of s. 122 of the Railways Act. If the entry was lawful, refusal to leave on being desired to do so would not make the original entry unlawful, nor would it make a person guilty under cl. (2) which is but an aggravated form of the offence under cl. (1). *KUMUD KANTA CHAKRABORTY v KING EMPEROR* (1917)
22 C. W. N. 575

s. 123—

Cattle left in charge of keepers allowed to stray on a railway line—Liability of owner
The owner of cattle which have been allowed to stray upon a railway in consequence of the negligence of the person actually in charge of them on the owner's behalf is not liable to punishment under s. 123 (3) of the Railways Act, 1890. *Queen Empress v Andri, I. L. R. 13 Mad. 228*, followed. *EMERSON v GUN PRASAD GILL* (1911)
I. L. R. 34 All. 91

ss. 126 (a), 130—Minor offender

Magistrate—Jurisdiction to try
A minor committing an offence punishable under s. 130, read with s. 126 (a) of the Indian Railways Act, 1890 can be tried by a Magistrate, he is not exclusively triable by a Court of Session. *EMERSON v BROSELYA DUDHIA* (1919)
I. L. R. 43 Bom. 883

s. 123—

See TORT. I. L. R. 43 Bom. 103

s. 131—

See TORT. I. L. R. 43 Bom. 103

s. 132—

See TORT. I. L. R. 43 Bom. 103

s. 140—

Notice of claim sent through post but not registered—Post Office Act (XIV of 1865), Part III
Notice of a claim of damages for short delivery sent through the post but not registered under Part III of the Indian Post Office Act was not service in any of the modes provided by s. 140 of the Railways Act. *Nadai Chand v Wood, I. L. R. 35 Cal. 194; s. c. 13 C. W. N. 450*, relied on. *MARTIN & CO v FAKIR CHAND SARDU* (1910)
14 C. W. N. 888

Notice of suit upon whom to be served
Under s. 140, Indian Railways Act (IX of 1890), notice of suit against a Railway Company can only be served upon the Agent unless it can be shown by evidence that some other officer of the Company had authority to receive the notice. *SENNACHILLAM CHETTI v TRAFFIC MANAGERS, Nizam's GUARANTEED STATE RAILWAY* (1913)
I. L. R. 36 Mad. 65

Sch. III—

See SHAWIS. I. L. R. 39 Cal. 1029

RAIYAT.

See BENGAL TENANCY ACT.

See CHOTA NAAGPUR TENANCY ACT, 1904

4 Pat. L. J. 11

at fixed rent—If may grant permanent Lease—

See BENGAL TENANCY ACT, 1885, s. 11

23 C. W. N. 9

at fixed rates—

See BENGAL TENANCY ACT, 1885.

1 Pat. L. J. 67

purchase of interests of—

See LANDLORD AND TENANT

I. L. R. 43 Cal. 164

"Kasami ryot"—Meaning of—
Occupancy ryot, grant of lease for over nine years by—Transfer from ryot if may question its validity

—Bengal Tenancy Act (I of 1885), ss. 49, 55—
Under ryot right if heritable
A lessor describing himself as a *Kasami ryot* does not necessarily imply that he was a ryot at a fixed rent. Where it was found that the lessor did not thereby or otherwise represent himself as a ryot at a fixed rent and the lessee was not induced to take the lease by such representation; and that in fact he was an occupancy ryot. Held, that the lease which was for a term of more than nine years was invalid and neither the lessor nor a purchaser from him was stopped from challenging its validity. *Chandi Charan Nath v Samis Bli, 22 C. W. N. 119 (1917)*, followed. The heir of an under ryot has no heritable right to continue as such. *Arip Mondal v Ramratan Mondal, I. L. R. 31 Cal. 757, s. c. 8 C. W. N. 479 (P. B.) (1908)*, referred to. *NADIRAM CHANDRA SIL v SRINATH CHAKRAVARTI*
24 C. W. N. 83

RAIYATI HOLDING—

Registered lease—Bengal Tenancy Act (I of 1885), s. 86 (1)—Evidence Act (I of 1872), s. 92, proviso 4

Even where the original lease is a registered one, a raiyat can orally surrender his holding under s. 86 of the Bengal Tenancy Act if it was not for a fixed period and if possession is given up. *Khanbar Abdur Rahman v Ali Hafiz, I. L. R. 28 Cal. 256*, and *Braynath Sarma v Mahanwar Gohane, 23 C. L. J. 220*, referred to. *Sardar Chandra Saha v Nriya Gopal Biswas, 13 C. L. J. 284*, distinguished. *FORAN MATIA v INDRA SEXTI* (1919)
I. L. R. 47 Cal. 129

RAJINAMA AND KABULIYAT.

See BOMBAY LAND REVENUE CODE (BOMBAY ACT V OF 1879).

I. L. R. 41 Bom. 170

I. L. R. 43 Bom. 898

See REGISTRATION ACT (XVI OF 1908), s. 17.

I. L. R. 41 Bom. 510

Registration—Registration Act (XVI of 1908), s. 90—Bombay Land Revenue Code (Bombay Act V of 1879), ss. 74, 76
Rajinamas and kabuliyyats, governed by the Bombay Land Revenue Code (Bombay Act V of 1879), are not compulsorily registrable. They cannot in themselves be documents of transfer, but they are fairly conclusive evidence that a transfer has in fact been made. *NARSO RAMAJI v NAGAYA* (1918)
I. L. R. 42 Bom. 859

RAJPUT FAMILY.

See HINDU LAW.—SUCCESSION
I. L. R. 48. Calc. 897

RAPE.

See PENAL CODE ACT (XLV OF 1860),
ss 82 AND 83 I. L. R. 37 ALL 167

RASH OR NEGLIGENT ACT.

See PENAL CODE ACT (XLV OF 1860)
s 336 I. L. R. 42 Bom. 396

RATE CIRCULAR.

— Issued by shipowners—

See CONTRACT I. L. R. 41 Calc 670

RATEABLE DISTRIBUTION.

See CIVIL PROCEDURE CODE, 1882—
ss 276, 295 I. L. R. 37 Bom. 138
ss 285, 295 14 C. W. N. 396

See CIVIL PROCEDURE CODE, 1908—
ss 2, 47 5 Pat. L. J. 415
ss 47, 73, O XXI r 53
I. L. R. 38 Bom. 156
ss 47, 73, 101 I. L. R. 39 Mad. 570
s 61 I. L. R. 43 ALL 399

See EXECUTION OF DECREE.

I. L. R. 47 Calc 515
I. L. R. 44 Calc. 1072

See LIMITATION ACT (IX OF 1908) SCH I,
ARTS. 62, 120 I. L. R. 39 Mad 62

See RECEIVER 15 C. W. N. 925

— order for—

See CIVIL PROCEDURE CODE (ACT V OF
1908), ss 47, 73 104.

I. L. R. 39 Mad. 570

Application for, not considered to be application for execution—Attachment before judgment is not application for execution—Decree holder—No right to rateable distribution unless he has applied for execution. Only a decree holder who has applied for execution can claim a right to rateable distribution. Such a right is not conferred upon a plaintiff who has merely obtained an attachment before judgment and has not applied for execution under s 230 Civil Procedure Code. *Amara Veerayya v Annamala Chetty Pichayya*, I L. R. 31 Mad 502, overruled. An attachment before judgment is in no sense an application for execution. A mere application for rateable distribution which does not comply the requirements of s 235 in form or substance cannot be considered to be an application for execution within the scope of s 295, Civil Procedure Code. *Sewdai Roy v Sree Canto Maity*, I L. R. 33 Calc. 638, distinguished. *Palloni Shapurji Mistry v Edward Vaughan Jordan*, I L. R. 12 Bom 400, followed. *ARUNACHILLAM CHETTIAR v HAJI SHEER MEERA ROWTHAR* (1910) I. L. R. 34 Mad 25

— Deposit by Judgment debtor—Civil Procedure Code (Act I of 1908), O XXI, r 82, and s 73—Alteration in s 73, effect of. When money is paid into Court under O XXI r 89 of the Civil Procedure Code, 1908, there can be no rateable distribution under s 73 of the Code. The scope of s 73 of the new Code

RATEABLE DISTRIBUTION—contd

of Civil Procedure (Act V of 1908) is far wider than that of s 294 of the old Code (Act XIV of 1882), yet the effect of the enactment in s 310A of the old Code, which is reproduced in O XXI, r 89, of the new Code, remains unaltered. *HARAT SAMHA v FAIZLUR RAHMAN* (1913)

I. L. R. 40 Calc. 619

— Practice and Procedure—Decree—Civil Procedure Code (Act I of 1908), ss 47, 73—Civil Procedure Code (Act VI of 1882) s 295—Appeal. An order refusing rateable distribution made under s 73 of the Code of Civil Procedure (Act V of 1908), between two rival decree-holders which does not affect or interest the judgment debtor, is an order in execution proceedings but is not a decree as all the conditions enumerated in s 47 of that Code are not present, and consequently is not appealable. *Jayadish Chandra Shaha v Kriparath Shaha*, I L. R. 36 Calc 150, followed. *Sorabji Chavurji v Kala Raghunath*, I L. R. 36 Bom 156, distinguished. It is essential for the application of s 73 of the Code of Civil Procedure that the decree should have been passed against the same judgment debtor. *BALMER LAWRIE & Co v JODHNATH BANEJEE* (1914) I. L. R. 42 Calc 1

— Rival decree holders—Right of one to impeach another's decree only in suit and not in execution—Civil Procedure Code (Act V of 1908), s 73, applicability of—O XXI, r 52 enquiry under. Where several decree holders against the same judgment-debtor apply for satisfaction of their decrees out of the same fund, any one of them is entitled to show that his rival's decree is a fraudulent or sham one but it is not open for him to do so in execution proceedings. *Sundara v Budan*, I L. R. 9 Mad. 80, followed. S 73, Civil Procedure Code, is applicable only if an application for execution of the decree in the prescribed form had already been made before the receipt of the assets and the fund out of which rateable distribution is asked for is one realised in execution. Where holders of decrees of several courts apply for satisfaction of their decrees, out of a fund in the custody of a court, the proper order governing their respective titles or priorities is O XXI r 52, Civil Procedure Code; and they are entitled to share it rateably as in the case of administration of the estate of a deceased person or of an insolvent as attachment does not under the present law give any priority to the first attaching creditor, but only prevent alienation. *Srinivas Chandra Lax v Ramak Lakshmi*, I L. R. 15 Calc. 202, 209, followed. The shares due to holders of decrees of other courts than the one which has the custody of the fund are to be distributed only according to the orders of those courts. *KATUM SATHA v HAJER MAHOMED BADSHA SATHI* (1913) I. L. R. 38 Mad. 221

— Civil Procedure Code (Act V of 1908), s 73, O XXI, r 65—Policy underlying the section—Receipt of purchase money by agent, effect of. The policy, which underlies s 73 of the Code of Civil Procedure, obviously is to fix the point of time when the entire body of persons entitled to claim rateable distribution should be finally ascertained, that point of time is the moment when the entire purchase money has been paid by the purchasers. It is immaterial from this point of view whether the purchase money has been actually paid into the Treasury

RATEABLE DISTRIBUTION—contd.

or into the hands of a person employed by the Court to hold the sale. When a sale has been held by a Court in execution, under O XXI r 63, receipt of purchase-money by the agent is, for the purposes of a 73, equivalent to receipt of same by the Court. *Gulam Hossein v Fatima Beg*, 16 O W N 334. *Maharaja of Bhopal v Ishra Krishna Roy*, 11 C L J 59. *Distinction*—*Huddersfield Banking Company, Ltd v Henry Lister & Son Ltd*, (1895) 2 Ch 273. *Pentworth v Bullen*, 9 B C 340. *Crosse v Wells*, 1 C M & R 235. *Gray v Hay*, 9 Jac 219. *Stred v GALTAY v WOODEN (HAWDRA BANERJEE (1916))* I L R 44 Calc 789

Civil Procedure Code (Act I of 1908), ss 63, 73, application under—Sale by Mansif—Application to Subordinate Judge for attachment of sale proceeds and rateable distribution. Where in consequence of proceedings taken by a creditor, the Mansif sold the judgment debtor's properties and where another creditor applied to the Subordinate Judge after the said sale, to attach the sale-proceeds deposited in the Mansif's Court and to distribute the same rateably and the latter refused the application. *Hd*, that in the events which had happened neither s 63, nor s 73 of the Civil Procedure Code applied. *Hd* also that the Subordinate Judge could not direct the Mansif to transmit the proceeds to his Court, but should move the District Judge to have the proceeds transferred. If this procedure were adopted, full effect would be given to the intention of the Legislature. The Subordinate Judge would in essence adopt the sale held by the Mansif and the sale-proceeds would then be rateably distributed in accordance with the provisions of the Code. *Eyant Nath Saha v Rajendra Narain Ray*, 1 L R 12 Calc. 333. *Patel Narayn Morari v Haridas Navatram*, 1 L R 14 Bom 453, referred to. *NILAYTA RAI v GOSTO BEHARI CHATTERJEE (1917)*

I L R 46 Calc. 64

RATEABLE VALUE.See **ASSESSMENT** I L R 42 Bom. 692**RATES AND TAXES**

Arrears of—Consolidated rate—Charge—Calcutta Municipal Act (Beng III of 1839), ss 223, 223—Arrear of consolidated rates, whether a first charge on the land and building in respect of which it has accrued due—Charge and mortgage distinction between—Transfer of Property Act (IV of 1882) ss 55, 58, 100—Bengal Tenancy Act (VIII of 1855), s 171—Constructive notice—Bond fide purchaser for value without notice. s 223 of the Calcutta Municipal Act is not controlled by s 223 thereof, and makes the consolidated rate, as it accrues due from time to time a first charge on the premises (subject only to arrears of land revenue). A mortgagee does, whereas a charge does not involve a transfer of an interest in specific immovable property. *Narayana v Venkataswami*, 1 L R 23 Mad 220. *Tancred v Delagoa Bay Co*, 23 Q B D 239. *Burlinson v Hall*, 12 Q B D 347, referred to. Such a charge cannot be enforced against the property in the hands of a bond fide purchaser for value without notice. *Kishen Lal v Gunga Ram*, 1 L R 13 All 28, referred to. The plea of purchaser for value without notice is a single

RATES AND TAXES—contd

defence, the onus of proving which is on the defendant. *Attorney General v Diphosphated Guano Co*, 11 Ch D 377. *Hales v Spooner*, (1911) 2 K B 473, followed. Where property with such a charge is foreclosed, by the mortgagee, constructive notice cannot be imputed to him to the same extent as to a purchaser at a private sale. *Radha Madhab v Kalpataru*, 17 C L J 209. *Brahma v Bhole Das*, 19 C L J 357, referred to. Still he should ascertain the true state of affairs before he becomes full owner thereof. Although a purchaser without notice from a person who had notice is protected (*vide Harrison v Fort*, (1895) Finch's Prec Ch 51) here, purchasers from such a mortgagee cannot claim the protection as, before they acquire title, they might by enquiry from the municipal authorities ascertain the precise period for which the rates were in arrears. *ARROY KUMAR BANERJEE v COMFORTATION OF CALCUTTA (1914)* I L R 42 Calc 625

RATIFICATIONSee **CONTRACT ACT** 1872, ss 196, 200See **MADRAS IRRIGATION CESS ACT (VII of 1805)**, s 1 I L R 33 Mad 997See **TRADING WITH THE ENEMY**

I L R 42 Calc. 1091

— of order—

See **HABEAS CORPUS**.

I L R 39 Calc. 164

RATING OF PROPERTY.See **APEN SETTLEMENT REGULATION (VII of 1900)** s 13

I L R 40 Bom. 446

RAYATI LEASE.See **LANDLORD AND TENANT**

I L R 38 Calc. 423

REASONABLE NOTICESee **SCHOOL-MASTER**.

I L R 44 Calc. 317

RE-ASSESSMENT OF PREMISES.See **ACQUISITION**

I L R 37 Calc 833

RECEIPT.See **REGISTRATION ACT (XVI of 1908)**—s 17 (2) (a) I L R 34 All 523See **STAMP ACT (II of 1899)**,

ss. 2 (23), 62, 63

I L R 35 All. 290

s 65

I L R 34 All. 192

— for goods shipped—

See **CONTRACT** I L R 41 Calc. 670

— exceeding R. 20—

See **STAMP DUTY** I L R 37 Calc 634.

— by one servant from another—

See **STAMP DUTY** I L R 37 Calc. 631

— of purchase money—Registration—

See **REGISTRATION ACT**, 1908 s. 17

I L R 1 Lah. 25

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—acknowledging acceptance of share
—admissibility of to prove partition if unregistered—

See REGISTRATION ACT 1908 s. 17 AND
49 I L R 44 Bom 581

—*Registration—Master*
—*Mortgage to charge of simple interest*
—*Mortgage to charge of simple interest*
which purports to show that simple and not compound interest was to be charged (though the mortgage bond contained provision for the payment of compound interest) is admissible in evidence. Such a receipt operates as a full acquittance for the money paid and requires no registration. *Jagan Ali Beg v Bawa Mal* I L R 9 All 103 followed. *KAILASH CHANDRA NATH v SURESH CHENET* (1914) I L R 42 Calc. 548

—*Stamp Duty—Money received by servant of a firm and handed over to fellow servant—Consideration—Acknowledgment of receipt by fellow-servant of a sum larger than Rs 20 is liable to stamp-duty—Stamp Act (II of 1929) s. 2(3), Sch I Art 53* Where a sum exceeding Rs 20 was received by an assistant in a mercantile firm from the cashier of the firm as advance made on the firm's behalf, and to be expended on the firm's behalf, and previous to disbursement of the sum in question a pay order was made out by the Accounts Department of the firm and was sent to the cashier who had paid the sum to the assistant, and the assistant at the same time acknowledged receipt by signing his name or initials on the pay order. Held that the acknowledgment did not require a receipt stamp by reason of the assistant's signature on the pay order. *Attorney General v Carlton Bank* (1899) 2 Q B 158 distinguished. *In re Bann & Co* (1910) I L R 37 Calc. 624

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See BUSTER LAND I L R 38 Calc 714

See CIVIL PROCEDURE CODE 1908—
s. 47

3 Pat L J 513

s 60 (i) I L R 40 Mad 302

O XL

O XLIII B 1

I L R 45 Bom. 99

See COMMON MANAGER.

I L R 43 Calc 978

See CRIMINAL PROCEDURE CODE—

s 145 3 Pat L J 147

See FRAUDULENT PREFERENCE

I L R 43 Calc 640

See GHATWALI TESTRE

I L R 39 Calc 1010

See INSOLVENCY I L R 37 Calc 418

14 C W N 588

I L R 42 Calc 283

L L R 41 All 200, 274

See LEASE I L R 45 Calc 940

See LIMITATION ACT (XV of 1877) s 19

I L R 32 All. 51

See OFFICIAL RECEIVER.

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See PROVINCIAL INSOLVENCY ACT 1907—
s 59

s 10

2 Pat L J 235

as 16 22 I L R 39 All 204

s 30

2 Pat L J 101

See SALE 16 C W N 394

—application against the legal representatives of—

See CIVIL PROCEDURE CODE (ACT V of
1908) O XL B 4

I L R 39 Mad 584

—appointment of—

See CIVIL PROCEDURE CODE (ACT V of
1908) O XL B 1

14 C W N 243 252

—appeal against appointment of—

See CIVIL PROCEDURE CODE 1908, O
XLIII B 1 I L R 42 All. 227

—attachment of moneys in hand of—

See EXECUTION OF DECREES.

1 Pat. L J 443

—assets in the hands of—

See SOLICITOR'S LIEV FOR COSTS

I L R 34 Bom 484

—death of—

See CIVIL PROCEDURE CODE (ACT V of
1908) O XL B 4

I L R 39 Mad. 584

—joint trial of—

See MISJOINDER I L R. 46 Calc 741

—in insolvency—

See MINOR I L R 42 Calc 225

—misappropriation by—

See CIVIL PROCEDURE CODE (ACT V of
1908) O XL B 4

I L R 39 Mad 584

—Order granting leave to sue Receiver
for negligence—No appeal lies—

See CIVIL PROCEDURE CODE (ACT V of
1908) O XLIII B 1

I L R 45 Bom 99

—pendente lite—

See PELIGIOUS TRUST

I L P 40 Calc. 251

—powers of—

See PROVINCIAL INSOLVENCY ACT (III of
1907) s 18 I L R 39 All. 633

—report of—

See PROVINCIAL INSOLVENCY ACT (II
of 1907) s 43 I L R 37 All. 429

—sufficiently grounds for appointment
of—

See CIVIL PROCEDURE CODE 1908 O
XL B. 1 I L R. 43 All. 311

—vesting of property in on adjudica-
tion—

See PROVINCIAL INSOLVENCY ACT 1907,
s 16 I L R. 42 All. 433

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— Bhag property—Gift by Mahomedan

widow for spiritual benefit of her husband—

See **WARR** . I L R. 44 Bom. 727

— Suit against—Whether notice neces-

sary—

See **CIVIL PROCEDURE CODE 1908**, ss 2

80 I L R. 44 Bom 895

— Suit against without leave of Court—

See **HIGH COURT, JURISDICTION OF**

I L R. 44 Bom 903

1. — Directions to receiver, if appealable—**Civil Procedure Code (Act V of 1908)**, O XL, r 1, cl (1) (d) and O XLIII, r 1 (d). Where both the parties have agreed to the appointment of a Receiver of the properties in dispute, and the Court has, in appointing the Receiver, given him certain direct orders as to the disposal of the income *Held* that an appeal lies from those directions by virtue of O XLIII, r 1 (d) of the Code of Civil Procedure. **MOHUNT ANAND DAS v RAM PERKASH DAS (1909)** 14 C. W. N 183

2. — Execution sale of property in hands of—**Illegality—Civil Procedure Code (Act XI of 1882)** ss 244, 248—*Non-service of notice on judgment-debtor if ground for setting aside the sale—Confirmation of sale, effect of* Where the Receiver appointed by the Court was directed to take possession of moveable properties and of the rents and profits of the immovable properties and was further authorized to get in and collect all debts and claims due to the estate. *Held*, that he must be taken to have been appointed Receiver in respect of the whole estate and had authority to apply for an order absolute on a decree nisi for foreclosure. A sale of the foreclosed property while the estate was in the possession of the Receiver in execution of a decree for money, without leave of the Court previously obtained, was illegal and liable to be avoided, and punishment by the procedure for contempt was not the only remedy against such unauthorized sales. The provisions of s 248 are not mandatory. A sale held without issue of notice under s 248, Civil Procedure Code (Act XIV of 1882), is therefore not a nullity, but such an omission is a serious irregularity, sufficient to vacate the sale upon an application made by the judgment debtor under s 244 of the Code. **Mallory v Nankharia** 5 C. W. N 10 s c I L R 25 Bom 337, I L R 27 I A 216, **Parashram v Balmukund**, I L R 32 Bom. 572 **Eraa v Sudramappa**, I L R 21 Bom. 424, 432 **Jogendra Chandra v Sham Das**, I L R 36 Calc 543 s c 9 C L J 271 Such an irregularity is a ground for setting aside the sale even after it has been confirmed. **Ashutosh v Eshori Lal** 11 C. W. N 1011 s c I L R 35 Calc 61 referred to. A purchaser of property at an execution sale is not protected when grounds for setting aside the sale under s 244 or 311 are established merely because he is a stranger. **Jayulchandra Lal v Gossain Lal**, 13 C. B. N 716, referred to. **LEWIS ASHTON v. MADHABMOH DAST (1910)** 14 C. W. N 560

3. — Possession of property by Receiver without succession certificate—**Succession Certificate Act (VII of 1889)**, ss 4, 8, cl (c)—**Succession (Property Protection) Act (XIX of 1841)**—**Succession Act (X of 1865)** s 190—**Hindu Wills Act (XXI of 1870)**—**Probate and Administration Act V of 1880**—**Indian Securities Act (XIII of**

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1885) ss 3, sub-s (2), 6, sub-s (1) cl (f). The position of a Receiver appointed by a Court is analogous to that of a curator appointed under Act XIX of 1841, who is a person claiming to be entitled to the effects of the deceased person whose estate he is appointed to manage. **Lakshon v Narsappa**, I L R. 20 Bom 437, referred to. The Receiver ordinarily is not the representative or agent of either party to a suit in the administration of the trust, but the appointment is for the benefit of all parties, and he holds the property for the benefit of those ultimately found to be the rightful owners. **Jagat Tarin Das v Naba Gopal Chakri** I L R 31 Calc 305 **Corporation of Dacup v Smith**, 44 Ch. D 395, **Portman v Mill**, 3 Jurist 356, referred to. In the absence of any provision in the Hindu Wills Act (XXI of 1870) and in the Probate and Administration Act V of 1881 that no right to the property of an intestate can be established unless administration had been previously granted by a competent Court, the Receiver appointed by the Court is competent to take possession of the accretions and moneys without a certificate under s 4 of the Succession Certificate Act, but regard being had to the provisions of the Indian Securities Act 1885, s 3, sub-s (2), s 6, sub-s (1) cl (f), and s 8 cl (c) of the Succession Certificate Act (VII of 1880), a Succession Certificate would be needed if a suit was brought to establish a title to such funds by right of inheritance. **HARSHAN MUKERJI v HARENDRA NATH MUKERJI (1910)**

I L R. 37 Calc 754

4. — Receiver, if a necessary party to rent suit—**Appointment of Receiver, if bona fide creditor—Receiver how sued—Civil Procedure Code (Act XIV of 1882)** s 22—**Receiver appointed by another Court, if may be added as party by Court of its own motion** Where during the pendency of a suit for rent under the Bengal Tenancy Act, a Receiver was appointed in respect of the entire property of the defendants by another Court and the property for which the rent was claimed vested in him. *Held* that the Receiver was a necessary party to the suit and if he was not added with the permission of the Court which appointed him, the suit was liable to be dismissed. The appointment of a Receiver does not of itself debar a creditor of the person over whose estate the Receiver has been appointed from suing for his claim provided that such suit does not in any way interfere with the possession or jurisdiction of the Court appointing the Receiver. But where property in the hand of the Receiver is intended to be affected by the result of the litigation, the Receiver is a proper and necessary party to such suit by way of addition to and not in substitution for the parties primarily responsible. **Miller v Ram Janjan**, I L R 10 Calc 1014 **Ashmon v Modhak Hani**, 11 C. J 459, **Hem Chandra v Frankfort** I L R 1 Calc 403 **Jogendra Nath v Dubendra Nath** I L R 26 Calc 127, s c 3 C W N 80 **Janki Koor v Sham Shirendra** 10 C. L J 23 **Jagat Tarin v Naba Gopal**, I L R 34 Calc 305, s c 6 C L J 270, referred to. Where the plaintiffs refused to add the Receiver as a party with leave of the Court appointing him although they had notice of such appointment: *Held* that the Court was not bound nor was it competent to it to add the Receiver as a party of its own motion under s 32, Civil Procedure Code, as the leave of the Court

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appointing the Receiver was essential. But as the point raised was of some novelty and as a fresh suit by the plaintiffs might be barred by limitation the High Court allowed the plaintiffs an opportunity of continuing the suit by taking steps to make the Receiver a party upon their paying all costs. *Jotindra Nath Chowdhury v Sarfaraj Mia* (1910) . . . 14 C W. N 653

5 ———— **Title—Receiver, accretions to property, if vests in—**Accretion, title to, prevails against all persons not claiming under prior title—Bona fide tenant under a de facto proprietor, if acquires riyat rights—Non-occupancy riyat if entitled to possession of accretions—Criminal Procedure Code (Act V of 1893), s 145, 146—Receiver appointed under s 146, rights of. As a general rule a Receiver takes no title in property acquired by the person formerly in possession. But a Receiver is entitled to any accretion to the property vested in him, upon general principles and the policy of the law by which a proprietor acquires a title to accretions to his property. Where a Receiver has been appointed under s 146 of the Criminal Procedure Code in respect of any property in dispute the Receiver is entitled, unless some special circumstance is established, not only to the subject matter of the proceedings under s 145, Criminal Procedure Code, but also to the accreted land and gives good title to a tenant under him. Such title will prevail against a trespasser but not against person who establishes a title to the accreted land acquired prior to the vesting of the lands in the Receiver. *Ajai Chandra v Lakh Narain* 10 C L J 55, referred to *MADHU v SABAR AII* (1910) . . . 14 C W N 681

6 ———— **Mortgage suit—Sale, appointment after—**Receiver, if may be appointed of property in hand of common manager—Civil Procedure Code (Act V of 1908) O XL, r 1, sub r (2)—Bengal Tenancy Act (VIII of 1885) s 95. A mortgage suit does not necessarily terminate with the sale, and a Receiver may be appointed after the sale, pending application to set it aside. *Wills v Loff*, 38 Ch D 197, distinguished. A Receiver may very well be appointed under O 40, r 1, sub r (2), Civil Procedure Code, in respect of property in the hands of a common manager appointed under s 95 of the Bengal Tenancy Act. *MADANESWAR SINGH v MAHAMATA PRASAD SINGH* (1911) . . . 15 C W. N 672

7 ———— **Suit against—**Leave of Court if condition precedent to suit—Stay of proceedings. Where a suit has been instituted against a Receiver without previously obtaining the leave of the Court which appointed him, it is open to the Court to stay proceedings for a reasonable time so as to enable the plaintiff to apply for leave to proceed with the suit. The consent of the Court which appointed the Receiver is not a condition precedent to the right to bring an action against the Receiver. *Pramatha Nath Gangooly v Khetra Nath Banerjee*, 1 L R. 33 Cal. 270 s.c. 9 C W N 247, dissented from. Where property in the hands of a receiver is intended to be affected by the result of the litigation, the Receiver is a proper and necessary party to such a suit. *Jotindra Nath Choudhury v Sarfaraj Mia*, 14 C W N 653, followed. *Miller v Ram Ranjan Chuckerbutty*, 1 L R 10 Cal. 1014, *Chartered Bank v Harish Chunder Dey*, 5 C. W

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N. 26, and *Kumar Suttia Suttia Ghoshal v Pant Golap Moni Dobi*, 5 C W N. 27, distinguished. *BANKU BEHARI DEY v HARENDRA NATH MUKERJEE* (1910) . . . 15 C W. N 54

8 ———— **Application to execute decree against—**Application for rateable distribution—Property sold at the instance of another creditor with leave—Leave, if still necessary—Leave, if may be obtained after application preferred—Civil Procedure Code (Act XIV of 1882), s 272, order under, if leave—Civil Procedure Code (Act V of 1908) s 73. The fact that leave had already been granted to the execution creditor at whose instance property in the hands of a Receiver was sold, does not dispense with the necessity of other execution creditors obtaining such leave to prosecute their applications under s 73 of the Civil Procedure Code for rateable distribution of the assets, for the funds are held by the Court for the benefit of the Receiver who would be entitled as a matter of right to take out any surplus left after satisfying the creditors who have obtained such leave, and apply it for the purpose of the litigation in which he was appointed. Courts have been generally reluctant to allow execution to proceed against properties in the hands of the Receiver until leave has expressly been granted for this purpose. A prohibitory order under s 272 of Act XIV of 1882 on the Receiver cannot be construed as leave granted to the decree holder to proceed against properties in his hand. In the circumstances of the case the High Court held that the application should not have been dismissed because no such leave had been obtained but that an opportunity should be given to the petitioner even at this late stage to obtain the requisite leave. *Danku Behari Dey v Harendra Nath Mukerjee* 15 C W N 54, followed. *Pramatha Nath Gangooly v Khetra Nath Banerjee*, 1 L R. 32 Cal. 270 s.c. 9 C W N 247, dissented from. *SARAT CHANDRA BANERJEE v AFURRA KRISHNA ROY* (1911) . . . 15 C W. N 925

9 ———— **Interference with Receiver appointed by the Court—**An agreement which would interfere with the work of a Receiver appointed by a Court should not be enforced as being opposed to public policy. *FATEER PANA MAN v ANATH BANHU PAL* (1911) . . . 16 C. W. N 114

10 ———— **Mortgage suit—**Receiver if may be appointed in, after appointment of Receiver in partition suit amongst mortgagors—Foreclosure suit, Receiver if and when may be appointed in. The appointment of a Receiver in a partition suit amongst the mortgagors, is no bar to the appointment of a Receiver in a subsequent suit by the mortgagor on his mortgage, as any possible conflict between the two Receivers, where the same Receiver has not been appointed in both suits, may easily be avoided. A mortgagor who has obtained a preliminary decree for foreclosure cannot at that stage ask for a Receiver of the property under mortgage, since he has no title to the profits until at least he obtains an order absolute for foreclosure and is then kept out of possession by the action of the judgment debtors. *KHUSURAT KOER v SARODA CHARAN GUHA* (1911) . . . 16 C. W. N 126

11. ———— **Ghatwall tenure—**Income from, if may be attached—Receiver, if may be appointed for Ghatwall lands—Rents and profits not due at

RECEIVER—contd.

the date of appointment The rents and profits of a Ghatwali tenure may be attached in execution of a decree in the life time of the Ghatwal though the estate itself cannot be attached *Akshora Koomar v. Broode Ram, 4 W. R. M. S. 5 Yarnal v. Krata Pershad, 10 O. W. N. colz, Uday Kumar v. Hari Ram, 1 L. R. 23 Cal., 453, Ray Keshore v. Banajadas, 1 L. R. 23 Cal. 573, considered* Where the lower Court in execution of a decree against the Ghatwal attached the Chatwali estate, placed it under a Receiver and directed the tenants not to pay rents to any body other than the Receiver *Held*, that, although the order of attachment of the estate was erroneous the appointment of a Receiver was sanctioned by authority *Quare* Whether a Receiver may be appointed to collect rents and profits that have not accrued at the date of appointment *Kishori Akeri v. Mohan Chandra Mandal (1912)*

1 L. R. 39 Cal. 1010
16 C. W. N. 502

12. — *Insolvency—Jatri or "Pilgrim business" profits from—Private, office of—Provincial Insolvency Act (III of 1907) s 2 (1) (g) 13 20 (c) 40 (1) 44, 47—"Business"—"Trade"* Where, pending an appeal to the High Court by a creditor in insolvency against a conditional order of discharge in favour of the insolvent who was a *panda* or priest attached to the temple of Jagannath at Puri, an application was made for the appointment of a receiver in respect of the business of the insolvent, which consisted in receiving pilgrims, housing them, feeding them, looking after their comfort, and accompanying them to the temple of Jagannath, in return for a fee from the said pilgrims in the nature of a voluntary payment, the object of the creditor being not to stop the business but to carry it on, so that the insolvent priest may be constantly attended by the receiver who may take possession of all his earnings *Held*, that what the priest did for the pilgrims could not appropriately be described as 'business' within the meaning of cl (c) of s 20 of the Provincial Insolvency Act and that the exercise of his calling by the insolvent, under the circumstances stated, could not be deemed a 'trade' within the meaning of sub s (1) of s 40 of the Provincial Insolvency Act *Held*, also, that ordinarily the business of the insolvent might be carried on by the receiver not with a view to profit, but only in so far as might be necessary for the beneficial winding up of the same *Ex parte Emmanuel, 17 C. A. D. 35 followed*. The difference between a receiver and a manager explained. *In re Manchester and Milford Railway Co., 14 Ch. D. 615, Usser Steamship Co. v. Wharmby (1912) 3 C. 254 In re Lens Hol (1902) 1 Ch. 332, Boehm v. Goodall, (1911) 1 C. A. 155 and In re Newington Colliery, Ltd (1912) 1 C. A. 489, referred to* *AVANNA MAHANTI v. GANESH MAHESWAR (1913)*

1 L. R. 40 Cal. 678

13. — *Powers of Civil Court when Receiver in possession under s 148 (2) Criminal Procedure Code—(Act V of 1908)—Conditional appointment—Former Receiver, reappointment of* The appointment of a receiver by a Civil Court under O. XL, r 1 of the Code of Civil Procedure, does not operate as a discharge of the receiver of the same properties already appointed by a Magistrate under s 146 (2) of the Code of Criminal

RECEIVER—contd.

Procedure. As a general rule when there is a receiver in possession appointed by the Magistrate, and application is made to the Civil Court to exercise its powers under O. XL, r. 1 of the Code of Civil Procedure, the Civil Court should make a conditional order of appointment and inform the Magistrate so that the latter may have an opportunity of withdrawing his attachment. Unless there is good reason to the contrary, the Civil Court should, as a matter of judicial discretion, appoint as its receiver the person already appointed by the Magistrate *Lal Lal us nam v. Abdul A. 1, 1 L. R. 23 All. 214, distinguished. BIDYATRASAD NARAIN SINGH v. ANUBHAV SIVON (1913)*

1 L. R. 40 Cal. 562

14. — *Discretion of Court—Interference by higher Court—Appointment of party to cause appointment of person residing outside jurisdiction and at a distance—Revision—Guardians and Wards Act (VIII of 1909), s 12, sub. (1) The selection and appointment of a particular person as a Receiver is a matter of judicial discretion to be determined by the Court according to the circumstances of the case, and the exercise of this like other matters of judicial discretion, will rarely be interfered with by an appellate tribunal. To induce the Appellate Court to interfere it is necessary to show some overwhelming objection in point of propriety or some fatal objection in principle to the person named. It is a settled rule that one of the parties to a cause shall not be appointed Receiver without the consent of the other party unless a very special case is made. Residence beyond jurisdiction is not by itself a fatal objection, but when a non resident is appointed Receiver, there must be adequate guarantees that he will be subject to the effective control of the Court. Residence at a great distance from the property which is to be subject to his management and control, while not regarded as an absolute disqualification for the office, is an important circumstance to be taken into consideration. Where amongst two rival claimants for appointment as guardian of a minor's property, the appointment of one by the District Judge was set aside on the ground of irregularities, and the District Judge was asked to reconsider the matter and the District Judge, pending trial, appointed the same individual Receiver under sub s (1) of s 12 of the Guardians and Wards Act, although he was a resident outside the Judge's jurisdiction and no security was taken from him *Held*, in revision, that the appointment was bad and should be set aside *KALI KUMARI v. BARNABY SIVON (1913)**

17 C. W. N. 974

15. — *Pending proceeding for appointment of Common Manager—Bengal Tenancy Act (VIII of 1885), ss 53 100—Fid. cause for appointment—Selection of Receiver—High Court, when will interfere with—Civil Procedure Code (Act V of 1908), O. XL r 1* The fact that an application for the appointment of a Common Manager of the property in suit is pending before the District Judge does not preclude the Subordinate Judge before whom the suit is pending from appointing a Receiver in a proper case. *The Eastern Mortgage and Agency Co. v. Poken Khatri, 16 C. W. N. 397, followed* Where it was common ground that no one was in effective possession of the property and in a position to collect the rents and pay the Government revenue,

RECEIVER—contd.

the Court could hardly go wrong, in appointing a Receiver. The trying Court's selection of a Receiver will not be set aside in appeal except in an extreme case, i.e., unless there be some overwhelming objection in point of propriety or choice or some fatal objection in principle. *Cookes v Cookes*, 2 DeG J & S 526, followed. *JIBANESSA KHATUN v MAJIDUNESSA KHATUN* (1913) 17 C. W. N. 581

16. ———— **Suit by present against former Receivers—Whether maintainable.** A suit was instituted by the present receivers of an estate against the former receivers (before the accounts of the latter have been passed by the Court) for the recovery of a certain sum which the plaintiffs alleged the defendants had failed to realise on behalf of the estate. *Held*, that no such suit was maintainable. *K. B. DUTT v SHAMAL DROVE DUTT* (1913) I. L. R. 41 Cal. 92

17. ———— **Partition suit—Defendant in sole occupation, though plaintiff not altogether excluded—Court, if may appoint a Receiver and when—Party to a suit when may be appointed.** The Court has jurisdiction to appoint a Receiver until the hearing of a partition action or until further orders, even though there is no exclusive occupation by any party, and the Court will not hesitate to do so whenever it is just and convenient. The case for the appointment of a Receiver is much stronger if a party to the partition action is in sole occupation. In such a case any other party may obtain a Receiver either of his share of the rents and profits or of the whole estate. The Court may also allow the party in exclusive occupation to elect to pay to the others an occupation rent, or the Court may require security from the co-owner in exclusive occupation to account for their share of the rents to the other co-owners. *Held*, that in the circumstances of the present case the second of the four alternative courses, viz., appointment of a Receiver of the whole estate was the proper one to adopt. One of the parties to a litigation should not ordinarily be appointed a Receiver except in very exceptional circumstances. In the special circumstances of this case, the defendant in possession was appointed Receiver of the whole estate subject to conditions. *SUPRASANNA ROY v URENDRA NARAYAN ROY* (1913) 19 C. W. N. 533

18. ———— **Property in possession of defendant—if may be taken over—Object of appointment.** Where the plaintiff sued to recover property in the possession of his adoptive mother and the suit was resisted, *inter alia*, on the ground that the defendant was entitled to retain possession of the estate for her life. *Held*, that O. XL, r 1 (2), which clearly refers to a case of removal of property from the possession or custody of a person other than the parties to the suit, was no bar to the appointment of a Receiver on the application of plaintiff when it was established that the estate was being grossly mismanaged by the defendant. The effect of the appointment of a Receiver would not be to prejudice the case in any way as the only object and effect of so doing would be to maintain the estate in its present condition during the pendency of the suit. *SATYA NARAYAN SINGH v KENDRAHAR KENDRAHAR* (1913) 215 C. W. N. 537

19. ———— **Suit by—Sue by one against the other, if maintainable—Objection to suit, when to be**

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taken—Contempt of Court. A Receiver is an officer of the Court and the possession by him is the possession of the Court, and to bring a suit so as to interfere with the possession of the Court without the leave of the Court, is a contempt of Court. But if a party is guilty of contempt of Court the proper way for the Receiver to act is to bring it immediately to the notice of the Court so that proper steps may be taken against the party guilty of contempt, and, in a proper case, the Court would grant a party leave to proceed with the suit. But it is not proper for the Receiver to wait till the day of hearing and put this objection forward as a ground for dismissing the suit. Where, by consent, in a partition suit two of the parties were made Receivers of different portions of the property with full powers under s. 503 of Act XIV of 1882. *Held*, that each of the Receivers had power to bring and defend suits, and a suit by one against the other without leave specially obtained from Court did not amount to such a grave and serious contempt of Court by the plaintiff as to merit dismissal. *Pranathath v Aithranath*, I L R 32 Cal. 270 s. c. 9 C. W. N. 247, referred to. *SATYA KRISHNA BAWERJEE v SATYA BHUPAL BAWERJEE* (1913) 18 C. W. N. 546

20. ———— **Partition—Code of Civil Procedure (Act V of 1908), O. XL, r 1, cl (d)—Indian Trusts Act (XXV of 1886), s. 8, 20, 32.** In a partition suit in which a receiver is authorised to sell properties including the share of an infant as declared in the decree, the Court may direct the receiver to convey the properties. Under O. XL, r 1, cl (d) of the Code of Civil Procedure (Act V of 1908) the Court may confer on a receiver all such powers for the realization of properties and the execution of documents as the owner has. *BAJIR ALI v HATIZ NAJIB ALI* (1916) 19 C. W. N. 817

21. ———— **Suit by, for possession of immovable property.** The plaintiffs were the receivers of the estate of one G who died leaving two widows A and V. On the 6th August 1906, one of the co-widows (V) brought a suit for a declaration that she was entitled to a half share in the estate of G and prayed that the properties might be partitioned and her share allotted to her. In this suit, the plaintiffs were appointed receivers with all the powers provided under O. XL, r 1, cl (d) of the Civil Procedure Code. It was further ordered that the receivers should have power to bring and defend suits in their own names and also should have power to sue the names of the plaintiff and the defendant. The plaintiffs instituted the present suit to recover possession of a certain immovable property and for a declaration that a lease, dated 16th September 1906, purporting to have been executed by N by virtue of which the defendant claimed to be a permanent tenant was void and inoperative. Subsequent to the institution of the present suit an order was made in the suit in which the plaintiffs were appointed receivers that the plaintiffs as receivers be at liberty to continue the present suit. It appeared that proceedings under the Lunacy Act were instituted in November 1908, and in these proceedings the District Judge, on the 24th September 1917, held that A was of unsound mind and incapable of managing her affairs. *Held*, that ordinarily a suit to recover possession of property can only be brought by

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him in whom there is a present title to it and by his appointment no present title becomes vested in a receiver. But this rule like all others is subject to modification by the legislature and the Code of Civil Procedure, in O XL, r 1, empowers the Court to confer upon a receiver all such powers as to bringing and defending suits as the owner himself has. That the co-widows of G were the present owners of the property and the suit in which the receivers had been appointed comprised that property. The receivers therefore were as competent to bring the present suit as the owners would have been. That the omission of the plaintiffs to get leave, in the suit in which they were appointed receivers to institute the present suit may have consequences adverse to them in that suit, but it cannot affect their power to bring the present suit. **CASIM MANOOJI v K. B. DUTT AND P. CHAUDHURI (1914)**

10 C W N 45

22. ———— **Sale by—Civil Procedure Code (Act V of 1908) O XL, r 1—Receiver, authority of, to sell property and execute the conveyance including share of infant defendant—Practice—Trustees Act (XV of 1886), ss 3, 20 and 22.** In a partition suit in which a Receiver is authorised to sell properties, there can be no difficulty in directing him to convey the properties. Under O XL, r 1, cl (d) of the Code, the Court may confer on a Receiver all such powers for the realisation of properties and the execution of documents as the owner has. The Receiver may be, therefore, directed to execute a conveyance including the share of an infant defendant. In all cases whether by the Court or under the Court or by direction of the Court out of Court the purchaser is bound to satisfy himself of the value, quantity and title of the thing sold, just as much as if he were purchasing the same under a private contract. The sale certificate does not transfer the title. It is evidence of the transfer. **Misatoonnenna Dibbe v Khaliounessa Dibbe I L R 21 Cal 479 Goleem Hussein Cassim driff v Fatima Begum, 16 C W N 391 and Davis v Ingram, (1897) 1 CA 477, referred to. BASIR ALI v HAFIZ NAZIR ALI (1915).**

I L R 43 Cal 124

23. ———— **Order relating to remove—If appealable—Resignation of one of two joint receivers, if terminates order appointing Receiver no appeal lies against an order refusing to remove a Receiver who has already been appointed.** Where two persons were appointed joint Receivers to an estate, the order appointing them did not come to an end on the resignation of one of them so as to leave the estate without a Receiver and without the protection for which a Receiver is, in fact, appointed. **EASTERN MORTGAGE AND AGENCY CO., LTD v FREEMANANDA SARA (1914)**

20 C. W. N 789

24. ———— **Irregular appointment of—Sue brought by such Receiver under authorisation of Court, if maintainable—Property of the Receiver's appointment if can be challenged in the suit.** In a suit pending in the lower Court the High Court in appeal directed the appointment of a Receiver on taking proper security. The Lower Court appointed a Receiver but took no security and authorised him to bring a suit against the respondent which was done. The suit was dismissed on the ground of invalidity of the Receiver's appointment. *Held*, that an order which is

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erroneous in law is not necessarily an order made without jurisdiction and the order for the appointment of the Receiver was operative in law. That the propriety of an order or decree made in a cause in which the Court has jurisdiction cannot be challenged collaterally and the Lower Court was wrong in dismissing the suit on the ground that the Receiver was not competent to maintain in the action. **BHAIRAB CHANDRA DUTT v NANDIRAM AKKARI (1917)**

I L R. 46 Cal 70
22 C W N. 520

25. ———— **Order appointing a receiver without naming anybody—Appealability of—Civil Procedure Code (Act V of 1908), O XL, r 1 and O XLIII, r 1.** *Held* by the Full Bench (STEWART, J., *contra*) that an order of a Court that a receiver should be appointed in a case without appointing anybody by name as receiver and adjourning the case to a later date for so appointing one is an order under O XL, r 1 and is appealable under O XLIII, r 1 (a), Civil Procedure Code (Act V of 1908). **Senkalanam v Stridavamma, I L R 10 Mad 179, applied. Upendra Nath Nag Chowdry v Bhupendra Nath Nag Chowdry, 13 C. L. J 157, and Srinivas Prasad Singh v Aello Prasad Singh, 14 C. L. J 489, dissented from. Per STEWART, J.**—Such an order is not appealable being only an interlocutory and not a final order. The test of whether an order is appealable is to see whether it completely disposes of the petition for appointing a receiver or not. If anything remains to be done in the petition, the order passed on it is not a final one and is not appealable. **PALANIAPPA CHETTI v PALANIAPPA CHETTI (1916)**

I L R. 40 Mad 18

26. ———— **Prosecution of—Receiver for criminal breach of trust without leave of the Court—Criminal breach of trust—Person not entrusted with property—Removal of labels from bales of jute whether such offence in respect of the jute—Penal Code (Act XLV of 1860), s 406.** A receiver appointed by the High Court, who has, under its order, taken possession of property, to wit, certain bales of jute, cannot be prosecuted for criminal breach of trust in respect of the same without first obtaining the leave of the Court. If the owner has any cause of complaint as to the delivery by the receiver of such property under a subsequent order of the Court, it is his duty to bring the matter to its notice for decision as to the proper course to be followed, that is whether it should deal with the matter itself or send it for disposal to the Magistrate. **Aston v Heron 2 M & K 350, approved. Agendra Nath Srimany v Jogendra Nath Srimany 13 Cr L J 491, distinguished.** A person who has never been entrusted with property cannot be convicted of criminal breach of trust in respect of it. The mere removal of a person's labels from his bales of jute is not criminal breach of trust of the jute. **SANTOK CHAND v EMPFORS (1918)**

I L R. 46 Cal 432

27. ———— **Suit by—Leave of Court—Simultaneous appointment of Receivers by different Courts—Jurisdiction—Practice.** In a suit instituted by a Receiver, who did not first obtain leave of Court, but who subsequently obtained leave to continue the proceedings: *Held*, that the failure to obtain leave prior to the institution

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of suit was cured by subsequent leave *Pramatha Nath Gangooly v Khatra Nath Banerjee*, 1 L R 32 Calc 270, not followed *Miller v Ram Ramyan Chakravarti* 1 L R 10 Calc. 1014, *Dunne v Kumar Chandra Kisor*, 1 L P 30 Calc 593, *Banku Behari Dey v Harendra Nath Mukerjee*, 15 C W N 54, *Sarat Chandra Banerjee v Apurba Krishna Roy*, 15 C W N 925, *Maharaja of Burdwan v Apurba Krishna Roy*, 15 C W N 872, *Atson v Hiron*, 2 My & K 390, and *Gowar v Bennett*, 9 L T 310, referred to *RUSTOMJEE DHANJIBHAI SETHNA v FREDERIC GAEBELE* (1918)

1 L R 46 Calc 352

28. ———— **Security not furnished by Receiver—Dismissal of suit—Jurisdiction of Court** In pursuance of an order of the High Court directing him to appoint a Receiver who was required to furnish security, the Subordinate Judge appointed the plaintiff as Receiver and authorised him to bring and defend suits in his own name. In consequence thereof the plaintiff instituted a suit, which was dismissed by the Subordinate Judge on the ground that the Receiver was not competent to maintain the action because as he had not furnished security, his appointment was inoperative in law. *Held*, that the propriety of an order or decree made in a cause in which the Court had jurisdiction could not be challenged collaterally. This general principle applied to an order for the appointment of a Receiver by a Court of competent jurisdiction. *Held* also, that in the present case the order of the Subordinate Judge was not conditional but absolute in its terms and took immediate effect. It could not be maintained that an order which was erroneous in law was necessarily an order made without jurisdiction. *Greenwall v Wilson*, 52 Kan, 109, 34 Pac 493, referred to *Edwards v Edwards*, 2 Ch D 291, distinguished. **BIHAR CHANDRA DUTT v NANDIRAM AGRAWA** (1917)

1 L R. 48 Calc. 70

29. ———— **Possession of—When may be disturbed without leave in case of third persons—Creditor, whether can proceed in execution—Receiver's property sale of, under execution issued by another Court, how may be avoided.** The rule that the possession of a Receiver may not be disturbed without leave does not apply, so far as third persons are concerned, until a Receiver has been actually appointed and is in possession. It is not enough that an order has been made directing the appointment of a receiver. Until the appointment has been perfected and the Receiver is actually in possession, a creditor is not debarred from proceeding to execution. The order appointing a Receiver is for the benefit of the parties to the action, it does not affect third persons until the appointment is complete and perfected. Property in the hands of a Receiver is exempt from judicial process and the purchaser of such property at an execution sale buys at his peril for the sale may be cancelled upon an application to the execution Court; in other words where property is in the custody of a Receiver appointed by a Court, a sale under an execution issued by another Court may be avoided by an appropriate process. **HANAI LAL JALAN v MANDU BIRI** (1919)

23 C. W. N 252

30. ———— **Suit against—Application for leave to sue general principles applicable to—Right**

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of applicant to an enquiry—Refusal to hear ex parte—Material irregularity—Revision—Code of Civil Procedure (Act I of 1908), s 115—Superintendence, High Court's powers of—Government of India Act (5 and 6 Geo F. 61) s 107 In India there is no statutory provision which requires a party to take the leave of the Court to sue a Receiver and the grant of such leave is made not in the exercise of any power conferred by statute but in exercise of the Court's inherent powers. The general principle applying to an application to sue a Receiver in respect of properties in charge of the Court, is that unless the Court is satisfied that there is no question to try or there is no legal foundation to the claim, leave should be granted as a matter of course. The onus is strongly on the Court to show that no foundation for any claim has been made out. The applicant is entitled to an enquiry upon the materials furnished by the parties and if he so desires, is entitled to ask the Court to take evidence if the Court is not inclined to give leave as a matter of course. An *ex parte* application or an application to a Court for leave to sue a Receiver is covered by s 115 of the Code of Civil Procedure, 1908. The High Court is entitled in exercise of its powers of superintendence, to correct and supervise subordinate Courts whenever they appear to have wrongly exercised their inherent powers. The High Court will always exercise its powers of superintendence when it appears that there has been something in the nature of a denial of the right to a fair trial. If a Court, which has jurisdiction to try a suit declines to go into evidence when required to do so, but merely proceeds to dispose of the suit upon the pleadings or upon allegations made in a petition, that is a material irregularity in the exercise of jurisdiction, which is reversible under s 115. In such a case the High Court has also power to interfere under s 107 of the Government of India Act 1915. **BRAJA BHUSAN TRIGUNAIT, v SRISCHANDRA TEWARI** 4 Pat L J. 20

31. ———— **Appeal against appointment—Power of Appellate Court to stay proceeding without taking security—Procedure, question of, is not a question of jurisdiction—Code of Civil Procedure (Act V of 1908), s 115 and O XLI, r 5 (3) (c)** In an appeal against the appointment of a Receiver the Appellate Court ordered the proceedings in connection with the appointment to be stayed pending the hearing of the appeal. When this order was communicated to the first Court, the Receiver reported that he had already taken charge of the garden in dispute and appointed watchmen to guard the property. The first Court sent the Receiver with his report to the Appellate Court, who ordered that "the Receiver is discharged." *Held*, (i) that the order was, in effect, not an order of discharge, but a direction to the Receiver not to take any steps in regard to or exercise any dominion over, the property till further orders in the appeal, (ii) that the Appellate Court, in not hearing the opposite party, may have committed an error of procedure but as there was no defect in jurisdiction, the High Court had no power to interfere under s 115 of the Code of Civil Procedure 1908. Where a Receiver is appointed by a writ, and an appeal is preferred against the appointment, it is competent to the Appellate Court either to stop the issue of the writ pending the appeal,

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or if the writ has been issued to direct the Receiver through the Court which appointed him not to take any steps in compliance with the writ of appointment. In the latter case O XL, r 5 (3) does not apply and so security need be taken under sub-sec (3) (c) **MULCHAND SINGH v TARNI PRASAD** 4 Pat L J 642

32. — Appointment of new Receiver after dismissal of suit—*Id id* of Code of Civil Procedure (Act I of 1908) O XL r 1 (a). A s it against several defendants in which a Receiver had been appointed was dismissed after a compromise with defendant No 1 had been effected. Two of the other defendants objected to the discharge of the Receiver who had been appointed to the estate of defendant No. 1 and an order was passed continuing the appointment. In point of fact however a fresh Receiver was appointed. *Held* that the order appointing a fresh Receiver was without jurisdiction. The power conferred on the Court by O XL, r 1 (a) to appoint a Receiver of any property whether before or after the decree refers only to the appointment of a Receiver in respect of the property in regard to which litigation is pending i.e. as long as the suit remains *pendens*, the function of the Receiver will continue until he is discharged by the Court. Although the dismissal of a suit may in some cases mean the discharge of the Receiver still the Court has jurisdiction over the Receiver who is an officer of the Court and the Court may require him to furnish accounts to allow parties to examine accounts and to deal with all matters connected with the management of the Receiver. (**MANDARHARAN PRASAD NARAIN SINGH v BISHWAS PRATAP NARAIN SARI** 5 Pat L J 513)

33. — Liability to account. A Receiver is not liable to account for any period other than that for which he is appointed. An appeal does not lie from an order directing submission of accounts. (**SAMANTHA SINGH v BILGAWAR SINGH** 5 Pat L J 37)

34. — Whether appointment of Receiver stays execution. An order appointing a Receiver does not stay execution of the decree against the debtor so as to disentitle the decree holder for executing the decree in any manner provided by the Civil Procedure Code even when appointed with consent of decree holder. Where a party seeks a particular relief and the matter is settled by a consent decree not giving that relief it must be presumed that such relief was refused and claimant is stopped for subsequently claiming that relief. (**MAHARAJADHIRAJ SIB RAMSINGH SINGH MALADWA v HITENDRA SINGH** 6 Pat L J 293)

35. — General principle summary appointment of. The Code of Civil Procedure does not confer an unlimited power on the Court to appoint a Receiver. It is an Equitable Relief and should only be granted on equitable grounds the first essential condition precedent by that the applicant need show that he has an interest in the property effected and a simple contract creditor has no such interest unless he can show he has a right to be paid out of the particular property concerned. (**RAJ BHADUR PRITTI CHAND LAL CHAUDHARI v KUMAR KALIKAND SINGH** 6 Pat L J 306)

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36. — Dismissal of objection to appointment of—*1st* part—Code of Civil Procedure (Act I of 1908) s 115 and O XL r 1. An order dismissing an objection to the appointment of a Receiver of property of which the objector is in possession falls within O XL, r 1 of the Code of Civil Procedure 1908 and is appealable. (**AGABEG v MESSAKAT SYEDARI** 3 Pat L J 573)

36 (a). — Court's discretion to appoint. Under O 40 r 1 of the Civil Procedure Code, the Court has been given precisely the same discretion in questions of appointment of a receiver that the Courts in England have. The condition in the old Code that to justify such appointment in any case it should be found necessary to preserve property from waste and alienation having been removed there has been a substantial widening of the Court's discretion. Where therefore in a suit for partition of joint family property it was proved that a co owner admittedly entitled to a half share in a considerable portion of the properties in suit was being kept out of possession by the co owner, with the result that all supplies were cut off from his branch of the family. *Held*, that although no case of waste might have been established against the co owner in possession the case was eminently a proper one for the appointment of a receiver. (**RUNJI RAM AND OTHERS v SALIGRAM** 14 C W. N 248)

37. — Appointment of by one Court, whether can be restrained by another Court. *Held* that one Subordinate Court has no power to restrain the action of another subordinate Court with co-ordinate powers. Therefore when a Subordinate Judge had appointed a Receiver it was *held* that it was not competent for another Subordinate Judge to restrain the Receiver from taking possession of a part of the property in respect of which the Receiver had been appointed. (**CHANDRANATH KEDARNATH THAKUR v MAHMOOD ALI KHAN** 6 Pat L J 288)

38. — Possession of receiver in mortgage suit, for whose benefit—Receiver, if can be appointed at the instance of mortgagee not entitled to possession. Possession of a receiver in a mortgage suit is *prima facie* for the benefit of the party who has obtained the appointment. (**Penny v Todd**, 26 W R (Eng) 502, followed. A second mortgagee in whose presence the order for appointment of a receiver in a mortgage suit by the first mortgagee, is made, is not entitled to avoid the consequences of the order of appointment because he has obtained a decree on his mortgage and has purchased the equity of redemption in execution of that decree. Whether a mortgagee is or is not entitled to possession he may invite the Court to appoint a receiver, if the demands of justice require that the mortgagor should be deprived of possession. (**1st** *gauri* **Penabata Rajagopala Suryawar Bahadur v K Bawa Reddy** (1914) Mad W A 771 **Herbert v Greene** 31r Ch Rep 270 **Weatherall v Eastern Mortgage Agency Co** 73 C L J 425 and **Eastern Mortgage and Agency Co v Fakaruddin** 17 C W A 16 referred to **RAMSINGH SINGH v CHUNI LAL SHARMA** (1919) L L R 47 Cal 418)

39. — Suit against—Sanction of Court for institution of the suit—Want of previous sanction—Effect of—Jurisdiction, whether affected—

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Sanction, subsequently obtained—Illegality whether cured Where a suit is instituted against a Receiver appointed by a Court, without obtaining the previous sanction of that Court, the omission to obtain such sanction does not affect the jurisdiction of the Court in which the suit is laid, but is an illegality which can be effectively cured by the plaintiff obtaining the sanction during the course of the litigation. *Banku Bihari Dey v. Harendra Nath Mukerjee*, (1916) 15 C. W. N. 64 and *Jagan Tarini Das v. Naba Gopal Chaki*, (1907) I. L. R. 34 Calc. 305, followed. *AMRUKUTTY v. MANAVIKRAMAN* (1920)

I. L. R. 43 Mad. 793

40. ———— *Rent decree obtained by, after conditional order of discharge made by Court, but not carried out and before the decree embodying order of discharge was signed by the Judge—Receiver, if bound to disclose to Court order of discharge in such circumstances—Devolution of interest pending suit—No application for substitution—Decree passed in favour of original party, if bad* In a rent suit instituted by the receiver of an estate as such a decree was obtained after an order discharging the receiver on certain conditions had been made by the Court. It appeared, however, that on the date the rent decree was made the order of discharge had not been in fact carried out nor was the decree embodying the said order signed by the Judge who passed it. The receiver was in possession as before and he was subsequently continued as such by the order of the Appellate Court: *Held*, that it was not established that the receiver was in fact and law discharged on the date of the rent decree nor was it proved that there was fraud such as would entitle the plaintiff to maintain a suit to have the decrees set aside. That it was not shown that there was in fact and in law such a discharge as it was incumbent upon the receiver to disclose before the Court. That, assuming that the receiver was discharged before the decree was passed, there was only a devolution pending the suit, and the decree made in favour of the receiver would not on that account be a bad decree but would ensure for the benefit of the party on whom the interest devolved, such party not having applied for the carriage of the proceedings. *DEVI DEBAR BOSE v. MR. H. F. BAYERLEE*

26 C. W. N. 381

41. ———— *Teshildar appointed by The owners of an estate brought a suit for account against a Teshildar of their estate who had been appointed by a Receiver who had been in charge of the estate under an order of Court but had since been discharged: Held*, that a suit was not maintainable. Such a suit can be sustained only on proof of fiduciary relation between the parties. But the Receiver is not a representative of the owner; he is an officer of the Court. Hence an officer appointed by the Receiver does not stand in the same position as an officer appointed by the owner. Although a Receiver has been discharged, it is still open to the party entitled to re-charge him in his accounts and obtain relief against him; and a suit may be maintained against the Receiver if it is established that he has monies belonging to the estate still in his hands, notwithstanding his discharge. *HANUMAN MOOKERJEE v. JANARUDIN MANDAL*

26 C. W. N. 993

RECEIVING STOLEN PROPERTY.See *ALTREFOIS ACQUIT*

I. L. R. 45 Calc. 727

RECIPROCAL PROMISES.See *CIVIL PROCEDURE CODE* (ACT V OF 1908), O XXIII, P. 3

I. L. R. 38 Mad. 959

RECISION OF CONTRACT.See *LIMITATION ACT* (IX OF 1908) FOR I, ART. 93

I. L. R. 37 Bom. 158

RECITAL.See *EVIDENCE* . I. L. R. 35 All. 194
See *DEED*.See *HINDU LAW—ALIENATION*

I. L. R. 44 Calc. 186

See *LEASE* I. L. R. 42 Bom. 103**RECOGNITION.**See *HINDU LAW—MARRIAGE*

I. L. R. 38 Calc. 700

RE-CONSTRUCTION.See *BUILDING* I. L. R. 39 Calc. 84See *DISTRICT MUNICIPAL ACT* (POM III OF 1901), ss. 3 (7), 26

I. L. R. 35 Bom. 412

RECONVERSION.See *MAHOMYDAN LAW—BIGAMY*

I. L. R. 39 Calc. 409

RE-CONVEYANCE.See *REGISTRATION ACT* (1877) s. 17

14 C. W. N. 703

I. L. R. 38 Bom. 703

RECORD.

——— alteration of—

See *SARAD, CONSTRUCTION OF*

I. L. R. 16 Bom. 639

——— procedure when, lost—

See *JUDGMENT* I. L. R. 33 Mad. 409

——— unnecessary printing of—

See *COSTS* L. R. 46 I. A. 299

I. L. R. 47 Calc. 415

——— *Special Tribunal—Cakutta Improvement Act* (Beng. I of 1911), s. 71, cl. (c)—*Land Acquisition Act* (I of 1894), s. 53—*Practitioner* The power to call for records is a power which is undoubtedly inherent in the Judge of a Land Acquisition Court and consequently in the Special Tribunal constituted under the Cakutta Improvement Act. *Gopal Coomary Dasari v. Fapi Sundar Narain Das*, 4 C. L. R. 35, followed. *HARESH CHANDRA BOSE v. HIRA LAL BOSE* (1915)

I. L. R. 43 Calc. 223

RECORDED PROPRIETORS.See *ARREARS OF REVENUE*.

I. L. R. 47 Calc. 331

RECORDED TENANT.See *LANDLORD AND TENANT*

I. L. R. 29 Calc. 932

RECORD OF RIGHTS.See *PYSCAL TENANCY ACT* (VIII OF 1933), ss. 103B AND 104H.

I. L. R. 48 Calc. 90

RECORD OF RIGHTS—*contd*

- See **BENGAL TENANCY ACT**, s 102
 s 103 . . . 14 C. W. N. 812
 s 111 . . . 1 Pat. L. J. 479
 See **BOMBAY LAND REVENUE CODE**,
 1879, s 135 . . . I. L. R. 45 Bom. 1339

- See **COURT FEES ACT**, 1870—
 s 7 . . . 4 Pat. L. J. 302
 s 17 . . . 4 Pat. L. J. 299
 See **CRIMINAL PROCEDURE CODE (ACT V**
OF 1898), s 193 (f), (c)
 I. L. R. 39 Bom. 310

- See **ENHANCEMENT OF RENTS**
 2 Pat. L. J. 124
 See **LIMITATION** . . . 23 C. W. N. 831

correctness of—

- See **BENGAL TENANCY ACT**—
 ss 5, 103B . . . I. L. R. 45 Calc. 805
 s 105 . . . 14 C. W. N. 897
 s 106 . . . 14 C. W. N. 894

- See **CENTRAL PROVINCES LAND REVENUE**
ACT—
 s 78 . . . 14 C. W. N. 886

erroneous entries—

- See **BENGAL TENANCY ACT**, s 106.
 14 C. W. N. 897
 See **LANDLORD AND TENANT**,
 I. L. R. 37 Calc. 30

effect of—

- See **ENHANCEMENT OF RENT**
 2 Pat. L. J. 124
 See **ROAD CENS ACT**, 1880, s. 20
 1 Pat. L. J. 521

entry in—

- See **COURT FEES** . . . I. L. R. 44 Calc. 352

presumption as to correctness of
 entries in—

- See **BOMBAY LAND REVENUE CODE**, 1879,
 s 135 . . . I. L. R. 44 Bom. 214

suit for alteration of—

- See **BENGAL TENANCY ACT**, 1885, s. 111A.
 1 Pat. L. J. 73
 See **SANTAL PARGANAS SETTLEMENT**
REGULATION, 1872, ss 11, 24.
 6 Pat. L. J. 373

Presumption of correctness of—Finding of lower Appellate Court as to whether presumption rebutted not liable to be disturbed on second appeal. In the record of rights the defendants were stated to be settled raiyats with liability to have their rents assessed. In a suit by the landlord for rent on declaration of title the first Court found that the suit was barred by limitation and adverse possession from an assertion of the defendant's right during the publication of the record of rights. The lower Appellate Court reversed this finding and held that the presumption as to the correctness of the record was not rebutted. *Held*, that the lower Appellate Court was entitled on the question of

RECORD OF RIGHTS—*contd*

fact to hold that the mere fact that this adverse claim had been made was not sufficient to show that the entry in the finally published record was wrong and this finding was not liable to be challenged in second appeal. **GOLK CHANDRA CHUCKERBORTY v. BHENDRO KISHORE MASTKYA** (1917) . . . 22 C. W. N. 449

Non-agricultural lands—Bengal Tenancy Act (VIII of 1885), s 105. S 105 of the Bengal Tenancy Act has no application to non-agricultural lands situated in a mofussil municipality. **BIRPRADAS PAL CHOWDHRY v. AZAM OSTAGAN** (1918) . . . I. L. R. 46 Calc. 441

Entry in, showing land khudkash—Suit for declaration of right of possession claiming land as khudkash—Onus on defence to show that land not such. The plaintiff sued for declaration of their right to possession of lands which they claimed as khudkash. The record of rights showed that the lands were khudkash. *Held*, that the onus was on the defendant to show that the entry was wrong. **GAJADHAR PRASAD SINGH v. SHEO NARAYAN PRASAD SINGH** (1918) . . . 23 C. W. N. 304

Suit for declaration that entry in is erroneous—Limitation. A was the sole owner of certain plots of land. His brother in law B had the lands recorded as being held in joint tenancy by himself and A. A took no step to have the erroneous entry corrected and B made no attempt to derive material benefit from it. B instituted a suit in the Small Cause Court claiming to participate in the profits of the land. *Held*, that a suit by A within six years of the receipt of the summons in the Small Cause Court suit, for a declaration that A was the sole owner of the land was within time. **MOULVI ALAUDDIN v. BISHU BANUNNISA**

2 Pat. L. J. 357

Suit for alteration in second of two records of rights—Limitation Act (IX of 1908), Sch. I, Art 129—Bengal Tenancy Act (VIII of 1885), ss 106 and 111A. Where there are two consecutive finally published records of rights it is competent to a party aggrieved by the second record of rights to ask for a declaration in respect of that second record of rights without displacing any prejudicial entries in the first record of rights. A person who has acquired a title by adverse possession is not bound to sue for a declaration that he has acquired such title. In the record of rights, finally published in 1889, the defendants were shown as being in possession of land some of which the plaintiff had purchased from the *talukdar* and to some of which he had acquired prescriptive title which was perfected in 1897. The plaintiff, however, remained in possession, but did not sue for a declaration of his title. In the record of rights finally published in 1906 the defendants were again shown as being in possession of the land. On the 11th January, 1907, the plaintiff instituted the present suit for a declaration that the entry in the record of rights of 1906 was incorrect. It was pleaded that the suit, so far as it concerned the land purchased from the *talukdar*, not having been brought within six years of the publication of the record of rights of 1889, and so far as it concerned the remainder of the land, not having been brought within six years of 1907, was barred by limitation.

RECORD OF RIGHTS—contd

tion *Held* that the suit was within time **SREKSH LATAPAT HOSAIN v KUMAR GANGAKAND SINGH**
3 Pat. L. J. 361

Effect of entry in An entry in a record of right has the same effect as between landlords of neighbouring estates as between landlord and tenant and must be presumed correct until the contrary is proved. A survey is an indispensable necessity for a preparation of a record of right under s 101 of the Bengal Tenancy Act. **MUSAMMAT BIBI WAKILAW v DEOVANDAN PROSAD** 5 Pat. L. J. 681

"Settlement of rent"—Bengal Tenancy Act (VIII of 1885), ss 105, 106, 113. A rectification of the record of rights under s 106 of the Bengal Tenancy Act as regards the existing rent cannot be said to be a settlement of rent so as to preclude a suit under s 113 of the Act. **ES 105 and 105A of the Act contemplate settlement of rent and not s 106** **MANINDRA CHANDRA NANDIA v UPENDRA CHANDRA HAZRA** (1920) I. L. R. 47 Cal. 1006

RECORDING OFFICER.

See **KHOTI SETTLEMENT ACT (BOM ACT I OF 1880), s 21**

I. L. R. 43 Bom. 469

RECOUPMENT.

See **LAND ACQUISITION**

I. L. R. 47 Cal. 500

I. L. R. 44 Cal. 219

*Powers under Calcutta Improvement Act (Beng V of 1911) ss 2, 3, 36, 37, 39, 41, 42 (a), 49 (1), 69, 71(b), 78, 81, 89, 123, Sch. cl. 13—"Betterment"—"Affect"—Lands Clauses Consolidation Act 1815 (8 & 9 Vict. c. 18), ss 63, 65—Land Acquisition Act (I of 1894), ss 6, 9, 23 (1) (3) 24 (6), 48—House and Town Planning Act 1909 (9 Edw. VII, c. 44) s 53 (3)—Calcutta Municipal Act (Beng III of 1899), s 337 (2)—Bombay City Improvement Act (Bom. IV of 1898), ss 25, 29—Reference to Full Bench when incomplete. **PER CURIAM (CHATTERJEA, J. dissenting)**—The Calcutta Improvement Act does authorise the Board of Trustees to acquire land compulsorily for purposes of recoupment, "as by selling or otherwise dealing with the land under s 81 or by abandoning the land in consideration of the payment of sum under s 78. Trustees for the Improvement of Calcutta v Chandra Kanta Ghosh I L R 44 Cal. 219 overruled in so far as it decides to the contrary. **PER CHATTERJEA, J.**—The Act does not authorise compulsory acquisition of land for the purpose of recoupment. The lands are not to be included in the scheme originally for the purpose of thereafter making profits, but if they are properly included in the scheme and subsequently found not to be required, the Board have the power to dispose of such lands. The question referred to the Full Bench did arise (**CHATTERJEA, J. contra**). **PROSOMNO COOMAR PAUL CHOWDHRY v KOSLASH CHANDRA PAUL CHOWDHRY** I L R (P. B.) 759, distinguished. The preamble does not control the enacting provisions of the Act. In s 42 (a) of Beng Act V of 1911 "affected" means affected in any way, and not merely "injuriously affected." **The Metropolitan Board of Works v Owen McCarthy** I L R 7 H. L. 243, explained. The words "by the execution of the scheme" used in s. 42 (a)*

RECOUPMENT—contd

simply mean through or owing to the execution of the scheme. **Hammersmith and City Railway Co v Brand, L R 4 H. L. 171**, distinguished. **S 78** does not apply only "to land which was originally required for the execution of the scheme but was subsequently found to be unnecessary." **PER TURNER, J.**—The area fixed and sanctioned as "the area comprised in the scheme" corresponds with the "lands delineated on the plans" in England. **MANT LALL SINGH v TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA** (1917)

I L R 45 Cal. 343

RECRUITMENT.

See **EMIGRATION** I L R. 37 Cal. 27

See **UNLAWFUL RECRUITMENT**

RECTIFICATION.

—of decree—

See **MISTAKE** I. L. R. 43 Cal. 217

—of mortgage deed—

See **SPECIFIC RELIEF ACT, s 31**
26 C. W. N. 36

—of instrument—

See **SPECIFIC RELIEF ACT, 1877, ss 31, 34**

—of Register—

COMPANIES ACT, 1882,
ss. 58 AND 147 I L R. 40 Bom. 134

See **COMPANIES ACT (VII OF 1913)—**

s 38 I L R. 41 Bom. 76

See **REGISTER, RECTIFICATION OF**

Entry in the revenue register—Misunderstanding of an order—"Over sight"—Natural Justice—Land Revenue Code (Bom. Act V of 1879), ss 109, 197 Where an entry in the revenue register was due to a misunderstanding of a certain order *Held*, that the cause of the error being of the same nature as 'oversight' falling within the description of errors in s 109 of the Land Revenue Code (Bom. Act V of 1879), the rectification of the register, so as to bring it in accord with the order after hearing both parties, was not contrary to natural justice. It was a case in which the revenue officer concerned was authorised under s 197 of the said Code to dispense with any judicial or quasi-judicial inquiry. **WASUDER MAHESWAR v GOVIND MAHADEV** (1911) I L R. 36 Bom. 315

RECURRING CHARGE.

See **MAINTENANCE ALLOWANCE.**

I L R. 38 Cal. 13

REDEMPTION

See **BENGAL REGULATION NO XV OF 1793** I L R. 34 All. 261

See **CIVIL PROCEDURE CODE, 1882—**

ss 13 AND 43

I L R. 33 All. 302

I L R. 32 All. 215

See **CIVIL PROCEDURE CODE, 1908—**

ss 11 AND 47 I L R. 42 Bom. 246

s 47, O XXI, s 2

I L R. 43 Bom. 240

ss 148, O XXXIV, s 8.

I L R. 34 All. 389

REDEMPTION—*contd*

O XXI & 53 4 Pat L J 336

O XXIV

See EQUITY OF REDEMPTION

See LIMITATION ACT (XV OF 1877) SCH

II ART 143 I L R 38 All 195

ART 134 I L R 38 Bom 148

See LIMITATION ACT 1908—

ss 6 7 AND ART 144

I L R 43 Bom 487

SCH I ARTS 140 141

I L R 40 Bom 239

ARTS 181 182 I L R 43 Bom 689

See MORTGAGE.

See MORTGAGOR AND MORTGAGEE

See PRACTICE

I L R 35 Bom 507

See REDEMPTION SOIT

See REGISTRATION ACT (XVI OF 1908)

s 17 I L R 41 Bom 510

See TRANSFER OF PROPERTY ACT 1882—

s 60 I L R 43 All 95 and 638

I L R 45 Bom 117

ss 83 84 I L R 39 All 719

ss 91 to 98

— clog on—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 60 I L R 45 Bom 117

— decree for—

See CIVIL PROCEDURE CODE (1908) O. XXXIV s 8 I L R 39 All 396

— extension of time for—

See CIVIL PROCEDURE CODE, 1908—

O I R 10 O XXXIV s 1

I L R 45 Bom 1009

O XXXIV s 8

I L R 35 All 116

— in the Punjab—

See REDEMPTION OF MORTGAGES (PUNJAB) ACT 1913 s I L R 2 Lah 234

— mortgagee allowed interest and liable to account for mesne profits—

See DEKKAN AGRICULTURISTS ACT 1879

s 15 I L R 44 Bom 372

— mortgagor's right to redeem when property purchased by mortgagee at Court sale and later repurchased—

See LIMITATION ACT 1908 ART 134

I L R 44 Bom 849

— parties in possession claiming independently—

See CIVIL PROCEDURE CODE, 1908 O. XXXIV s 1 I L R 44 Bom 698

— transfer by mortgagee effect of—

See LIMITATION ACT 1908 ARTS 134 AND 145 I L R 43 Bom 614

— right to—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 91 I L R 39 All 533

See MORTGAGE I L R 39 Calc 828

REDEMPTION—*contd*

— suit for—

See CIVIL PROCEDURE CODE ACT 1908—

ss 2 97 O XXVI RR 11 12 (2)

I L R 38 Bom 392

s 11 EXPT I L R 35 Bom 507

ss 11 47 I L R 39 Bom 41

s 4 O XXI RR 100 101

I L R 40 Mad 964

See COMMISSIONER

I L R 41 Bom 719

See COMPROMISE I L R 42 Calc 801

See DECREE I L R 34 Bom 280

See DEKKAN AGRICULTURISTS' FRIED ACT (XVII OF 1879)—

I L R 35 Bom 204

I L R 40 Bom 483

ss 2 (2) 10A I L R 33 Bom 18

ss 3 (a) 1^o I L R 40 Bom 655

s 10(a) I L R 35 Bom 231

s 13 I L R 39 Bom 587

ss 13 15D 16 I L R 39 Bom 73

See MADRAS CIVIL COURTS ACT (III OF 1873) s 12 13

I L R 39 Mad 447

See Mortgage 14 C W N 1001

I L R 47 Calc 377

I L R 48 Calc 22

I L R 39 All 423

I L R 43 Bom 334

See MORTGAGOR AND MORTGAGEE

I L R 43 Bom 357

See REGULATION (XVII OF 1806) s 8

I L R 40 All 387

See TRANSFER OF PROPERTY ACT (1938)—

ss 60 67 93 I L R 38 Mad 310

ss 60 AND 91 I L R 38 Mad 896

Civil Procedure Code (1877) s 583—Decree for redemption reversed on appeal—Restitution—Jurisdiction of Court to which application for restitution is made to award mesne profits which are not given by Appellate Court decree—Suit to redeem A mortgagor sued for redemption of a usufructuary mortgage and obtained a decree from the Subordinate Judge under which on payment of the sum decreed to the mortgagee he was put in possession of the mortgaged property but the mortgagee appealed to the High Court which increased the amount payable on redemption by a sum which the mortgagor failed to pay and the mortgagee thereupon applied to the Subordinate Judge for possession and for mesne profits for the period during which he had been out of possession. *Held* (upholding the decisions of the Courts in Ind a) that the Subordinate Judge had power under s 583 of the Code of Civil Procedure 1877 to award mesne profits although they had not been expressly given by the decree of the High Court. If the decree was wrong the parties aggrieved had the remedy either by appeal to the High Court or by an application for revision. The proceedings taken under the decree of the Subordinate Judge culminating in the sale at which the mortgagee reported to purchase the equity of redemption were valid and the appellant an

REDEMPTION—contd

assignee of the rights of the mortgagor, was held not entitled to redeem *PARBHU DAYAL v. MAHBUL AHMAD* (1915) . I. L. R. 33 ALL 163

Suit for—Limitation.
The plaintiffs were *Mistashara* sons. At a sale in execution of a decree upon four mortgages against their father, the mortgagee, defendants in the present suit, bought the property now in suit. The plaintiffs were not parties to the suits upon the mortgages. Several years after the auction sale they instituted the present suit for an account and to redeem. *Held*, that the first step necessary for redemption is a declaration that the sale should be set aside, that the period of limitation to set aside a sale is one year, and that, therefore, the suits were barred by Art 12 of the Limitation Act, 1908. *Query* Whether a *Mistashara* son can sue to redeem even though he has been deliberately, and with notice, omitted from a suit upon a mortgage made by his father. *BROLA JHA v. LALA HALI PRASAD*

I Pat L. J 180

Payment of balance, whether amounts to—Transfer of Property Act (I) of 1882, ss 60, 89 and 95—Code of Civil Procedure (Act X of 1908), O XXXII, r 5 Where there have been payments in part satisfaction of a mortgage the payment of the balance due is as much a redemption as the payment of the whole sum due in a case in which there has been no previous part payment. Redemption is effected by the releasing of the security, and where the security is extinguished the property is redeemed by the act which extinguished it. S 95 of the Transfer of Property Act, 1882 is not limited in its scope to cases in which delivery of possession of the property itself is rendered possible by the fact that the mortgage was an usufructuary mortgage. The section is also applicable to cases of simple mortgage where the property, not being in the possession of the mortgagee, cannot be transferred to the party releasing the security. *MUSAMMAT HIRA KUTER v. PAKI SINGH*

3 Pat L. J 490

REDEMPTION DECREE

See MORTGAGE I. L. R. 43 Bom. 703

REDEMPTION OF MORTGAGES (PUNJAB) ACT, 1913.

s. 12—*Mortgage redeemed on payment of amount fixed by Collector and possession given to mortgagor—Suit by mortgagee for restoration.* The defendant mortgagors applied, under Punjab Act II of 1913, to the Collector for redemption of their land, and an order was passed in their favour that possession should be given on payment of Rs 1063-0-0. Possession passed accordingly. The plaintiff mortgagee thereupon instituted the present suit for restoration of possession on the ground that a far larger sum was due under the mortgage. The first Court found that Rs. 1,957-6-6 was due to plaintiffs and that they were entitled to retain possession until they were given the full amount. This decision was upheld by the lower Appellate Court. The defendants appealed to the High Court. *Held*, that the provisions of s. 12 of the Redemption of Mortgages (Punjab) Act are sufficiently wide to allow a Civil Court to try any writing done by the Collector in the summary proceedings and if necessary to

REDEMPTION OF MORTGAGES (PUNJAB) ACT, 1913—contd

S 12—contd

restore possession of the land and that the decision of the lower Courts was consequently correct. *Balwant Das v. Gherna* (35 P. R. 1917), distinguished. *Lot Chand v. Hazar Khan* (35 P. R. 1917, not followed. *NIZAM DIN v. DAULAT RAM* I. L. R. 2 Lah. 534

REDUCTION OF RENT.

See BENGAL TENANCY

I. L. R. 48 Calc. 473

RE-ENTRY.

right of—

See LESSOR AND LESSEE.

I. L. R. 33 Mad. 415

REFERENCE.

See BOOKS OF REFERENCE.

See COSTS

I. L. R. 45 Bom. 1288

See JURISDICTION

I. L. R. 48 Calc. 766

See PRACTICE

I. L. R. 42 Calc. 819

See ARBITRATION

to determine tenure of land—

See BOMBAY REVENUE JURISDICTION ACT (X OF 1870), s. 12

I. L. R. 45 Bom. 463

*Jury trials—Power of Judge to refer the case of an accused as to whom he agrees with the verdict—Legality of procedure—Criminal Procedure Code (Act I of 1895), s. 307 (2)—Confessions of co-accused—Corroboration—Sufficiency of circumstances raising a mere suspicion S. 307 (2) of the Criminal Procedure Code contemplates a reference only in the case of those accused as to whom the Judge declines to accept the verdict of the jury. When he agrees with them in respect of any particular accused he ought to acquit or convict and sentence the latter as the case may be. Confessions of the co-accused can be taken into consideration, but the Court requires corroboration, before acting on them. *EMPEROR v. BAKAR ALI GANI* (1914)*

I. L. R. 42 Calc. 759

REFERENCE BY COLLECTOR OF RANGOON

See APPEAL TO PRINCE COURTEL.

I. L. R. 40 Calc. 21

REFERENCE TO ARBITRATION

See ARBITRATION.

by some of the disputing parties—

See ARBITRATION I. L. R. 37 Calc. 63

Subsequent suit—No application to stay—

See ARBITRATION

I. L. R. 47 Calc. 732

REFERENCE TO FULL BENCH

See PRECEDENT

I. L. R. 45 Calc. 343

REFERENCE TO HIGH COURT

See ACQUITTAL

I. L. R. 41 Calc. 761

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 438

I. L. R. 41 Bom. 47

REFERENCE TO HIGH COURT—*contd*

See CRIMINAL TRESPASS

I L R 41 Cal 682

See VERDICT OF JURY

I L R 41 Cal 621

REFORMATORY SCHOOLS ACT (VIII OF 1897)

— s 31— *Youthful offender—Punishment—Powers of Courts dealing with youthful offenders* S 31 of Act VIII of 1897 read with the definition of youthful offender enables practically any Court in the case of an offender under fifteen to deliver him to his parents with or without sureties for his future good behaviour *EMERSON & ABDUL AZIZ* (1916) I L R 39 All 141

REFUND

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM ACT III of 1901) s 2 PRO (b) AND s 65 CL 4

I L R. 45 Bom. 64

See BOMBAY CITY IMPROVEMENT TRUST ACT (BOM IV of 1898) s. 43 (11)

I L R 42 Bom 54

See UNDUE INFLUENCE

I L R 42 Cal 236

REFUND OF COURT FEE

— *Appel over valuation of—Partial decree—Memorandum of appeal over valuation of—Court fee paid in excess by inadvertence—Practice.* The appellant a agent having by inadvertence over paid court fee on the memorandum of appeal the High Court directed the Taxing Officer to issue the necessary certificate to enable the appellant to obtain a refund of the excess court fee from the Revenue authorities *In the matter of Grant 14 W R 47* referred to *HARTNAR CURU & ANANDA MAHANTY* (1914) I L R 49 Cal 265

REFUND OF PURCHASE MONEY

— suit for—

See EXECUTION OF DECREE

I L R 38 All 599

See SALE IN EXECUTION OF DECREE.

I L R 37 Cal 67

REFUSAL BY JUDGE

— effect of—

See CROSS EXAMINATION

I L R 41 Cal 289

REFUSAL TO GRANT TIME

See ATTACHMENT I L R 40 Cal 105

REGISTER OF BIRTHS

— admits liability of, as evidence—

See HINDU LAW—MINOR

I L R 38 Mad 166

REGISTER OF DEATHS

— *Public document—Evidence—Certified copy of entry in the Register admissibility of—Bengal Police Manual 1911 r 124—Evidence Act (I of 1872), as 35 74 and 114* A register of deaths kept by police officers at *thanas* under the rules made by the Local Govern-

REGISTER OF DEATHS—*contd*

ment, is a public document" within the meaning of s 74 of the Evidence Act Under the provisions of s 114 of that Act the Court is entitled to presume that an entry made in such register was properly made and a certified copy of such entry is admissible in evidence. *Namalinga Reddi v Kotayya* I L R 41 Mad 28 referred to *TAMBUDDIN BAKAR v TAZU* (1918)

I L R 48 Cal 152

REGISTER RECTIFICATION OF

See COMPANY I L R 47 Cal 901

COMPANIES ACT 1892 ss. 58 AND 147

I L R. 40 Bom 134

See COMPANIES ACT 1913—

s 33

I L R 41 Bom 78

See RECTIFICATION

REGISTERED AND UNREGISTERED DOCUMENTS

See REGISTRATION ACT (XVI of 1908),

s 30

I L R 35 All 271

REGISTERED BOND

See LIMITATION ACT (IX of 1908)

SCH I ARTS 116 AND 60 s. 19

I L R 38 Bom 177

REGISTERED COMPANY

See COMPANY

See LIQUIDATOR I L R 43 Cal 586

REGISTERED LEASE.

See LIMITATION ACT (IX of 1908) SCH I

ARTS. 110 116

I L R 37 Bom 636

See RAIYATI HOLDING

I L R 47 Cal 129

REGISTRATION

See DESIGN

I L R 45 Cal 606

See CIVIL PROCEDURE CODE 1908—

O XVIII n. 3 I L R 33 All 75

See COMPROMISE 3 Pat L J 43

See COMPANIES ACT ss. 28 45 61

I L R 36 Bom. 557

See DESIGN I L R. 45 Cal. 606

See EVIDENCE ACT (I of 1872) s. 70

I L R. 38 All. 1

See LAND REGISTRATION ACT (BENG

ACT VII of 1878).

See MORTGAGE I L R 37 Cal 589

I L R 48 Cal 1 & 509

See QUEEN EXERCISE ACT 1809

I L R. 42 All 422

I L R 33 All 344

See PROVIDENT INSURANCE.

I L R 42 Cal 300

See RECEIPT I L R 42 Cal 546

See REGISTRATION ACT (III of 1877)

See REGISTRATION ACT XVI of 1908

See SPECIFIC PERFORMANCE.

14 C W N 65

REGISTRATION—*contd*

See TRANSFER OF PROPERTY ACT 1882—

s. 54 . . . 5 Pat L J. 715

I. L. R. 40 Bom. 313

ss. 54, 118 . . . I. L. R. 40 All. 187

s. 59 . . . I. L. R. 38 Bom. 372

s. 107 . . . I. L. R. 36 Bom. 500

s. 123 . . . I. L. R. 45 Bom. 164

See TRUSTS ACT, s. 5

I. L. R. 28 Bom. 396

See WAQFNAHA . . . I. L. R. 42 All. 609

Fraud of mortgagor unknown to mortgagee—

See CIVIL PROCEDURE CODE, 1908, s. 109

I. L. R. 42 All. 176

Lessee on a monthly rent—

See REGISTRATION ACT, 1908, s. 17

I. L. R. 2 Lah. 300

Presentation by agent not duly authorised—

See REGISTRATION ACT, 1908, s. 32

I. L. R. 2 Lah. 5

Fraudulent by mortgagor—

See CIVIL PROCEDURE CODE, 1908, s. 109

I. L. R. 42 All. 176

effect of—

See TRADE MARK . . . I. L. R. 37 Calc. 204

if notice by itself—

See NOTICE . . . 25 C. W. N. 49

whether Court can go into the question of validity of the document—

See REGISTRATION ACT, 1908, s. 77

I. L. R. 2 Lah. 202

of receipt for purchase-money—

See REGISTRATION ACT, 1908, s. 17

I. L. R. 1 Lah. 25

of transfer of shares—

See COMPANY . . . I. L. R. 36 All. 363

presentation by agent—

See REGISTRATION ACT, 1877, as 32 and

33 . . . I. L. R. 42 All. 487

See REGISTRATION ACT, 1908

I. L. R. 2 Lah. 5

Oral sale followed by Registered sale with notice—

See SALE . . . I. L. R. 44 Bom. 586

of permanent lease granted by occupancy raiyat—

See BENGAL TENANCY ACT, 1835, s. 83

25 C. W. N. 4

suit to compel—

See REGISTRATION ACT (XVI of 1908)—

ss. 36, 73, 77 . . . I. L. R. 34 All. 313

ss. 73, 74, 77 . . . I. L. R. 34 All. 163

validity of—

See REGISTRATION ACT, 1877, s. 28.

14 C. W. N. 532

REGISTRATION—*contd*

want of—

See CONSTRUCTION OF DOCUMENT

I. L. R. 37 Mad. 480

Registration Act (III of 1877), s. 17, cl. (n)—Endorsement on a mortgage bond of payment made in satisfaction of a previous mortgage-debt—Civil Procedure Code (Act XIV of 1882), s. 43—Payment by a subsequent mortgagee under s. 74 of the Transfer of Property Act (IV of 1882), effect of. The endorsements on a mortgage bond of payments made in satisfaction of a mortgage, which payments did not purport to extinguish the mortgage, are covered by cl. (n) of s. 17 of the Registration Act, and as such do not require registration *Jwan Ali Dey v Dasa Mal, I L R 9 All 108*, and *Uppalalanda Kunka Kutta Ali Haji v Kusum Mithal Kottiprath Abdul Rahman, I L R 19 Mad 228*, followed *HARI NARAIN BANERJEE v KUSUM KUMARI DAS (1910)* . . . I. L. R. 37 Calc. 589

Document—Variation of Terms—Registration Act (XVI of 1908), s. 17 (d). A document which varies the amount to rent to be paid under an existing lease registered as required by s. 17 (d) of the Indian Registration Act, as also the incidents of such payments, namely, the date of payment and consequences of default of payment requires registration *Durga Prasad Singh v Rajendra Narain Bagchi, I L R 37 Calc 293*, approved, so far as it determines that a document embodying an agreement for reduction of rent under a previously existing lease registered, as required by s. 17 (d) of the Registration Act, requires registration *LALIT MOHAN GHOSH v GOPALI CHUCK COAL COMPANY, LD (1911)*

I. L. R. 39 Calc. 284

Gift—Consent of donor to registration of deed of gift of immovable property not essential to validity of gift. Held, that it is not essential to the validity of a gift of immovable property that registration of the deed by which such gift is effected should be either at the instance of or with the consent of the donor *Ramamirtha Ayyan v Gopala Ayyan, I L R 19 Mad 433*, dissented from *PARBATI v BALI NATH PATHAK (1912)* . . . I. L. R. 35 All. 2

Instrument reserving at life estate to the maker, not a will—Instrument creating interest in adoptive mother—Value of the interest in excess of Rs. 100—Registration. Any instrument which confers or reserves a life-estate to the maker is not a will. A deed of adoption by which an interest is reserved to the wife of the adopter in immovable property which she otherwise would not have possessed and could not have possessed when such interest exceeds in value Rs. 100, requires registration *FIRAS VALAD KASTIMBAR v GURAPPA BARAPPA (1913)*

I. L. R. 33 Bom. 227

Family settlement—Distribution of family property carried out by means of mutation proceedings—Hindu law—Joint Hindu family—Representative capacity of father. The members of a Hindu family, one of whom was a minor, entered into a compromise concerning the partition of certain property in the course of mutation proceedings, and the partition agreed to was carried into effect by these proceedings. Held, that, inasmuch as the minor was represented by his father and there was no evidence of fraud or

REGISTRATION—contd

collusion, the compromise was binding on him. *Held* also, that the compromise did not require registration. *Akoti v Puri Lal*, 1 L R 33 All 50¹ referred to. *DAYA SHANKAR v HIR LAL* (1914) 1 L R 37 All 105

Unregistered deed of relinquishment of real and personal estate for a joint consideration—Oral evidence of an agreement preceding the written instrument—Whether admissible in evidence—*Indira Evidence Act, 1 of 1872, s. 91*. The plaintiff-appellant sued defendant respondent, the widow of Basanta deceased, as next heir, for possession of the property left by the deceased on the grounds that she had forfeited her rights to a life estate owing to her uncharitatively. The defendant contended *inter alia* that the plaintiff had waived his claim to succeed to the property left by Basanta and in support of this plea put forward a document by which the plaintiff gave up all his rights in Basanta's property real and personal, on the condition that defendant paid a sum of Rs. 1000 to a *gurdah*. The execution of this document was admitted, but not its contents. *Held* that the document was inadmissible in evidence for want of registration, notwithstanding that its execution had been admitted. *Satyesh Chander v Dhunpal Singh*, 1 L R 21 Cal 20, and *Chidambaram Chetty v Annambayalangan pally Taver*, 3 Mad L C R 342, distinguished. *Held* also, that s. 91 of the Evidence Act rendered inadmissible oral evidence to prove that there was an oral agreement of relinquishment preceding the written document. *Held* further, that as the consideration could not be apportioned between the real and personal estate relinquished by the deed, the latter could not be admitted into evidence even in respect of the personal estate. *Bani v Petman v Ganesh Das*, 49 P 1918 followed. *Muhammad Baksh v Muhammad Amir Begum*, 23 P R 1918, and *Sri Panipati v Sri Raja Iyer*, 47 Indian Cases 363 373, 374, distinguished. *BISHVCHAR LAL v MANSUMAT BHUT* 1 L R. 1 Lab 436

Constructive notice—Agreement between plaintiff and the defendant's vendor by which the latter restricted the ordinary user of his property—Agreement not a covenant running with land—Agreement if indexed in the register in relation to defendant's property would be notice—Injunction. The plaintiff had entered into an agreement with defendant's vendor by which the latter agreed to a restriction of ordinary user of his property. This document was registered and on the strength of it the plaintiff sued to obtain certain reliefs by way of injunction against the defendant. Both the lower Courts decreed the plaintiff's claim on the ground that the document was registered and, therefore the defendant must be presumed to have had notice of it. *Held*, that the agreement not being a covenant running with the land but being merely a restrictive covenant by which the defendant's vendor restricted the ordinary user of his property, it could not be said that defendant had constructive notice unless the document was indexed in the register in relation to defendant's property. *PER HATTON, J.*—Registration does not necessarily give notice to anybody of anything. But if a registered document is so indexed that an inquirer anxious to ascertain whether there are documents relating to a property which he proposes to buy, can find from the index documents relating to that

REGISTRATION—contd

property, then it will be held that he has notice of those documents because if he made the enquiry, which as a prudent man he ought to make then they would come to his notice. *GORDHANDAS VITHALDAS v MOHANLAL MAYEK LAL* (1920) 1 L R. 45 Bom. 170

REGISTRATION ACT (VIII OF 1871)

—Leave executed before reserving a yearly rent if required registration.

See TRANSFER OF PROPERTY ACT

23 C W N 641

REGISTRATION ACT (III OF 1877)

See REGISTRATION

See VENDOR AND PURCHASER

1 L R. 41 Bom 300

—effect of—

See GIFT. 1 L R. 40 Mad 204

—s. 3—

See KACULIVAT 1 L R. 39 Cal 1016

—ss. 3, 1 (d), 49—

See SPECIFIC PERFORMANCE.

14 C W. N 65

—ss. 3, 17—

See CIVIL PROCEDURE CODE, 1882, s. 375

1 L R. 33 Mad. 102

—ss. 3 and 34—Document creating right to benefits to arise out of land compulsorily registrable—Evidence, such document not admissible in, if unregistered—Possession under such document only. First defendant obtained possession of certain lands under an unregistered instrument which gave him the right to apportion future rents (over Rs. 100 in value) towards an antecedent debt due to him. *Held*, that the instrument created a right to benefits to arise out of land, and was compulsorily registrable under s. 17, Indian Registration Act. *Benaje Bibaji Nask v Shidromapa Balapa Desai*, 1 L R 19 Bom 663 followed. *Miri Lal v Moshar Hussain*, 1 L R. 13 Cal 96² distinguished. *Banathar v Sawi Lal*, 1 L R. 10 All 133, distinguished. Such a document if not registered cannot be admitted in evidence. Where defendant's possession arose only out of such an unregistered document he cannot otherwise prove that he was not a trespasser. *MAYGALASWAMI v SUBBIA PILLAI* (1910)

1 L R. 34 Mad 64

—ss. 3, 17, 49—Contract to sell—Agreement to lease—Evidence Act, s. 91. An agreement to execute a sub lease and to get it registered at a future date is a lease within s. 3 of the Indian Registration Act III of 1877 and is compulsorily registrable under cl. (d) of s. 17. Such an agreement to grant a lease which requires registration affects movable property and cannot be received in evidence in a suit for specific performance of such agreement. It is immaterial whether possession has passed or not in accordance with the agreement. S. 49 of the Registration Act indicates that a document should not be received in evidence even where the transaction sought to be proved does not amount to a transfer of interest in immovable property but has only created an obligation to transfer the property. *NARAYAN CHETTY v NUTHIAL SWABAI* (1910)

1 L R. 35 Mad. 63

REGISTRATION ACT (III OF 1877)—*contd*

Deed of gift in favour of a married minor girl presented for registration by latter's father without authority from executant—Registration of gift void—Deeds void Two deeds of gift executed by K in favour of his niece A who was a minor and married to his adopted son were presented for registration by A's father and registered. *Held* that upon A's marriage her father ceased to be her natural guardian and never having been appointed her legal guardian was not her assignee or representative within the meaning of sec 3 of the Registration Act, 1877. Nor was he within the meaning of sec 34 of the Act the representative assignor or agent duly authorized on behalf of K. The registration of the deeds was therefore illegal invalid and void with the consequence that the deeds themselves were void and unenforceable. *AMBA (alias PADMA VATHI) v. SHRINIVASA KAMATHI*

28 C W N (P C) 369

s 17—

See s. 3 I L R 34 Mad 64
I L R 35 Mad. 63

See CIVIL PROCEDURE CODE, 1880 s 375
I L R 34 Mad 162

See LIMITATION ACT, 1877 Sch II Arts
132 144 I L R 35 Bom 433

See TRANSFER OF PROPERTY ACT s 55
123 I L R 34 Bom 287

Registration—Adoption—Authority to adopt—Whether document a will A Hindu about three weeks before his death executed a document which was headed by a statement that it was a will in favour of the executant's wife; by it the executant after stating that he had long been seriously ill and had no issue said I have consented to your adopting a son at your pleasure and conducting the management of the estate in the best manner. None of my heirs shall have cause to raise disputes touching this matter. This will has been executed by my consent. The document was not registered. After the executant's death his widow adopted a son to him. *Held* that the document was merely an authority to adopt and not a will and was therefore required to be registered by the last provision in s 17 of the Indian Registration Act 1877. [*Judgment of the High Court affirmed*] *BHEEMA DEO v. BHARAT DEO* (1921)

I L R 41 Mad. (P C) 733

—cls (a), (b) and (h)—*Registration Act (XVI of 1908) s 17, except (v)—Registered conveyance—Simultaneous unregistered document to reconvey—An ordinary agent sent to sell—Exemption from registration* The plaintiff and the defendant agreed that plaintiff should nominally sell the property in suit out and out to the defendant and thereafter attorn to him for an amount of rent which would represent reasonable interest. A conveyance to this effect was executed and duly registered. Contemporaneously the defendant executed an agreement to the plaintiff to reconvey the property for the same consideration, namely Rs 1400 when called upon to do so. This agreement was not registered. The plaintiff having brought a suit against the defendant for the specific performance of the unregistered agreement to reconvey the lower Courts dismissed the suit on the ground that the agreement was compulsorily registrable under s 17 cls (a) and (b) of the

REGISTRATION ACT (III OF 1877)—*contd*cls (a) (b) and (h)—*contd*

Registration Act (III of 1877) On second appeal by the plaintiff *Held* reversing the decree that the agreement did not require registration. Separated entirely from the defendant's registered conveyance plaintiff's unregistered document was nothing more than an ordinary agreement to sell and such agreements were expressly exempted from the operation of s 17 cls (a) and (b) of the Registration Act (III of 1877) by cl (h) and of s 17 of the Registration Act (XVI of 1908) by exception (v). Having regard to the form of the document as a whole it was no more than an ordinary agreement to reconvey. *SAYAD MIN GAZI v. MIYA ALI* (1914) I L R 38 Bom 703

—cls (b) (c)—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 37 Bom 53

—cls (b) and (d)—*Lease of palmyra grove—Whether lease of immovable property* Where a document stated that the lessee had taken for lease for two years the palmyra trees in a certain garden and that he would not cut the leaves of any of the trees on which he climbed except those whose leaves had to be cut. *Held* that it was not a lease of immovable property and that the interest conveyed by it was not for the purposes of the Registration Act, an interest in immovable property. *Sukry Avudeppa v. Goondakull Nagreddi* 6 Mad 11 C 71 and *Seeni Chettiar v. Santhanathan Chettiar* I L R 20 Mad 58 explained and distinguished *NATESA v. TANGAYELU* (1914)

I L R 38 Mad 883

—cl (d)—

—proviso—*Lease not reserved a yearly rent not within the exemption* The proviso to s 17 (d) of the Registration Act will apply only in the case of leases which reserve an annual rent. A lease for a term of 3 years which reserves no annual rent but only provides for the payment of a lump sum, is compulsorily registrable even when such lump sum is less than the aggregate of three annual instalments of Rs 50. *VENKATASAM CHETTI v. SURPA PILLAI* (1909)

I L R 33 Mad 216

Reservation of annual rent not necessary to bring the document within proviso to cl (d) of s 17 In order to exempt a lease from registration under the proviso to cl (d) of s 17 of the Registration Act it is not necessary that an annual rent should be reserved. The proviso simply means that if an annual rent is reserved it should not exceed fifty rupees. *VEN KATASAM CHETTI v. SURPA PILLAI* (1910)

I L R 34 Mad 93

—cls (d) (h)—

See LEASE I L R 37 Calc. 508

Amalnamah If must be registered when lease intended to be granted a lease in perpetuity—*Agreement to lease which contemplated execution of gatta and kabulsat but never (theless intended passing title upon delivery of possession* If a document merely creating a right to obtain a subsequence document. Where a document described the land intended to be demised and set out the boundaries thereof and proceeded to say that according to your prayer I grant this *amal namah* to you for erecting houses after reclaiming

REGISTRATION ACT (II OF 1877)—*contd*c's (d), (h)—*contd*

the said homestead, you will dwell thereon on payment of rent Rs 15 10 gds from year to year to our Sarkar you will abide the survey and settlement, within a month on executing a *kabuliyat* you will take a *patta* which I shall grant." *Held*, that the document was plainly an agreement to lease and the lease being apparently a lease in perpetuity the document was compulsorily registrable. *Syed Sufur Raza v Amjad Ali*, 1 L R 7 Cal 703, followed. *Dwarka Nath v Leda Sukdar*, 1 L R 33 Cal 392, disapproved. That it was not a document merely creating a right to obtain a subsequent document within cl (h) of s 17 of the Registration Act as the parties intended that as soon as possession was taken under the document, the title of the grantee would commence and it was not contended that the title of the grantee did not yet commence by reason of his failure to tender a *kabuliyat* to the landlord and obtain from him a *patta*. *Narayana Chetty v Muthiah Sirose* 1 L R 33 Mad 63, *Champakalakshmi Sutra v Asfar Chandra Pal*, 15 C W N 536, referred to. *ELAH v HUKUM* (1913) . 18 C. W. N 38

cl's (d), (h) (i)—*Agreement to grant permanent lease of property not subject of suit, embodied in petition of compromise—Agreement part of consideration of compromise—Decree passed on petition—Specific performance, suit for—Admissibility of petition and decree to prove agreement—Petition, if agreement for lease* *PER MOOREHEAD, J*—Although an agreement in writing, which does not operate as a present demise, but is only an agreement for a lease, is (having regard to the extended significance of the term lease as defined in s 3 of the Registration Act) required to be registered if the term exceeds one year, and the exemptions provided in cl's (h) and (i) to s 17 do not apply to leases or agreements for leases, s 49 of the Act does not preclude its being received as evidence of any transaction not affecting such property. Such a document can therefore be proved by the plaintiff in a suit for specific performance of the agreement to grant the lease. *Konduru v Gottumukhala* 17 Mad. L J 218, *Satyendra Nath Bose v Anil Chandra Ghosh*, 15 C W N 66 *Sarat Chandra Ghose v Shyamchand Singh*, 1 L R 39 Cal 663, relied on. *Hurjivan v Jameji*, 1 L R 9 Bom. 63, and *Purnanand Das v Dharey*, 1 L R 19 Bom 101, not followed. Where in a suit for recovery of property A, the parties entered into a compromise and in a petition to the Court recited the fact *inter alia* that plaintiff had agreed to grant a permanent lease of property B to the defendant on certain terms and the Court recorded the compromise in full and made a decree in these terms "The suit be decreed in terms of the compromise filed by both parties," in a suit for specific enforcement of the agreement embodied in the compromise petition: *Held*, *per MOOREHEAD, J*—That the agreement for lease embodied in the petition was admissible in evidence to prove the contract to grant the lease. *PER BEACONSFIELD, J*—That the petition simply amounted to a statement to Court that the parties had come to certain terms accompanied by a prayer for a decree on those terms. It in itself was not an agreement to lease. That the promise to grant a lease of property B was part of the consideration for the agreement arrived at concerning property A, and the Court in its decree was bound to record the

REGISTRATION ACT (II OF 1877)—*contd*cl's (d), (h), (i)—*contd*

whole of the terms of the compromise, and the decree, though it was final only so far as it related to the subject matter of the suit, was admissible in evidence to prove the promise to grant a lease of property B. Documents referred to in cl's (e) to (n) of s 17 of the Registration Act are excepted from the provisions of cl's (d) and (e), and not from those of cl's (a) and (d), because those documents come within the description of documents in cl's (b) and (c) and not within the description of documents in cl's (a) and (d). *HEMANTA KUMARI DEBI v MIDNAPUR ZEMINDARI CO* (1914)

19 C. W. N 347

cl (a)—*Stamp Act (II of 1899)*
Sec 1, Art 22—Trusts Act (II of 1932) s 5—Composition deed—Compounding of debts due—Transfer of immovable property—Registration not necessary With the consent of creditors to the extent of Rs 1,22,000 out of the total number of creditors claiming Rs 1,61,800 of the family firm represented by one B, the latter executed a deed making over all the specified assets of the family to certain nominated trustees. The creditors coming in (by a particular day) under the deed agreed that after all the goods and the properties had been made over to the trustees no other claim whatever with regard to the amounts due to them should remain outstanding against B and the minor members of the family, but the whole claim should be understood to be written off against them and B and the minors were to make use of the deed as a release passed on their behalf. The deed also provided that the trustees were to manage the properties for the benefit of the creditors interested and the monies realized from time to time were to be distributed among such creditors, in proportion to their claims. The properties comprised in the deed, movable as well as immovable were transferred to the trustees in due course. The deed was unregistered. Subsequently in a suit brought by the trustees to recover possession of a house comprised in the deed a question having arisen whether the deed was a composition deed *Held* that the definition of the term "composition deed" as given in Art 22, Sec 1 of the Stamp Act (II of 1899) meant the same thing as the term "composition deed" in s 17 of the Registration Act (III of 1877) that the term so defined covered three classes of instruments: (i) an assignment for the benefit of creditors, (ii) an agreement whereby payment of a composition or dividend was secured to the creditors and (iii) an inspectorship deed for the purpose of working the debtor's business for the benefit of his creditors, that the inclusion of the term "composition deed," in s 17 of the Registration Act (III of 1877), showed that it was intended to apply to a transfer of immovable property and not to a mere agreement to take fractional payment of money in settlement of claims, that the test of a "composition deed" was that there ought to be a compounding of debts due and that such a deed fell under cl. (e) of s 17 of the Registration Act (III of 1877) and did not require registration under that Act nor under the provisions of s 5 of the Trusts Act (II of 1932) *Held*, accordingly, that the deed in question was a composition deed within the meaning of s 17, cl. 2, of the Registration Act (III of 1877) and did not require registration. *CHANDRASHANKAR v RAT MAGAN* (1914) . 1 L R 33 Bom 576

REGISTRATION ACT (II OF 1877)—*contd*

Agreement to hand over land in consideration of supply of funds for litigation—

See CHAMPERTY I L R. 1 Lah 124

cl. (1)—

See RES JUDICATA

I L R. 38 Mad. 46

Cl. (1)—Document whether Will or an authority to adopt—Registration compulsory of latter The operative part of a document which the writer called a "Will" stated that having, owing to severe illness, had serious misgivings and not having been blessed with an heir apparent, the writer had consented to his wife adopting a son at her pleasure and conducting the management of the estate in the best manner Held—That the document was not a Will but only a power to adopt and as such ought to have been registered as being an authority to adopt a son, not conferred by a Will within the meaning of sec 17 (1) of the Registration Act of 1877 ANANDA BHANA DEO v. KUNJA BEHARI

26 C. W. N. 374

—cl. (2)—

See MORTGAGE I L R. 37 Cal. 569

See RECEIPT I L R. 42 Cal. 546

Mortgage—Agreement to relinquish portion of principal and all interest—Acknowledgment—Registration Held, that an agreement executed by a mortgagor after the date of the mortgage whereby he relinquished a certain part of the principal and all interests past and future, on the mortgage in lieu of certain services rendered by the mortgagor to the mortgagee was a document which required registration to make it admissible in evidence, and it could not be said to be an acknowledgment of payment within the meaning of the exception contained in s. 17, cl. (a), of the Indian Registration Act 1877 GOBARDHAN SANTI v. JADUNATH RAI (1913)

I L R. 35 All. 202

ss 17, 23, 43—

See MORTGAGE I L R. 48 Cal. 509

ss 17 and 43—

See MORTGAGE I L R. 48 Cal. 1

See OUDH ESTATES ACT (I of 1889)

I L R. 33 All. 344

See TRANSFER OF PROPERTY ACT, 1882, s. 54 I L R. 37 Bom 53

Document compulsorily registrable—Registration by mistake in a wrong book—Mistake not to affect parties—Document duly registered—Endorsement releasing mortgaged property for consideration in cash—Registration A release whereby a father transferred all his rights of ownership in his immovable and moveable property in favour of his son was registered not in Book No. 1, but in Book No. 4, that is to say, not in the Book kept for the registration of documents compulsorily registrable under s. 17 of the Registration Act (III of 1877) Held, that the release must be considered as having been duly registered. The father's property was capable of identification and the error of the registrar in registering the document in Book No. 4 should not be allowed to affect the parties prejudicially SORABJI EDALJI v. ISHWARDAJ JAG-

REGISTRATION ACT (II OF 1817)—*contd*

ss. 17 and 43—*contd*

JEANDAS, (1892) P J 5, followed An endorsement made by a mortgagee (on the back of the mortgage-deed) releasing the mortgaged property in consideration of a cash payment of Rs 300 is a document which requires registration, and not being registered was not admissible in evidence either of the redemption of the property or of the real nature of the original transaction between the parties. PARASHRAMPANT v. RAMA (1909)

I L R. 34 Bom 202

Registration—Compromise, not embodied in the decree, containing a contract for pre-emption The parties to a suit filed a compromise which, in addition to settling forth the rights of the parties as to the property in suit, went on to provide that if either party sold his share of the property, the other party should have a right to pre-empt The decree based on this compromise was silent as to the right of pre-emption Held that the compromise required registration, and, not being registered, could not be used to support a suit for the pre-emption KASHI KUNBI v. SUMER KUNBI (1916)

I L R. 32 All. 206

Precedence—Petition of compromise unregistered and not embodied in any decree of Court Held, that a petition containing the terms of a compromise between parties to a Revenue Court suit, which had been filed in the Court, but was unregistered and had not been acted upon or embodied in the Revenue Court's decree, could not in a subsequent civil suit be used as evidence of the terms of such compromise, the property purporting to be dealt with thereby being above the value of Rs 100 SADR UD-DIN AHMAD v. CHINNY, I L R. 31 All. 13 and KASHI KUNBI v. SUMER KUNBI, I L R. 32 All. 206 followed BHAGWAN SARAI v. HAR CHAIN (1911)

I L R. 33 All. 475

Petition to Revenue Court in mutation proceedings—Compromise—Family settlement A separated Hindu created two usufructuary mortgages on portions of his estate and then died leaving a widow and a daughter The widow held possession for her life time and created a third usufructuary mortgage She died Her daughter laid claim to the estate and applied for entry of her name in the revenue records. M, one of the reversioners, contested her application, urging that her father was joint with him and not separate The parties came to terms, orally The daughter agreed to give up her claim; M, in return, agreed, to take the estate, to pay off the mortgages and to pay a certain sum to the daughter They two then filed a joint petition in which it was stated that the parties had come to terms This statement in the petition was followed by another on behalf of the daughter that as she had given up her claim to the estate she had no objection to mutation of names being made in favour of M The Revenue Court's order was that mutation was to be made according to that compromise M, to secure to the daughter the payment of the money which he had promised to pay, executed two bonds in favour of her sister's husband, but he never paid the money due thereon; on the contrary he managed to get the bonds back and kept them Some time afterwards the daughter sued to recover possession of the property in dispute

REGISTRATION ACT (II OF 1877)—*contd*ss. 17 and 49—*contd*

Held, that in the circumstances the plaintiff was entitled to a decree conditioned on her paying the amount due on the mortgages *JAGRANI v BISHESHAR DUBE (1916)*

I L R 38 All 366

Agreement between

first and second mortgagees of the same property to share equally money realized from their mortgages—*Suit by one of them to recover money realized by the other—Agreement also affecting the mortgaged property* The appellants were the first mortgagees of certain immovable property and the respondents held a second mortgage of the same property and they came to an agreement "that both parties should as regards rights, stand in the same position without claiming prior or subsequent rights, and divide and appropriate in equal halves, as per terms mentioned herein, whatever amounts may be realized on the date of realization." The agreement was found to be made for valuable consideration. The appellants having realized part of the estate, the respondents sued them in order to obtain their share of the proceeds to which they claimed to be entitled by virtue of the agreement. An objection was raised by the appellants that the agreement required registration, and not being registered could not be used as evidence. *Held*, on the construction of the agreement that if the whole effect of the agreement was to provide merely that the realized money was to be divided in equal shares, there was nothing to require it to be registered and if on the other hand there were two distinct provisions, the one relating to rights of property, and the other with regard to the division of the money realized, then as the proceedings in the suit related merely to the question of the realized money, the agreement need not be registered for the purpose of being given in evidence in this suit, although it might require registration in a suit relating to the regulation of the rights against the estate itself *VYRAN CHETTI v SUBRAMANIAN CHETTI (1920)*

I L R 43 Mad. (P. C.) 660

Deed of authority to adopt, executed in Nizam's Dominions by a domiciled subject of that State, necessary for registration of—Adoption on such authority—Right of adopted son to succeed to his adoptive mother's father's properties situated in British India—Tenants in common—Adverse possession by the heir of one for more than twelve years—Art. 144 of the Limitation Act (XV of 1877) The Indian Registration Act (III of 1877) does not apply to authorities to adopt executed in Native States by domiciled subjects of those States, such documents are valid and are admissible in evidence in British India without registration. A person adopted in pursuance of such an authority acquires the status of an adopted son capable of inheriting the separate properties of his adoptive mother a father situated in British India. If on the death of A, a Hindu, who held an estate on behalf of himself and other tenants in common the estate is held exclusively by his widow or daughter as his heir, claiming it as his separate property adversely to the other tenants in common, for more than twelve years, the rights of the latter to recover the estate as tenants in common are barred under Art. 144, Limitation Act. Art. 127 does not apply. On the death of the widow or daughter the estate will

REGISTRATION ACT (II OF 1877)—*contd*ss. 17 and 49—*contd*

descend to the heirs of A as his separate property *VENKATAPPAYYA v VENKATA RANGA ROW (1920)*

I L R 43 Mad 283

ss. 17, 49 and 50—

See NOTICE 25 C. W. N. 49

ss. 17 and 87—

See WAQFAMA I L R 42 All. 609

Deed appointing mut-walis of wakf need not be registered Personal interest of registering officer disentitles him to register and if he in good faith does so overlooking his own interest it is adopted in procedure which is condoned by s. 87 of the Registration Act *MUHAMMAD RUSTAM ALI KHAN v MAULVI MUSHTAQ HUSAIN* 25 C W N. 123

s. 21—*Registration—How far a mis description of property comprised in a deed may invalidate registration* Where one of several villages comprised in a registered mortgage deed was described as being in a wrong *tappa*, the description being, notwithstanding this error, sufficient for identification, it was held that the mis description was not sufficient to invalidate the mortgage as regards the village in question. *Brari Madho Singh v Jagot Singh, 10 All. L. J. 33*, referred to *PASSOTAM DAS v PATESRI PARSAT NARAIN SINGH (1913)* I L R 35 All. 250

s. 28—

See MORTGAGE I L R. 45 Cal. 1

Jurisdiction of registering officer—Registration—Validity—Property actually within jurisdiction included in conveyance—Vendor found not to have title in it—Fraud, not found Where the title to the only item of property sold by a *kobala* which would give the Sub Registrar jurisdiction to register it was disputed and ultimately found not to have been in the vendor. *Held*, that this alone, in the absence of fraud on the part of the vendor or the vendee, or collusion between them, would not render the registration of the *kobala* by the Sub-Registrar invalid when the property did in fact exist within his jurisdiction. *Barj Nath Tewari v Sheo Sahay Bhagat, 1 L. R. 18 Cal. 556*, distinguished *BRARO GOPAL MUKERJEE v ABHILASH CHANDRA BISWAS (1910)* 14 C W N. 532

ss. 28, 30 (b), 49—

Property comprised in mortgage, non-existence of—Onus of proof—Effect of registration by officer not having jurisdiction—Mortgage, title of—Amendment of Schedule to mortgage deed—Property substituted not belonging to mortgagor—Fictitious entry in Schedule to get deed registered in Calcutta—Concurrent findings of fact as to mistake in entries in Schedule—No evidence showing mistake The plaintiff's (appellants') claim was based on a mortgage decree passed in a suit brought in the High Court at Calcutta on its Original Side to enforce a mortgage executed in the plaintiff's favour. The defendants (respondents) were the mortgagor (who did not appear) and two other persons who disputed the mortgagee's title. These defendants (who had not been parties to the suit on the mortgage) alleged that the mortgage deed had not been legally registered, because no portion of the property mortgaged was situated in Calcutta

REGISTRATION ACT (II OF 1877)—*contd.*ss. 28, 30 (b), 49—*concld.*

where the deed had been registered, and the decree had therefore been made by a Court which had no jurisdiction to entertain a suit on the mortgage, and the plaintiff had no title to maintain the suit. The only portion of the property in the mortgage deed alleged in the suit on the mortgage to be situate in Calcutta, was parcel No. 28 in the Schedule, and was described as "23, Gora Das Street", but the property so described was found to be non-existent, the wrong description being said to be due to a mistake though no evidence of it was given. The Court directed an amendment, and the description was altered to "23, Ashutosh Dey's Lane" which was in Calcutta, and was comprised within the same boundaries as those given in parcel 28 of the Schedule to the mortgage deed. In the present suit no evidence was given either by the mortgagor or the mortgagee to show that there had been any mistake in the description of the property, but it was proved by the defendants that the property contained within the boundaries given in parcel 28 was property which did not belong and never had belonged to the mortgagor. Both the Courts below, like the High Court in the suit on the mortgage, found without any evidence that there had been a mistake in the entry of parcel 28, and held that part of the property being in Calcutta the deed had been properly registered there, and that the decree in the mortgage suit had been rightly made, and with jurisdiction. *Held*, (reversing three decrees), that it was open to the defendants (not having been parties to the mortgage suit) to contest the validity of the decree, and for the same reason the direction of the High Court that the entry in the Schedule should be amended did not affect them, and that under the circumstances of the case the onus was on the plaintiff to show that the entry in that parcel was not a fictitious entry, which onus he had not discharged. And their Lordships on the conduct of that parties and the evidence in the case, held that the parcel was in fact a fictitious entry and represented no property that the mortgagor possessed or intended to mortgage, or that the mortgagee intended to form part of his security. Such an entry intentionally made up by the parties for the purpose of obtaining registration in a district where no part of the property actually charged and intended to be charged in fact existed, was a fraud on the Registration law, and no registration obtained by means thereof was valid. No such fictitious entry inserted to give a colourable appearance to the deed of relating to property in Calcutta when in reality such was not the case, could bring the deed within the limited jurisdiction of the Court. The High Court, therefore, had no jurisdiction to make the decree, and the deed not having been registered in accordance with the Registration Act (III of 1877), the mortgagee had no title to maintain the suit. The principle of concurrent findings of fact does not apply to a case of an error made according to well known principles of law as to law that there is no evidence to support a finding being a question of law. Where, therefore, the Subordinate Judge found that the erroneous entry in the Schedule had been made by mistake, and the High Court accepted that finding but there was no evidence to show that there was in fact any mistake in the matter. *Held*, that the finding was one which could be set

REGISTRATION ACT (II OF 1877)—*contd.*ss. 28, 33 (b) 49—*concld.*

aside by the Judicial Committee on appeal with out departing from their practice of not interfering with concurrent findings of fact. **HAKKEDRA LAL ROY CHOWDHURI v. HARIKANDI DEBI** (1914).

I L R. 41 Cal. 972

s. 32.—Registration—"Presentation"
Where the executants of a document which it is desired to register are present acquiescing in the handing over of the document to the Registrar for registration, the fact that the physical act of handing the document to the Registrar is performed by a person who is not authorised to "present" the document for registration, will not render the presentation invalid. **NATH MAL v. ABUL WABID KHAN** (1912).

I L R. 34 All. 335

ss. 32 and 33—

Registration—"Presentation"
tion of power of attorney for registration—Executant ill and unable to go to registration office—Executant treated as presenter—Mortgage duly registered under power so presented and authenticated. In a suit on a mortgage executed on the 30th of August, 1895, a question arose whether the mortgage had been duly registered. It appeared from an endorsement by the Sub-Registrar on the power of attorney under which it purported to be registered that it was brought to him on the 4th of November, 1895, "for registration and authentication" by a servant of the executant of the power who said "that the executant was ill and unable to come himself, and asked that the power of attorney might be registered on the spot". As that would have been illegal, the Sub-Registrar, on the 6th of November, went to the residence of the executant, and was satisfied that he was ill and unable without risk and serious inconvenience to attend at the registration office, and he read the contents of the power of attorney to the executant, who thereupon admitted the execution and completion of the power, and asked that after registration the document should be given to the person named as the attorney in it, and thereupon the Sub-Registrar registered it. *Held* that the presentation by the servant on the 4th of November was improper and that the executant himself was the real presenter and was so treated by the Sub-Registrar on the 6th of November. **Jamun Prasad v. Muhammad Ali Khan**, I L R 31 All. 19, L R 42 A 22, distinguished. The person named as attorney in the power presented on the 2nd of January, 1896, now sued upon the mortgage of which he had obtained registration under the power of attorney. *Held* that the power was duly registered and authenticated in accordance with ss. 22 and 33 of the Registration Act (III of 1877) and the subsequent registration of the mortgage under it by the attorney named in it was a valid registration. **Prasad Prasad v. Hanu Ali Khan**.

I L R. 42 All. 477

23 C. W. N. 73

Presumption of validity of registration—Presumption rebutted by finding that document to have been procured by an unauthorised person. Although, when the validity of the registration of a document is in question after the lapse of a considerable period of time, it is to be presumed that the registration was carried out according to

REGISTRATION ACT (II OF 1877)—*contd.*s. 50—*contd.*

mortgages of different dates was sold in execution of a decree on the latter of the two mortgages and purchased by the decree holder, who afterwards sold it by an unregistered deed to Bal Kishan, who in turn sold it by a registered deed without making any mention of the prior unregistered mortgage. *Held*, that after such sale no suit would lie on the prior unregistered mortgage. *Sobhag chand Gulabchand v Bhairchand*, I L R 6 Bom. 193, Baldeo Prasad v Baldeo, All Weekly Notes, 1901, 112, and Ram Lal v Thakur Bachcha Singh, 10 A L J 114, referred to. *ISHRI PRASAD v GORI NATH* (1912). I L R 34 All 631

Registered document

relating to land, effect of, as against unregistered document—Notice of title created by prior unregistered document, effect of, on holder of registered document—Burden of proof as to such notice—Possession of person other than vendor, if sufficient notice to put purchaser on enquiry—Effect of purchase with such notice. S 50 of the Indian Registration Act has no application when the person who claims title under the subsequent registered document has notice of the title created by the prior unregistered document. The burden lies upon the person who alleges such knowledge or notice to aver it in his pleadings and to establish it. If a person purchases and takes a conveyance of an estate which he knows to be in the occupation of a person other than the vendor he is bound by all the equities which the person in such possession may have in the land. *MAGOOL BRAHMA v BAKRISHNA DAS* (1913). 18 C W. N 657

s 60—

See s. 32. I L R 34 All. 253

See EVIDENCE ACT (I OF 1872) s 70.

I L R. 38 All. 1

s 73—

See s 32. I L R. 34 All. 253

s 77—

Suit for direction to

register documents—Scope of enquiry—Issues—Execution—Compliance with requirements of law—Effect and binding nature of the documents. In a suit for a decree directing the registration of certain documents, the enquiry in Court is to be directed to two points only, namely, (a) whether the documents had been executed; and (b) whether certain requirements of the law as to presentation for registration in due time to the proper office, and in the manner generally prescribed by the Registration Act, had been complied with by the person presenting the documents for registration. *Faj Lakhi Ghosh v Debendra Chandra Mojumdar*, I L R 24 Cal 668, *Rambal Ammal v Aruna chaki Chetti*, I L R 18 Mad 255, *Kanhaya Lal v Sardar Singh*, I L R. 29 All 284. The defendant in such a suit may possibly have good reasons why he should not be bound by the documents, but the law does not allow him to advance such reasons in a suit under s. 77 of the Indian Registration Act. *W W BROCKEN v RAJAH SHANMUGAN BIKRAM SHAN* (1909). 14 C. W. N. 12

Suit for registration of

a document—Limitation—Order striking off a case for compulsory registration of a document—Review—Final order refusing to register—Period of thirty days when to run from. Where the plaintiff applied

REGISTRATION ACT (II OF 1877)—*contd.*s. 77—*contd.*

to the Registrar for compulsory registration of a deed of sale and the case was struck off, but on the plaintiff's application for review the case was restored and the Registrar after taking evidence on both sides made his final order refusing to register the deed, and the plaintiff instituted a suit in the Civil Court under s 77 of the Registration Act within 30 days from the date of this order. *Held*, that the final order of the Registrar made after the restoration of the case was the order of refusal in respect of which the plaintiff was entitled to institute a suit in the Civil Court and the plaintiff's suit was not barred by limitation. *SHRIK SAJED v SARADA PONSAD CHAUDHURY* (1913). 17 C W. N 585

Suit for registration of

document—Limitation—Last day a holiday—Suit filed on re-opening of Court—Stare decisis—General Clauses Act (X of 1857), s 77—General Clauses Act (I of 1897), s 10—Limitation Act (XV of 1877), s 6. Where a Registrar having refused to order the registration of a document on the 29th November, the plaintiff instituted a suit for the registration of the document under s. 77, Registration Act of 1877, on the 2nd January following, the Court being closed on the 29th of December and the following days until it re-opened on the 2nd January; *Held*, that in view of previous decisions of the Court and of the Legislative sanction impliedly accorded to the rule there laid down by the General Clauses Acts of 1857 and 1897, the suit should be held to have been properly instituted. *Mayer v Harding*, L R 2 Q B 410, referred to. *Hossain Ally v Donelle*, I L R 6 Cal 906, *Shoshee Bhushan v Gobinda Chandra*, I L R 18 Cal 231, *Peary Mohan v Ananda Charan*, I L R 18 Cal 631, commented on. *Per D CHATTERJEE, J*—S 5 of the Limitation Act has no application to suits under s 77 of the Registration Act. *ASAD BAKSH MOLLA v SHRIK BAHAR ALI* (1912). 16 C W. N. 721

s 87—

See s 17. 25 C W. N 123

See WAQFANA. I L R 42 All. 609

REGISTRATION ACT (XVI OF 1908).

See REGISTRATION.

See CORRESPONDING SECTION OF REGISTRATION ACT 1877 WHICH IS PRACTICALLY IDENTICAL BUT NOTE FOLLOWING DIFFERENCES—

	Act III of 1877	Act XVI of 1908
2	.	93
3	.	2 (Definition of 'Signa- ture' and "Signed" omitted)
4	.	3 and 4 (Proviso to s 3 added)
9	.	9 (Slight difference in wording).
17(b)	.	17 (2) (ix) [(x) (xi) (xii) are new]
22	.	22 (2)
23	.	23 and 24
		23(1) and 23 A new.
24	.	25.
25	.	26
26	.	Omitted.

REGISTRATION ACT (II OF 1877)—*contd*— ss 32 and 33—*concl'd*

law, yet when there exists evidence which discloses a fatal defect in procedure as, for instance, that the person who presented the document for registration was not legally authorized to do so, the registration must be held to be invalid. Such a defect as presentation by an unauthorized person cannot be cured by subsequent admission of execution on the part of the executants. *Mohammad Ewaz v Brij Lal*, L R 41 A 166, and *Majid un nissa v Abdul Rahim* I L R 23 All 253, referred to. *Wilast Dugam v Fazal Hussain Khan*, 9 All L J 143, and *Ram Chandra Das v Farzand Ali Khan* I L R 34 All 253, distinguished. *Jambu Prasad v Muhammad Aftab Ali Khan* (1912) I L R. 34 All 331

Registration of document by person holding power-of-attorney. Necessity of strict compliance with the section of the statute established. *JYANENDRA NATH PAL v THE SECRETARY OF STATE FOR INDIA*

25 C W N 73

— ss 32 to 35—*Presentation of documents for registration—Registration of document is presented by an unauthorized person not valid—Jurisdiction of Registering Officer to register document—Admission of execution by executant of deed effect of on registration—Prevention of fraud object of ss 32 to 35—Duty of Courts not to allow defect of provisions of Act. Ss. 32 and 33 of the Registration Act (III of 1877) relating to the presentation of documents for registration are imperative and the provisions must be strictly followed and where it was proved that agents who presented deeds of mortgage for registration had not been duly authorized in the manner prescribed by the Act to present them the deeds were held not to be validly registered, so as (under s 49) to affect immovable property or to be received in evidence of any transactions affecting such property, or under s. 59 of the Transfer of Property Act (IV of 1882) to be effective as mortgages. A Registrar or Sub Registrar has no jurisdiction to register a document unless he is moved to do so by a person who has executed or claims under it or by the representative or assign of such person or by an agent of such person representative or assign duly authorized by a power-of-attorney executed and authenticated in the manner prescribed by s 33 of the Act. Executants of a deed who attend a Registering Officer to a limit execution of it cannot be treated for the purposes of s 32 of the Act as presenting the deed for registration. They would no doubt be assenting to the registration, but that would not be sufficient to give the Registering Officer jurisdiction. One object of ss. 32 to 35, Registration Act, III of 1877 was to make it difficult for persons to commit frauds by means of registration under the Act, and it is the duty of the Courts in India not to allow the imperative provisions of the Act to be defeated. *Jahri Prasad v Brijnath* I L R 23 All 707, and the principle laid down in *Majid un nissa v Abdul Rahim* I L R 23 All 253. L R 23 J A 15, followed. *Jambu Prasad v Muhammad Aftab Ali Khan* (1914) I L R. 37 All 49*

— ss 32, 60, 75—*Registration—Presentation of documents of registering officer—Resumption—Evidence—Evidence Act (I of 1872) s 114*

REGISTRATION ACT (II OF 1877)—*contd*— ss 32, 60, 75—*concl'd*

A document was presented to a Sub Registrar or registration by a *karinda* of the person in whose favour it was executed. It was received for registration. Simultaneously with the presentation an application was made to summon the executants. They failed to appear and the Sub-Registrar, considering that execution was not admitted, refused to register the document. The matter came up before the District Registrar by means of an application under s 73 of the Registration Act and the presence of the executants having been secured the District Registrar ordered that the document should be registered. The document was apparently then sent by the Registrar to the Sub Registrar by whom it was registered. Held that in the absence of evidence to the contrary it must be presumed that the *karinda* who presented the document was duly authorized in that behalf and further that, even if the Registrar had in fact sent the document direct to the Sub Registrar instead of returning it to the person who had presented it for registration the act alone was not sufficient to invalidate the registration. *Mohammad Ewaz v Brij Lal* L R 41 A 167, referred to. *Majid un nissa v Abdul Rahim* I L R 23 All 33, and *Jahri Prasad v Brij Nath* I L R 23 All 707 distinguished. *Ram Chandra Das v Farzand Ali Khan* (1912) I L R. 34 All 253

— s 33—*Registration—Presentation of document by agent holding a power-of-attorney—Authentication of power. A document was presented for registration by the agent of a parda nashin lady acting under a power-of-attorney authorizing him generally to present documents for registration on behalf of his principal. The power-of-attorney was not executed in the presence of the Sub-Registrar, but the Sub-Registrar had gone to the house of the executant, questioned her, and satisfied himself that the power-of-attorney have been voluntarily executed and had endorsed the power of attorney with a statement that he had so satisfied himself. Held that the power of attorney was properly executed and authenticated within the meaning of s 33 of the Indian Registration Act, 1877, and the document presented by the executant's agent was validly presented.* *CHUTTAN LAL v SHAM PRASAD* (1919) I L R 32 All 179

— s 34—

See s 3. 26 C. W. N 369

— s 40—

See s 3. I L R 35 Mad 63

— s 49—

See s 17

See s. 23. I L R. 41 Calc. 873

See MORTGAGE. I L R 43 Calc 1

See SPECIFIC PERFORMANCE

14 C W N 65

— s 50—

See NOTICE. 25 C W N 49

See SPECIFIC RELIEF ACT (I OF 1877), s. 27. I L R. 33 All 184

— *Registration—Mortgage—Priority between registered and unregistered deeds—Property which was the subject of two unregistered*

REGISTRATION ACT (II OF 1877)—*concl'd*s. 50—*concl'd*.

mortgages of different dates was sold in execution of a decree on the latter of the two mortgages and purchased by the decree-holder, who afterwards sold it by an unregistered deed to Bal Kishan, who in turn sold it by a registered deed without making any mention of the prior unregistered mortgage. *Held*, that after such sale no suit would lie on the prior unregistered mortgage. *Sobhagchand Gulabchand v Bhairchand*, I L R 6 Bom 193, *Baldeo Prasad v Baldeo*, All Weekly Notes, 1901, 112, and *Ram Lal v Thakur Bachcha Singh*, 10 A L J 114, referred to. *ISHNI PRASAD v GORI NATH* (1912). I L R. 34 All 631

Registered document

relating to land, effect of, as against unregistered document—Notice of title created by prior unregistered document, effect of, on holder of registered document—Burden of proof as to such notice—Possession of person other than vendor, if sufficient notice to put purchaser on enquiry—Effect of purchase with such notice. S. 50 of the Indian Registration Act has no application when the person who claims title under the subsequent registered document has notice of the title created by the prior unregistered document. The burden lies upon the person who alleges such knowledge or notice to aver it in his pleadings and to establish it. If a person purchases and takes a conveyance of an estate which he knows to be in the occupation of a person other than the vendor he is bound by all the equities which the person in such possession may have in the land. *MAGOO BHANJA v BAKRISHNA DAS* (1913). 18 C W. N. 657

s. 60—

See s. 32. I L R. 34 All. 253

See EVIDENCE ACT (I OF 1872) s. 70.

I L R. 38 All 1

s. 73—

See s. 32. I L R. 34 All 253

s. 77—

*Suit for direction to register documents—Scope of enquiry—Issues—Execution—Compliance with requirements of law—Effect and binding nature of the documents. In a suit for a decree directing the registration of certain documents, the enquiry in Court is to be directed to two points only, namely, (a) whether the documents had been executed, and (b) whether certain requirements of the law as to presentation for registration in due time to the proper office and in the manner generally prescribed by the Registration Act, had been complied with by the person presenting the documents for registration. *Raj Luckhi Ghosh v Debendra Chandra Moymondar*, I L R 24 Cal 663, *Balambal Ammal v Aruna Chala Chetti*, I L R 18 Mad 255, *Kanhaya Lal v Sardar Singh*, I L R 29 All 234. The defendant in such a suit may possibly have good reasons why he should not be bound by the documents, but the law does not allow him to advance such reasons in a suit under s. 77 of the Indian Registration Act. *W. W. BROVCKE v RAJAN SHAH* MOHAN BIKRAM SHAH (1909) 14 C. W. N. 12*

Suit for registration of a document—Limitation—Order striking off a case for compulsory registration of a document—Review—Final order refusing to register—Period of thirty days when to run from. Where the plaintiff applied

REGISTRATION ACT (II OF 1877)—*concl'd*s. 77—*concl'd*

to the Registrar for compulsory registration of a deed of sale and the case was struck off, but on the plaintiff's application for review the case was restored and the Registrar after taking evidence on both sides made his final order refusing to register the deed, and the plaintiff instituted a suit in the Civil Court under s. 77 of the Registration Act within 30 days from the date of this order. *Held*, that the final order of the Registrar made after the restoration of the case was the order of refusal in respect of which the plaintiff was entitled to institute a suit in the Civil Court and the plaintiff's suit was not barred by limitation. *SHRIK SAJED v SARADA PORSAD CHAUDHURY* (1913) 17 C. W. N. 585

Suit for registration of

document—Limitation—Last day a holiday—Suit filed on re-opening of Court—Store decrees—General Clauses Act (X of 1887), s. 77—General Clauses Act (I of 1877), s. 10—Limitation Act (XV of 1877), s. 6. Where a Registrar having refused to order the registration of a document on the 29th November, the plaintiff instituted a suit for the registration of the document under s. 77, Registration Act of 1877, on the 2nd January following, the Court being closed on the 29th of December and the following days until it re-opened on the 2nd January. *Held*, that in view of previous decisions of the Court and of the Legislative sanction impliedly accorded to the rule there laid down by the General Clauses Acts of 1887 and 1897, the suit should be held to have been properly instituted. *Mayer v Harding*, I L R 2 Q B 410, referred to. *Hossain Ally v Donville* I L R 5 Cal 906, *Shoshee Ehusan v Gobinda Chandra*, I L R 18 Cal. 231, *Peary Mohun v Ananda Charan*, I L R 18 Cal 631, commented on. *Per D CHATTERJEE, J*—S. 6 of the Limitation Act has no application to suits under s. 77 of the Registration Act. *AHAD BAKSH MOLLA v SHEIKH BAKAR ALI* (1912) 16 C W N 721

s. 87—

See s. 17. 25 C W N 123

See WAQFNAME I L R 42 All 609

REGISTRATION ACT (XVI OF 1908)

See REGISTRATION.

See CORRESPONDING SECTION OF REGISTRATION ACT 1877 WHICH IS PRACTICALLY IDENTICAL BUT NOTE FOLLOWING DIFFERENCES—

Act III of 1877.	Act XVI of 1908
2	93.
3	2 (Definition of "Signature" and "Signed" omitted)
4	3 and 4 (Proviso to s. 3 added)
9	9 (Slight difference in wording)
17(b)	17 (2) (ix) [(x) (xi) (xii) are new]
22	22 (2)
23	23 and 24
	22(1) and 23 A new.
24	25.
25	26
26	Omitted.

REGISTRATION ACT (XVI OF 1908)—*contd*

Act III of 1877

Act XVI of 1908

58 (or a copy of a 58 (or a copy sent to the certificate under the Registering Officer under Land Improvement s 89)

Act 1871 sent to the Registrar')

8th(d) with n the mean Omitted
ing of the Indian
Penal Code

83 Subordinate Magistrate of the
trate of the first second class
class.

83 Paragraphs 3 and 4 Omitted

84 A Registrar shall but Omitted
a sub registrar shall
not be deemed a court
within the meaning of
ss 435 and 436 of the
Criminal Procedure
Code s 89

89 Amplified owing to
enactments later than
1877

92 British Burma Lower Burma

Mortgage bond—Interpolation by a mortgagee—Adding another item belonging to mortgagee for convenience of registration—Registration bond on registration law—Document whether properly executed attested and registered
A document mortgaging only one item of property was duly executed and attested and another item of his property was interpolated by the mortgagee with the knowledge and consent of the mortgagee in the presence of the same attesting witnesses. The mortgagee registered the deed in the Sub Registrar's office within whose jurisdiction the latter item was situated. It appeared that the object of adding the second item was not so much to give an additional security to the mortgagee as to enable the mortgagee to get the document registered near the place where he was living and thus prevent delay in registering the deed. *Held* that there had been no fraud on the registration law and that the document was duly executed, attested and registered with regard to both items of property. *Harindra Lal Roy Chowdhury v Haridas Deb* (1914) 1 L. R. 41 Cal. 97^o (P. C.) distinguished. *KUNHI RAMANATH NAMBIAR v NARAYANAN THIRUNIPPU* (1920) 1 L. R. 43 Mad. 405

— s 2 (7)—

See KABILYAT 1 L. R. 39 Cal. 1016

— ss 2, 3, 17, 49—*Admissibility of an unregistered lease—Lease and agreement to lease—Ind an Registrat on Act (XVI of 1908) sec 2 3 17, 49—Agreement followed by possession on effect of—Doctrine of part performance of applicable—Statute of Frauds—Transfer of Property Act (IV of 1882) s 107—Suit for specific performance—Entoppel against a statute if available.*
An agreement to lease intended to operate as a present demise is a lease within the meaning of cl (d) of sec 17 of the Registration Act, 1908 and as such is inadmissible in evidence in a suit for specific performance of its terms, under sec. 49 of the Act if it is not registered even though the tenant is in possession under the said agreement. Cases of part performance under sec 4 of the Statute of Frauds have no application to those arising under sec. 49 of the Registrar on Act 1908 as the positions under the two Acts are

REGISTRATION ACT (XVI OF 1908)—*contd*

— ss 2, 3, 17, 49—*contd*

quite different. *SANJIV CHANDRA SANYAL v SANTOSH K. LAHIRI* 26 C. W. N. 390

— ss 2 and 17—*Lease—Agreement to lease—Instrument not registered—Admissibility of instrument in evidence—Suit by lessor to eject lessee—Lessee setting up counter-claim for specific performance of agreement to lease or for damages for its breach by lessor*
An agreement to lease which does not operate as an immediate demise of the property, does not fall within the definition of 'lease' contained in s. 2 of the Registration Act (XVI of 1908) and is admissible in evidence without registration. The question whether an agreement to lease operates as an immediate demise should be determined on the facts of each case. *Hemanta Kumar Deb v Midnapur Zamindari Company* (1920) 1 L. R. 47 Cal. 435 (P. C.), s. c., 1 L. R. 46 1 A 210 followed. *Narayanan Chetty v Muthiah Serrao* (1912) 1 L. R. 35 Mad. 63 (F. B.), not followed. *SWAMIVATHA MCDALIAR v RAMASWAMI MUDALIAR* (1921) 1 L. R. 44 Mad. 399

Bainaputra if it is an agreement to lease and whether requires registration when it does not effect a present demise
An unregistered bainaputra for grant of a putni lease acknowledged receipt of part of the consideration money, and contained a promise to grant a putni lease again (with effect) from the date of the bainaputra and to exchange patta and kabulyat before the 30th Aghran. *Held*—That the bainaputra did not effect a present demise and should be regarded as an agreement creating a right to obtain a putni lease on the performance of certain conditions on or before the 30th Aghran. The document was not an agreement to lease and therefore did not require registration and so was admissible in evidence. *Rani Hemanta Kumar Deb v The Midnapur Zamindari Co., Ltd.* 24 C. W. N. 177 (P. C.) (1919) and *Panchanan Bose v Chanda Charan Misra* 1 L. R. 37 Cal. 808 s. c. 14 C. W. N. 874 (1910) referred to. *PER CURIAM*—On the whole we come to the conclusion that the document in question does not effect a present demise and should be regarded as an agreement creating in the Plaintiff a right to obtain in putni lease on performance of certain conditions on or before the 30th Aghran 1318. *HARI NATH BANDOOPHAYAYA v PROMOTHO NATH ROY CHAUDHURI* 25 C. W. N. 550

— ss 2, 17 49—

See AGREEMENT TO LEASE.

1 L. R. 47 Cal. 485

— s 17—

See s 2

See CIVIL PROCEDURE CODE (1908) O. XXIII r. 3 1 L. R. 38 All. 75

See COMPROMISE 3 Pat. L. J. 43 & 255 1 L. R. 42 Cal. 801

See HINDU LAW—PARTITION 1 L. R. 48 Cal. 1059

See HINDU LAW—WIDOW 1 L. R. 38 Bom. 224

See MORTGAGE 1 L. R. 43 Mad. 803

See REGISTRATION

— Agreement to retransfer—Agreement to re transfer property sold on repayment of price

REGISTRATION ACT (XVI OF 1908)—contd

with interest if must be registered Where contemporaneously with a registered deed of sale a document was executed whereby the transferee agreed to retransfer the property to the transferor upon payment by the latter of the sale price with interest within a specified period: *Held*, that the document was not a reconveyance and did not require registration **DWARAKA NATH SEN v KESSORY LALL GOSWAMI (1910)**

14 C. W. N. 703

Memorandum of arrangement between lessor and lessee—if must be stamped and registered A document, dated the 8th March, 1885, which did not demise any property and was neither a lease nor an agreement to lease, but was and purported to be a memorandum of an arrangement which had been made with the grantees by the agent of the lessors on their behalf and under which the grantees had taken possession with effect from 12th April, 1884, was admissible in evidence although neither stamped nor registered. **KATAYANI DEBI v PORT CANNING AND LAND IMPROVEMENT CO (1914)** 19 C. W. N. 58

Rajinama and Kabulyat—Mortgage of lands in an Inam village—Mortgagor passing a Rajinama in favour of a third person—Kabulyat by the person to the Inamdar—Transfer of Khata in Inamdar's books—Extinction of the equity of redemption One A, holder of lands in an Inam village, mortgaged the lands with one B (father of defendants Nos 2 and 3) in 1871. In 1875, A passed a Rajinama in favour of one J and gave notice to the Inamdar to transfer his khata in the Inamdar's books to the name of J. On the same day passed a Kabulyat to the Inamdar agreeing to pay assessment due to Government. J in turn had the khata transferred to one V who in 1878 executed a Rajinama in favour of defendant No 2. In 1913, plaintiffs as the heirs of A sued to redeem the property. The defendants Nos 2 and 3 contended that they had become owners of the lands. The Subordinate Judge dismissed the suit holding that A transferred his interest in the lands by the Rajinama in 1875 and, therefore, the plaintiffs had no interest in the lands as owners. The Assistant Judge in appeal, reversed the decree and allowed redemption on the ground that the Rajinama by A could not be proved in Court as it required registration. On appeal to the High Court, *Held*, that the plaintiffs' suit to redeem must fail as the Rajinamas and Kabulyats although not registered were good evidence of the transfer having taken place since they were documents between the occupants and his superior holder and not documents between the transferor and the transferee they recited the transfer which had taken place presumably for consideration, but they themselves did not purport to operate as transferring any interest to another. *Held*, further, that even assuming that they fell within the terms of s 17 of the Indian Registration Act, 1908, as operating to extinguish an interest in immovable property, it was not shown that they required registration, the interest extinguished by them being of a value less than Rs 100. *Held*, also, that at the time these transactions took place from 1875 to 1878 it was not necessary according to the law that there should be any document evidencing the transfer but payment of price and delivery of possession completed the transaction. **IMAM VALAD ISRAHIM v BHAV APPAJI (1917)** I. L. R. 41 Bom 510

REGISTRATION ACT (XVI OF 1908)—contd

Agreement by reversioners to forego right to sue for declaration respecting an alienation by the Hindu widow—*Held*, that an agreement by which the reversioners to certain property in the possession of a Hindu widow agreed not to enforce their rights to sue for a declaration that a gift of such property made by the widow was not binding upon them was not a document which was compulsorily registrable under s 17 of the Indian Registration Act, 1908. **BHANA v GUMAN SINGH (1918)**

I. L. R. 40 All 384

Sub-s (1) (b)—
See COMPROMISE

3 Pat L J. 43

sub-s (1) (d)—Lease of land dar salme rate—Lease exceeding one year—Registration compulsory It was provided by a lease as follows: We have taken these three fields for cultivation from you yearly (dar salme rate) on condition that we are to pay the assessment. We shall go on paying the assessment to Government so long as you give us the fields for cultivation. If we say anything false or unfair or if you come to hear of any fraud or deceit on our part or if we practise such fraud or deceit, we will restore possession of the fields to you as soon as you ask us to do so. *Held* on a construction of the lease, that the words dar salme rate (year to year) taken in connection with the total absence of any date for the expiry of the tenancy suggested that the parties contemplated that the lease should operate for a period exceeding one year, and that therefore, it was compulsorily registrable under the provisions of s 17, sub-s 1 (d) of the Indian Registration Act (XVI of 1908). **ONURABHAI v BHULDAS v MOHANLAL MAGANLAL (1917)** I. L. R. 41 Bom 458

Lease on a monthly rent—tenant liable to ejectment on a default in payment of rent—whether compulsorily registrable, The plaintiff sued for Rs 18 on account of the rent of a hut and for its possession under a lease entered in his book, which was to the effect that plaintiff had let a hut to the defendant who was to pay 8 annas per mensem by way of rent and in the event of a default in payment of the rent, the tenant was liable to be ejected. The question before the High Court was whether the lease could be regarded as a lease for a term exceeding one year and therefore required registration. *Held*, that section 17 of the Registration Act, being a disabling section, must be strictly construed and that unless a document is clearly brought within the purview of that section its non registration is no bar to its being admitted in evidence. *Held* further, that the lease was not one for a period exceeding one year within the meaning of section 17 (1) (d). **ATREA v MANGAL SINGH** I. L. R. 2 Lah. 300

See BENGAL TENANCY ACT, 1885 ss 147A AND 29

4 Pat. L. J. 687

See HINDU LAW—WIDOW.

I. L. R. 33 Bom. 225

sub-s 1 (b) and (c)—Sale deed—Receipt for consideration of sale—Proof of payment—Alimda—Single Bench rulings as precedents *Held*, following *Ram Chand v. Chotta Singh*, 73 P. L. R. 1910, that a receipt for the

REGISTRATION ACT (XVI OF 1908)—*contd.*sub-s. 1 (b) and (c)—*contd.*

balance of purchase money on an oral sale of land said to have taken place previously, is not a sale-deed, but is registrable under s. 17 (c) of the Registration Act as a receipt. *Held*, also, that, although an unregistered receipt is not admissible in evidence, the payment may be proved *alunde*. *Held*, further, that Single Bench rulings of this Court, if not dissented from or overruled, are as much binding upon the subordinate Courts of the Province as the decisions of Division Benches. **SHIB KHAN v MUZAFFAR KHAN**

I. L. R. 1 Lab. 25

See COMPROMISE 3 Pat L. J. 255

sub-s. (2) (v)—COMPROMISE—Adjustment of decree—Civil Procedure Code (F of 1908), Order XXI, r. 2—Whether exempted from registration. A compromise made after decree, affecting any immovable property of the value of over Rs. 100, and embodied in a petition presented under O XXI r. 2, Civil Procedure Code, which has been recorded by the Court is exempt from registration. *Hemanta Kumari Debi v Midnapur Zamindari Company* (1919), 46 I A 249 followed. *Chelamma v Rama Rao* (1913) 1 L R 36 Mad 48, and *Raja Venkatasappa Nayaram Iyaru v Raja Thimma Nayaram Iyaru* (1914) 27 M L J 656, overruled. **GOOVANATHA AYYISA v KENDRON CHOKEN** (1920) 1 L R. 43 Mad. (F.B.) 688

See REGISTRATION ACT, 1877 s. 17

I L R. 38 Bom. 703

sub-s. 2 (xi)—Mortgage—Receipt for mortgage money—Registration. A receipt for money due upon a mortgage was given in the following terms:—“The bond is returned. No money remains due.” *Held* on suit for recovery of the mortgage debt, that the receipt did not require to be registered, and that the words “no money remains due” did not purport to extinguish the mortgage. **PIARI LAL v MUKHAI**

I L R. 34 All 528

ss. 17 and 49—

See AGREEMENT TO LEASE.

I L R. 47 Cal. 485

See HINDU LAW—JOINT FAMILY PROPERTY

28 C. W N 201

See TRANSFER OF PROPERTY ACT, 1882, s. 4

I L R. 44 Mad. 55

Registration—Petition to Revenue Courts in Mutation Proceedings—Compromise—Family Settlement. A separate Hindu created two usufructuary mortgages on portions of his estate, and then died leaving a widow and a daughter. The widow held possession for her life time and created a third usufructuary mortgage. She died. Her daughter laid claim to the estate and applied for entry of her name in the revenue records. *M*, one of the revenue officers, contested her application, urging that her father was joint with him and not separate. The parties came to terms orally. The daughter agreed to give up her claim; *M*, in return, agreed to take the estate, to pay off the mortgagees and to pay a certain sum to the daughter. They two then filed a joint petition in which it was stated that the parties had come to terms. This statement in the petition was followed by another on behalf of the daughter that as she had given

REGISTRATION ACT (XVI OF 1908)—*contd.*ss. 17 and 49—*contd.*

up her claim to the estate she had no objection to mutation of names being made in favour of *M*. The Revenue Court's order was that mutation was to be made according to that compromise. *M*, to secure to the daughter of payment of the money which he had promised to pay, executed two bonds in favour of her sister's husband, but he never had the money due thereon, on the contrary he managed to get the bonds back and kept them. Some time afterwards the daughter sued to recover possession of the property in dispute. *Held*, that in the circumstances the plaintiff was entitled to a decree conditioned on her paying the amount due on the mortgages. **JAGANNATH v BISHESHAR DUKH**. I L R. 38 All 368

Act No. IV of 1882

(Transfer of Property Act), s. 9—Registration—Petition to Court in mutation proceedings—Compromise—Family settlement. The parties to certain mutation proceedings were six nephews of the deceased owner, three being sons of one brother, two of another and one of a third. In the course of the mutation proceedings the parties came to an agreement amongst themselves as to the partition, not only of the zamindari property, but of certain house property owned by the propertors, and also as to the payment of his debts. As to the house property the agreement was put into writing and registered, and the parties took possession of the house property in accordance therewith. Some of them also paid certain of the debts due from the deceased in accordance with the agreement. As regards the zamindari property the parties filed in court a petition in which they recited that they had arrived at a settlement of the matters in dispute between them and what that settlement was, and they prayed that mutation might be ordered in accordance therewith. The settlement was based on the supposition that according to the custom of the tribe to which the parties belonged the nephews were entitled to the property *per stripes*. Subsequently, however, the three sons of one brother of the propertors brought a suit claiming one half of the property as against the other three. The suit was dismissed by the trial court but on appeal the lower appellate court remanded the case for trial on the merits, holding that the compromise filed in the mutation proceedings was invalid for want of registration. *Held* by **HANNAIYA LAL, J.** (Principal Judge), that in the circumstances of the case the petition filed in the mutation proceedings was not a document which required registration. But in any case the petition might be treated together with the registered agreement as to the house property and with the fact that some of the debts of the deceased had been paid, *apparently* in pursuance of an agreement between the parties, as evidence of an antecedent family settlement of disputed claims, which, if fairly arrived at without fraud or concealment, would be binding on the parties and could not be re-opened, especially if it had been acted upon. **BALDEO SINGH v. UNAL SINGH**. I L R. 43 All 1

The parties to a suit filed a compromise which in addition to settling forth the rights of the parties to the property in suit went on to provide that if either party sold his share the other would have the right to preempt. The decree based on the compromise

REGISTRATION ACT (XVI OF 1908)—*contd*ss. 17 and 49—*contd.*

was silent on the point *Held*, that the compromise required registration and therefore could not be used. **KASHI KUMBI v SUMER KUMAR**.

I L R. 32 All. 268

Partition—Unregistered receipt acknowledging acceptance of shares Plaintiff claimed to be entitled to certain property alleging that the same was allotted to his share on a partition between himself and his brothers. For the purpose of proving the alleged partition plaintiff relied on unregistered receipts signed by his brothers in which they acknowledged having accepted certain portions of the family property. *Held*, that the receipts required registration and were therefore inadmissible as evidence. **NIL KANTH BHIMJI v HANMANT EKNATH** (1920)

I L R. 44 Bom. 881

Document compulsorily registrable—Assignment of decree for sale of immovable property *Held*, that a deed of assignment of a final decree for the sale of mortgaged property under O XXXIV, r 5 of the Code of Civil Procedure, 1908, is not a document which is compulsorily registrable under the provisions of s 17 (b) of the Indian Registration Act, 1908. **Gopal Narayan v Trimbak Sadashiv** I L R. 1 Bom. 267, and **Mutasaddi Lal v Muhammad Hanif**, 10 All L J 167, distinguished. **Abdul Majid v. Muhammad Fawzullah**, I L R. 13 All. 59, and **Bay Nath Leher v Banooyendra Nath Pali** 8 C W N 5, followed. **MUMTAZ AHMAD v SRI RAM** (1913) . . . I L R. 35 All. 524

Lease—Agreement to lease—Property demised in process of construction

Demise from a future date—Document evidencing demise from a future date need not be registered

Offer and acceptance—Specific performance—Optional clause for removal inserted in a letter of acceptance—Optional clause not binding on the lessor unless accepted by him—Power of an estate manager to bind the owner In December 1914,

the Presidency Post Master was looking for premises for a new Post Office for the Masjid branch and gave the defendant who was then erecting a building particulars as to the nature and extent of the accommodation required. On 1st February 1915, the defendant wrote a letter to the Presidency Post Master saying that he "shall let on a lease for ten years" a portion of the building at Rs 175 a month, the defendant making necessary arrangements for the Post Office and keeping the premises ready for occupation by the 1st of April 1916. On the 13th February 1915, the Presidency Post Master replied that he "accepted the proposal" adding that the Post Master General had desired him to insert an optional clause, i.e., giving the Post Office the option to renew the lease for another five years. Nothing was said by the defendant with regard to this optional clause, but on the 16th February 1915, the defendant's estate manager merely wrote to the Presidency Post Master that he was "making the necessary arrangements". On 1st April 1916, the Presidency Post Master went into occupation of the defendant's premises though the necessary arrangements were not completed till the following month. The Presidency Post Master paid rent at the rate of Rs. 175 a month but no steps were taken towards getting a proper lease executed until September

REGISTRATION ACT (XVI OF 1908)—*contd*ss. 17 and 49—*contd*

1917 when the Presidency Post Master was given notice to quit. Thereupon, the Secretary of State for India sued the defendant for specific performance of the agreement of February 1915 by calling upon the defendant to execute a proper lease, such lease to contain the optional clause for renewal of the lease. The defendant contended, *inter alia*, that there was no concluded agreement between the parties, that he had not accorded his assent to the optional clause to renew the lease and that if his letter of 1st February 1915 and the reply thereto be held to constitute an offer and acceptance of the proposal, the same were inadmissible in evidence for want of registration. The trial Court decreed the plaintiff's suit. The defendant appealed.—*Held*, (1) that the defendant's letter of the 1st February 1915 and the reply of the Presidency Post Master constituted an offer and acceptance of the proposal and specific performance of that agreement should be decreed, (2) that the said letter and reply were admissible in evidence though unregistered, as they did not constitute a present demise; (3) that the optional clause in the reply of the Presidency Post Master was a counter offer to the defendant, and as the same was not accepted by that defendant the plaintiff was not entitled to have the clause inserted in the lease, (4) that the estate manager of the defendant had no power to accept the counter offer, nor was his letter of the 16th February 1916 an acceptance of such counter offer. **Hemanta Kumar Deb v Midnapur Zamindars Company** (1919) L R 46 I A 240, referred to. **SIR MAHOMED YUSUF v THE SECRETARY OF STATE FOR INDIA** (1920) I L R. 45 Bom. 8

ss 17, 50—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 51 I L R. 41 Bom. 550

ss 17, 90—

See LAND REVENUE CODE (BOM ACT V OF 1879), s 74 I L R. 41 Bom. 170

Registration—Transfer of Property Act (IV of 1882) s 107—Crown Grants Act (XV of 1893) ss 2 and 3—Lease—Lease of Government land by commissioners of a notified area The commissioners of a notified area let certain plots of land which were the property of the Government and had been handed over to them for administrative purposes. The leases ran in the name of the Secretary of State for India and provided that the lessees were to remain in possession for 30 years so long as they fulfilled certain conditions, and the lessor had a right of re-entry only on breach of certain conditions. *Held*, that such leases were compulsorily registrable, and could not be considered as falling within the purview of s 90 (d) of the Indian Registration Act, 1908, nor were they excluded from s 107 of the Transfer of Property Act by the operation of the Crown Grants Act, 1895. **Dost Muhammad Khan v The Bank of Upper India**, 3 All L J 129, 628 referred to. **MURSHI LAL v THE NOTIFIED AREA OF BAROT** (1914) . . . I L R. 36 All. 176

s. 23—

See MORTGAGE . 16 C W. N. 585

s 28—

See PRESCRIPTION LAW—FRAMED ON I L R. 43 Mad. 436

REGISTRATION ACT (XVI OF 1908)—*contd.*s. 28—*contd.*

Registration in district where small portion of property situated—Transfer or not entitled to such property—Whether registration is valid. Where there is any fraud or collusion between the parties for the purpose of giving jurisdiction to a particular Sub Registrar to register a document by including property which does not exist this is sufficient to invalidate the registration, but registration is not invalid if the property described exists, merely because it transpires that the transferor, though acting in a perfectly bona fide manner, has ceased to have an interest in that property. Where property which formed the subject matter of a document registered in Benares was situated partly in Benares and partly elsewhere, and it transpired that the transferor had no title to the property situate in Benares. *Held*, that the registration was valid. **MUNSAMMAT RAM DAS v RAM CHANDARBAHAI DUBEI**

4 Pat. L. J. 433

Place of registration—

Sale-deed—Deed fraudulently registered in a district where none of the property in respect of which it might have been operative, was situated. In order to prevent certain persons interested in the bulk of the property which purported to be sold, and which was in the district of Pilibhit becoming aware of the existence of a sale deed, the vendor included in the deed a small piece of property, situated in the city of Bareilly, which in fact did not belong to him, and had the sale-deed registered in Bareilly. *Held*, that this transaction was merely a fraudulent evasion of the Registration law, and that the sale-deed conveyed no title to the purchasers in respect of any of the property comprised in it. **Narendra Lal Roy Chowdhuri v Haridas Deb, 1 L. R. 41 Cal. 972, Jagas Nath v Ram Nath, 12 All L. J. 913, Basant Singh v. Ramesh Bhatia, 12 All L. J. 913, and Purna Chandra Bakshi v. Nabin Chandra Gangapadhyay, 3 C. N. 4352, referred to MANGAL LAL v ABID YAR KHAN (1917)**

I. L. R. 39 All 523

Place of registration—

Security bond—Bond fraudulently registered in a district where none of the property in respect of which it might have been operative was situated. In a bond hypothecating, as security for the due fulfilment of the terms of a mortgage, certain immovable property, a small piece of land, was inserted which did not belong to the obligor and was mentioned only for the purpose of getting the security bond registered in a particular registration subdivision. *Held* that registration so effected was a fraud on the Registration law and the bond must be treated as unregistered. **Mangal Lal v Abid Yar Khan, 1 L. R. 39 All 523, followed Narendra Lal Roy Chowdhuri v Haridas Deb, 1 L. R. 41 Cal. 972, referred to. RAM LAL v TANKS BAKO (1919)**

I. L. R. 41 All 353

Registration—Mort-

gage registered in a particular place by virtue of inclusion therein of property to which the mortgagor had no title—Fraud or collusion not proved. Where property is admitted to be in existence and has been included in a mortgage deed, but is shown not to have been the property of the mortgagor, the mere fact that the document has been registered in the district to which that property belongs, is not sufficient, in the absence of evidence of

REGISTRATION ACT (XVI OF 1908)—*contd.*s. 28—*contd.*

fraud or collusion between the mortgagor and the mortgagee, to invalidate the registration when that property is the only property hypothecated within the registration district. **Procyopol Mukherjee v. Abhishek Chandra Pious, 14 C. W. N. 552, followed Narendra Lal Roy Chowdhuri v. Haridas Deb, 1 L. R. 41 Cal. 972, distinguished. PAWLADI LAL v MUSAMMAT LAKSHI (1918)**

I. L. R. 41 All. 22

—ss. 31, 32, 52, 87—Registration—"Presentation"—*Presentation by a person not an authorized agent of the executant—Procedure—Invalid presentation not a mere question of procedure.* Where a document is presented for registration by a person not duly authorized to present it according to the law applicable to registration of documents, such presentation is altogether invalid, and its subsequent registration, made upon the admission of the executant before an officer who had no jurisdiction to accept the document for registration, is likewise invalid. **Majid un nissa v. Abdur Rahim, 1 L. R. 23 All 233, followed. ABUL-UD-DIN AHMAD v. BANXI BISI (1912)**

I. L. R. 35 All. 34

s. 32—

—Presentation—"Presentation"—*Presentation by a servant of the mortgagor in the presence of the mortgagor.* Where a mortgage deed was handed over to the sub-registrar for the purpose of registration by a person other than the mortgagor, but the mortgagor was present assenting to the registration of the document with full knowledge of what was being done in the office of the sub-registrar: *Held*, that the presentation was a valid presentation within the meaning of s. 32 of the Registration Act. **Nath Mal v. Abdul Wahid Khan, 1 L. R. 34 All 355, followed. Majid un nissa v. Abdur Rahim, 1 L. R. 23 All. 233, distinguished. Jambh Prasad v. Atiab Ali Khan, 1 L. R. 34 All. 331, not followed. KARTA HIRAY v. HARVAM CHAND (1912)**

I. L. R. 35 All. 72

—Registration—"Presentation"—*Physical delivery of document by person not authorized to "present" it, but executant present and assenting whilst registration was going on.* Where it is shown that, prior to the registration of the document by the duly authorized official, a person competent to present the document for registration was present before that official assenting to the registration, the requirements of the Registration Act are sufficiently complied with. **Majid un nissa v. Abdur Rahim, 1 L. R. 23 All 233, and Karti Aulakh v. Har Narain, 1 L. R. 35 All. 72, referred to. ATMA RAM v. UOMA SEV (1912)**

I. L. R. 35 All. 134

—ss. 32, 33, 71, 73, 75, 87, 88—Mortgage-deed—Registration—*Presentation—Authority to present document for registration on behalf of executant—Distinction between presentation under part VI and under part XII of the Act.* A mortgage-deed was executed on the 20th of November 1911. Before, however, the deed could be registered, the mortgagee fell ill. On the 3rd of February, 1912, the mortgagee executed in favour of a pleader, a power of attorney of the kind referred to in s. 32 of the Indian Registration Act, 1908. This was duly authenticated by the sub-registrar, and the document was presented for registration by the pleader on the 6th of February, 1912.

REGISTRATION ACT (XVI OF 1908)—*contd.*ss. 32, 33, 71, 73, 75, 87, 88—*concl'd*

On the 8th of February the mortgagee died. The mortgagor failed to appear before the sub-registrar and admit execution, and the sub registrar refused to register the deed. An application was next presented to the Registrar under s. 73 of the Act by the widow of the mortgagee in the capacity of the guardian of the mortgagee's two minor sons, and on the 28th of June, 1912, the Registrar made an order under s. 75 (1) of the Act directing that the mortgage-deed should be registered. Meanwhile the estate of the minors had been taken under the superintendence of the Court of Wards, and the Collector as Manager on behalf the Court of Wards, on the 23rd of July, 1912, sent the mortgage-deed by a messenger to the sub registrar, with a copy of the Registrar's order mentioned above and an official letter requesting that the document might be registered, which was accordingly done. On suit having been brought on the mortgage, some of the defendants raised an objection that the mortgage deed in suit was not validly registered. *Held*, that the document was properly registered. No valid objection could be sustained as to its presentation, either on the 5th of February, 1912, when it was presented by the pleader acting under his power of attorney given by the mortgagee, or on the 23rd of July, 1912 when it was sent by the Collector to the sub registrar. The Collector was not bound to present the document in person, and that being so, it was immaterial what means he took to bring it before the sub registrar. That officer was perfectly justified in presuming the authenticity of the Collector's official letter and in taking action accordingly. **COLLECTOR OF MORADABAD v MAQ BUL UL-KAHMAN (1918)** I. L. R. 40 All 434

ss. 32, 35, 49 and 80—*Presentment of document for registration by a person not properly authorised—Limitation—Declaratory suit in respect of a gift of land and houses—Indian Limitation Act, IX of 1908 articles 123 and 125* On 14th June 1904 the widow of A K executed a gift by which she gave 2,493 bighas and 10 biswas of land and a house belonging to her deceased husband to H N, one of her 2 daughters. On the 30th January 1905 A B, plaintiff, the other daughter, executed a deed of release in which she consented to the gift and gave up her rights to the property gifted. Notwithstanding this she brought the present suit for a declaration that the gift should not affect her reversionary rights. The first Court gave her a decree as regards both the land and the house. The Lower Appellate Court upheld the decree in regard to the land but held that the suit was barred by time as regards the house. Both parties appealed to the High Court. It was contended by the plaintiff that though the deed of release was a registered one it was inadmissible in evidence owing to defects in registration as the person presenting it on behalf of the plaintiff had no power of attorney. *Held*, following **Jambh Prasad v Muhammad Afzal Ali** [I. L. R. 37 All 49 (P C)] that sections 32 and 33 of the Registration Act relating to the presentation of documents for registration, are imperative and their provisions must be strictly followed and therefore if the Agent who presented deed for registration had not been duly authorised in the manner prescribed by the Act the deed would not be validly registered so as (under sec

REGISTRATION ACT (XVI OF 1908)—*contd.*ss. 32, 35, 49 and 80—*concl'd*

tion 49) to affect immovable property or to be received in evidence of any transactions affecting such property. One object of sections 32 to 35 of the Registration Act is to make it difficult for persons to commit fraud by means of registration under the Act, and it is the duty of the Courts not to allow the imperative provisions of the Act to be defeated. *Held*, further, that the presumption is that the owner of a house is owner of the site also and therefore article 125 of the Limitation Act applies to this suit in regard to the house (included in the gift) as well as to the land. **Dev Raj v Shiv Ram (70 P. R. 1914)** distinguished **Soman Singh v Ullam Chand** (I. L. R. 1 Lahore 69), referred to **Rulla Ram v Sher Singh (5 Indian Cases 842)**, followed **MUSAMMAT AMIR BEGUM v MUST HUSSAIN BIBI** I. L. R. 2 Lah. 5

s. 35—*Registration of deed of gift—Death of donor—Execution admitted by donee—Registration, if proper* The donee under a deed of gift is an "assign" of the executant within the meaning of s. 35 of the Registration Act and may when the donor is dead admit the execution of the deed before the Registering Officer. **AK ROY CHANDRA MAJHI v MANMATHA NATH CHATTERJEE (1916)** 20 C. W. N. 1345

ss. 38, 73, 77—*Registration—Refusal of Sub Registrar to register—Appeal to Registrar—Refusal to register based on inability to procure attendance of executants—Suit to compel registration* A sale deed was presented for registration but the executants did not appear before the Sub Registrar, who, after four months from the date of execution, reported the fact to the Registrar and was directed by the latter not to register it. Registration was accordingly refused. An appeal against that order to the Registrar was dismissed. It appeared that the summonses by the Sub Registrar to the executants had been returned unserved. The vendees brought a suit for registration of the document. *Held*, that the suit was maintainable, the refusal by the Sub Registrar to register not being based upon denial of execution. **Luci Lal Narain Khattri v Sat Cowrie Pyne, I. L. R. 16 Cal. 189**, distinguished **KHADIM HUSAIN v BHANAT SINGH (1912)**

I. L. R. 34 All 315

s. 41 (2)—*Enquiry before a Sub Registrar regarding a disputed will—Deposition of witnesses, admissibility of, under s. 33, of the Evidence Act* The depositions of witnesses (since deceased) examined at an enquiry held by a Sub Registrar under s. 41 (2) of the Indian Registration Act regarding the genuineness of a will, at which the opposing parties had opportunity of cross-examination, are admissible in evidence under s. 33 of the Evidence Act in a subsequent suit raising the same question between the same parties. It is not necessary that the "first proceeding" referred in s. 33 of the Evidence Act should be a judicial proceeding. **LAKSHMANNA v VARDHANANNA (1918)** I. L. R. 42 Mad. 103

— s. 47—

See AGRA TENANCY ACT (II OF 1901), s. 97. I. L. R. 37 All. 59

Time from which registered document operates—Date of execution and not

REGISTRATION ACT (XVI OF 1908)—*contd*s. 77—*contd.*

See **LIMITATION.** I. L. R. 47 Cal. 300
I. L. R. 33 Mad. 291

Period of 30 days provided by s. 77, Registration Act (XVI of 1908), if can be extended on ground of prosecution of proceedings in good faith in Court not having jurisdiction. A suit for the registration of a mortgage bond for Rs. 1,000 was filed in the Court of the Munsiff, being valued at Rs. 500, and on the Court holding it to be undervalued the plaint was amended and the suit was valued at Rs. 1,000, whereupon the plaint was returned as being beyond the pecuniary limit of the jurisdiction of the Court. It was then filed in the Court of the Subordinate Judge and was dismissed as barred by limitation; *Held*, that under s. 29 (1) (b) of the Limitation Act nothing in that enactment affects or alters any period of limitation specially prescribed for any suit, appeal or application by any special or local law, and inasmuch as s. 71 to 77 of the Registration Act lay down a complete procedure where registration is refused and as s. 77 limits the period within which a suit is to be brought to 30 days, the said period cannot be extended under s. 14 of the Limitation Act on the ground of prosecution of proceedings in good faith in a Court not having jurisdiction in the matter. **KHAGENDRA NARAYAN ROY BARMAN v. BARMANI BARMANI** 24 C. W. N. 29

Held, that s. 14 of the Limitation Act cannot be applied to compute the period of limitation prescribed by s. 77 of the Registration Act for a suit to enforce the Registration of a document. **KALIMULLAH MOLLAH v. SAKIBUDDIN MOLLAH** 24 C. W. N. 4

Whether Court can enter into the question of the validity of the document—Punjab Alienation of Land Act, XIII of 1900, s. 17—New charge on old security—whether a new mortgage. *Held*, that in a suit for the registration of a document under s. 77 of the Registration Act, the District Judge is not entitled to enquire into anything more than whether the ostensible executant signed and delivered to the other party the document which he produced for registration and he cannot enter into any question regarding its validity. **NAWAB v. ARJAN DAS**, (13 P. R. 1904), followed. *Held*, further, that where a mortgage has been effected before the 8th June 1901, and a further advance is made after that date on the old security, the further advance is not a new mortgage, provided that no changes are made in the terms of the original transaction. **SHADI LAL v. PUNJAB ALIENATION OF LAND ACT**, p. 41, and *Financial Commissioner's Standing Order No. 7, dated 2nd September 1911*, referred to. **PENAL DAS v. MUSTANMAT JANNAT**

I. L. R. 2 Lah. 202

s. 77-72, 76—Suit for registration of document, registration whereof refused on the ground of non payment of penalty in due time. Refusal by a Sub-Registrar to register a document on the ground of failure to pay penalty in due time is an order refusing registration under s. 72 of the Registration Act and is appealable to the Registrar and on the dismissal of such appeal a suit lies under s. 77 for the registration of the document. **UMESH CHANDRA GHOSH v. NISTARANI BASU**

24 C. W. N. 304

REGISTRATION ACT (XVI OF 1908)—*contd*

s. 82, 83—

Permission of registration officer a necessary preliminary to a prosecution. *Held*, that the permission referred to in s. 83 of the Indian Registration Act, 1908, is a necessary condition precedent to the prosecution of any person for an offence mentioned in s. 82 of the Act. **KING EMPEROR v. JIWAN, 27 Indian Cases, 203**, referred to. **EMPEROR v. ILICHAIR KHAN (1916)** I. L. R. 38 All. 354

Offence under s. 82—Prosecution by a private person—Permission under s. 83, whether necessary. Permission under s. 83 of the Registration Act (XVI of 1908) is not a preliminary requisite for the institution by a private person of proceedings for an offence under s. 82 of the Act. **GOPNATH v. KULDIP SINGH, I L R 11 Cal. 566** and **QUEEN EMPRESS v. FULHINGS, I L R 11 Mad. 500**, referred to. **NAIDATHI (1917)** I. L. R. 40 Mad. 860

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I. L. R. 41 Bom. 170

I. L. R. 45 Bom. 898

See **RAJINAMA AND KABULIAT**

I. L. R. 42 Bom. 359

cl. (1) (d)—Consolidation—Sale of ejazdem genera—Lease of lands by Government—Document executed by leasee but not registered, whether admissible in evidence—Prohibition in lease against erection of buildings—Power of Government to impose conditions—Crown Grants Act (XV of 1893), ss. 2 and 3—Power whether affected by Malabar Compensation for Tenants' Improvements Act (I of 1900), s. 19. A lease of lands made by Government was evidenced by an unregistered document executed by the lessee; it contained an undertaking by the lessee not to erect buildings on the land, the latter, however, built on the lands contrary to the agreement. In a suit by the Secretary of State to eject the lessee. *Held*, that the document did not require registration as it fell under s. 90, cl. (1) (d) of the Registration Act, and was admissible in evidence. The expression "other document, etc." in s. 90, Registration Act, should not be construed *ejusdem generis* with "sanads and lease title deeds" in the previous part of the section; but, even if so construed, a lease is of a different character as a sanad; and the words "grants or assignments of interest" in the same section are comprehensive enough to include a lease. Under ss. 2 and 3 of the Crown Grants Act the Government has power to impose restrictions in a lease made by it—a power which is not affected by the provisions of the Malabar Compensation for Tenants' Improvements Act. **MUSKULU v. THE DEPTD AREA OF FOREST (1914)**, I. L. R. 35 All. 176, distinguished. **MOHAT KUTTI v. THE SECRETARY OF STATE (1920)**

I. L. R. 43 Mad. 65.

REGULATIONS—*contd*1801—I—*contd*

established by a decree of the Sudder Dewany Adalat of 1805 to be an independent talook having duly applied for the separation of the talook in accordance with the provisions of Reg I of 1801 within a year from the passing of the Act, had not been wanting in diligence in seeking the relief to which they were clearly entitled and that the delay of over 100 years that had occurred was due either to the opposition of the zemindar or the action of the Revenue authorities, and that the objections of the zemindar in their present suit to the separation being effected by the Revenue authorities were purely vexatious and designed to prolong litigation. "The actual produce" on which the assessment of revenue under s 8 of Reg I of 1801 was to be based was "the actual produce" at the time when proceedings were instituted for the separation of the talook. *HEMANTA KUMARI DEBI v JAGA DINDRA NATH ROY* (1918) . 23 C. W. N. 149

1802—XXV—

See IMPARTIBLE ESTATE.

I. L. R. 36 Mad 325

See UNSETTLED PALAYAN

I. L. R. 41 Mad. 749

See MADRAS REGULATION

Impartible estate, proof of—Sanad granted under Madras Reg XXV of 1802, in common form, if alters succession—Impartibility, proof of—Raj, estate whether—Question of fact—Concurrent findings—Appeal to Privy Council—Practice The zamindari of Nidadavole was the subject of a sanad in common form under Reg (Mad) XXV of 1802. Held, that it must be held to be partible and descendible according to the ordinary rules of inheritance of the Hindu Law unless the sanad could operate as a confirmation of a previously existing estate which from its nature or by virtue of some special family custom, was impartible and descendible to a single heir. Whether or not at or prior to the date of the sanad the grantee of the sanad had an estate in the nature of a Raj and so descendible to a single heir was a question of fact to be determined on the evidence. Where on such a question there were concurrent findings of the Courts in India, the practice of the Privy Council was not to disturb the finding unless they were satisfied that it was not justified by the evidence. The principles applicable in determining the questions of impartibility in cases of this description re-affirmed. *VENKATARAMAYYA APPA ROW v PARTHASARATHY APPA ROW* (1913) . 17 C. W. N. 1221

1803—XXXI—

s. 6—

See CONSTRUCTION OF DOCUMENT

I. L. R. 38 All. 230

1805—XII—

s. 33—

See CHATEWANI CHAKKAR LANDS.

I. L. R. 42 Calc. 710

1805—XIII—

s. 41—

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I. L. R. 42 Calc. 710

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1806—XVII—

See CONSTRUCTION OF DOCUMENT

I. L. R. 38 All. 570

See MORTGAGE . I. L. R. 38 All. 97

s. 8—*Mortgage by way of conditional sale—Suit for redemption—Plea of foreclosure under the Regulation—Procedure—Evidence* In the case of mortgage to which Reg XVII of 1806 applies, before it can be held that the right of redemption is barred, it must be proved that the requirements of the Regulation have been strictly complied with, that is to say that the mortgagee had served upon the mortgagor a notice, under the seal and official signature of the District Judge, warning him that the mortgage would be finally foreclosed in the event of his failure to redeem within the period of one year. *Badal Ram v Taj Ali & A L. J. 717*, followed. *RAM BIRAN RAY v HAN SEWAR DUTTA* (1918) . I. L. R. 40 All. 387

1810—XIX—

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I. L. R. 48 Calc. 13

1812—V—

s. 3—

See ILLEGAL CESS.

I. L. R. 45 Calc. 259

1814—XXIX—

See GHATWALI TENURES.

1 Pat. L. J. 197

See PARTITION I. L. R. 47 Calc. 354

1818—III—

See LEEEL I. L. R. 37 Calc 760

1819—II—

Resumption of lands within permanently settled mahal—Nature of onus of proof on person with whom such land settled in dispute as to whether land settled was within ambit of the zemindari Where certain lands within a permanently settled mahal were resumed under Reg II of 1819 and settled along with other Government khas mahal lands with a person other than the zemindar, the onus of proving that lands within the ambit of the zemindari were part of such resumed land as against the zemindar did not lie on the person who claimed it as such in the sense that on his failure to discharge it, the lands must be taken to remain and be vested in the zemindar. *SURJA KANTA ACHARYA v. SABAT CHANDRA HOY CHOWDHURY* (1914) . 18 C. W. N. 1281

1819—VIII—

See PATNI SALE I. L. R. 47 Calc. 782

ss. 8, 9, 13 (2)—

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I. L. R. 44 Calc. 715

s. 14—

See LIMITATION ACT, 1877, s. 8

16 C. W. N. 123

1822—VII—

See PER EMPTION. I. L. R. 33 All. 196

Settlement proceedings under Reg 111 of 1822, read with Reg IX of 1825

REGULATIONS—*contd.*1822—VII—*contd.*

Under Reg. VII of 1822, read with Reg. IX of 1835
*—Rajput land held by Settlement Officer to belong to defendant and not to plaintiff's holding—Decision of "award"—Plaintiff's suit to recover—Limitation—Limitation Act (XV of 1877), Sec. II, Arts. 11, 45—Tenants, if they sue to recover from person with whom land settled by landlord and by whom he has been dispossessed. Where a Collector in settling land under Reg. VII of 1822 decided that a certain area of land did not form part of the plaintiff's holding as alleged by them, but was part of the defendant's holding. Held that the decision of the Collector was not an award within the meaning of Art. 45 of Sec. II of the Limitation Act of 1877. Held, further, that an order by which land belonging to the plaintiff was given by the Collector to others without any warrant of law need not be set aside by the plaintiff and Art. 14 of Sec. II of the Limitation Act does not apply to a suit by the plaintiff to recover the land. It was not intended by the provision of Reg. VII of 1822 that the Collector should decide disputes as to title between rajputs in which the zamindars or sardar mahajans had no amendment which could in no way affect the interest and so Art. 14 of the Regulation does not apply to a case in which rival tenants claim, not only a tenancy of the same nature, but the same land under the same nature of tenancy. The decision in *Enod Lal Palwani v. Kala Prasad* (I L. R. 20 Cal. 54), was never intended to be applied to a tenant suing to recover his own holding. *Rajani Nait Mukherji v. Ram Dulal Das* (1911)*

17 C. W. N. 55

— 3. 3—

*Char land—Prevent seller's right to re-settlement—Revenue authorities who may settle with stranger—Strict compliance with the law necessary. Where there was no report by the Revenue authorities that the settlement of char land with the proprietor of a permanently-settled estate contiguous to it, who was the last holder of the char, would endanger the public tranquility or otherwise be seriously detrimental. Held, that the settlement of the char with a third party was not in compliance with a 3, Reg. VII of 1822, and must be set aside. Strict compliance with the provisions of the Regulation was necessary to justify the deprivation of the permanent holder's right to settlement of the char with him. *Rajni Nath Barua v. Kanakchandra Sinha* (1916)*

23 C. W. N. 221

Char mahal reserved to a permanently-settled estate, temporary settlement under Regulation, if valid—Reg. II of 1832—Reg. XI of 1835—Art. IX of 1847—Art. XXXI of 1853—Reg. I of 1858—Portioning of char on ground of Sudder Mahajans' misconduct attacked as ultra vires—Decision of Revenue authorities if reviewable by Civil Courts—Civil Courts jurisdiction. The provisions of a 3 of Reg. VII of 1822 are applicable to char lands which have been reserved to an estate in which the owner has a permanent proprietary interest. The applicability of the provisions of the Regulation is not restricted to the matters referred to in the second paragraph of a 3 of Art. XXXI of 1853. Where upon a report of the Revenue authorities bearing on the conduct of the Sudder Mahajans with whom, on behalf of the proprietors of a permanently-

REGULATIONS—*contd.*— 3. 3—*contd.*

settled estate, a char mahal had been settled, the Local Government in exercise of powers conferred by a 3 of Reg. VII of 1822 directed that the mahal be held *khaz* for a term of 12 years and the order of the Local Government was questioned as ultra vires on the ground that the charges made against the Sudder Mahajans were without justification. Held, that if there were materials for the Revenue authorities to go upon, it was not open to the Civil Court to see whether they were sufficient to justify them in reporting to the Government under the *proviso* to the *section*, the *proviso* having conferred exclusive jurisdiction in the matter on the Revenue authorities. What the Civil Court has to be satisfied with is that the requirements of the law had been complied with and that the Revenue authorities had materials upon which it made the recommendation to the Government. There is nothing to show that steps cannot be taken under a 3 of the Regulation unless the report of the Revenue authorities is made in the course of proceedings under Reg. VII of 1822, and the present order was not bad because it was made in the course of settlement proceeding not under Chap. X of the Bengal Tenancy Act. *LADRA NATHA AICH v. SECRETARY OF STATE FOR INDIA* (1919) 23 C. W. N. 265

— 27. 9— *First, enhancement of—Settlement officer, powers of—Jumlandi. Where a settlement was carried out under Reg. VII of 1822. Held, that the Settlement Regulation did not authorise the settlement of sale lands. All that the Settlement Officer was entitled to do was to record the existing rent. *ISHAR CHANDRA SARKAR v. TRIVELAKYA NATH SINHA* (1913)*

17 C. W. N. 963

— 1. 10—

See REGULATION AND SETTLEMENT SALLS ACT
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— 1823—XI—

See BENGAL ALLIANCE AND DIVISION
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See FISHERY 1 L. R. 42 Cal. 489

*Whether the section applies to the bed of a private river. 8 of Reg. XI of 1823 is not limited to its application to a river the bed of which is the property of the Crown. *PURI DASS v. NAYAN PANDIT*. 1 Pat. L. J. 326*

Immodar, if a navigable river—Non-navigable river flowing through or by the side of permanently-settled estates, charges forming in, if terminable and assessable with revenue—If permanent owner's right to the middle of the stream—If exclusive right of fishery, no evidence of title to the bed of the river and. The test in this country as to whether a river is navigable is whether it allows of the passage of boats at all times of the year. The river Immodar was not a navigable river at the date of the Permanent Settlement. At the date of the Permanent Settlement the bed of the river Immodar in so far as it flowed through the estates of zamindars of Bardwan formed a portion of the estate permanently settled with the predecessor of the remainder of Lordman. Atough as exclusive right of fishery does not of itself pass the right to the bed in the bed of the river, the terms of the grant in this case being unknown or uncertain, the fact that the grantor had a several right of

REGULATIONS—contd**1875—XI—contd**

fishery in the river was held to support his claim to the soil in its bed. Churs forming in non navigable rivers flowing through permanently settled estates and forming parts thereof are not resumable under Reg XI of 1823. Before there can be a further assessment of Government revenue there must be a "gain" from the public domain. The right to the soil of a river flowing within the estates of different proprietors belongs to the riparian owners *ad medium filum aquæ*. Where property is bounded by a road or a river, the boundary even if given as the road or the river is the middle of the road or river as the case may be. Therefore, a permanently settled estate on the bank of a non navigable river included half the bed of the river, and churs forming on this portion are not assessable with revenue under Reg XI of 1823, the assessment of the Government revenue on the riparian mouzas having been imposed not only on the mouzas but on the adjoining half of the river bed also. **SECRETARY OF STATE FOR INDIA v. BEJOY CHAND MAHATAP (1918)**

22 C. W. N. 872

1827—II—

s. 21—Caste question—Civil Court Jurisdiction—Suit to be declared Ayya of Hiremath and to restrain defendant from so styling himself. The plaintiff sued to obtain a declaration that he was entitled to the fees and privileges appertaining to the Hiremath and Kamalapur by reason of his title to be called the Ayya of that Hiremath, and to obtain a perpetual injunction to restrain the defendant from using the name of "Ayya of Hiremath." The plaintiff's complaint was that the defendant had assumed a name to which the plaintiff had the exclusive right, and that that assumption would enable, as it had enabled, the defendant to attract to himself a large number of the plaintiff's followers, and, thereby appropriate to himself fees, which would otherwise have been paid to the plaintiff. *Held*, that it was a claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy certain privileges and honors at the hands of the members of the caste in virtue of that office. It was a caste question not cognizable by a Civil Court. *Held*, also, that the fact that there had been no allegation of any specific damage by reason of the assumption by the defendant of the name of Ayya of Hiremath, and also the admission that after all the result of the assumption of that name would be merely to enable some of the followers of the plaintiff to go over to the defendant showed that what the parties had been fighting for was merely a question of dignity under the cover of a religious office. If the Court were to interfere in such cases, it would be merely assisting one party at the expense of the other and compelling the caste or the sect to follow one spiritual leader in preference to another. **GADGONIA v. BANAYA (1910)**

I. L. R. 31 Bom. 455

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s. 9—Duty of Settlement Officer under the Regulation—Entry as to fair rent payable by tenant, if has the effect of enhancing rent. A Settlement Officer under Reg VII of 1882 does not settle rent but records rates of rent existing in the village and the effect of an entry by the Settlement Officer as to the fair rent payable by the cultivator has not the effect of enhancement of his rent so as to entitle the landlord to claim rent at that rate. **JAGADINDRA NATH RAY v. MONENDRA NATH MOZUMDAR (1914)**

23 C. W. N. 587

1886—V—

ss. 85, 141—Municipal Board—Powers of Board in respect of erection of buildings—Suit against Municipal Board—Jurisdiction. One Kufayatullah served the Municipal Board of Ajmere with notice of his intention to rebuild a certain wall. He received no reply to his notice within a month, and thereafter commenced to build. The Municipal Board then required him to stop the building and submit a fresh application. The applicant stopped the building but did not present a fresh application, and some months later sued the Board for damages on account of the stoppage of the building. The Board failed to prove that the notice first given by Kufayatullah was not in accordance with law. *Held*, that in the circumstances the original notice must be considered as a good notice under s. 85 of the Ajmere Regulation, I of 1877, and that s. 140 of the Regulation, if it applied at all, did not oust the jurisdiction of the Civil Court to try the result for damages. **MUNICIPAL BOARD OF AJMERE v. KUFAYAT ULLAH (1915)**

I. L. R. 37 All. 220

1910—XIV—**See GHATWALI TEXTURES**

1 Pat. L. J. 197

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Partition—Undivided brothers—Instruments whereby co-owners divide property in severally—Release—Stamp Instruments whereby co-owners of any property divide or agree to divide it in severally are instruments of partition. One of three undivided brothers agreed to take from the eldest brother, the manager of the family as his share in the family property, movable and immovable a certain cash and bonds for debts due to the family, and passed to the eldest brother a document in the form of a release. Subsequently one of the two brothers passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining family property by the latter handing over to the former securities for money. A question having arisen as to whether for the purpose of stamp duty the said two documents were to be treated as releases or instruments of partition. *Held*, that the documents were instruments of partition. *In re GOVIND PANDURANG KAMAT* (1910) I L R 35 Bom 75

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6 Pat L J 658

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6 Pat L J 130

Claim for two reliefs—Right to one proved and to the other not proved—Right of plaintiff to a decree for the relief proved Where the plaintiff claimed a decree for possession of a tank from which they had been dispossessed and a declaration that they had a permanent and heritable right in the tank and it was found that they were entitled to possession but were not entitled to a permanent and heritable right therein. *Held* that they were entitled to a decree for possession.

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sion as it was not a case of a plaintiff claiming one relief and being given relief of a wholly different kind. It was a case of a plaintiff claiming two reliefs—one of which he was entitled to and the other he had failed to prove. *I* myself entitled to DEHU GHUNYA v SRIMATI HARADHINA DEHI

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RELIGIOUS CEREMONY

Right to perform religious ceremonies if may be enforced—Agreement to share profits of religious services and if lies to enforce Parties who require religious ceremonies to be performed for their benefit are at liberty to choose the priest by whom they shall be performed and no declaration can be given that any person is exclusively entitled to officiate at ceremonies at a particular place Where the plaintiffs claimed under an agreement executed by the ancestors of the plaintiffs and defendants that whoever amongst them might perform ceremonies on a particular occasion on the banks of the river Jhunpun at Gaya he should bring whatever he might earn thereby into a common fund to be enjoyed by all the members of the family. *Held* that such agreement cannot be obligatory on the successors of the parties for all time in spite of the wishes of the members who might desire to terminate it and a suit does not lie to enforce the claim. *Dano Nath v Pratap Chandra*, I L R 27 Cal 30 & C W N 79, and *Bheema v Kotha Kola*, 17 Mad L J 493 distinguished. *DWARAKA MISHRA v RAMPRATAP MISHRA* (1911)

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requirements for completion of a valid gift—

See HINDU LAW (RELIGIOUS ENDOWMENT) I L R 43 All 503

Religious Endowments Act (XX of 1863) ss 7 & 8 and 10—Suit brought by surviving member of a Committee, whether main maintainable A suit brought by a surviving member or members of a Committee appointed under s 7 of the Religious Endowments Act (XX of 1863) is maintainable. *Santholva v Manjanna Shetty*, I L R 14 Mad 1, distinguished. *RAGHU NANDAN RAMANUJA DAS v THEBUTH BRUSAN MURTHY* (1911) I L R 39 Cal 304

Failure of the line of trustees—Right of heirs of founders of the institution to create a new line of trustees. *Held* by the Full Bench (SRIVATSA ATYANGAP J contra) that it is competent to an heir of the founder of

RELIGIOUS ENDOWMENT—contd

a shrine, in whom the trusteeship has vested owing to the failure of the line of the original trustees, to create a new line of trustees *Per* SAINIVA ARYANAN, J. In the absence of any such power in the deed of trust, the Court alone has the power to appoint a trustee, such a power of nomination is equivalent to an alienation of the office of trustee which is illegal *GAURANGA SAHU v SUDEVI NATA* (1917) . . . I L R. 40 Mad 612

Mutt—Head of Mutt—Trustee of Temples—Appointment of successor—Compromise to avoid prosecution—Invalidity—Code of Civil Procedure (XIV of 1882) s 539 By the usage of a mutt the pandara sannidhi, or head had power to appoint his successor and was trustee of the endowments of certain dependent temples. In 1894 the pandara sannidhi appointed the appellant as chinnu pattam or junior head with a right to succeed as head. This appointment was not made *dona fide* in the interests of the mutt, but under a compromise whereby he had avoided a threatened prosecution for forgery of a will purporting to be that of his predecessor and appointing him as successor. The appellant having succeeded as pandara sannidhi, suits were instituted in 1905 to remove him from being trustee of the mutt properties and of the temple properties. *Held*, that the appellant's appointment as head of the mutt was invalid and that consequently he never became trustee of the temples, but that on the finding which was not challenged on appeal, that there was no evidence that the head of the mutt was a trustee of the mutt properties, the suit to remove him from being trustee of the mutt could not be maintained under s 539 of the Code of Civil Procedure, 1882. *Rama lingam Pillai v Vythilingam Pillai* (1933) L R 20 I A 150, I L R 16 Mad 490, (P C), followed and applied. *NATARAJA THAMIRAN v KAILASAM PILLAI* (1921) 1 L R 44 Mad. 283

Removal of Mahant by unauthorised persons—Suit for restoration—Whether irregularities in removal entitle plaintiff to succeed When the Mahant of an endowment had been removed from office on account of unfitness. *Held*, he was not entitled to succeed in a suit for a declaration that the defendant had no right to remove him from office and for possession merely on the ground that the persons who removed him from office were incompetent to do so unless he could show that he was not unfit to continue in the office. *NIAMAT ALI v YAD ALI SHAH*

6 Pat L J 408

Mutt—Relation of heads and managers of religious institutions to their property—Alienation by head of mutt—'Trustee' Indian Limitation Act (IX of 1908) Sch I, Arts 131 and 134 The endowments of a Hindu mutt are not "conveyed in trust" nor is the head of the mutt a "trustee" with regard to them, save as to any specific property proved to be vested in the head for specific and definite object. Consequently, Art 134 of Sch I of the Indian Limitation Act, 1909, which contains the expressions above quoted, does not apply where the head of a mutt has granted a permanent lease over a part of the mutt property not proved to be subject to a specific trust. The same rule applies to the endowments of Mohammedan religious institutions, and to alienations made by the Sajjadanaashin or Mutawali. *Ram Parkash Das v Anant Das*,

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(1916) I L R 43 Cal 707 (P C) L R 43 I A 73, explained. *Behari Lal v Muhammad Aluttafi*, (1893) I L R 20 All. 482 (F B), *Dattagiri v Dattatraya*, (1903) I L R 27 Bom 363, *Nilmoney Singh v Jagabandhu Roy*, (1896) I L R 23 Cal 536, disapproved. Except for unavoidable necessity, the head of a mutt cannot create any interest in the mutt property to encumber beyond his life. A lessee, however, has not adverse possession under Art 144 of the schedule above-named during the life of the head who granted the lease. If the lessee's possession is consented to by the succeeding head, that consent can be referable only to a new tenancy created by him, and there is no adverse possession until his death. [Judgment of the High Court reversed.] *VIDYA VARUTHI v BALUSAMI AYYAR* (1921)

I L R 44 Mad 831

Shabats rights, whether trustees have power to convey life estate in—Adverse possession, acquisition of Shabats rights by—Limitation Act (IX of 1908), s 10, Sch I, Arts 124, 134 and 144 The right to administer the trust property of a public religious endowment within the limits imposed by the trust and, for that purpose, the right to possession of the property, as against those previously administering the trust, or others claiming through them, can be acquired by adverse possession, and in a trust of this nature it is only where a claim is set up adverse to the rights of the deity to whose worship the property is dedicated, that s 10 of the Limitation Act, 1908, could have any application so as to deprive the defendant of the rights conferred by the remaining portions of the Act. The trustees of such an endowment have no power to convey even a life estate in the shabats rights attending the worship of an idol. Where the trustees purport to make such a conveyance the grantee is in adverse possession of the estate from the time when he assumes the duties of the office and takes over possession of the property. *NATHE PUJARI v RADHA BRYDE NAIR*

3 Pat L J. 327

Waqf—Constitution of The dedication of property in trust to secure the permanent performance of certain religious ceremonies is not void for vagueness nor does the fact that the settlor retains the residue of the income for herself vitiate the trust. *SAYID ISMAIL ALI KHAN v MUHAMMAD HAMIDI BEGUM*

6 Pat L J. 218

*Code of Civil Procedure, 1882, s 539—Sanction to sue under section—Death of original defendant—Jurisdiction to order scheme. A mutt was instituted to remove a Raja from the management of a Hindu shrine on the ground of mismanagement. Permission to institute a suit under s 539 of the Code of Civil Procedure 1882 had been granted. Pending the hearing the Raja died, his widow was substituted for him and later a posthumous son was added as a defendant. The trial Judge found that the shrine was a public, religious and charitable trust and held that the defendant family should be removed from being trustees and a scheme settled. Upon appeal the son's hereditary right to manage the shrine on attaining majority was conditionally declared, and if a case was remitted for the settlement of a scheme. *Held* that there was jurisdiction to order the settlement of a scheme although the application for permission*

RELIGIOUS ENDOWMENT—contd

contemplated only the appointment of new trustees, and although the original defendant had died after the suit was instituted. Judgment of the Court of Judicial Commissioner affirmed. **RAJA ANAND ILAI v RAMDAS DADURAM** (1920)

I L R 48 Cal 493

Suit—Bona purchase of Debtor property—Invalidity—Removal of sheshai. A purchase of debtor property by its sheshai benami and without disclosing that he is the real purchaser is invalid even when the sale is in execution proceedings and the sheshai has paid the full market value. It is sufficient ground for removing a sheshai from his office that in the exercise of his duties he has placed himself in a position in which the Court thinks that he can no longer faithfully discharge the obligations of the office. Judgment of the High Court affirmed. **PEARY MOHAN MUKERJI v MANOHAR MUKERJI**, (1921)

I L R 48 Cal 1019

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 92 and 14

I L R 42 Mad 608

Change of village from one district to another, for revenue purposes—Religious institution in the village—Power of original committee of the original district to control the institution—No power for the committee of the new district to appoint trustees. The Religious Endowments Act (XX of 1863) contemplates the creation of divisions or district committees once for all soon after the passing of the Act to take the place of the Board of Revenue and the local agents referred to in Reg VII of 1817. It is only the committee that is originally appointed in that behalf or its successor that can exercise jurisdiction over a particular religious institution and any order of Government transferring a certain village in which a particular religious institution is situated from one district to another for purposes of revenue administration does not deprive the original temple committee of its powers over the institution (such as appointing trustees for the same) or enable the committee of the new district to which the village is transferred to exercise any power over the institution. **RASAPPA v RUMAPPA** (1915)

I L R 39 Mad 949

S. 3—Temple falling under—Power of Temple Committee to appoint additional trustees in good faith and in the interest of the temple—Onus of proving bad faith on person challenging the appointment. For the better management of a certain Hindu temple which had no settled scheme of management and which was governed by a 3 of the Religious Endowments Act (XX of 1863) a Temple Committee appointed two trustees in addition to the three then existing. *Held*, (a) that the committee had power to appoint the additional trustees in virtue of their general power of superintendence over temples committed to their care as successors to the Board of Revenue, who has such power under s 2 of Reg VII of 1817, (b) that this power must be exercised reasonably and in good faith, in the interests of the temple (c) that the onus of proving that it did not exercise this power "Reasonably and in good faith"

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—contd

lay not on the committee but on the person challenging the appointment of additional trustees, e.g., on the already existing trustee as in this case, who sued to set aside the additional appointments, and (d) that the power of appointing new trustees was not confined to filling up vacancies alone, but extended to creating additional trustees. **Sheik David Saib v Hussein Saib** I L R 17 Mad 212, referred to **Venkatasubba Pillai v The Taluk Board Sandapet** I L R 34 Mad 375 **Alayathakali Ammal v The Taluk Board of Mayararam**, I L R 34 Mad 333, s c 20 Mad L J 355, and **Ganapathi Ayyar v Sri Vedavyasa Alangudi Jattar**, I L R 29 Mad 534, distinguished. **THIRUVENGADATHAYANGAR v POENAVATTENGAR** (1914)

I L R. 38 Mad 1176

*Suit for scheme for a temple falling under s 3—Civil Procedure Code (Act V of 1908) s 92 jurisdiction of Courts to frame a scheme under—Temple Committee, powers of ever since 1812 when the Board of Revenue handed over the management of the temple of Sriangam to certain trustees, one trustee was chosen hereditarily every year from a certain family in the locality called the "Sthalathars" and two other trustees were appointed till 1863 by the Board and later on by the Temple Committee formed under the Religious Endowments Act, (XX of 1863). In several litigations connected with the temple the temple was treated as one falling under s 3 of Act XX of 1863. *Held*, that the temple was one falling under s 3 and not under s 4 and was thus subject to the control of the Temple Committee. Though the Courts cannot interfere with the statutory powers conferred upon the members of the Temple Committee so as to deprive them of their statutory functions, yet the Court has jurisdiction to frame a scheme under s 92, Civil Procedure Code (Act V of 1908) in respect even of a temple subject to the control of the Temple Committee, and introduce changes in its administration which the committee is not legally competent to introduce and which are desirable and necessary to meet the altered circumstances of the time. Considering that the actual management of the temple must vest in the trustees subject to the statutory control of the committee, their Lordships held it undesirable in framing a scheme to introduce, as the lower Court did, a new body of people called a Board of Control over the trustees and hence abolished the same. In the result their Lordships framed a scheme for the temple providing among other things for (a) the appointment of two additional trustees for the better management of the temple, (b) the tenure of office of the trustees appointed being only for five years (c) the preparation of annual budget and audit of temple accounts and (d) the appointment of a cashier under the trustees. **PER CHIAM**—The powers of the committee or any other statutory body do not become suspended by the occurrence of a vacancy since its members Powers of a Temple Committee considered. **Santhala v Manjanna Shetty**, I L R 34 Mad 1, dissented from English and Indian cases reviewed **SITHARAMA CHETTY v SRI S. SURESHMANIA IYER** (1916).*

I L R 39 Mad. 700

ss 3 and 4—

See HINDU LAW (ENDOWMENT)

I L R. 43 Mad 685

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—contd

s 5—District Court if may appoint a trustee pending decision of Civil Court, in all cases District Courts have no power, upon a vacancy occurring in the office of the trustee of a religious endowment, to appoint a trustee under s 5 of the Religious Endowments Act unless the endowed property has been actually transferred to the former trustee under s 4 of the Act by the Board of Revenue or Government. *Itanai Panikkar v Itanai Nambudripad*, 1 L. R. 3 Mad 491 Jan 11 v *Rim Vaidh Murali*, 1 L. R. 3 Cal. 37, relied on *Dharm Singh v Anand Singh*, 1 L. R. 7 Cal. 781 *Sheoranis Kuruwari v Ram Parash*, 1 L. R. 13 All 22* *Muhammad Samud Hay v Imamuddin*, 1 L. R. 19 All 101, distinguished. s 5 of the Act contemplates the temporary appointment of a manager by the Court pending the decision by a Civil Court of the title of any other applicant to the office. *Monuvv Sheonandan Gir v Dhupan Upadhyaya* (1910) 14 C. W. N. 1104

Order appointing the Collector to take charge of a Math—Revision—Jurisdiction. The District Judge has jurisdiction to appoint a temporary manager of trust property under s 5 of Act No. XX of 1863 only in the case where a vacancy has occurred in the office of the trustee to whom such property shall have been transferred under s 4 of the Act. An order purporting to be passed under s 5 of the Act without any inquiry as to whether foundation for the District Judge's jurisdiction exists is open to the revisional, if not the appellate jurisdiction of the High Court. *Itanai Panikkar v Itanai Nambudripad*, 1 L. R. 3 Mad 491, *Gopala Ayyar v Aruna Chulam Chetty*, 1 L. R. 26 Mad 87, and *Mohun Sheonandan Gir v Dhupan Upadhyaya*, 14 C. W. N. 1104, referred to. *Rasdeo Gir v Pitram Gir* 41 L. R. 43 All 50

Order appointing the Collector to take charge of a Math—Appeal. No appeal lies against an order made under s 5 of the Religious Endowments Act, 1863. *Misakshi Vaidya v Subramanya Sastri*, 1 L. R. 11 Mad 26, referred to. *Pitram Gir v Mahant Rasdeo Gir* 41 L. R. 43 All 55

s 7—

See MAHOMMEDAN LAW—WAKF

1 L. R. 45 Cal. 13

Suit for removal of trustees—Parties. Two out of three of the members constituting a committee appointed under s 7 of the Religious Endowments Act, 1863, are not competent to maintain a suit for the removal of the person or persons acting as the trustees of the endowment. The Committee under this section is a Corporation having a legal entity. *Syed Muhammad Hasan v Kazi Nazim Muhammad* 1 Pat. L. J. 437

ss 7, 8, 10—

See RELIGIOUS ENDOWMENT

1 L. R. 39 Cal. 304

ss 7 and 10—Constitution of Committee under—Validity of Acts done by incomplete committee. One of a committee of three members appointed under s 7 of Act XX of 1863 (Religious Endowments Act) died and the vacancy thus

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—contd

ss 7 and 10—contd.

caused was not filled up in accordance with s 10 of the Act. The remaining two members purported to perform the functions of the committee. Held, that the remaining two members cannot be said to be a committee at all and cannot perform any of the functions of the original committee. *Per ARNOLD WHITE, C. J.*—ss 7 and 10 of the Act are imperative or obligatory and not merely directory. The law governing corporate bodies with regard to the capacity of the members of the corporate bodies to act is not applicable to the case of the statutory body appointed under s 7 of the Religious Endowments Act. *The King v Bhranger*, 4 T. P. 810, and 100 Eng. Rep. 1315 distinguished. *Per ANDER RANIM, J.*—The intention of the Legislature is that a committee appointed under the Act shall not consist of less than the number originally appointed. *Ana to nara nana Iygar v Kuttalam Pillai* 1 L. R. 22 Mad 481, distinguished. *SANTHALVA v MAN JANTA SERTTY* (1910) 1 L. R. 34 Mad. 1. *BCT etc* s 3 1 L. R. 39 Mad 700

s 10—Temple Committee

Vacancy—District Judge—Court—Persons designated—Civil Procedure Code (Act V of 1908), s 115. An order made by a District Court under s 10 of the Religious Endowments Act is an order revisable by the High Court under s 115, Civil Procedure Code (Act V of 1908). *Meenakshi v Subramanya*, 1 L. R. 11 Mad 26 distinguished. *Gopala Ayyar v Arunachalam Chetty*, 1 L. R. 26 Mad 85, referred to. When a Temple Committee does not do its duty, and arrange for an election, the Court can make the appointment without reference to the committee or direct the remaining members of the committee to fill up a vacancy. The power of the committee in such a case being derived from the Court an appointment by election there after is bad. *Ramanuja Iyengar v Anandaraman Iyer*, 6 Mad. L. J. 1, dissented from. *VAJESUDRA AITTA v THE NEGAPATAN DEVASTHANAM COMMITTEE* (1913) 1 L. R. 33 Mad 594

Vacancy in Temple

Committee—Jurisdiction of District Judge—Civil Procedure Code (Act V of 1908) s 115—Power of revision by the High Court—Duty of remaining members of the Committee—Failure to perform duty—Election held after expiration of the statutory time. The High Court has jurisdiction under s 115 of the Civil Procedure Code 1908, to revise an order of the District Judge made under s 10 of the Religious Endowments Act, XX of 1863, on the occurrence of a vacancy in a Temple Committee declaring that an election by the remaining members of the Committee to fill up the vacancy was regularly held, and that the appointment of the person was valid. No appeal lay under the Civil Procedure Code from such an order. In making the order the District Court was acting in a judicial capacity as a Court of law and not merely in an administrative capacity. The matter in which the order of the District Court was made was a 'case' within the meaning of s 115 of the Civil Procedure Code, 1908. A 'case' includes an *ex parte* application such as that made in this matter. *Misakshi Nayudu v Subramanya Sastri*, 1 L. R. 11 Mad 26 1 L. R. 14 I. A. 160 distinguished. On the true construction of s 10 of Act XX of 1863 the power of the remaining mem-

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*contd*s 10—*contd*

bers of the Committee to fill up the vacancy must be exercised within three months from the date of the occurrence of the vacancy. The District Court had no jurisdiction after the expiration of the three months to direct the remaining members of the Committee to fill up the vacancy by election, or to make an order purporting to validate the appointment of the person elected. If the Committee do not perform their duty by holding an election within three months to fill up the vacancy, a subsequent election by the remaining members after the expiration of three months is invalid and this is so notwithstanding that such a construction would enable the remaining members of the Committee by their own default to practically disfranchise the electors and at the discretion of the Court possibly to procure the patronage for themselves. The only remedy for that is to alter the law if wrong, by legislation. The Board can only declare the law. BALAKRISHNA UDAYAN v VASUDEVA AYYAR (1917)

I L R 40 Mad 793

s 14—

See CIVIL PROCEDURE CODE, 1908—

s 92 I L R 42 Bom 742

ss 92 AND 14 I L R 42 Mad 668

See PARTIES I L R 40 Cal 323

*Procedure to be fol-**lowed by committee in the transaction of its business—**Suspension of a temple trustee by a Temple Committee**—Legality of procedure—Suit by the trustee for**damages for illegal suspension—Liability of individ-**ual members of the committee in damages. Notice**of suspension was given to a temple trustee**in accordance with the opinion of the majority**of the members of the local Temple Committee,**to each of whom one of the members sent a copy**of his report recommending suspension and in**spite of the objection taken by one member that**the matter should be disposed of at a meeting**Held, that a Temple Committee under the Religious**Endowments Act resembles a corporation and that**the ordinary way to transact its business is at a**meeting. Assuming that it can do some of its**business in circulation, it cannot remove or sus-**pend trustees in this manner. Rex v Taylor 3**Salk 231 91 E P 795 Rex v Sutton 10 Mad**74 88 E 639 Tirumalaraya Pillai v Sub-**bayer I L R 23 Mad 483 485 and Ponnambala**Pillai v Muthu Chettiar, 30 Mad L J 619**referred to. The procedure being ultra vires it is**no answer to the trustee's suit for damages for**illegal suspension that there were sufficient grounds**for suspension. In India individual members of a**Temple Committee who are parties to an illegal**suspension of this kind are liable in damages.**Vijaya Raghava v Secretary of State for India I**L R 7 Mad 466, and Ferguson v Kennedy 9 Ct**& F 251, followed. Indian and English decisions**considered. VENKATA NARAYANA PILLAI v**POYKUSWAMI NADAR (1917)*

I L R 41 Mad 357

ss 14 and 18 Sanction to two persons

*jointly—Whether suit by one competent. Where**sanction to suit is given to two persons under s 18**of the Religious Endowments Act, one of them can**not sue alone. Mahomed Akbar v Baniyan Khan**I L R 34 Cal 537, explained. Sanction granted**under s 18 of the Act is a condition precedent*RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*contd*ss 14 and 18—*co id*

to the exercise of the right of suit. Venkateswara, In re, I L R 10 Mad 93, referred to. It has to be construed strictly without enlarging its scope. Sayad Hussain Aliyan v Collector of Kaira, I L R 21 Bom 257, referred to. S 14 of the Act commented on. VENKATESHA MALIA v RAMAYA HEDAGE (1914)

I L R 38 Mad. 1192

Leave given to four

*persons under s 18 of the Act—Suit by them under**s 14—Death of one of the plaintiffs after suit, whether**it effects abatement. A suit instituted under s 14**of the Religious Endowments Act by four persons**with the leave of the Court under s 18 of the Act,**does not abate on the death of one of the plaintiffs,**Venkatesha Malia v Ramayya Hedage, I L R**38 Mad 1192, Maddala Bagavannarayana v**Madapalli Perumalla Charyulu, 23 Mad L J 231,**distinguished. Chabbi v Ram v Durga Prasad,**I L R 37 All 236, not approved. Parames-**waran Munjee v Narayanan Nambodri, I L R**40 Mad 119, referred to. ALAGAPPA v NUTHIAR**(1917)*

I L R 41 Mad 237

s 18—

See CIVIL PROCEDURE CODE 1882, s 622

I L R 23 Mad 412

See CIVIL PROCEDURE CODE (ACT V OF

1908), s 92 I L R 37 Mad 184

I L R 40 Mad 212

RELIGIOUS FOUNDATION

Endowed Property—

Limitation Act, XV of 1877, s 28, Sch II, Arts 124,

144—Temple trusteeship and properties bar of suit

*for former involves bar of suits for latter. The**dismissal of a suit to recover the office of trustee**for a temple whereby the right to the trusteeship**is lost, involves the loss of the right to recover a**portion of the endowment. GOVINDASAMI PILLAI**v DASHTINAMURTI POOSARI (1910)*

I L R 35 Mad. 82

RELIGIOUS INSTITUTIONS—

See CUSTOM (RELIGIOUS INSTITUTIONS).

I L R 1 Lah 511, 540

See MAHOMEDAN LAW—ENDOWMENT

I L R 36 Bom 308

transfer of—

See RELIGIOUS ENDOWMENTS ACT (XX

OF 1863) I L R 39 Mad 949

RELIGIOUS OFFICE

See HINDU LAW SUCCESSION

I L R 40 Mad 105

competency of women to hold—

See HINDU LAW—RELIGIOUS OFFICE

I L R 41 Mad 886

See MAHOMEDAN LAW—RELIGIOUS

Office I L R 41 Mad 1033

RELIGIOUS POEM

See OBSCENE PUBLICATION

I L R 39 Cal 377

RELIGIOUS PROCESSION

See HIGHWAY I L R 43 All 682

RELIGIOUS TRUST

S e PUBLIC RELIGIOUS TRUST

S e TRUST I L R 40 Calc 232

Deed of endowment—

S e sh ba i—Appoint ment of the n w sh ba i in case of death—Appoint ment how to be made—Rece ver pendents l i Trusts will not be allowed to fail for want of a trustee and consequently if the nom nee dies before qualifying or afterwards the Court will appoint a trustee In re Orde ² I CA D 271 I e Ambler s Trust 19 L T R S 219 Ganson v S mpson L R 5 L J 233 In re Smith wa e s Trusts L R 11 Eq 251 referred to Where a sh ba i is dead and there is no provision in the deed of endowment about the mode in which the office is to be filled up the Court will not read into the deed of endowment a proviso for appoint ment to the off e of sh ba i which is not to be found therein It becomes incumbent upon the representatives of the founders to make an appoint ment to the office of sh ba i and upon failure to do so the Court has power to appoint a new trustee and will exercise this power whenever there is a failure of a su ab l person to perform the trust either from original or supervenent disability to act S e Dasi Lalay v Protap Chandra Sarma H C L J referred to The appoint ment of a f t an l proper person to be a new trustee is not a matter of arbitrary discretion of the Court The appointment must be n a le subject to well known and defined rules In re Tempst L R I CA App 451 referred to Where a receiver appointed pend nte l e was directed by the subordinate Judge to continue to manage the properties on the scheme laid down in the deed of endowment pending an agreement between the parties to appoint a sh ba i H l d that the proper course to follow was e ther to d sm as the su i or if the parties so desired to appoint a sh ba i and place the properties in his hands This latter order could be properly made only after amendment of the prayer in the plaint PAR KRISHNA DEY v BIKIN BHARAT DEY (1916)

I L R 40 Calc 251

RELINQUISHMENT

S e FAMILY SETTLEMENT

I L R 38 All 335

S e HINDU LAW—WIDOW

I L R 47 Calc 466

S e HINDU LAW—WIDOW

L R 46 I A 259

S e LANDLORD AND TENANT

15 C W N 680

S e MAHOMEDAN LAW—DOWER

I L R 47 Calc 537

S e NORTH WESTERN PROVINCES RENT ACT (XII OF 1881) I L R 37 All 444

S e UNDER RAIYATI HOLDING

I L R 4^o Calc 751

by patnidar—

S e LANDLORD AND TENANT

I L R 41 Calc 683

in favour of sentient person—

S e HINDU LAW—WILL

I L R 37 Calc 128

of claim—

S e CIVIL PROCEDURE CODE 188^o s 43.

I L R 32 All 625

RELINQUISHMENT—contd

of portion of claim—

S e CAUSE OF ACTION

I L R 46 Calc 640

to save Litigation whether binding on Reversioners—

S e FAMILY SETTLEMENT

of service I L R 38 All 335

S e MASTER AND SERVANT

I L R 35 All 132

RELEVANCY OF EVIDENCE

S e EVIDENCE ACT 1872 s 32

I L R 44 Bom 19^o

REMAINDERMAN

S e LATOFFEL I L R 44 Calc 145

REMAND

S e AGRA TENANCY ACT (II OF 1901)

ss 18^o 183 I L R 38 All 181

s 193 I L R 40 All 652

s 20^o I L R 38 All 533

S e APPEAL I L R 37 Calc 426

15 C W N 830

S e (BENGAL) CESS ACT

2 Pat L J 553

S e CIVIL PROCEDURE CODE 1908

ss 105 108 109 O XLI s 23

I L R 33 All 391

s 105 O XLI s 23

I L R 43 All 377

s. 109 I L R 42 All 174 178

I L R 38 All 150

O XLI s 1 2 Pat L J 398

O XXI s 23 I L R 34 All 612

O XLI s 23

s 23 O XLIII s 1 (4)

I L R 35 All 427

s 25 15 C W N 575

s 33 I L R 37 Bom 289

O XLIII s 1 I L R 42 All 200

S e CRIMINAL PROCEDURE CODE ss 112

167 I L R 36 All 262

S e LETTERS PATENT

2 Pat L J 603

S e PENSIONS ACT (XXIII OF 1871)

s 6 I L R 39 Bom 352

S e SANCTION FOR PROSECUTION

I L R 44 Calc 816

S e SECOND APPEAL 2 Pat L J 568

appeal from order of on finding of fact—

S e CIVIL PROCEDURE CODE 1908 O

XLIII s 1 I L R 2 Lah 25

by Appellate Court—

S e COSTS I L R 39 Mad 476

Order of, whether appealable to Privy Court—

S e PRIVY COUNCIL APPEAL TO

I L R. 38 Mad. 509

REMAND—contd.

— plea of limitation taken on—

See ACCOUNT, SUIT FOR

I L R. 40 Cal. 108

1 ——— Parties, addition of—*Civil Procedure Code (Act XIV of 1882) s. 564—Order of remand by Appellate Court directing addition of party, whether legal* An order of remand under s. 564 of the Civil Procedure Code (Act XIV of 1882) by the Appellate Court, directing addition of parties, is an order upon a preliminary point, and, as such, is not illegal. *Habib Baksh v Baldeo Prasad*, I L R. 23 All. 167, followed. *JADAB GOBINDA SINGH v ANANT BANDHU SAHA* (1901) I. L. R. 37 Cal. 171

2 ——— Order for, improperly made—*Civil Procedure Code (Act V of 1908), ss. 99, 107 (1) (b), O XII, r. 23—Appellate Court, power of—Whether power wider than under former Code (Act XIV of 1882) ss. 562, 564—Statute composed of Sections and Rules—Canon of interpretation* An Appellate Court has no wider powers of remand under s. 107 of the Civil Procedure Code of 1908, read with O XII, r. 23, than it had under ss. 562 and 564 of the Civil Procedure Code of 1882. *Zohra Bibi v Zobeda Khatun*, 13 C. L. J. 365, dissented from. When an Act is divided into sections and rules, the proper canon of interpretation is that the sections lay down general principles and the rules provide the means by which they are to be applied, and they cannot be otherwise applied. An order of remand improperly made is an irregularity within the meaning of s. 99 of the Civil Procedure Code, 1908. *Mohesh Chandra Dass v Jamiruddin Mollah*, I L R. 28 Cal. 324, followed. *NABIN CHANDRA THIPATI v PRAKASHNA DE* (1913) I. L. R. 41 Cal. 108

3. ——— New case—Second appeal—*Finding of fact—High Court, power of—Silk—Railway Company, liability of—Railways Act (IX of 1890), s. 75—Practice.* A new case cannot be made on behalf of the plaintiff on remand. After there has been a decision of fact in the two Courts of original and first appellate jurisdiction, the High Court cannot entertain a second appeal upon any question as to the soundness of findings of fact by the lower Appellate Court. If there is evidence to be considered the decision of the second Court, however unsatisfactory it might be, when examined, must stand final. *Ramratan Subal v. Nanda*, I L R. 19 Cal. 219, referred to. The question whether silk in manufactured or unmanufactured state is to be treated as silk is a question of fact. *Brent v. Midland Railway Company*, 33 Exch. 187, *Hualasarias v. Kailash Chandra Saha*, 16 C. L. J. 259, *Lakshminar Hira Chand v. The Great Indian Peninsula Railway*, 4 Bom. H. C. 129, *Shamunadha Medali v. The South Indian Railway Company*, I L R. 6 Mad. 420, *Pundalik Uday Jadhav v. S. M. Railway Co.*, I L R. 33 Bom. 703, referred to. *EAST INDIAN RAILWAY COMPANY v CHANGAI KHAN* (1913) I. L. R. 42 Cal. 888

4. ——— On issue only raised on second appeal—*Cases decided by lower Courts on issues of fact—Civil Procedure Code, 1882, s. 584—Absence of ground of law to support second appeal—Costs—Suit to eject a paik in service of zamindar holding under kabuliat with Government—Onus of proving land as chakirdari chakras—Right to dismiss paik.* The plaintiff, a zamindar under a kabuliat with the Government made by his predecessor

REMAND—contd.

in title in 1901, sued to eject from a jaghir within his zamindari a paik in his service whom he had dismissed from his service with notice to quit. The Secretary of State for India, now sole respondent, was also made a defendant as the Government disputed the zamindar's right to dismiss the paik. The plaintiff's case was that there were two classes of paiks the Government paiks who performed police duties and who could be dismissed only by the Government and that class alone came within the terms of the kabuliat, and private paiks who performed services personal to the zamindar, and that the paik in suit belonged to the latter class and the zamindar was therefore entitled to dismiss him. Both the Subordinate Judge and the District Court held that the paik defendant did not come within the terms of the kabuliat, and found concurrently on the facts in favour of the plaintiff's contention but the District Judge gave no specific reasons for his decision. The High Court admitted a second appeal by the respondent on an issue not previously raised in the case, "whether the land in suit had been excluded from assessment at the settlement in 1792 as being appropriated for the maintenance of paiks performing police duties, and whilst agreeing with the lower Courts on the construction of the kabuliat, ignored the findings of fact, and remanded the appeal for the trial of the fresh issue, making the plaintiff who had succeeded, pay all the costs then incurred. Held, that the High Court in second appeal was by s. 584 of the Code of Civil Procedure, 1882, then in force, bound by the findings of fact of the District Judge who "had considered the evidence and saw no reason for differing from the findings of the Subordinate Judge." The High Court could therefore only allow the appeal on a ground of law, and on the only question of law that Court agreed with the Court below. Even if it were competent to the High Court to remit a case for rehearing on an issue not raised in the pleadings or even suggested in the Courts below, it ought only to be done in an exceptional case for good cause shown, and on payment by the party appealing of all costs. The respondent did not suggest he was taken by surprise or had discovered fresh evidence of which he was previously unaware. The omission to raise the issue early in the case appeared to be deliberate, the onus of proving it was on the respondent, and there was little, if any, evidence to support it. The appeal was consequently allowed. *RAM CHANDRA BHUNAI DZO v SECRETARY OF STATE FOR INDIA* (1916)

I. L. R. 43 Cal. 1104

5 ——— On a Preliminary point—*Powers of lower Appellate Court to reverse and remand—Civil Procedure Code (Act V of 1908), s. 107, sub-s. (1), cl. (b), sub-s. (2), O XII, r. 23* As the body of the Code creates jurisdiction (while the rules indicate the mode in which it is to be exercised), it is expressed in more general terms, but has to be read in conjunction with the more particular provisions of the rules. S. 107, sub-s. (1), cl. (b) of the Code is subject to the conditions and limitations prescribed by the rules; and in the case of a lower Appellate Court, the power of reversal and remand is limited to the position described in r. 23, O XII. *MANI MOHAN MANDAL v RAMTANU MANDAL* (1915)

I. L. R. 43 Cal. 148

REMAND—contd.

7. — Addition of parties by Appellate Court—Amendment of plaint—Whether whole emanated in consequence—Civil Procedure (Act V of 1908), s. 107, O XLI, rr 23, 25 are other possible cases of remand which is included in O XLI *Nabin Chandra v. Prankrishna De, I L R. 41 Calo. 108*, 1918. In the Code of Civil Procedure, the Legislature has given the power of remand to the Court of Appeal and, as a result, it has the power of remanding the case when an amendment of plaint is made and when parties are added. The provision in s. 107 for a remand is not limited by O XLI alone, but is subject to such conditions and limitations as are prescribed in the rules and orders, the amendment of a plaint and addition of parties to the Court of appeal being among them. *Uzia v. Sadar v. Savai Behara (1916)*

I. L. R. 43 Calo. 938

8. — After directing Court of first instance to remit findings on issues not tried—Decision on other issues in the remand order if binds Judge or his successor at final hearing—Decision, of preliminary decree or interlocutory order—Civil Procedure Code (Act V of 1908), O XLI, rr 23, 25 Where a suit for recovery of possession in which the defendant besides denying plaintiffs' title set up certain pleas in bar (limitation, etc.), was dismissed by the first Court on the merits, but the lower Appellate Court finding in favour of the plaintiff on the merits, the case was remanded to the first Court for finding on the issues in bar which had not been tried by the first Court: *Held*, that upon receipt of the findings of the first Court on these issues, the lower Appellate Court was not bound to reconsider its findings on the merits and thus whether the officer before whom the appeal finally came for hearing was the same or another officer. *Per Richardson, J.*—An opinion incidentally or provisionally expressed in a remanding judgment would not amount to a final adjudication so as to conclude the parties, but an adjudication by the remanding Judge would bind him or his successor at the final hearing. One test which may be suggested for the purpose of determining whether such an adjudication is or is not final and conclusive so far as it goes is whether it does or does not amount to a preliminary decree. *Semble*. The remand order in this case amounted to a preliminary decree in so far as it disposed of the merits of the case. *Per MULLICK, J.*—It seems to be well settled that though it is open to a Court to revise after remand interlocutory decisions which were made either by itself or by an officer of co-ordinate jurisdiction, yet as a matter of practice a Court will not and ought not to do so. When, however, the interlocutory decision amounts to a preliminary decree within the meaning of s. 2 of the Civil Procedure Code, the Court is incompetent to revise that decree till it is duly set aside or amended according to law. That the decision on merits contained in the remand order did not amount to a preliminary decree. *HIRA LAL PAL v. ETBAR MANDAL (1915)* . . . 20 C. W. N. 43

9. — By Appellate Court without retaining case on file—Whole case if open before Court to which case remanded—Limitation of scope of appeal remanded by High Court. In

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strict law a remand made by an Appellate Court without retaining the appeal in its own file necessarily reopens the whole case and the Court of Appeal to which the case is remanded is bound to hear the appeal upon the judgment of the Court of first instance and on nothing else. But the High Court in the exercise of its powers of supervision under the Charter rightly assumes in certain cases authority to limit the scope of certain appeals remanded to the lower Court without keeping them on its own file. But whenever this is done it is absolutely essential that the High Court should lay down clearly without any possibility of mistake that it did intend to limit the scope of the appeal to certain specified questions. *KARTICK CHANDRA DAS v. SATYA NIDI GHOSAL (1915)* . . . 20 C. W. N. 584

9. — Appellate Court, Inherent jurisdiction—Correction of omissions or defects in the trial—De novo trial—Civil Procedure Code (Act V of 1908), ss 107, 151, O XLI, r 23 The power of remand under s. 107 of the Civil Procedure Code is limited to the case described in O XLI, r 23 but nothing in that section restricts in any manner the application of the principle of inherent power recognised by s. 151 of the Code. The powers of the Appellate Court as regards remand are thus not restricted to the case specified in O XLI, r 23, but the Court by reason of its inherent jurisdiction, recognised and preserved in the Code, may order a remand in cases other than the case specified in O XLI, r 23, if it be necessary for the ends of justice. *Nabin Chandra Tripathi v. Prankrishna De, I L R. 41 Calo. 108*, dissented from. Inherent jurisdiction must be exercised with care, subject to general legal principles and to the condition that the matter is not one with which the Legislature has so specifically dealt as to preclude the exercise of inherent power. *Per Woodroffe, J.*—Whether justice does require a Court to invoke its inherent jurisdiction, must be determined by that Court, with reference to the particular facts of the case, and the rule of law that a Court cannot invoke an inherent jurisdiction where there is a provision in the Code whether by way of remand or otherwise, which if applied, will meet the justice of the case. *Per MOOKERJEE, J.*—That the Code itself recognises the power of a Court to direct a remand in circumstances other than those specified in O XLI, r 23 is clear from the terms of s. 99. The Court of Appeal is invested with plenary powers to correct errors of procedure committed by the trial Court. Where the Court of Appeal is satisfied that the correction of the omission or defects in the trial is not reasonably practicable by recourse to one or other of the provisions mentioned that is, where it is clearly apparent that the Appellate Court cannot itself satisfactorily dispose of the suit on the merits by the adoption of the specific procedure mentioned in O XLI, r 24 to 25, a remand for retrial is not only permissible but obviously incumbent on the Court. *GUTHAYAT THE ALLAHABAD BANK, LTD. (1917)* . . . I. L. R. 44 Calo. 929

10. — Remand of whole case on the merits—Jurisdiction—Civil Procedure Code (Act V of 1908)—O XLI, r 33—Rules of Supreme Court of England, 1853, O LI III, r. 4—Practice. Where a suit had been partly decreed in appeal and no second appeal had been preferred to the High Court against the portion allowed and]

REMAND—*conold*

after remand the lower Appellate Court went into the whole case on the merits as directed—*Held*, that the High Court had ample jurisdiction to make the order remanding the whole case for determination on the merits *Attorney General v Simpson, [1901] 2 Ch 671*, referred to. *SARADA SUNDARI DASSAYA v GANGAHARI SAHA (1918)*

I. L. R. 48 Calc. 733

11. ——— Appeal from—Remand order passed otherwise than under O XLI, r 23 is not appealable. *MOHENDRO NATH CHAKRAVARTI v RAMTARAN BANOJADHAYA (1919)*

23 C W. N. 1049

12. ——— Appellate Court Inherent powers of—Code of Civil Procedure (Act V of 1908), s 151 and O XLI, rr 23 and 25 Under its inherent powers an Appellate Court has jurisdiction to remand a case for retrial apart from the provisions of O XLI, rr 23 and 25 of the Code of Civil Procedure, 1908 but should exercise that power with the greatest caution. *RAONUNANDAY SINGH v JADUNANDAY SINGH*

3 Pat L J. 253

13. ——— Inherent powers of court Under its inherent powers an appellate court may remand a case if it thinks that it is necessary for the ends of justice to do so even where the case does not come within the terms of O XLI, rr 23 and 25, of the Code of Civil Procedure, 1908. *BEJINGMAN PATRAK v DEBCHANDRA PATRAK*

5 Pat. L. J. 146

RE-MARRIAGE.

See DIVORCE I. L. R. 48 Calc. 636

See GUARDIAN—HINDU WIDOW
I. L. R. 33 Calc. 862

See HINDU LAW—WIDOW

See HINDU WIDOWS RE MARRIAGE ACT
(XV of 1836), s. 2

——— custom of—

See HINDU LAW—SUCCESSION
I. L. R. 43 Calc. 300

REMEMBRANCE OF LEGAL AFFAIRS.

——— Position of—

See CONTENT OF COURT
I. L. R. 41 Calc. 173

REMOTENESS.

——— rule of—

See WILL I. L. R. 48 Calc. 485

REMOVAL NOTICE OF.

See FICTITIOUS I. L. R. 48 Calc. 602

**REMOVAL OF CASTE DISABILITIES ACT
(XXI OF 1850).**

See HINDU LAW—JOINT FAMILY
I. L. R. 40 Calc. 407

See MALABAR LAW
I. L. R. 44 Mad. 631

——— s. 1—

See HINDU LAW—WIDOW
I. L. R. 35 All. 466

REMUNERATION.

See ADMINISTRATOR PENDENTE LITE.

I. L. R. 41 Calc. 771

RENEWAL.

——— option of—

See LANDLORD AND TENANT—LEASE.
I. L. R. 48 Calc. 1079

RENNELL'S MAP OF INLAND NAVIGATION.

See NAVIGABLE RIVER.

I. L. R. 48 Calc. 390

RENT.

See AGRA TENANCY ACT (II of 1901).
ss 4, 167 I. L. R. 39 All. 605

See BENGAL RENT RECOVERY ACT

See BOMBAY CITY MUNICIPAL ACT (Bom.
Act III of 1883), ss. 140 (c), 143 (f)
(g) AND 2 (d) I. L. R. 43 Bom. 281

See ESTATES LAND ACT (I of 1908), s 26
I. L. R. 41 Mad. 121

See LANDLORD AND TENANT

See LIMITATION ACT (IX of 1908)—

SCH I, ART 110 I. L. R. 36 Mad. 438

ARTS. 110, 116 I. L. R. 37 Bom. 656

See RENT DECREE.

See RENT, SUIT FOR.

See RENT IN KIND

See RENT RESERVED.

See STAMP ACT (II of 1899), s 59, SCH 1,
ART 35, CL (2), SUB-CL (iii)
I. L. R. 39 Bom. 434

See SUIT FOR RENT

See U P LAND REVENUE ACT (III of
1901), ss 56, 66 I. L. R. 28 All. 286

——— abatement of—

See PARTIAL LEASE I. L. R. 41 Calc. 683

——— arrears of—

See MORTGAGE I. L. R. 39 Calc. 810

——— distraint for—

See MADRAS ESTATES LAND ACT (I of
1908), s 52 (2) I. L. R. 38 Mad. 1140

——— enhancement of—

See BOMBAY LAND REVENUE CODE, 1879
ss 83, 216 I. L. R. 44 Bom. 666

See OUDH RENT ACT (XXII of 1836),
s 3 (10) AND CH. VIII
I. L. R. 40 All. 541

——— fixation of—

See AGRA TENANCY ACT (II of 1901),
s 97 I. L. R. 37 All. 12

——— forfeiture, for non-payment of—

See LESSOR AND LESSEE.
I. L. R. 38 Mad. 445

——— Kadam Ibrahim, right of after intro-
duction of settlement—

See BOMBAY LAND REVENUE CODE, 1879
s 217 I. L. R. 45 Bom. 61

——— in kind—

See LANDLORD AND TENANT—ENHANCE-
MENT OF RENT I. L. R. 37 Calc. 810

RENT—contd.

legal right to remission—

See ESTATES LAND ACT (MAD ACT I OF 1908), ss 4, 27, 73, 143

I. L. R. 40 Mad. 640

liability for—

See LANDLORD AND TENANT

I. L. R. 34 All. 604

See SALE . . . I. L. R. 41 Calc. 148

Mortgagor retaining property under a Rent Note—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 47, O XXXIV, r 14

I. L. R. 45 Bom. 174

no estoppel by receipt of—

See MADRAS ESTATES LAND ACT (MAD ACT I OF 1908) s 3 . . . I. L. R. 37 Mad. 1

non-payment of—

See MADRAS ESTATES LAND ACT (I OF 1908), s 189 . . . I. L. R. 39 Mad. 60

partly in money, partly in kind—

See KABILJAT, CONSTRUCTION OF . . . I. L. R. 37 Calc. 628

payment of, for sixty years—

See MADRAS ESTATES LAND ACT (I OF 1908), s 13, cl. (3)

I. L. R. 39 Mad. 84

permanent occupant—

See BOMBAY LAND REVENUE CODE, 1878, s. 216 . . . I. L. R. 45 Bom. 996

permanency of—

See LANDLORD AND TENANT . . . I. L. R. 37 Calc. 30

payable in kind recovery of—

See BENGAL TENANCY ACT, 1885 s 40 . . . 25 C. W. N. 714

receipt stating tenancy is at will—
value of—

See LANDLORD AND TENANT . . . 24 C. W. N. 1

relief against forfeiture for non-payment of—

See LEASE . . . I. L. R. 45 Bom. 300

remission of—

See CUSTOM . . . I. L. R. 45 Calc. 475

suit for—

See AGRICULTURE ACT (II OF 1901), s 34 . . . I. L. R. 35 All. 512

See HOMESTEAD LAWS . . . I. L. R. 42 Calc. 633

See JURISDICTION OF CIVIL COURT . . . I. L. R. 40 Calc. 402

See LESSOR AND LESSEE . . . I. L. R. 39 Mad. 938

See LIMITATION . . . I. L. R. 33 Mad. 101 . . . I. L. R. 43 Calc. 63

suit for, by a third party—

See CONTRACT . . . I. L. R. 41 Mad. 455.

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suit for, in Revenue Court—

See MADRAS ESTATES LAND ACT (I OF 1908) . . . I. L. R. 38 Mad. 33

suspension of—

See LANDLORD AND TENANT

I. L. R. 46 Calc. 958

War restrictions on—

See BOMBAY RENT (WAR RESTRICTION) ACT.

See CALCUTTA RENT ACT.

1. ———— Rent for Ferry—*Provisio of Small Cause Courts Act (IX of 1837), Sch. II, Art 3*—*Pent of a ferry, suit for, if cognizable by a Small Cause Court.* To determine whether an amount payable under a contract is rent or not each case must be judged by its own circumstances. In a suit to recover sums due under a contract for the defendant plying boats in a private ferry *Held* that in the circumstances of the case the sum payable was in no sense a rent. *PROBLAD PATNI v SASHADHAR RAY* (1910) . . . 14 C. W. N. 994

2. ———— Maintenance Grant—*Baradara Jagir, Orissa—Landlord and Tenant—Grantor and Grantee—Kilajal estates in Orissa—'Light tribute as rent—Assessment of rent by Settlement Officer—Finality of decision—Bengal Tenancy Act (I of 1855), ss 3 (5), 104, 107—Bengal Tenancy Amendment Act (Ben. III of 1935), s. 9—Second Appeal—Findings of fact—Inference of Law.* In Orissa a proprietor of an estate governed by the law of primogeniture made a grant of certain villages at *baradara jagir* (hereditary right), etc., for the support of the younger brothers and other nearer relatives of the family, it was not transferable, but was subject to resumption on failure of direct heirs, and the grantee had to pay to the grantor a proportionate share of the Government revenue. *Held*, that the amount payable by the grantee to the grantor under such conditions constituted rent within the meaning of s. 3 (5) of the Bengal Tenancy Act, 1855, and the grantees were tenants and not co-proprietors. *Chaudh Kani Chakraborty v Mahomed Hossein, 6 W P Act X, I*, referred to. Where a Settlement Officer made an assessment of rent under s. 104 of the Bengal Tenancy Act (VIII of 1843) which was not appealed against under s. 104 of the Act. *Held*, that the decision of the Settlement Officer was in view of s. 107 of the Bengal Tenancy Act, 1855, read with s. 9 of Bengal Tenancy Amendment Act, 1875, final. Though the High Court, in second appeal, cannot interfere with findings of fact, it can interfere with an inference of law drawn from the facts found. *INWARA NATH BIDYADHAR v JAMSHEDDHAR MAHAPATRA* (1910) . . . I. L. R. 38 Calc. 278

3. ———— Madras Estates Land Act—(I of 1908), ss 3 (10), 13 and 119. A Revenue Court has no jurisdiction to try a suit for rent of private lands as defined in s. 3 (10) of the Madras Estates Land Act (I of 1908); such a suit must be brought in a Civil Court. *RAJA APPA RAO RAMANATH v NARAYANA* (1913) . . . I. L. R. 36 Mad. 7

4. ———— Evidence, admissibility of—*Previous decree for rent—Admitted by a co-sharer if relevant on the question of rent—Facts later arise.* Where a tenant holds lands under several landlords under one contract of tenancy, and each co-sharer claims to collect rent proper.

RENT DECREE

See EXECUTION OF DECREE

I L R 38 Calc 233

I L R 40 Calc 623

amendment of—

See BENGAL TENANCY ACT, 1885 s 105

5 Pat L J 472

Execution of—

See SALE . I L R 43 Calc 263

See CHOTA NAGPUR TENANCY ACT 1908

s 211 . 5 Pat L J 458

Whether acts as Res Judicata—

See CIVIL PROCEDURE CODE O XLVIII,

B 2 3 Pat L J 372

1 ——— Contribution suit—Contract Act (IA of 1872), ss 69, 70—Suit for contribution of loss for payment by one judgment-debtor of joint decree—'Lawfully paid' money paid by one judgment debtor to satisfy joint decree—Res judicata—Plea of non-liability in contribution suit if barred in equity where Defendant acquiesced in original claim. A decree was passed against several persons jointly in a rent suit and one of them paid the whole amount of the decree. This judgment debtor subsequently brought a suit for contribution against some of his co-judgment debtors. The defendants pleaded that they were *benamars* and not really liable for payment under the decree. *Held* that although the decree in the rent suit was not *res judicata* as between co-defendants, the co-judgment debtors should not be allowed to plead non liability in the contribution suit. If they had such a plea they ought to have raised it in the rent suit. *Sita Panda v Jyotsna Panda*, I L R 25 Mad 599, referred to. It is a recognised principle of equity that where of two innocent persons one must suffer by the act of a third he by whose negligence it happened must be the sufferer. So even if the defendants were *benamars*, as they allowed their names to be used in the *kobala* and the *semindar's* *sherista* and did not object, when the *semindar* brought a suit against them, they cannot be heard to complain if they are compelled to reimburse the plaintiff for what he had done for them. *Umesh Chandra v Khaina Loan Co.* I L R 34 Cal 92 referred to. No hard and fast rule can be laid down barring the application of s 69 of the Indian Contract Act to the payment of a joint decree by one of the joint judgment debtors. *Puttikali v Ganga Nath* I L J 8 Cal 113. *Muthura Nath v Krsna Kumar*, I L R 4 Cal 369. *Manindra Chunder v Jambhar Kumar* 9 C W N 670 discussed. But where the decree was for a share of the rent by a fractional proprietor and was executed against the plaintiff alone any interest other than that of the plaintiff was not implied and the plaintiff could not be said to have been interested in the payment of that part of the decree which was leviable from the defendants, and could not recover the amount so paid by a suit for contribution under s 69 of the Indian Contract Act. But the payment by the plaintiff was 'lawful' within the meaning of s 70 of the Indian Contract Act and he could recover on it under that section from the defendants who had been benefited by it. An interest in making the payment should be a criterion for deciding whether the payment was 'lawful' within the meaning of s 70 of the Contract Act. *Chedi Lal v Bhagwan Dass*, I. L. J 11

RENT DECREE—contd

All 234. *Damodara Mudaliar v Secretary of State* I L R 18 Mad 88. *Gordhan v Durbar Sree Suray Mahi*, I L R. 25 Bom 594. *Smith v Dina Nath*, I L R 12 Cal 213. *Baskurto Nath v Uday Chandra*, 2 C L J 311, 313, discussed. *AJODHYA SINGH v JAMMOO LAL* (1910) 14 C W N 699

2. ——— Previous *ex parte* rent decree—Admissibility of, as evidence of relationship between parties—Presumption of continuance thereof—Evidence Act (I of 1872) s 114, illus (d). A previous *ex parte* rent decree (between the same parties) is not merely an item of evidence but is conclusive as to the relationship between the parties at that time. Its value becomes more apparent since the terms of s 114, illus (d) of the Evidence Act permit the Court to make a presumption as to the continuance of the state of things. *HIRANNAY KUMAR SAHA v RAMJAN ALI DEWAN* (1915) I L R 43 Cal 170

3. ——— Decree for ejectment for non-payment—Act VIII (B C) of 1869 s 32—Decree for ejectment for non payment of arrears of rent—Period of 15 days if can be extended by executing Court after appeal dismissed. Under s 62 of Act VIII (B C) of 1869 the period of 15 days can only be extended by the Court of first instance at the time of drawing the decree or by the Appellate Court when disposing of the appeal from the decree, but cannot be subsequently extended by the Court executing the decree. *HUKAI SINGH v SARAT CHANDRA DUTTA* (1917) [21 C W N 749]

4. ——— Rent decree obtained by putni-dar—Sale of putni under Reg VIII of 1819 after application for execution but before sale—Decree if to be executed as rent decree—Bengal Tenancy Act (VIII of 1885), s 65. Where after his putni taluk had been sold under Reg. VIII of 1819, the putni-dar sued a tenant for previously accrued arrears of rent and recovered a decree and subsequently the putni sale was set aside and the putni-dar thereafter applied for execution of the decree by sale of the holding under the Bengal Tenancy Act, but before the sale the putni was again sold under Reg VIII of 1819. *Held* that the decree could be executed as a rent decree, the case being covered by the Full Bench decision in *Akhraj Singh v Arunpritha Begum Dasi* I L J 33 Cal 566 s.c. 10 C W N 547 which has not been overruled by the Privy Council in *Foiles v Maharaj Emladur Singh* I L R 41 Cal 96 s.c. 18 C W N 747. *MANINDRA NATH GHOSH v ANBUTOSH GHOSH* (1917) 21 C W N 1132

5. ——— Prodate Rent—Whether can fall into arrears—Bengal Tenancy Act (VIII of 1885) ss 45 (3) 65 and 155 (2). A holding which is held on produce rent or partly on produce rent and partly on money rent is liable to be sold in execution of a decree for arrears. *MANBARAN LAL v NODDAR SINGH* 5 Pat L J 641

6. ——— Two compromise rent decrees both providing for sale of portion by sale of the tenure—Second decree if may be executed against tenant personally when the tenure was sold in execution of the first decree—Both set to directions in the second decree. Two compromise rent decrees provided that the landlord should satisfy his claim for rent by sale of the tenure. Under the first decree the property was sold and purchased by the decree-holder and the decree.

RENT DECREE—concl'd.

holder next applied for personal execution of the second decree. *Held*—That the executing Court cannot go behind the decree and must give effect if possible to both the decrees. The second decree having been passed before the sale of the property, the sale was subject to the directions contained in the second decree. **RATAN LAL BISWAS v. NAFAR CHANDRA PAL CHOWDHURY**

7 ——— Not a mortgage decree—A rent decree is in no sense a mortgage decree. *Forbes Chunder Dey Sircar v Foley, 1 L R 15 Cal. 492* approved. If the landlord obtains two rent decrees against a tenant and first executes one decree by sale of the holding without notifying that the sale is subject to the other decree and purchases the holding himself he is not debarred from executing the other decree against the remaining properties of the tenant. *MAHARAJA KESHO PRASAD SINGH v MUSAMMAT IMAJIZOTA KORN*. 6 Pat L J 351.

8. ————— Where five persons are entered in the Record of Rights as the tenants of certain land a rent decree cannot be obtained in a suit against only one of them
 BERNARD SEKHU v. BACHA MAHMO

RENT-FREE GRANT.

See AGRA TENANCY ACT (II OF 1901),
s 153 . I L R 33 ALL 553

See ESTOPPEL I L R 39 Cal 439

See JURISDICTION OF CIVIL COURT
I. L. R. 43 All. 325

RENT-FREE HOLDING.

Lakshraj Land, accretions to—Lakshrajpur of entitled to hold same rent-free—Sud to recover possession from superior tenant-holder and raiyat who took settlement from latter—**Messe profits—Regulation XI of 1825, s. 4, sub s. (1) and (5)** The holder of a rent free holding is entitled to possession of all lands forming accretion thereto, but he is not entitled to hold the same rent free *Mesa Jan v Akram, 8 C L J 541, Goshwari v Bholanath 1 L R 21 Cal 233, Gopal Ali v Kail Krishna Thakur, 1 L R 7 Cal 479, Chootaramonee Dey v Howrah Mill Company, 1 L R 11 Cal 696, Ramamonee v Gomesh Chunder [1883] Beng S D A 1836, and Ramgopal Nag v Buroda Churn, 1 W R 124, referred to* Where such a person sued to recover the accreted land from the holder of the superior interest and from a raiyat who in good faith had taken settlement of the land from the latter *Held*, that the plaintiff was not entitled to eject the raiyat. The principle of *Penode Lal Pakrashi v Kulu Pramanik, 1 L R 20 Cal 708*, applies equally to firm and alluvial lands. As against the superior holder, the plaintiff who, it was found, had never paid him any rent or offered to do so was not given a decree for mesne profits, the former's claim for rent being set off against the latter's claim of mesne profits *Baidya Nath Roy v Nayda Lal Gura Sarkar (1914) 18 C W N 1208*

RENT FREE TANK.

See **ESTOPPEL** I L. R. 39 Cal. 439

See LIMITATION	I	L.	R.	39	Calc	453
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RENT IN KIND.

———— conversion of, into money rent—
See HINDU LAW (REVERSIONERS)
I L. R. 40 Mad. 871

RENT RESERVED.

See LANDLORD AND TENANT
I. L. R. 44 Cal. 403

See SUIT FOR RENT
L. L. R. 46 Cal. 342

RENT ROLL.

— certified extracts of—
See BOMBAY CITY LAND REVENUE ACT
(BOV. II OF 1878), ss 30, 35, 39, 40
I. L. R. 39 Bom. 664

RENT SETTLEMENT ACT (BENG. VIII OF 1879).

See BENGAL TENANCY ACT (VIII of
1885,) ss 103B, 104H
I. L. R. 46 Calc. 90

RENT SUIT.

See **IVARADAE** I. L. R. 48 Cal. 1078

See LIMITATION
L. L. R. 48 Calc. 65

See LIMITATION ACT (XV of 1877), Sec.
II, ARTS 110, 116
I L R 34 ALL 484

See NON-JOINDER.
I. L. R. 43 Cal. 518

~~premature~~
See LIMITATION I. L. R. 46 Cal. 870

Title Paramount, the possession by—Omnis of proof—Apportionment of rent—Evidence Act (1 of 1872), s. 102 Where a tenant is sued for rent, he can set up eviction by title paramount to that of his lessor as an answer, and if evicted from part of the land, an apportionment of the rent may take place, but the onus is on the lessor to show what is the fair rent of the lands out of which the tenant was not evicted *Gopannud Jha v Lalka Govinda Prasad*, 12 B. P. 109, referred to *SUBENDRA NARAY ROY CROWDHURY v DINA NATH BOSE* (1915)
I L R. 43 Calo 554

Suit against one of several recorded tenants—whether rent decree or money decree may be passed. When 5 persons are entered in the Record of Rights as the tenants of a certain piece of land, a rent decree cannot be obtained in a suit against one only. **BRADAR SINGH v. BACHA MANTO** 5 Pat. L. J. 23

Against co-tenants—
Non-substitution of heirs of deceased co-tenant—
Decree whether good money decree against survivors—
Liability, if joint or joint and several—Right of co-
tenant to insist on all co-tenants being implicated—
Contract Act (IX of 1872), s 43 Where in a suit
for rent the landlord purported to make all the
persons who had entered into the contract of
tenancy parties defendants and obtained an ex parte
decree, but some of the tenants having died before
the suit, those surviving opposed execution on the
ground that the decree was not validly obtained
Held, that the decree passed in such circumstances

RENT SUIT—contd.

was a good and valid money decree enforceable against the tenants who were alive at the date of the decree or their representative. If the land or desires to obtain a decree good against the land under the Bengal Tenancy Act, he must ordinarily (apart from any question of representation) implead all the co-tenants including the heirs or legal representatives of a deceased co-tenant. But for the purposes of a money decree (in the absence of express agreement to the contrary) he is free under s. 43 of the Contract Act, to sue any or all of the tenants. *Per N. R. CHATTERJEA, J.* (RICHARDSON *J.*, *reserving his opinion*) when the contract is with a single person as tenant and he dies the liability of his heirs is a joint liability. *Per I. CHANDRASEKHAR, J.* Liability is joint if on the death of one of the joint promisors the liability becomes the liability of the surviving promisors and no liability devolves upon the heirs or legal representatives of the deceased promisor. There being no survivorship amongst co-tenants in India and co-tenants not having under s. 43 the right to be sued together, *prima facie* the liability is joint and several. Authorities reviewed KRISHNA DAS POT *v.* KALI TARA CHOWDHURANI (1917).

22 C. W. N. 239

partly nor all property represented effect of. In a rent suit one of the tenants had not been joined as a party but he had received a copy of the summons and been represented by a pleader after filing a written statement. In the appeal too the defendant was not made a party but the district judge after he had delivered judgment issued a notice to him informing him that his name had been added as a party defendant. In the said rent suit another infant tenant's mother on being proposed as guardian appeared through a pleader and stated she could not act unless the name was corrected which not having been done she did not defend the suit on behalf of the infant. Held that no useful purpose could be served by adding in the appellate stage a party defendant if he had not been made a party to the appeal and that after joinder in the appeal had been delivered he could not be heard by the insertion of his name on the record by the defendant. *BRINDHRA NATH DOKER *v.* A. MOON NATH DOKER*

25 C. W. N. 525

Payment of and when prevents limitation running. It is established as a general principle that the right to demand the rent which falls due during the pendency of a suit for apportionment is not in suspense during the pendency of the litigation. *NAAGANATH NATH *v.* NARAI PAM MANDAL*

25 C. W. N. 934

RENUNCIATION

See PROBATE I. L. R. 43 Bom. 666

REPEAL

See INDIAN DISTRICT POLICE ACT 1909 s. 52 I. L. R. 45 Bom. 203

See CIVIL PROCEDURE CODE s. 1008 (1) XII P. 53 I. L. R. 37 Bom. 259

See LIMITATION I. L. R. 37 Bom. 231

See STATUTE, CONSTRUCTION OF I. L. R. 23 Bom. 207

REPEALING AND AMENDING ACT (X OF 1916).

See ATTACHMENT I L. R. 43 Bom. 716

REPRESENTATION

See CONTRACT I. L. R. 33 Mad. 599

See HEREDITARY OFFICES ACT (No. 111 OF 1874), ss. 25, 36

I. L. R. 34 Bom. 101

See HINDU LAW—ALIENATION

I. L. R. 44 Cal. 186

— principle of—

See LANDLORD AND TENANT

I. L. R. 37 Cal. 75

Decree defendant—Error of not substituting d. Decree passed against heirs of landlord on the estate—Will. L. one of the defendants in a money suit brought by P. died during the pendency of the suit leaving a will in favour of the plaintiff in the present suit. On P's application the heirs of D were substituted as defendants in her place and the plaintiff's application for substitution of his own name was rejected as he had not obtained probate of P's will. A decree was passed *ex parte* and the property sold in execution thereof. Held that the estate of D was not properly represented in the suit and that so far as the estate covered by the will was concerned it was not affected by the decree or the sale. *Lakshminarayana *v.* Ramu* I. L. R. 9 Bom. 38. *Kharaj mal *v.* Dham* 9 C. B. N. 291 s. 1 L. R. 34 Cal. 266. *L. I. 371 A. 23. Matangini Das *v.* Choksey. Meni Das* I. L. R. 22 Cal. 431. *Hooded. Iron smelter Chander Dhatkarkare *v.* Krishna Chaudhary* I. L. R. 4 Cal. 312. *Chand Lal Das *v.* Gurmood Lohy* I. L. R. 30 Cal. 111 distinguished. *HARISH CHANDRA BISWAS *v.* LAKSHMAN DAS* (1910) 14 C. W. N. 1041

REPRESENTATIVE.

See CIVIL PROCEDURE CODE, 1908 s. 47, 52 I. L. R. 39 All. 47

REPRESENTATIVE IN INTEREST

See EVIDENCE I. L. R. 40 Cal. 891

REPRESENTATIVE SUIT

See CONTRACT ACT (IX OF 1872) s. 70 (1) L. R. 42 Bom. 536

RE PUBLICATION

See WILL I. L. R. 40 Cal. 192

REPUDIATION OF TITLE.

See LEASE I. L. R. 42 Bom. 734

REPUDIATION OF WILL.

See JURISDICTION OF HIS COURT I. L. R. 34 Mad. 337

RE-PURCHASE.

See SALE WITH AN OPTION OF REPURCHASE I. L. R. 25 Bom. 238

REPUTATION

See EVIDENCE I. L. R. 37 Cal. 76

REFUTE.

See EVIDENCE—MATERIAL I. L. R. 23 Cal. 49

REQUIREMENTS

See MORTGAGE I. L. R. 45 Calc. 748

RE-SALE.

See CONTRACT I. L. R. 39 Calc. 568

of tenure—

See BENGAL TENANCY ACT, s. 65
14 C. W. N. 1098

RESCUE FROM LAWFUL CUSTODY.

See WARRANT I. L. R. 33 Calc. 789

See WARRANT, VALIDITY OF
I. L. R. 42 Calc. 703

Lawful apprehension
resistance to—Opium—Person selling article as
opium which turns out not to be the same—Arrest
and detention of such person—Legality of arrest—
Escape from such arrest—Opium Act (I of 1878),
s. 15—Penal Code (Act XLV of 1860), ss. 224 and
225 Where a person purports to sell an article
as opium which afterwards turns out not to be
the same and he is arrested but escapes with
the aid of others Held, that his arrest and
detention are lawful under s. 15 of the Opium
Act (I of 1878), and that his conviction under
s. 224 and that of the others under s. 225 of the
Penal Code are legal It is an offence for a person
to escape from custody, after he has been lawfully
arrested on a charge of having committed an
offence, although he may not be convicted of
such latter offence Doo Sahay Lal v Queen
Empress, I L R 23 Calc. 253, approved MOHAM
MED KAZI v EMPEROR (1916)

I. L. R. 43 Calc. 1181

RESERVED FOREST.

Assam Forest Regula-
tion (VII of 1891), ss. 4, 5, 6, 8, 11, 15, 16, 17
and 25—Claim by proprietor of permanently settled
estates—Disposal of claim—Disallowance of claim
without enquiry—Order of rejection not appealed
against—Validity of final notification—Objection to
validity raised at trial for breach of Regulation
Where on the issue of a notification under s. 5
of the Assam Forest Regulation (VII of 1891),
proposing to constitute a certain area a reserved
forest, a proprietor filed an objection or claim
before the Forest Settlement Officer that part
of the notified area was his permanently settled
estate and not at the disposal of Government
under s. 4, but his plea was acceded, at the hearing,
to the view of such officer, that he was not em-
powered to adjudicate on the claim, and stated
that he merely put in his objection and offered to
produce evidence as a safeguard in any future
proceedings before the Civil Court, whereupon the
officer, without holding an enquiry or taking evi-
dence, held that he was not empowered to decide
an objection denying the title of Government,
and, therefore, "disallowed the objection," and
the claimant did not appeal against the order,
and the final notification under s. 17 was published:
Held, that the claimant could not, on his trial
for offences under s. 23, of the Regulation, raise
the question of the validity of the final notification,
either because he had not really submitted his
claim for adjudication and had not, therefore,
adopted the course specified by the Regulation,
or if he had so submitted his claim because it had
been "disposed of" within s. 17, and he had not
appealed against the decision of the Forest Settle-

RESERVED FOREST—contd

ment Officer KHONDKAR HEDAYETULLA v EM-
PEROR (1920) I. L. R. 47 Calc. 889

RESERVED RENT.

See TENANCY AT WILL.

I. L. R. 44 Calc. 214

RESIDENCE

See DIVORCE ACT (IV of 1869), ss. 2,
4, 7, 45 I. L. R. 38 Bom. 123

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 43 Calc. 153

See SUCCESSION ACT (X of 1860), ss. 7, 9,
10 I. L. R. Bom. 637

—Hindu widow's right of—

See HINDU LAW
I. L. R. 45 Bom. 337

—meaning of—

See LUNACY ACT s. 37
25 C. W. N. 178

—notification of—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1893), s. 563

I. L. R. 35 Bom. 137

RESIDENT AT ADEN.

See ADEN SETTLEMENT REGULATION (VII
OF 1900), s. 13 I. L. R. 40 Bom. 446

RESIDUARY CLAUSE.

See WILL I. L. R. 38 Mad. 1096

RESIDUARY LEGATEE.

See PROBATE AND ADMINISTRATION ACT

See PARTIES I. L. R. 45 Calc. 802

A residuary legatee is
entitled to such an account as is necessary for the
purpose of ascertaining what his share is KUTRA-
MONI DASKE v DHIRENDRA NATH ROY

I. L. R. 41 Calc. 271

RESISTANCE BY STRANGER

See EXECUTION OF DECREE

14 C. W. N. 838

See SEARCH I. L. R. 41 Calc. 281

RES JUDICATA

See AGRA TENANCY ACT (II OF 1901)—

ss. 4, 19 I. L. R. 37 All. 230

ss. 10, 202. I. L. R. 33 All. 607

s. 63 I. L. R. 33 All. 453

s. 93 I. L. R. 37 All. 223

ss. 95 AND 167 I. L. R. 27 All. 41

ss. 162, 190 I. L. R. 41 All. 389

s. 167 I. L. R. 43 All. 191

s. 199 I. L. R. 32 All. 8

See AWAK I. L. R. 33 All. 490

See BENGAL TENANCY

I. L. R. 43 Calc. 400

See BENGAL TENANCY ACT—

s. 103B 14 C. W. N. 361

ss. 105 AND 109A 6 Pat. L. J. 553

ss. 105A, 107 AND 109

3 Pat. L. J. 370

RES JUDICATA—*contd.*

See CIVIL PROCEDURE CODE 1882—

- s 13 I L R 32 All 215
 ss 13 30 I L R 33 Mad 483
 ss 13 43 I L R 32 All 119
 I L R 33 All 302
 ss 13 44 I L R 35 Bom 297
 ss 13 46 I L R 36 Bom 53
 ss 13 695 AND 696 I L R 32 All 484
 ss 13 639 I L R 33 All 752
 s 43 I L R 34 All 172
 s 102 14 C W N 298
 s 375 I L R 33 Mad 102

See CIVIL PROCEDURE CODE (ACT V OF 1909) s 11

- s 47 O XXI RR 95 AND 98 I L R 34 Mad 450
 s 53 I L R 32 All 210
 s 97 I L R 39 Bom 421
 O II R 2 I L P 40 Mad 291
 I L R 36 All 264
 O XXI R 16 I L R 38 All 289
 O XXIII R 1 I L R 42 Bom 155
 O XLVII R 2 3 Pat L J 372

See COMPANIES ACT 1882 ss 6 40 41

I L R 40 Calc 1

See COURT FEES ACT 1870 s 10

4 Pat L J 703

See DECREE* I L R 35 Bom 245

See EMANCIPATION OF PENT

I L R 40 Calc 29

See EVIDENCE ACT (I OF 1872) s 44

I L R 23 All 143

See EXECUTION PROCEEDINGS

14 C W N 114, 433

See EXECUTOR DE BON TORT LIABILITY

I L R 33 Mad 423

See FRAUD I L R 41 Calc 990

I L R 37 All 535

See HINDU LAW—

ADOPTION 5 Pat L J 164
I L R 40 All 593ALIENATION 3 Pat L J 426
I L R 43 Calc 417

JOINT FAMILY I L R 42 Bom 69

PARTITION L R. 41 I A 247
I L R 43 Calc 1059

REVERSIONER I L R 43 Bom 869

See INAM LAND* I L R 38 Bom 272

See JURISDICTION I L R 44 Calc 367

See LANDLORD AND TENANT I L R 42 Mad 702

See LIMITATION I L R 33 All 264
I L R 42 Calc 244

See LIMITATION ACT (XV OF 1877)—

ss 5 AND 7 I L R 34 Bom. 559
s 19 AND SCH II ART 148
I L R 35 All 227RES JUDICATA—*contd.*

See LIMITATION ACT 1808 S 14

6 Pat L J 593

See MAHOMEDAN LAW—DOWER

I L R 41 All 538

See MORTGAGE

I L R 47 Calc 662 70
I L R 39 Calc 527 925See PARTITION I L R 32 All 469
4 Pat L J 29

See PROBATE 14 C W N 924

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 22 I L R. 39 All 353
I L R 41 All 378

See RESTITUTION 3 Pat L J 367

See REVIEW APPLICATION FOR

I L R 40 Calc 541

See SARANJAM I L R 40 Bom 608

See SIBRAIT I L R 39 Calc 887

See SPECIFIC RELIEF ACT (I OF 1877)
s 9 I L R 41 All 108

See TRANSFER OF PROPERTY ACT (I OF 1882) s 59 I L R 38 Bom 617

See WAKF VALIDITY OF

I L R 43 Calc 158

See WILL I L R. 46 Calc 485

———— application to have joint mahal
formed followed by application for exclusive
possession—See UNITED PROVINCES LAND REVENUE
ACT 1901 s 233

I L R. 42 All 309

———— Compromise decree dealing with
properties other than those in suit effect of—

See COMPROMISE 1 Pat L J 203

———— decision by Manda Court—

See HINDU LAW—SUDRAS

I L R. 2 Lah 207

———— Decision on abstract question of Law—

See BOHRA LA D P L 1912 COLP 16 9
ss 216 217
I L R 45 Bom 1260

———— dictum in previous suit effect of—

See SPECIFIC RELIEF ACT 1872
ss 41 AND 34 4 Pat L J 682

———— Ex parte decree—

See LAND ACQUISITION ACT 1894
5 Pat L J 259———— Necessity of specifying raising the
plea

See SECOND APPEAL 25 C W N 281

———— Order for directions without decid-
ing question of jurisdiction—See THIRD PARTY NOTICE
I L R 45 Bom 24———— partition suit whether bars subse-
quent suit for whole estate—See SANTAL PARGANAS SETTLEMENT REGU-
LATION 18 2 6 Pat L J 373

RES JUDICATA—contd

rule of—

See DECLARATORY DECREE SUIT FOR
I L R 43 Cal. 894

order for directions not—

See THIRD PARTY NOTICE
I L R 45 Bom 24suit in Revenue Court for rent
followed by suit in Civil Court claiming to be
occupancy tenants—See AGRA TENANCY ACT, 1901, s 167
I L R 43 All 191refusal of Court to file arbitration
award—See CIVIL PROCEDURE CODE, 1909 s 11,
SUL II R 20 I L R 45 Bom 329

1 ———— **Adjudications—Res judicata**
between co-defendants—Burden of proof Where an
adjudication between co-defendants is necessary to
give the appropriate relief to the plaintiff such
adjudication will be *res judicata* between the
defendants as well as between the plaintiff and
defendants. There must be a conflict of interest
between the defendants, a necessity for a decision
between them and a judgment defining the rights
and obligations of the defendants *inter se* *I am*
Chander Narayan v Narayan Mahadev I L R 11
Bom 216 249 referred to and followed. The
general rule is that a person who claims property
through some other person must prove that such
property vested in that other person. A person
who alleges that property in the hands of a female
was inherited from some person whose heir he
claims to be must prove that it belonged to that
person *Dewan Ran Bhai Bahadur Singh v Indar*
pal Singh, I L R 26 I A 228, 228 referred to
NARAYANA AMMAL v SRINIVASARAGAVA AITAY
GAR (1909) I L R 33 Mad. 112

2 ———— **Matter substantially in issue**
—Capacity of parties—Civil Procedure Code (Act
XIV of 1882) s 13 The plaintiff in conjunc-
tion with another had in 1902 filed a suit against
the defendant for possession of certain property,
basing his claim on the allegation that he was
owner. He succeeded in the first Court but
the Court of Appeal held that the property had
been bequeathed to charity, and refused to uphold
his claim as owner. The plaintiff declined to
adopt the Court's suggestion to modify his claim
and be content to ask for a decree for possession
as manager, and his suit was therefore dismissed.
Five years later he filed the present suit claiming
possession as manager. *Held* that his title as
manager was one which might and ought to
have been put forward in the previous suit, and
that his present claim was therefore *res judicata*.
If a plaintiff is suing in a capacity in which he
is a stranger to the capacity in which he sued in a
former suit, his claim has no proper connection with
that former suit, and the Civil Procedure Code
(Act XIV of 1882), s 13, does not apply. *HAROO*
VAN RAMJI v MULSI HANJIVAY (1909)

I L R 34 Bom 416

3 ———— **Practice—Suit against defend-**
ant on ground which failed not to be decreed on
another ground—Application for leave to amend
plea if after arguments heard in appeal disallowed
A suit brought against the defendants on one
ground which fails should not be decreed against

RES JUDICATA—contd

them on another ground which they had no oppor-
tunity of meeting. After arguments in appeal
have been heard the Court will not allow an amend-
ment of the plea so as to convert a suit of
one character into a suit of a substantially
different character. *H* filed a suit in 1904 against
A and *J*, the drawer and indorser respectively
of two hundies. At the time of filing the suit *J*
was dead. *H* obtained a decree against both
defendants which decree remained unsatisfied.
In 1905 *H* filed a suit against the heirs of *J* on the
same two hundies. *Held* that the earlier suit
having been filed against the firm of *J* and not
against *J* personally was a bar to the later suit.
RAYABAI v HAJI NOOR MAHOMED (1904)

I L R 34 Bom 241

4 ———— **Cause of action, how to be**
determined—Civil Procedure Code, Act XI of
1852 s 103—Bar of suit under s 158—Scope
of The plaintiff in the present suit sued one
Srinivasa Aiyar in Original Suit No 7 of 1892 on
the ground that he was prevented from entering on
his property and prayed for an injunction restrain-
ing the said *Srinivasa Aiyar* from obstructing
plaintiff. In the present suit plaintiff sued the
successor-in-title of *Srinivasa Aiyar* alleging that
Srinivasa Aiyar wrongfully got into possession
prior to his filing Original Suit No 7 of 1892 and
prayed for a declaration of title and possession;
held that the present suit was barred as *res*
judicata. Where the causes of action are substan-
tially the same, the form in which they are
stated or the difference in the frame of
the relief will not affect the question. *Haji*
Hasim Ibrahim v Mancharam Kalandar, I L
R 3 Bom 137, followed. *Jubanti Nath Khan*
v Shid Nath Chakraborty, I L R 8 Cal 319,
distinguished. A Court is not precluded from com-
paring the issues in the two cases and from con-
sidering what the plaintiff had to prove or undertook
to prove in either case, in considering whether the
causes of action are identical. *Chand Kaur v*
Parbat Singh I L R 10 Cal 88 explained.
Where in a suit at an adjourned hearing neither the
plaintiff nor his pleader appears the case may be
dealt with under s 158 of the Civil Procedure Code,
1882. There is nothing in the language of that
section which precludes its application to such a
case. *Srinivas Sagayaras v Smith, I L R 20*
Bom. 736 disapproved from. *NAGANADA AITAY v*
KRISHNAMURTI AITAY (1910)

I L R 34 Mad. 97

5 ———— **Decision on merits—dismissal**
for under valuation—Civil Procedure Code (Act V
of 1908) s 11—Second suit for trial on same merits
A previous suit between the parties failed on the
ground that the claim was undervalued and the
plaintiff when called upon to pay the deficient
Court fees omitted to do so. There were issues
on merits also decided. In a subsequent suit
for trial on the same merits, the decision in the
first suit was pleaded as *res judicata*. *Held* that
the rejection of the suit on the ground of under-
valuation at any stage of it did not make it *res*
judicata for the purposes of a subsequent suit
on the same cause of action or litigating the same
title. *Held* further that the dismissal of the suit
on the ground of undervaluation having been suffi-
cient by itself the findings on the issues on the
merits were not necessary for the decision of the
suit and could not have the force of *res judicata*.

RES JUDICATA—contd.

LEAWA KOM LATMAHA MUGALI v SATYAPPA BEN SHIDAPPA MUGALI (1910) I. L. R. 35 Bom. 38

6. — Execution proceedings—Decision in such proceeding not appealed against—Finality of such decision—Erroneous decision on a question of law, whether *res judicata* A decision in a previous execution proceeding which merely lays down what the law is, and is found to be erroneous, cannot have the force of *res judicata* in a subsequent proceeding for a different relief; *BAIJ NATH GOENKA v PADMANAND SINGH* (1912) I. L. R. 39 Cal. 848

7. — Partition suit—Suit by a widow to recover possession of her husband's share in divided family lands after partition by metes and bounds—Alleged partition of a house—Dismissal of suit, family lands being found not divided—Subsequent suit by a reversioner to recover possession of the house, no *res judicata* There were two brothers, Kishorbbhai and Desaibhai. Kishorbbhai died leaving him surviving his widow Bai Kanku, a daughter Bai Divah, and brother Desaibhai. Subsequently Desaibhai died leaving behind him his daughter's son Muljibhai. In 1884 Bai Kanku brought a suit against Muljibhai to recover possession of her husband's share in divided family lands after partition by metes and bounds. She alleged that the house in which she lived had fallen to her husband's share at partition. It was found that the family lands were not divided and the suit was dismissed. Bai Kanku died in 1907. In the year 1908 the plaintiff, who was the nearest heir of Kishorbbhai, brought the present suit against Muljibhai to recover possession of the house. A question having arisen as to whether the finding in the suit of 1884 with respect to family lands operated as *res judicata* with respect to the house *Held*, that the decision in the suit of 1884 did not bar the present suit. *MULJIBHAI NARBHARAM v PATEL LAKHMIDAS* (1911) I. L. R. 36 Bom. 127

8. — Suit against pledger—Ornaments—Unauthorized Pledge—Subsequent recovery—Recovery of judgment against pledger—Non-satisfaction—Suit against pledgee for detention after demand—Tortfeasor—Judgment not *res judicata*—Omission to raise an issue suggested by defendant—Defendant not claiming under a person against whom the issue was decided after defendant's transaction—Movable property—Doctrine of *lis pendens* not applicable—Party and privity Plaintiff brought a suit No. 159 of 1897, against M to obtain a declaration that M was not adopted by plaintiff's step mother and that she (the plaintiff) was the owner of the property in suit as the heir of her father and to obtain possession. The cause of action was laid in March 1897. The property in suit included ornaments of considerable value which M had pledged with his creditor. After the filing of the suit M redeemed the ornaments and again pledged them with G with the exception of two which had already been pledged with C. The plaintiff recovered judgment against M but it was not satisfied. The plaintiff then brought the present suit, No. 58 of 1908, against G as pledgee of the ornaments from an unauthorized pledger for detention of the ornaments after demand on or about the 11th August 1907. The defendant G answered that the judgment in the suit of 1897 was a bar to the present suit on the ground that the pledger and the pledgee were joint tortfeasors and the matter had passed into *res judicata*. At

RES JUDICATA—contd.

the hearing of the suit, the defendant wanted the Court to raise an issue as to whether M was not the validly adopted son, but the Court refused to frame the issue and admitted the judgment in the suit of 1897 (which had decided the issue in the negative) in evidence on the ground, *inter alia*, that the defendant, who was M's pleader in that suit, was a privy to it. The Court overruled the defendant's plea of *res judicata* and allowed the plaintiff's claim for the recovery of the ornaments or their value. *Held*, on appeal by the defendant, that the defendant's plea of *res judicata* could not stand. The cause of action in the second suit must be precisely the same as the cause of action in the first suit in order to make the judgment in the first suit a bar to proceedings in the second suit. *Held*, further, that it was an error not to raise an issue as to whether M was not the validly adopted son and to admit the judgment in the former suit in evidence on the ground that the defendant was a privy to it. The judgment in the former suit was subsequent to the pledge and the defendant did not claim under a person against whom the issue of adoption had been at the time of the pledge finally heard and determined. The fact that the former suit was pending at the time of the pledge of the ornaments could not prejudice the defendant on the issue of *res judicata*, for the doctrine of *lis pendens* did not apply to movable property. The defendant was, therefore, not a privy of M and was not bound by that judgment. *Held*, also, that the judgment in the previous case was irrelevant to prove that M had got possession of the ornaments by means of fraud. *GOVIND BABA GUJRAR v JIJIBAI SAHEB* (1911)

I. L. R. 36 Bom. 189

9. — Co-plaintiffs—Civil Procedure Code (Act V of 1908), s. 11—Civil Procedure Code (Act XIV of 1852), s. 26—Joinder of parties The plaintiff D and his step mother R (defendant) brought a suit against C to recover possession of certain ornaments which formed part of the estate of M, the father of D and husband of R. It was held by the Court of first instance that R was entitled to the ornaments, because they were her *stridhan*, but the appellate Court held that she was entitled to them not because they were her *stridhan*, but because she was the absolute owner of the property. D then sued R for a declaration that he, as son and heir to M, was entitled to hold the decree. The defendant in reply contended *inter alia*, that the suit was barred by *res judicata*. *Held*, that the bar of *res judicata* did not apply, inasmuch as there was no final adjudication as between R and D, and in the first suit it was a matter of no consequence to the defendant therein for the purposes of the relief to be given against him whether R succeeded or whether D succeeded. A finding to become *res judicata* as between co-plaintiffs must have been essential for the purpose of giving relief against the defendants. *Jumfardra Narayan v Narayan Mohader*, 11 I. J. 111, 111, 216, followed. The Court ought not to hold a point to be *res judicata* unless it is clear from the pleadings and the findings in the previous suit. No Court ought to infer *res judicata* by mere arguments from a judgment in a previous suit. *Attorney General for Trinidad and Tobago v. Frick*, [1893] A. C. 518, followed. *REKHNISI v INCHRO MANADU* (1911) I. L. R. 28 Bom. 207

RES JUDICATA—*contd*

10. ———— *Settlement—Sust by after born son to set aside settlement—Difference between estoppel and res judicata* Estoppel and res judicata are entirely different. *Res judicata* precludes a man averring the same thing twice over in successive litigations while estoppel prevents him saying one thing at one time and the opposite at another. *CASABAILLY JAJRAJRAI v. SRI CURRIMBOY EBRANIM* (1911).

L. L. R. 36 Bom 214

11. ———— *Consent decree—Civil Procedure Code (Act I of 1908), s. 11—Consent decree between predecessors in title of parties in suit—Injunction granted in former suit—Res judicata and estoppel distinguished* A consent decree has to all intents and purposes the same effect as res judicata as a decree passed per amicitiam and thus notwithstanding the words in s. 11 of the Civil Procedure Code has been heard and finally decided. In *re South American and Mexican Company*, [1895] 1 Ch 37, followed. A consent decree comes to between the predecessors in interest of the present parties touching matters now substantially and directly in issue between them is res judicata. *Res judicata* ousts the jurisdiction of the Court while estoppel does no more than shut the mouth of a party. Estoppel never means anything more than that a person shall not be allowed to say one thing at one time and the opposite of it at another time, while res judicata means nothing more than that a person shall not be heard to say the same thing twice over. *BHAISSANKER NANARAI v. MORARI KESHAJI & Co* (1911).

L. L. R. 36 Bom 233

12. ———— *Compromise decree, rescission of—Civil Procedure Code, s. 257 A—Agreement contravening rule in—Not opposed to public policy—Judgment-debtor may waive rule* The test for determining whether there is an estoppel in any particular case in consequence of a decree passed on a compromise is whether the parties decided for themselves the particular matter in dispute by the compromise and the matter was expressly embodied in the decree of the Court passed on the compromise or was it necessarily involved in, or was it the basis of, what was embodied in the decree. The basis of a compromise decree is a contract between the parties to the litigation and the principles applicable to contracts would often have to be considered in determining the rules of estoppel applicable to such decrees, at the same time such a decree cannot be regarded as a mere contract, and has got a sanction for higher than an agreement between parties. The parties to the decree cannot therefore put an end to it at their pleasure in the manner that they could rescind a mere contract. Nor can it be impeached on some grounds on which a mere contract could be impeached such as absence of consideration or mistake. *Jenkins v Robertson*, 1 H L Sc and Div 117, distinguished. The reason is that the Court having bound to adopt the agreement between the parties as its own adjudication the interpretation on to be placed upon such adjudication ought to be the same as that to be placed on the agreement itself. A compromise decree may in some respects have a greater validity than one passed after contest between the parties as such a decree has all the force of a compromise or a species of contract which is highly favoured by the Courts. Judgments passed on mutual agreements of parties are dis-

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tinguishable from judgments by default and decrees passed upon a confession of judgment or an admission by the defendant that the plaintiff is entitled to a particular relief. An agreement in contravention of s. 257 A of the Civil Procedure Code is not opposed to public policy. The prohibition in section is not based on any rule of public policy rendering such agreement illegal. It is merely unenforceable in execution proceedings or by a fresh suit as the case may be. A judgment debtor is entitled to waive the benefit of the rule. *VENKATA PERUMAL PATA RAMADUR v. THATA RAMASAMY CHETTY* (1911). L. L. R. 35 Mad 75

13. ———— *Rent decrees—How far decrees for rent in previous suit res judicata on the question of title in subsequent suit* A, a landlord tendered patta to B, his tenant, who objected to the patta on the ground that the extent of his holding was overstated, some of the lands included in the patta not belonging to A, but to B himself. The issue was raised whether the patta tendered was proper, the Court found that it did not contain any objectionable matter and was therefore a proper patta. Decree was accordingly given for rent in favour of A. A tendered a similar patta to B for a subsequent year and B again raised a similar objection to the extent of the holding. In a suit brought by A for the rent, B objected to the extent of the holding and it was contended first that the matter was res judicata by reason of the decision in the previous suit. *Per MURRO, J.*—The finding in the previous suit that the patta was proper, was a finding that the relationship of landlord and tenant subsisted between the plaintiff and the defendants in respect of the land entered in the patta and the defendants cannot be allowed to plaintiff again to prove of his title. *Per SANKARAN NATH, J.*—A decree for rent does not necessarily require a decision as to the terms of the patta or the extent of the land for which rent has to be paid. There being no express finding in the previous suit on the question of the ownership of the land, it cannot be implied from the mere framing of the decree for rent that the question was decided for the purpose of the subsequent suit. Where a question need not be deemed to have been decided on the ground that the decree in the previous suit requires such assumption to make it a decree rightly passed, a party is not, in the absence of a clear and express finding, precluded from raising the question in a subsequent suit. The question whether A or B was owner of the land included in the patta was not res judicata by reason of the previous decision. *RAMNIDI BAIYA NAIDU v. RAMNIDI PARADHI NAIDU* (1911). L. L. R. 35 Mad. 216

14. ———— *Compromised decree—Compromise also affecting land not in suit—Registration Act (III of 1877), s. 17, cl. (i)—Compulsory registration* Where a compromise affected land not in suit and a decree was passed in terms of the compromise in so far as it related to the property sued for, to render the compromise available as a defence to a future suit as regards property not formerly sued for, it must have been registered in accordance with the provisions of the Registration Act (III of 1877), s. 17. If any portion of a *razinama* has not passed into a decree or order of Court, it is *prima facie* difficult to see how a recital of it in the proceedings of the Court or its inclusion in pleadings put before the Court will bring it within the operation of cl. (i) of

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* 17 of Registration Act *Bhindersi Nair v Ganga Saran Sahu*, 1 L. R. 20 All 171, and *Peraan Annai v Lakshmi Annai*, 1 L. R. 22 Mad 518, explained. *Natesa Chetty v Vengu Nachwar*, 1 L. R. 33 Mad 102, dissented from. *Jasimuddin Biswas v Dhuban Jehin*, 1 L. R. 31 Cal 456, distinguished. *CHELAMANNA v RAMA RAO* (1913)

I. L. R. 36 Mad. 46

15 ——— Decision based on oath, etc. effect of, as—Oaths Act (X of 1873), effect of An adjudication by a Court on an oath made by one of the parties to the suit would make the matter or issue covered by the adjudication *res judicata* in a subsequent litigation between the same parties where the subject matter of the suit is different. *PER CURIAM* The decision of any matter directly and substantially in issue in a former suit between the same parties, would none the less be *res judicata* because the decision was based on the oath of one of the parties or a witness in the former suit. The effect is similar to that of a decision of a Court based on a finding of an arbitrator or on a compromise between the parties. In all these cases the decision is the decision of the Court and not of the arbitrator or the parties. *SATTYASI BABITVA v ARTASWARO* (1913)

I. L. R. 36 Mad. 287

16 ——— Land assigned to support religious service—Lease—Adverse possession—Limitation—*Right to recover possession of ratan land on the ground that the mortgage by the previous holder ceased to be effective on his death—Defence of tenancy for a term—Dismissal of suit—Subsequent suit to recover possession on the ground that the deceased holder had no right to alienate the land in any manner* In the case of a lease for a term of years by the holder for the time being of lands assigned to support services rendered to a Mahan and religious community by successive holders time begins to run not from the commencement of the tenancy of the person claiming to hold as a tenant, but from the date when the claims of the parties became openly and undoubtedly adverse. *Tekait Ram Chunder Singh v Srimati Mailho Kumari*, 1 L. R. 12 J. A. 197 and *Trimlak Ram chandra v Shela Gulam Zilani*, 1 L. R. 34 Bom 329, referred to. The plaintiff brought a suit on the ground that the alienation by way of mortgage of certain service ratan lands ceased to be effective on the death of the alienor, the previous holder. The defendant contended that the document of alienation was a lease and not mortgage. The suit was dismissed on the ground that the plaintiff failed to establish his contention as to the character of the document upon which he had elected to go to trial. In a subsequent suit, the plaintiff asserted that the lands in suit being Sarv Inam attributable in the plaintiff's family in the succession of disciples the plaintiff's deceased predecessor had no right and power whatever to pass in writing those lands by way of mortgage or lease or in any other manner so as to let the writing continue in force after his death. *Held*, that the subsequent suit was not maintainable owing to the bar of *res judicata*. The complaint in both the suits was the unlawful retention by the defendant of the lands after demand for delivery free of incumbrances. The matter of the retention of possession of the lands by defendants upon the terms asserted by him had been heard and finally decided in the first suit and could not be raised again. *Woomalata*

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Deba v Kristokamini Dossee, 18 W. R. 163, referred to. *Naro Bahwand v Ramchandra Tulder*, 1 L. R. 13 Bom 326 distinguished. *MAMAD GAUS v RAJABANSHA* (1912)

I. L. R. 37 Bom 224

17. ——— Estoppel—Mortgage by Hindu widow claiming an absolute estate—*Perver sioner, previous independent title of* On 28th August 1879, one Musammal Pismo was declared to have preferential title to one Satyabadi in certain lands. On the 30th September 1904, Bhamo executed a conditional mortgage. In a suit for foreclosure brought by the mortgagee against Bhamo and Satyabadi a brother Baleshwar who was made a party on the allegation that he was in possession as a donee of the equity of redemption, a decree was granted to the mortgagee, and Baleshwar (who repudiated the title of Pismo and set up a title in himself alleging that the property belonged to him, and Bhamo was in possession as his guardian) was dismissed from the suit. Subsequently, the mortgage decree having been made absolute, and the mortgagee having been unable to obtain possession of the lands in question, a suit for recovery of possession was filed on the 19th June 1906, by the mortgagee against Baleshwar. This latter suit was decreed on the 17th September 1906, and both Courts of Appeal subsequently confirmed this decree. Shortly after the decision of the High Court in the above appeal, Bhamo died and, on the 2nd April 1909, Baleshwar brought a suit against the mortgagee for declaration of title and recovery of possession. *Held*, that the decision in the litigation of 1879 could not operate as *res judicata*. *Baleshwar Dargot v Lingraith Das* 1 L. R. 35 Calc 701 followed. *Held*, also, that the decision in the mortgage suit could not operate as *res judicata*. *Jaggeshwar Dutt v Dhuban Mohan Mura* 1 L. 33 Calc 425 2 C. L. J. 205, referred to. *Held*, further that the plaintiff was bound by his allegations in the suit for recovery of possession and could not now be permitted to say that Bhamo was in possession as a Hindu mother and that he himself was entitled to succeed on her death. *Bhaya Choudhury v Chuni Lal Marwari*, 5 C. L. J. 85, referred to. *EMAGATHI DAS v BALESHWAR BAGARTI* (1913)

I. L. R. 41 Calc 69

17 C. W. N. 877

18 ——— Suit for rent decreed—Tenant, if can institute title-suit to declare he was the tenant of another person and for recovery of amount realised under the decree—*Alleged landlord joined as party* Where B having sued C for rent on the basis of a registered *kobaliyat* C denied his tenancy under B and asserted that he was holding as tenant directly, under B's superior landlord A, but C's defence was overruled and a decree made in B's favour. *Held* that a subsequent suit brought by C in which he made both A and B parties defendants for a declaration that he was not C's tenant and for refund of the money realised by B under his decree was barred by *res judicata*. *Duarka Nath v Ram Chand* 1 L. R. 25 Calc 428 5 C. L. J. 3 C. W. N. 266 distinguished. *SRIVENATH DUTT v KANER BHETTER* (1913) 18 C. W. N. 116

19 ——— Execution proceedings—Order, returning execution application for correction of the amount claimed, without notice to judgment debtor, whether binding on the decree holder Where the Court without issuing notice to the judgment-debtor returned an execution applica-

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to n, directing the decree holder to amend the same by reducing the amount claimed and the decree holder failed to appeal against the order. *Held* that the order was a judicial adjudication in a proceeding between the parties that the decree holder was not entitled to the larger amount, and that the decree holder was consequently debarred from claiming the larger amount in a fresh execution application. The fact that the judgment debtor had no notice of immaterial except when the order is passed against him in which case it is an *ex parte* order and cannot bind a party who had no opportunity to make his defence. *Hiral Bose v Durga Charan Bose* 3 C. I. J. 240. *Chola Nath Das v Prafulla Nath Kundu Choudhry* 1 L. R. 28 Cal. 192 and *Delhi and London Bank Limited v Orchard* 1 L. R. 3 Cal. 47 distinguished. *VRAPARI GOUDAN v CHIDAMBARA MIDLAR* (1912) 1 L. R. 37 Mad. 314

20. — Findings on two issues—*Civil Procedure Code (Act I of 1908) s. 11—Judgment or findings on two issues one of which alone was sufficient—Both findings res judicata* Where a judgment is based on the findings on two issues the findings on both the issues will operate as *res judicata* though the finding on only one would be sufficient to sustain the judgment. *Arakha Bibars Poy v Brojnarain Choudhary*, 1 R. 2 I. A. 283 and *Venkayya v Nagarajamma* 1 L. P. II Mad. 201 followed. *VENKATARAJU v RAMANAMA* (1913) 1 L. R. 38 Mad. 158

21. — Execution of decree—*Failure of judgment debtor to raise objection to an amount erroneously set forth in an application for the execution of a decree—Civil Procedure Code (1908) s. 11, expln. IV* *Held*, that if a judgment debtor does not take exception to the amount erroneously set forth in an application for the execution of a decree as being the sum due he is not prevented by the principle of *res judicata* from doing so on subsequent application for the execution of the same decree. *KALYAN SINGH v JAGAN PRASAD* (1915) 1 L. R. 37 All. 589

22. — Suit on mortgage—*Ex parte decree against mortgagee members of joint Hindu family—Decree set aside against one member for insufficient service while remaining against other members—Decree on retrial made against all the members—Decision that decree was valid decree in suit on mortgage—Fresh suit to set aside decree on same grounds as in suit on mortgage and between same parties—Civil Procedure Code (1884) ss. 13 and 244—Suit to set aside decree made with jurisdiction and allowed to become final—Valid decision unless fraudulent* A mortgage was executed in 1884 by the manager of a Hindu joint family of which he and his two sons were the adult members in favour of the predecessor in title of the respondent, and in a suit on a mortgage on 12 points decree was on the 30th of April, 1897, made against the mortgagor and his two sons one of whom was the appellant, and an order absolute for sale was made in September 1900. In 1901 the *ex parte* decree was set aside against the other son, on the ground of insufficient service on him, and on the retrial of the suit the Subordinate Judge on the 22nd of September 1902 made a decree against all three members of the family notwithstanding that the decree of the 30th of April 1897, was still in existence against the appellant. In 1906 an order was applied for to make the decree of 1902

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absolute against all the judgment debtors. The appellant made objections which were overruled and an order absolute for sale was made by the Subordinate Judge on the 3rd of November, 1906 which was affirmed by the High Court on the 20th of February 1908. *Held* that a fresh suit brought by the appellant against the respondents to have the decree of the 22nd of September, 1902, set aside on the ground that he was not a party to it, and that at the Court had therefore no jurisdiction to make it was on the principle of *res judicata*, not maintainable, as being between the same parties, and raising precisely the same grounds and objections as had been raised and disallowed in the former suit and proceedings on the mortgage. It is not open to suitors in India who have exhausted the remedies competent to them, to institute a fresh suit the object of which is to declare that a decree competently and with adequate jurisdiction obtained therein is not applicable to them, although they are named in the decree. Even if the objections were wrongly decided, and the decree was erroneous, it must, when it has been allowed to become final, be taken as being valid if the Court had jurisdiction to make it and provided as was the case here, there was no fraud proved. *Malharjun v Aarkari*, 1 I. R. 25 Bom. 377. L. R. 27 I. A. 216 followed. *1 AJAYANT PRASAD PANDY v RAM RATAN GILL* (1915).

1 L. R. 37 All. 495

23. — Sale of Khoti lands—*Civil Procedure Code (Act I of 1908), s. 11—Sale of Khoti lands on the basis that they are alienable—Subsequent suit between the parties on the allegation that the lands were inalienable—Khoti Settlement Act (Bombay Act I of 1880), s. 8* Certain Khoti lands were sold in execution proceedings between the parties on the footing that they were alienable, and purchased by the defendant. The plaintiff then filed a suit to recover possession of the lands on the allegation that the sale is being occupancy lands their sale was invalid under s. 9 of the Khoti Settlement Act, 1880. *Held*, that the plaintiff's allegation was barred by *res judicata* inasmuch as the sale in execution decided inferentially as between the plaintiff and the defendant that the lands sold were not occupancy lands. *KASHINATH KRISHNA v DROXDHER* (1916)

1 L. R. 40 Bom. 675

24. — Effect of rule—*Rule of res judicata not a mere technical rule* The application of the rule of *res judicata* by the Courts in India should be influenced by no technical considerations of form but by matter of substance with the limits allowed by law. *SREERAMAYAN SINGH v. RAMTANDAN PRASAD NARAIAN SINGH* (1916)

1 L. R. 43 Cal. 894
20 C. W. N. 738

25. — Finding in claim that it is *res judicata* re other properties—*Civil Procedure Code (Act I of 1908) O. XXI r. 63, effect of*—*Wakf* solidity of Properties A and B are included in an alleged wakf. The finding in a claim case regarding A that the wakf is a fraudulent transaction is not conclusive in a suit for declaration and possession regarding a share in B. An order in a claim case is conclusive only as regards the particular property in dispute. *Hill*, further, that a wakf having been given effect to during the life time of the wakf is valid and irrevocable. *Suramoyi Das v Ashutosh Goswami*, 1 L. R. 27

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Calc 714, Koyyana Chittanama v Doosy Gararamma, I L R 29 Mad 225, Ramu Aiyar v A L Palanappa Chetty I L R 35 Mad 35, distinguished Radha Prasad Singh v Inl Sahab Rai, I L R 13 All 53, Dinkar Ballal Chakradev v Hari Shridhar Apte, I L R 14 Bom 206, referred to ASHRA BIBI v AWALJADI BIBI (1916)

I. L. R. 44 Calc 698

26. — Execution of decree—Effect of the decision of an issue in the suit upon a cognate but not precisely similar issue raised in execution proceedings. In a suit for sale on a mortgage the main defence raised was that the mortgagor had no right to mortgage the property in suit, inasmuch as it formed part of a grant, originally made by Government, which was in the nature of political pension, and inalienable. This defence was accepted, and the Court, refusing to make a decree on the mortgage, gave the plaintiffs a money decree only. In execution of this money decree the plaintiffs decree holders sought to attach certain property of the judgment debtors not being part of the property included in their mortgage. Whereupon it was objected by the judgment debtors that this property also formed part of the original grant and could not be taken in execution. *Held*, that the question so raised was not concluded by the finding arrived at in the suit in respect of the property which purported to have been mortgaged to the plaintiffs. *Mangala thammal v. Narayanarumi Aiyar, I L R 30 Mad 461, and Aghore Nath Mukerjee v Srimati Kamini Devi, 11 C L J 461, referred to. Held*, that having regard to the substance rather than to the form of the proceedings before the court below, there was in this matter a reference to arbitration by the Court under the earlier paragraphs of the second schedule to the Code of Civil Procedure, and in the circumstances the appeal, which was against the decree based on the award was not maintainable. *Nidamarthi Arishnamoorthi v Garuparti Ganapathalingam, 34 Indian Cases 711, and Shama Sundram Iyer v Abdul Latif, I L R 27 Calc 61, referred to. RAM NANDAN DEAN DUBE v KANIZ FATIMA BIBI (1917)*

I. L. R. 39 All 379

27. — Finding when 'res judicata' between co-defendants.—In order that a finding in a case should be *res judicata* between co-defendants three things are necessary: (i) that there should be a conflict of interest between co-defendants (ii) that it should be necessary to decide on that conflict in order to give to the plaintiff the relief appropriate to his suit, (iii) that the judgment should contain a decision of the question raised as between co-defendants. *JADAV CHANDRA SIKHAN v KATLASH CHANDRA SING (1916)*

21 C. W. N. 693

28. — Issue not "finally decided" in former suit—Civil Procedure Code, 1872, s 13—Deceit of fraudulent representation in suit on a bond. S 10 of the British Baluchistan Regulation IV of 1896 creates an estoppel by judgment only when the "matter in issue" has been "finally decided." *Sheosagar Singh v Sitaram Singh, I L R 21 Cal 616, L P 24 I A 50, followed.* That was a case under s 13 of the Civil Procedure Code, 1872, which, so far as the question under discussion is concerned, is similar to s 10 of the Baluchistan Regulation. The appellant (defendant) had brought a suit for

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cancellation of a bond on the ground that he was induced to execute it by the fraudulent representations of the respondent (the present plaintiff). The first Court held that he had failed to establish the fraud, and that decision was affirmed on appeal by the District Judge. He then brought a second appeal to the Judicial Commissioner who declined to go into the merits of the case and, upholding an objection by the respondent to the frame of the suit, dismissed the appeal. In a suit brought by the respondent to enforce the bond, the appellant raised the same issue as before, and the two lower Courts held that the issue was *res judicata*, and the Judicial Commissioner dismissed an appeal to him from that decision. *Held* by the Judicial Committee, that the defence in the present suit was not *res judicata*, the allegation regarding the execution of the bond on the fraudulent representations of the respondent never having been "finally decided" in the Judicial Commissioner's Court. *ABDULAH ASHGAR ALI KHAN v GANESH DAS (1917)*

I L R. 45 Calc. 442

29. — Suit for profits—Civil Procedure Code (Act V of 1908), s 11, expt V, s 47 and O X, r 12—Previous suit for land and past and future profits—Decree for land and past profits and no decision as to future profit—Second suit for future profit maintainability. *Held* by the Full Bench (ATLING, J., contra). When in a suit for possession and past and future mesne profits the Court gives a decree for mesne profits down to the date of suit, and says nothing about subsequent mesne profits, a fresh suit to recover them is not barred under s 11 Civil Procedure Code. *Ponnusami Iyer v Sri Pangaraja Iyengar, 2 L B S, overruled. Kuyyusawmy Aiyar v Venkatarao, 15 Mad L J 462, applied. DONAISAMI v SUBRAMANIAM (1917)*

I L R 41 Mad. 188

30. — Erroneous decree—Property belonging to estate B erroneously decreed to be in estate A—Tenants under B under permanent leases, if bound by decree—Tenants entitled to hold under their own leases under A—Co sharer zemindar pursuing tenure—Possession disputed by tenant of neighbouring zemindar—Suit as both purchaser and zemindar to establish title in property purchased—Zemindar's title if properly in issue—Litigating under the same title. A and B are neighbouring zemindars. The 4 5th proprietor of A purchased in execution of a decree for his share of the rent a defaulting tenure G in A. A tenant of B having set up title as such to a portion of the land thus purchased, the purchaser sued the claimant and the zemindars of B to establish his title both as landlord and as purchaser to the tenure G. In the course of that suit a Commissioner fixed a boundary between A and B which in a subsequent investigation was found to have erroneously included in estate A lands which really formed part of estate B, as part of the defaulting tenure G and this was confirmed by the Court. *Held*, that the plaintiff in that suit was interested in establishing his title both as zemindar and purchaser, and the zemindars' title having, upon the pleadings, been directly put in issue, upon the decision, so far as plaintiff's 4 5th zemindars' title was concerned, was as between the rival zemindars *res judicata*. The defaulting tenure G held having prior to the sale of the tenure mortgaged his properties, the tenure amongst other properties was

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sold in execution of a decree obtained on the mortgage and a part of it was purchased by the mortgagee and the rest by a stranger who later on sold it to the mortgagee. The mortgagee purchaser was no party to the suit of the 4 5ths remainder of A who had purchased only the equity of redemption at the sale in execution of his rent decree. *Held*, that the decision in that suit was not *res judicata* against the mortgagee purchaser who was entitled to show that he held certain portions of the land purchased by him on her permanent leases granted to the mortgagor by the proprietors of B on certain terms. That as regards such lands the 4 5ths remainder title being 1 und to be in the proprietors A *res judicata* in the present suit in which both the proprietors of B and the mortgagee purchaser are parties the mortgagee purchaser is entitled to hold them on under the 4 5ths proprietor of A as to that share on the terms of the permanent leases granted by the proprietors of B. *SWIN CHANDRA RAY v HARENDRA LAL RAY* (1918)
22 C. W. N. 721

31. — **Finding on unnecessary issue**—*Civil Procedure Code (Act I of 1908), s. 11*—*Finding recorded on an issue which is not necessary in the first suit—Finding does not become res judicata*—“*Finally decided*,” meaning of. In 1903, the plaintiff sued the defendant to recover possession of land and arrears of assessment at an enhanced rate, alleging that the defendant was a tenant-at-will and not a permanent tenant. The Court held in that suit that the defendant was a yearly tenant; and though it decreed the claim to recover arrears of assessment at the enhanced rate, it dismissed the claim to recover possession on the ground that notice to quit had not been given by the plaintiff. Ten years later, the plaintiff gave to the defendant a legal notice to quit, and brought a second suit to recover possession of the land, alleging that the defendant was a tenant-at-will and that he was prevented from contending otherwise by *res judicata*. *Held*, by *HEATON, J.*, that though the issue as to the nature of the tenancy was undoubtedly directly and substantially in issue it could not be said that it was finally decided, in the earlier case. *Held*, by *FRATT, J.*, that the dismissal of the claim for possession prevented the finding that the defendant was not a permanent tenant from operating as *res judicata*, and that the issue as to the character of the tenure was a matter collateral to the liability to pay enhanced assessment. *DADHRAI ALLEXANDER v DAYA RAMA* (1918)
I. L. R. 43 Bom. 568

32. — **Adoption suit—Civil Procedure Code (Act V of 1908), s. 11**—*Suit by Hindu widow to set aside adoption made by her as invalid—Suit dismissed on the ground of estoppel and also on the merits—Fresh suit by reversionary heir to declare adoption invalid, if maintainable—Hindu widow how far represents estate* A suit by a Hindu widow to set aside an alleged adoption by her of the defendant as the son of her deceased husband was dismissed by the Courts in India on the ground that the plaintiff was by her conduct estopped from denying that the defendant was validly adopted, but on appeal to the Privy Council, the Judicial Committee did not confine its decision to the question of estoppel only but held as a fact that the plaintiff had authority to adopt the defendant and he was validly adopted.

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On the death of the widow an alleged reversionary heir sued the defendant in the previous suit for recovery of the estate on the allegation that the widow had no authority to adopt. *Held*, that the decision in the previous suit was a bar to the maintainability of this suit. That in that suit, the widow, notwithstanding the personal estoppel under which she laboured represented the estate on the question of fact as to whether the defendant had or had not been adopted. Were the estate of a deceased Hindu has vested in a female heir a decree fairly and properly obtained against her in regard to the estate is, in the absence of fraud or collusion, binding on the reversionary heir, and a Hindu widow, otherwise qualified to represent an estate in litigation, does not cease to be so qualified merely owing to personal disability or disadvantage as a litigant, although the merits are tried and the trial is fair and honest. *RISAL SINGH v BALWANT SINGH* (1918)

23 C. W. N. 326
33. — **Administration suit—Validity of gift—Decision in same suit—Civil Procedure Code (Act I of 1908), s. 11** S. 11 of the Code of Civil Procedure, 1908, is not exhaustive of the circumstances in which an issue is *res judicata*. A testator by his will and codicils provided that certain annuities should be paid out of a trust fund thereby created, and that the residue of the income of the fund should be paid to the deacons of a Baptist church, subject to certain conditions, with a gift over to another Baptist church if the conditions were not fulfilled. In an administration suit in the High Court during the life of the last surviving annuitant, it was held that the conditions had not been fulfilled and that there was not an intestacy as to the surplus income, rejecting a contention on behalf of the next of kin that the gift over was invalid, as creating a perpetuity, the decree provided that the determination of the destination of the income or corpus of the fund upon the death of the annuitant should be deferred until after that event. In further proceedings in the suit after the annuitant's death, the next of kin contended that under the reservation in the decree they were entitled again to raise the contention that the gift over was invalid. *Held* that the validity of the gift over was *res judicata*. *Jam Arifal Shukri v Rup Avari, I L R 3 All 633, L R 11 I A 37, and Prorath v Morrot, 23 D 182*, followed. Judgment of the High Court reversed. *HOOK v ADMINISTRATOR GENERAL OF BANGAL* (1921).

I. L. R. 48 Cal. 499
25 C. W. N. 915

34. — **Rent suit—Question of title is essentially raised if res judicata**. In a suit by the Plaintiff to recover lands appertaining to a jote belonging to his predecessor, the defence was that the latter had abandoned the jote. In a previous suit by the Plaintiff against Defendant for rent on the basis of a *labhyot*, the Defendant had averred that the *labhyot* had been obtained by misrepresentation and set up a tenancy under a third party. It had been found in that suit by the first Court that the *labhyot* was not genuine, but in the Appellate Court, the dismissal of the suit by the first Court was upheld on the finding that the Plaintiff had abandoned the jote. *Held*—That the decision was not *res judicata* in the present suit. *GOBER SRIKSH v ALLEXANDER SRIKSH* 24 C. W. N. 717

RES JUDICATA—*contd*

35. ——— Family Custom, Effect of decision as to—*Position of descendants of non-contesting branches of the family* Where it is necessary to establish or deny a custom in a family, and where pains have been taken to bring upon the record every branch of the family, and where that custom has been the subject of contest and thoroughly thrashed out in the presence of all branches of the family, the matter cannot be again raised by the descendants of those branches, even though certain branches did not take an active part in the contest but contented themselves with admitting that the custom existed. *MOWAR SHEWBAX SINGH v MOWAR THAKUR DAYAL SINGH*. 1 Pat. L. J. 221

36. ——— Decision incidental to main issue—*Whether operates as res judicata—Examination of pleadings and judgment to ascertain what was directly and substantially in issue* In a previous suit by the plaintiff for delivery of a *talukhat* it was alleged that the rent was Rs 49 per annum. The court, finding that the rent was less than Rs 49 per annum, dismissed the suit, and in order to decide what costs the defendants were entitled to, recorded a finding that the real rent was Rs 30 per annum. In the present suit the plaintiff sued for rent at the rate of Rs 30 per annum. *Held*, that the question of the rent payable by the defendants was not *res judicata*. The decision that the rent was Rs 30 per annum, being recorded merely for the purpose of arriving at a correct conclusion regarding the cost, was only incidental and recorded for a purpose collateral to the main issue. In order to ascertain what matter directly and substantially in issue in the previous suit was heard and finally decided, the pleadings, and judgment in that suit may be examined. *MITTER PODDAR v JADAB CHANDRA CHATTOPADHYAY*. 2 Pat. L. J. 156

37. ——— Mortgage suit, property wrongly described—*Decree set aside—Subsequent suit for sale of property actually covered by bond* Where the execution of a decree on a mortgage bond failed on the ground that in the plaint in the suit the property was described as being situated in Mouzah B, whereas in fact it was situated in Mouzah M, *held*, that a subsequent suit on the mortgage bond was not barred by the rule of *res judicata*. Non suit does not operate as *res judicata*. *JANAKDULAB SARAN MISHRA v AMBICA PRASAD SINGH*. 2 Pat. L. J. 313

38. ——— Failure to produce evidence in first suit—*Withdrawal with leave to bring fresh suit, effect of* If a suit is dismissed on the ground that as constituted it could not succeed the dismissal is not *res judicata*, however erroneous may be the idea that the frame of the suit barred a decision. If, however, it is dismissed for want of evidence the decision is final. Where the plaintiff's suit was dismissed by the first Court and the plaintiff appealed and applied to the appellate Court for leave to withdraw the appeal on the ground that he had not been able to adduce evidence necessary for the substantiation of his case. *Held*, that the order of the appellate Court granting leave to withdraw amounted to a decision that the evidence on the record was not sufficient to support the plaintiff's case, and, therefore, a subsequent suit between the same parties in which the same matters were substantially in issue was

RES JUDICATA—*contd*

barred by the rule of *res judicata*. *SATYABAD GOUNIA v BEDIADHAR DAS PANDA*.

3 Pat. L. J. 404

39. ——— First suit decreed in the Second Class Subordinate Judge's Court—*Subsequent suit in Court of the First Class Subordinate Judge—Identical issue involved in both suits—No bar of res judicata—Jurisdiction—Civil Procedure Code (Act V of 1908), O II, r 2—Minor plaintiff not to be prejudiced by a mistake of his guardian* The plaintiff's guardian filed a suit in the Second Class Subordinate Judge's Court to recover possession of property, alleging that the plaintiff was the adopted son of one Nathu. The plaintiff's adoption was upheld and suit decreed. The plaintiff subsequently filed a second suit in the First Class Subordinate Judge's Court for the recovery of another portion of family property. The defendant pleaded that the plaintiff was not the adopted son and that the suit was barred by O II, r 2, Civil Procedure Code. On plaintiff's behalf it was contended that the defendants were barred by *res judicata* from disputing plaintiff's adoption. *Held*, that the decree in plaintiff's favour in the previous suit could not be pleaded as *res judicata* in the subsequent suit as the judge by whom it was made had no jurisdiction to try and decide the subsequent suit in which the issue as to adoption was subsequently raised. *Held* also, that the suit was not barred under O II, r 2 of the Civil Procedure Code, 1908, as the plaintiff who was a minor when the first suit was brought could not be prejudiced by a mistake made by his guardian as his right to sue in his own person came into effect on his attaining majority. *Golvi Mandar v Padmanand Singh (1902) L. R. 29 I. A. 202, referred to*. *VRANKAT R. ONKAR NATHU (1920)*. I. L. R. 45 Bom. 805

40. ——— Where both parties appealed from decree of first Court and Appellate Court disposed of both appeals by one judgment accepting plaintiff's appeal and rejecting that of defendant, separate decrees being given—and defendant in his second appeal did not file a copy of the decree passed on his appeal—*Civil Procedure Code, Act V of 1908, O 42, r 1—entire in bhāsi silent as to interest—whether oral evidence of agreement to pay interest is admissible—Indian Evidence Act, I of 1872, s 93, proviso (2)* Plaintiff-repondent sued for recovery of Rs 825 principal and Rs 412 8 0 interest on a *bāhi* entry which made no mention of interest. First Court decreed Rs 325 and interest at Rs. 2 per cent per mensem, making a total of Rs 448 8 0. Both parties appealed, and the Lower Appellate Court wrote a judgment in defendant's appeal covering both appeals and accepted plaintiff's appeal allowing Rs. 825, the amount given in the entry and Rs. 264 as interest, total 1 089, and dismissed defendant's appeal. A short judgment was also written in the plaintiff's appeal referring to the other and separate decrees were given in the two appeals. Defendant then preferred a second appeal to this Court attaching thereto copies of the two judgments and of the decree in plaintiff's appeal but not of the decree passed in his own appeal. *Held*, that as there was no valid appeal before this Court in respect of the decree of the Lower Appellate Court on defendant's appeal, the decision relating to the sum of Rs. 448 8 0 was final and the present appeal in respect of this item was barred as *res*

RES JUDICATA—contd

obtained in a former suit and not make any difference. The importance of a judicial decision is not to be measured by the pecuniary value of the particular item in dispute and the Defendants in the suit could not be heard to say that in view of the comparatively small value of the property involved in the proceeding under s. 32 of Act I of 1894 it was not thought worth the while to appeal from the decision of the High Court in that proceeding. The award as constituted by the Land Acquisition Act is nothing but an award which states the area of the land the compensation to be allowed and the apportionment amongst persons whose interests are not in dispute. A dispute between interested people as to the extent of their interest forms no part of the award. The determination of such a dispute in the High Court was a decree and appealable as such to the Privy Council. It is not accurate to say that under the Hindu law in the case of a gift of immovable property to a Hindu widow, she has no power to alienate unless such power has been given. **T B RASACHANDRA RAO v B N S RAMCHANDRA RAO** 26 C W N 715

RESPONDENT

— death of—

See **APPEAL, PARTIES TO AN**

I L R. 39 Mad. 356

RESTITUTION

See **ASSIGNMENT OF A MONEY DECREE**

I L R 38 Mad. 36

See **CIVIL PROCEDURE CODE 1882 s 583**

I L R. 38 All. 163

I L R. 32 All. 79

See **CIVIL PROCEDURE CODE, 1908**

s 47 AND 144 I L R. 44 Bom 702

s 144

— claim for—

See **CIVIL PROCEDURE CODE (ACT V OF 1908), s. 144** I L R 43 Bom 492

Application for restitution of property—subsequent application for means profits res judicata—Code of Civil Procedure (Act I of 1908) ss 141 and 144 and O II, r 2—(Act XIX of 1931) s 55L—Limitation Act (IX of 1908) Sch I, Art 181 Where a decree obtained against the defendants was reversed on appeal and they applied for and obtained restitution of the property from the plaintiff held that a subsequent application for means profits in respect of the property, for the period during which the plaintiffs were in possession was maintainable, and that the period of three years provided by Art 181 of Sch I to the Limitation Act, 1908 began to run from the date of the appellate Court's judgment. A proceeding in which relief by way of restitution is claimed is neither a suit nor an execution proceeding but a miscellaneous proceeding to which the rules applicable to execution proceedings in substance apply. The provisions of O II, r 2 of the Civil Procedure Code do not apply to such a proceeding. Article 181 of Schedule I to the Limitation Act, 1908, does not control the period

RESTITUTION—contd

during which means profits shall be allowed to accumulate and whatever the number of years during which the decree holders have been in possession the defendant is entitled to be compensated in respect of the whole of that period, provided he applies within three years from the date on which the right to the relief accrued. **KRUPASTINDHU RAY v MAHANTA BALNADRA DAS**

3 Pat L J 367

RESTITUTION OF CONJUGAL RIGHTS

See **CIVIL PROCEDURE CODE, 1908—**

s 11 I L R 37 Bom 563

O XXXIX s 1 I L R 43 All. 134

See **COURT FEES ACT (VII of 1870) Sch II, Art 17 (vi)** I L R 33 All. 767

See **DIVORCE ACT (IV of 1869) ss 2, 4**

7 45 I L R 38 Bom 125

See **HUSBAND AND WIFE**

I L R 37 Bom 393

See **LIMITATION ACT (IX of 1908) s 29**

I L R 34 All. 412

See **MAHOMEDAN LAW—DOWER**

I L R. 35 Bom 330

See **MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS**

See **MARRIAGE** I L R 33 All. 90

— decree for should not be executed by detention of wife in prison—

See **CIVIL PROCEDURE CODE 1908 O XXI, n 33** I L R 44 Bom 972

— suit for, effect of—

See **MAHOMEDAN LAW—DIVORCE**

I L R. 48 Cal. 141

Jurisdiction—Valuation of claim—Jurisdiction of Second Class Subordinate Judge to entertain the suit—Bombay Civil Courts Act (XII of 1869), s 24—Suits Valuation Act (III of 1857), s 11 A suit for restitution of conjugal rights, wherein the claim was valued by the plaintiff at Rs 65 was instituted in the Court of the Second Class Subordinate Judge. The First Court decreed the claim and on appeal the decree was confirmed. On second appeal it was contended that the First Court had no jurisdiction to try the suit. Held that the valuation of the claim by the plaintiff must be accepted for the purpose of jurisdiction, unless it was shown to have been made either from any improper motive or delusively for the purpose of giving the Court a jurisdiction which in fact it had not. **Jam Mohtam d Mandol v Mohtam doli, I L R 34 Cal. 252, followed Jasara v Chaturu (1900)** I L R 34 Bom 226

— Decree against wife—Infringement against wife's parents—Case 11418 filed a suit against his wife and her parents to obtain a decree for restitution of conjugal rights against his wife and a personal injunction restraining the parents from obstructing his wife from living with him and from allowing her to live in their house. The lower appellate Court gave the plaintiff a decree for restitution of conjugal rights and granted an injunction against the parents. On appeal, held, that the order granting the injunction was wrong. **Jamunadas v Janyan**

RES JUDICATA—*contd*

judicata C v C and B (22 P P 1903), referred to *Jugal Kishore v. Chamma* (55 P P 1905, F B) distinguished. *Held* also that, paying regard to the concluding words of *process* (2) of s. 92 of the Evidence Act, oral evidence of an agreement to pay interest on the amount shown due in the entry was admissible such entries in *hats* not being of a formal character. *Kishore Chand v. Guran Ditta Mal* (52 P P 1911) distinguished. *Bura v. Mani Biah* (101 I 1 1901) and *Rajku Mal v. Randu* (110 P P 1909) referred to. BHAN SINGH v. GOKAL CHAND

I. L. R. 1 Lah. 83

41 ———— Decision in previous suit whether "res judicata" as between the defendants—necessary essentials—*stopper*—Admission by defendant in a previous suit which did nothing to influence plaintiff's beliefs or actions. *Held* following *Ram Chand v. Narain v. Narain Mahal* (1 L. R. 11 Bom. 216) that where an adjudication between the defendants is necessary to give the appropriate relief to the plaintiff the adjudication will be *res judicata* between the defendants as well as between the plaintiffs and defendants. But for this effect to arise there must be a conflict of interests between the defendants and a judgment defining the real rights and obligations of the defendants inter se. Without necessity, a judgment will not be *res judicata* amongst defendants nor will it be *res judicata* amongst them by mere inference from the fact that they have been collectively defeated in resisting a claim to a share made against them as a group. *Broja Behari v. Kedar Nath* (1 L. R. 12 Cal. 359 F B) and *Balambhat v. Narayanbhat* (1 L. R. 25 Bom. 74), approved. *Held* further, that as the plaintiff was fully cognizant of his own rights and position the admission of the defendant made in a previous suit between the parties who did nothing to influence either plaintiff's beliefs or actions could not operate as an estoppel in the present suit. MAHRA v. DEVI DITTA MAL.

I. L. R. 2 Lah. 88

42 ———— Ex-parte decree—Application for re-hearing on ground of non-service of summons—Application dismissed—Suit to contest decree on the same ground whether maintainable—Code of Civil Procedure (Act V of 1908), O. IV, r. 13. Although a decree can be set aside on ground of fraud yet if question has already been agitated between the same parties and decided by a Court of competent jurisdiction the matter is *res judicata*. JANGAL CHAUDHRY v. LALIT PASTAN

6 Pat. L. J. 1

43 ———— Withdrawal from Suit—Where a defendant has entered appearance and filed a written statement and then withdrawn from the suit he is not entitled to institute a suit to set aside the ex-parte decree obtained against him in these circumstances merely on the ground that the plaintiff in a joint suit procured his decree by means of perjured evidence. RAM SARAY LAL SHAW v. TOOKI SAO.

5 Pat. L. J. 259

44 ———— Suit by public,—if barred by the decision in a previous suit *between a Manager appointed under the Religious Endowments Act and some claimants* v. *Mokunda*. A Manager was appointed under s. 5 of the Religious Endowments Act of 1863 in respect of a temple, and thereupon a person claiming to be a *Molunt* or *Dandan* of the temple instituted a suit for estab-

RES JUDICATA—*contd*

lishment of his title. There were three Defendants in the suit viz, the said Manager, his successor in office and another rival claimant to the office of *Dundee*. The suit was decreed. During the pendency of the suit the public brought the present suit under s. 92 of the Civil Procedure Code but the District Judge dismissed the suit on the ground that the trial of the question raised in the present suit was barred by the result of the decision in the previous suit which was pending at the date of the institution of the present suit. *Held*—That the decree in the earlier suit though operative against the Manager appointed under s. 5 of the Religious Endowments Act as also against the rival claimants, could not possibly operate to defeat a suit by members of the public instituted under s. 92 C P C s. 92 contemplates the administration of a trust created for public purposes. Such administration may include the removal of an existing trustee the appointment of a new trustee or both. In such a suit it may be held that the endowment was not of such a nature as to attract the operation of the provisions of the Religious Endowments Act, 1863, and that the appointment of the Manager under s. 5 of the Act was without jurisdiction and so forth. SAMAYAM CHAKRABARTY v. KUA GENDRANANDA 26 C. W. N. 504

45 ———— Land Acquisition Act—(1 of 1894)—*Decision under it may be reopened in regular suit*—*Res judicata* general principle of, not applied by Civil Procedure Code (Act V of 1908), s. 11—Land Acquisition Act (1 of 1894) s. 51—'Award' if includes decision on disputed question as to disposition of compensation money—Gift by Hindu to wife whether limited or absolute—Principle of construction—Under a deed of settlement executed by one B, one half of certain properties was given to his adopted son and the remaining half was given to his two wives who were to take the same half and half. One of these properties having been acquired by Government a question arose in a proceeding under s. 32 of Act I of 1894 between the adopted son and one of the wives, as to whether the latter was absolutely entitled to her share of the compensation money or whether the same was to be invested, she having no right to alienate her interest in the property under the deed of settlement. The High Court, when the matter came up before it, held that by the deed of settlement the wife was intended to have a widow's estate only in the property devised. Subsequently the wife having bequeathed her properties to Respondent by Will, the representatives of the adopted son instituted a suit against the claimants under the Will alleging that she had a limited estate under the deed of settlement and had no power to dispose of the properties by Will. *Held*—That it was not open to the Courts in this suit to review the decision of the High Court in the proceeding under s. 32 of Act I of 1894, that the lady had only a limited estate in the property without power of alienation. It is not competent for the Court, in the case of the same question arising between the parties to review a previous decision no longer open to appeal. This principle is of general application and is not limited by the specific words of s. 11 of the Civil Procedure Code so that the fact that the decision in question was not

Decree against wife—Infernal on
opposite wife's parents—Court. Plaintiff filed a
suit against his wife and her parents to obtain
a decree for restitution of conjugal rights against
his wife and a personal injunction restraining
the parents from obstructing his wife from living
with him and from allowing her to live in their
house. The lower appellate Court gave the
Plaintiff a decree for restitution of conjugal rights
and granted an injunction against the parents.
On appeal—Held, that the order granting the
injunction was wrong. *See* *James v. James*.

RESTITUTION—contd

Moreshear Pease 1876 1 Bom. 164, distinguished.
Bai JAMANA v DATALJI MANKUJI (1919)

I L R 44 Bom 454

RESTORATION OF APPEAL

See APPEAL

8 Pat L J 625

RESTORATION OF SUIT

See CIVIL PROCEDURE CODE, 1908, O IX,
 RR 8 AND 9, s. 151

I L R. 34 AH 423

See SMALL CAUSE COURT SUIT

I L R 41 Cal. 950

Decree set aside for fraud—Order of Court of co current jurisdiction, if effective to restore suit Where a decree obtained in a Court of equal jurisdiction was set aside by another Court which went on to add that the result of the decree being declared fraudulent would be that the original suit would be restored. *Held* that this order of a Court of equal jurisdiction could not operate as a direction to the first Court to restore the suit and that in refusing to restore the suit the Court had committed no error. *HEETRA MOHAN BARIK v MAHOMMED PAL (1910)*

14 C W N 558

Order dismissing application for restoration—appeal No appeal lies from an order dismissing an application for restoration of a suit. *JAGDIS NARAIN PRASAD SINGH v HARBANS NARAIN SINGH*

2 Pat L J 720

RESTRAINT ON PROCEEDINGS

See INJUNCTION I L R. 38 Cal. 405

RESTRAINT OF TRADE

See CONTRACT

I L R. 48 Cal. 1030

See CONTRACT ACT s. 27

RESTRAINT ON ALIENATION

See TRANSFER OF PROPERTY ACT, 1882,
 s. 10

RESTRAINT UPON DRUNKEN AND DISORDERLY PERSON—

See PENAL CODE s. 341

I L R. 44 Mad 613

RESTRICTION OF HABITUAL OFFENDERS (PUNJAB) ACT, 1918—

ss. 3 and 7.—*Order of restriction follows an order of security for good behaviour—The Act* *Held* that a restriction order under s. 7 of the Restriction of Habitual Offenders (Punjab) Act, following an order for security for good behaviour is ultra vires under the provision to the section and must be set aside. *HABIB DAKSH V CROWN*

I L R. 1 Lah 100

ss. 3, 12 and 13.—*Whether an order of restriction for a period exceeding one year passed by a Magistrate requires confirmation by the Sessions Judge—Criminal Procedure Code, Act 1 of 1898, s. 123.* *Held* that an order of restriction for a period exceeding one year passed by a Magistrate under the provisions of the Restriction of Habitual Offenders (Punjab) Act does not require confirmation by the Sessions Judge. *CROWN v SUNDIA*

I L R. 1 Lah 614

RESULTING TRUST

See LIMITATION ACT (XV of 1877), s. 10*
 I L R. 35 Bom. 49

See SETTLEMENT BY A HINDU WOMAN ON TRUSTS I L R. 40 Bom. 341

Purchase by husband of land in Rangoon and conveyed to wife—Erection on land of dwelling houses—Suit by husband against wife as a mere benamidar—Parties born of English parents but with permanent residence in India—Law applicable to such a suit—English Law with rebuttable presumption of advancement to wife—Onus of proof The parties in this case were husband and wife born in India of English parents and who had resided in India all their lives except for a visit to England occasionally. The appellant had bought land with money of his own or borrowed and had procured it to be conveyed to the respondent by two deeds and had at his own expense erected thereon two dwelling houses. In a suit brought by the appellant against his wife for a declaration that the houses were held by her as his benamidar, and that he was the true owner of them, and for an order that she should convey them to him, the respondent while admitting that the sites of the houses had been so purchased and conveyed to her and that the houses had been built upon them as stated alleged that the sites were conveyed and the houses built on them for her as an advancement and that she was consequently entitled to a beneficial interest in them as her own property. *Held*, that the principles and rules of law which would be applicable to the case if it were tried in a Chancery Court in England were applicable to it when tried in Rangoon. There would be a presumption of an intended advancement which might be rebutted, but that the onus of rebutting it rested in the appellant. *Gopkrishna Goswami v Gangapermal Goswami* 6 Moo L A 53, and *Unkur Ali v Ulfat Fatima*, 13 Moo L A 23*, distinguished. To rebut such a presumption it was not sufficient for the appellant merely to state that he did not intend to confer any beneficial interest on the respondent, but he must establish with reasonable clearness that he had other and different motives for the action he took. *Devooy v Devooy*, 3 Am d O 803, per V. C. Sir Page Wood applied in principle. *Held*, further that on the evidence the onus had been discharged by the appellant and he was entitled to succeed. *KER WICK v KERWICK (1920)* I L R. 48 Cal. 280

RESUMPTION

See ASSESSMENT I L R. 43 Cal. 973

See CANTONMENT PROPERTY

I L R. 36 Bom. 1

See CHAUJDARI CHAKRAN LANDS

I L R. 42 Cal. 710

I L R. 45 Cal. 685

I L R. 37 Cal. 57

I L R. 44 Cal. 841

I L R. 45 Cal. 765

See CIVIL PROCEDURE CODE, 1882, s. 474

I L R. 35 Bom. 362

See FORFEITURE I L R. 38 Bom. 539

See GRANT I L R. 38 Bom. 438

I L R. 39 Bom. 63

RESUMPTION—contd

See JAGERS . . . I. L. R. 39 Calc. 1
I. L. R. 46 Calc. 683

See INAM

See MADRAS REGULATION (XXV OF 1802)
s. 4 . . . I. L. R. 38 Mad. 620

See RESUMPTION BY GOVERNMENT

See RESUMPTION OF SARANJAM

See SHETSANDI LANDS

I. L. R. 34 Bom. 560

See VRIITTI I. L. R. 37 Bom. 403

— distinguished for enfranchisement—

See CHARITABLE INAMS

I. L. R. 40 Mad. 939

— of grant—

See GRANT OF LAND.

I. L. R. 43 Bom. 37

— of muafi—

See AGRA TENANCY ACT (II OF 1901),
s. 163 . . . I. L. R. 39 All. 689

— of Pasaia Inam land—

See BOMBAY LAND REVENUE CODE (BOM
ACT V OF 1879), s. 202

I. L. R. 45 Bom. 894

— of Saranjam—

See SARANJAM . . . I. L. R. 41 Bom. 408

Resumption for "public purposes" by Government of land granted by La 1 India Company—Scheme to erect dwelling houses at adequate rent for the accommodation of Government Officials in Bombay—Construction of lease and sanad—English decision under s. 43 Eliz c 2 as to exemption from rating—Notice of resumption addressed to one party and served on another—Haver. In these appeals the Judicial Committee held (affirming the decisions of the Courts in India) that the providing of housing accommodation for Government Officials by the erection of dwelling houses for their private residences at adequate rents, was a "public purpose" within the meaning of a lease of land from the East India Company given in 1854, and a Sanad or Government Permit of land granted in 1839 by the same Company, which made such lands (situate on Malabar Hill, Bombay) liable to resumption for "public purposes" upon certain terms as to notice and compensation. The scheme was one which their Lordships agreed with the Courts below would under the circumstances in evidence redound to public benefit by helping the Government to maintain the efficiency of its servants. Held, also (agreeing with the Courts below), that the English decisions which construed the words "public purposes" as used in the Statute 43, Eliz. c 2 with reference to exemptions from rating afforded no help as to the proper construction to be put on the words in the contracts in suit. The definition of a "public purpose" that "the phrase, whatever else it may mean, must include a purpose, that it is an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned," approved by their Lordships of the Judicial Committee. A notice which though addressed to one of the defendants (a testator who was dead) was served on one of his executors

RESUMPTION—contd

and trustees, also a defendant, and accepted and acknowledged by his solicitors who corresponded on the basis of it with the Government as to the resumption was held to be a valid notice, the irregularity having been thereby waived. *HANABAI FRAMJEE v SECRETARY OF STATE FOR INDIA* (1914) . . . I. L. R. 39 Bom. 279

*Land held under Sanad from Government—Valuation of land to be determined by a committee appointed by Government—Construction of the word "committee"—Valuation fixed by the majority binding on parties to the Sanad—Dissection between arbitrators and valuers. Land was held by the plaintiffs under a Sanad from Government which provided 'the said ground to be at any time resumable by Government for public purposes, six months' notice being previously given and a just valuation of all buildings or improvements thereon being paid the owner, the amount of which a committee appointed by Government is in such a case to determine.' The land being resumed with due notice given under the above clause the Government appointed a committee of three persons to value the compensation to be paid to the plaintiffs. Two members of the committee valued the land at Rs 60,383, the third valuing it at Rs 179,774. The Government accepted the report of the majority as the determination by the committee under the terms of the Sanad and took possession of the land after payment of Rs. 60,383 to the plaintiffs. The plaintiffs filed the present suit to recover compensation at the higher valuation, or any sum in excess of Rs 60,383 which the Court might think just and proper. Held, dismissing the suit (i) that it was the understanding and within the contemplation of all the parties to the Sanad that the determination of the just value of the land to be made by a committee appointed by Government should be accepted if that determination represented the concurrent opinion of a majority of the committee, (ii) that the valuation agreed upon by the majority of the committee appointed by Government was the valuation expressed to be determined and so was binding upon the parties to the resumption term in the Sanad. *MATOMBERALY ADAMJI v SECRETARY OF STATE FOR INDIA* (1917)*

I. L. R. 42 Bom. 663

RETAINER.

See BAR COUNCIL, RESOLUTIONS OF
I. L. R. 40 Calc. 898

RETRACTION OF STATEMENT BY WITNESS.

See SANCTION FOR PROSECUTION
I. L. R. 37 Calc. 616

RE-TRIAL.

See APPEALS, EXAMINATION OF
I. L. R. 40 Calc. 183

See ATTORNEYS ACQUIT

I. L. R. 41 Calc. 1072

See CRIMINAL PROCEDURE CODE (ACT V
OF 1888), ss. 233, 421, 437

I. L. R. 39 Mad. 527

See EVIDENCE ACT (I OF 1872), ss. 21,
81 . . . I. L. R. 36 Mad. 457

See TRIAL BY JURY

I. L. R. 47 Calc. 795
16 C. W. N. 809

RE-TRIAL—contd

Power of High Court to order, after obtaining additional evidence—Code of Criminal Procedure (Act V of 1898), s 428—Government of India Act (5 and 6 Geo 5 c 61), s 107—Witnesses, duty of Court to secure attendance of—Petitions filed by parties, duty of Court to pass order on—The High Court has power to direct the Sessions Judge to rehear an appeal after obtaining additional evidence. It is the duty of the Court, when processes have once been issued for the attendance of witnesses, to exhaust all the powers allowed by law to enforce their attendance, unless the party citing such witnesses can be shown to have been guilty of wilful obstruction and delay. Where the accused repeatedly requested that certain persons should be summoned as witnesses and the Court twice issued process without securing their attendance held that the fact that the accused had failed to deposit the travelling and diet expenses of the witnesses did not excuse the Court from its duty to secure their attendance as the accused had never been requested to deposit the sum necessary for the expenses. **MARWED ZAMINDAR v KING-EMPEROR** 3 Pat. L. J. 632

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See **JURISDICTION OF CIVIL COURT**

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See **UNITED PROV. LAND REVENUE ACT**

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See **BOMBAY REVENUE JURISDICTION ACT**

(X of 1876)

s 4 (a)—

See **HEREDITARY OFFICES ACT** (BOM III of 1874), ss. 11, 11A

I. L. R. 37 Bom. 37

See **SARANJAM**

I. L. R. 41 Bom. 408

ss 4 (c), 5 and 6—*Don boy Land Revenue Code (Bom Act V of 1879), s 140—Realization of land revenue—Atachment of goods by Mamlatdar—Suit against Mamlatdar for recovery of damages—No denial of the allegation that the goods belonged to plaintiff—Jurisdiction of Civil Courts—Delegation of the powers by the Collector for his own district* S 4 (c) of the Revenue Jurisdiction Act, Bombay (X of 1876), is not a bar to a suit in which there is a claim arising out of the alleged illegality of the proceedings taken for the realization of land revenue. Where the legality of the proceedings initiated by a revenue officer is in question, the Court has to inquire under s 6 of the Act whether the act complained of was done *bona fide* by the officer in pursuance of the provisions of any law. The Mamlatdar in order to justify his acts under s 140 of the Land Revenue Code (Bom Act V of 1879), must show that the Collector of the District in which he is the Mamlatdar had delegated his powers. The Mamlatdar can only exercise delegated powers in the taluka in which the delegation occurred. The delegation by the Collector of any other District would not justify his act. **GANGARAM HATIRAM v. DISKAR GAVESH** (1913)

I. L. R. 37 Bom. 542

s 4, sub-s (a)—*Act XI of 1852*

—*Land held as Saranjam—Decision of the Inam Commissioner—Finality—Suit for declaration of title and possession—Exclusion of jurisdiction of Civil Courts* In the year 1853 the Inam Commissioner decided that a certain estate was Saranjam of P and not his Sary Inam. On P's death in 1899 Government resumed the estate on the ground that it was Saranjam and re-granted it to P, one of P's grandsons. Subsequently the plaintiff, another grandson of P, brought a suit against the Secretary of State for India and P for declaration of title and possession, on the ground that the immovable property in suit was plaintiff's Sary Inam property and could not be taken from his possession by Government or its officers or re-granted to any one else. *Held*, (i) that the decision of the Inam Commissioner was, by virtue of the provisions of Rule 2, Sch A of Act XI of 1852, final as regards the land and interests concerned in the decision (ii) That after such final decision, the title and continuance of the estate must be determined under Sch B, Rule 10 of the Act, under such rules as Government may find it necessary to issue from time to time (iii) That in accordance with these

REVENUE JURISDICTION ACT (X OF 1876)—*contd*— s 4, sub s — *contd*

rules the estate was on P's death resumed by Government who re-granted it to J. Held further that the suit having been against Government relating to land as Saranam was excluded from the jurisdiction of the Civil Courts by the provisions of sub s (a) of s 4 of the Revenue Jurisdiction Act (X of 1876). **RAMRAY GOVINDRAO v SECRETARY OF STATE (1909)** I L R 34 Bom 232

— s 5 cl (c) —

See PROVINCIAL SMALL CAUSE COURTS ACT (IX of 188) SCH II ART 13

I L R 39 Bom 131

REVENUE OFFICER

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REVENUE PAYING ESTATE

See CHAUKIDARI CHAKRAN JANDS

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— entry in —

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I L R 35 Bom 487

— Entry in more than 12 years — whether sufficient for acquisition by adverse possession —

See EQUITY OF REDEMPTION

I L R 1 Lah 549

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See MADRAS REVENUE RECOVERY ACT

REVENUE REGISTER

See LIMITATION ACT (IX OF 1908) SCH I ART 118

I L R 37 Bom 513

REVENUE SALE

See BENGAL LAND REVENUE SALES ACT

See CONTRACT ACT s 59

15 C W N 443

See REVENUE SALE LAW

See SALE FOR ARREARS OF REVENUE

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 65 (c) I L R 39 Mad 959

An incumbrance or under tenure is not *ipso facto* avoided by the sale of an estate for arrears of revenue and is only liable to be avoided at the option of the purchaser at such sale. **PANHATAN KAPALI v ASWINI KUMAR DUTT**

I L R 37 Calc 559

— Revenue Sale Law (Act XI of 1859) ss 6 33 — Publication of notification sale in the Vernacular Government Gazette if necessary — Omission thereof as an irregularity and not illegality — Bengal Land Revenue Sales Act (Beng VII of 1858) s 8 Where the Subordinate Judge of Cuttack decided that it was absolutely necessary that the notice for a Revenue Sale should be published in the Vernacular Gazette in Urdu and that its non publication had made the sale null

REVENUE SALE — *contd*

and void apart from any consideration as to the adequacy of price. Held that the publication of a notification of sale in the Calcutta Gazette only was sufficient compliance with a provision of Law (Act XI of 1859 s 8) requiring the publication of such notification in the Official Gazette. Held further that even if it had been necessary to publish the notification in the Urdu Gazette the omission to do so would not have rendered the sale null and void in the absence of any proof of substantial injury by reason of this omission as s 33 of Act XI of 1859 applied to such a case. **Gobind Lal Roy v Ramjanam Misser I L R 21 Calc 70** L R 20 I A 165 followed. **Lala Moharuk Lal v Secretary of State for India I L R 11 Calc 900** referred to. **RADHA CHARAN DAS v SHARFUDDIN HOSSAIN (1913)** I L R 41 Calc 276

— Notification — Official Gazette — Calcutta Gazette — Government Vernacular Gazette — Bengal Land Revenue Sales Act (XI of 1859) ss 6 33 The Official Gazette in which by s 6 of Act XI of 1859 a notification is to be published of the revenue sales therein referred to is the Calcutta Gazette. A sale is not contrary to the provisions of this Act within s 33 by reason of no notification having been published in a Government Vernacular Gazette circulating in the locality. **SHARFUDDIN HOSSAIN v RADHA CHARAN DAS (1918)** L R 45 I A 205

— Revenue Sale Law (Act XI of 1859) s 37 and 4th exception to s 37 — Scope of s 37 — Benefit of the 4th exception to s 37 when can be claimed. S 37 of Act XI of 1859 applies to sale of an entire estate for recovery of arrears due on account of an entire estate as well as to a sale for recovery of arrears due on account of a share only provided the entire estate is sold under the provisions of s 14 of the Act and that so long as it is the entire estate which is sold and the arrears are due on account of the estate itself and not on account of estates other than that which is sold s 37 applies. The benefit of the 4th exception to s 37 is limited only to such portions of land as are covered by buildings, tanks etc and cannot be extended to cover those lands included in the lease on which no permanent works have been constructed. **Najmoddeen Moonsah v Syed Hassan Hyder Chowdhury 9 C W N 852** **Wahid Ali v Rahat Ali 12 C W N 1029** **Bisweswar Chatak v Fateh Hussain 10 C W N 1117** and **Muthura Nath Ghosal v Ratneswar Sen 23 I C 917** referred to. **Kiron Chunder Roy v Namudda Talukdar I L R 30 Calc 493** not followed. **LOGENDRA NARAIN ROY CHOWDHURY v KIRAN CHANDRA ROY (1918)** I L R 46 Calc 730

REVENUE SALE LAW ACT (XI OF 1859)

See CHAUKIDARI CHAKRAN LANDS

I L R 45 Calc 785

— ss 2, 3 —

See s 23

5 Pat L J 65

— Beng Act VII of 1858 s 30 — Panchannagram tenure in which may be sold for arrears of revenue — Default date of fixed by statute or not fixed on the deed or if may be varied by administrative Rules — Period when becomes arrears and when default in payment takes place — Tenures held under Government in D'I Panchannagram in the District of 94 Pargannas are saleable

REVENUE SALE LAW ACT (XI OF 1859)—
contd.

ss. 2, 3—contd

under Act XI of 1859 by virtue of the provisions of Beng Act VII of 1863. No distinction can be drawn between the provisions of Act XI of 1859 and those of Beng Act VII of 1863 with reference to the procedure for sale and with reference to what constitutes arrears. Where the *Kabuliyat* executed by the original holder of the tenure provided that the *jama*, an annual one would be paid in the Collectorate within the 29th June of every year, the rent payable under the terms of the *Kabuliyat* on the 28th June 1902 was not in arrear according to the provisions of s. 2 of Act XI of 1859 till the 1st of July 1902. Where further a Notification issued by the Board of Revenue under s. 3 of Act XI of 1859 "determined and fixed the 28th June of each respective year as the latest day of the payment of rents of all descriptions of tenures in Khass Mehal Panchannagram in default of which payment on or previous to that date tenures in arrears in that mehal will be sold at public auction to the highest bidder." *Held*, that the 28th June 1902 was the first date under the notification and the Statute when the default, such as would enable the "tenure in arrears" to be sold, arose in respect of the amount payable under the *Kabuliyat* on the 28th June 1902. The sale in this case which took place in March 1903 was therefore illegal and liable to be set aside. General considerations or administrative rules not having the sanction of the Statute, such as Rule 7 of Part III, c. 16 of the Survey and Settlement Manual could not operate to vary the contract of the parties and the statutory provisions applicable thereto. *Durlay Chandra Kar v. Hajee Bux Ellahi*, 13 C. W. N. 633 reversed. *Haji Bux Ellahi v. Durlay Chandra Kar* (1912). 16 C. W. N. 842

ss. 6, 10 to 13, 33—

See SALE FOR ARREARS OF REVENUE.

ss. 6, 33—

See REVENUE SALE.

I. L. R. 41 Calc. 276

See SALE FOR ARREARS OF REVENUE.

I. L. R. 46 Calc. 255

Notification of sale publication in Government Vernacular Gazette, if necessary—Omission, if nullifies sale—Irregularity. The publication of a notification of sale under s. 6 of Act XI of 1859 in the Calcutta Gazette only is a sufficient compliance with the provision of law requiring the publication of such notification in the "Official Gazette." Where such notification has been published in the Calcutta Gazette publication thereof again in any of the Government Vernacular Gazettes is not required by law. If such publication in the Vernacular Gazettes were required by law, non-compliance with it would be an irregularity and the provisions of s. 33 of the Act would apply. *Radha Chaman Das v. Shree Uddin Hosain* (1913). 17 C. W. N. 1135

ss. 10, 11—*Separate account opened in favour of shareholder owning shares in specific portion of estate—Such shareholder if purchases a revenue sale free from incumbrance—Land Registration Act (Beng VII of 1876) s. 19.* *See REJIB AND VINCENT JJ (BRETT, J. contra)—Persons in whose favour the Collector has opened a*

REVENUE SALE LAW ACT (XI OF 1859)—
contd.

ss. 10, 11—contd

separate account, though they are neither shareholders in the whole estate nor proprietors of specific lands comprised therein but are shareholders in some only of the many villages comprised in the entire estate, do not by purchase of the estate at a sale for arrears of revenue, acquire it free from incumbrances. The privilege given by s. 63 of Act XI of 1859 to shareholders with whom separate accounts have been validly opened under s. 10 or s. 11 of the Act has not been extended to shareholders in whose favour accounts have been opened under s. 70 of the Land Registration Act, nor can such privilege be claimed by shareholders with whom separate accounts had been opened by the Collector before the passing of the Land Registration Act in contravention of ss. 10 and 11 of Act XI of 1859. *Ashraf Sheikh v. Panna Prasad* 21 W. N. 33 approved. *Mahamad Mehmud Husein Khan v. Shree Sharnkar Prasad Singh* (1911). 16 C. W. N. 817

ss. 10 to 13—

See SALE FOR ARREARS OF REVENUE.

ss. 10, 11, 33—

See SALE FOR ARREARS OF REVENUE.

I. L. R. 39 Calc. 353

s. 13—

Sale for arrears of revenue, effect of—Collector, if can dismember revenue unit for realising arrears. Under the Bengal Land Revenue Sales Act, the Collector is entitled to sell a revenue unit in its entirety whether it be an estate or a share, and nothing less. He is not entitled to dismember the revenue unit for the purpose of realisation of arrears. *Ganga Prasad Singh v. Pargash Singh* (1912). 17 C. W. N. 844

Share sold for its own arrears though estate as a whole not in arrears—Validity of sale—"Estate" meaning of. Where the plaintiff's share in a revenue paying estate in respect of which a separate account had been opened was sold for its own exclusive arrears, without taking into account excess payments made by the proprietors of other shares and which more than made good the arrears due on plaintiff's share. *Held*, that as the estate as a whole was not in arrears the sale of plaintiff's share was illegal and was liable to be set aside by the Civil Court. The term "estate" as used in the clause "if the estate shall become liable to sale for arrears of revenue" in s. 13 of Act XI of 1859, means the entire estate out of which the separate share has been carved. *Indra Mani Das v. Prithamath Chakrabarty* (1913). 18 C. W. N. 490

ss. 13, 14, 33, 53—

See SALE FOR ARREARS OF REVENUE.

I. L. R. 41 Calc. 1092

ss. 13, 54—*Separate account—Share owned erroneously recorded in Collector's books as a larger share with proportionately larger revenue—Sale of separated share—Purchaser acquires what share.* At a sale under s. 13 of Act XI of 1859 it is not the rights of the recorded proprietor that pass, but the share itself. The rights which s. 64 of the Act in terms precludes the purchaser at such a sale from acquiring are interests such as incumbrances and the like which are referred to

REVENUE SALE LAW ACT (XI OF 1859)—
contd.

ss. 13, 54—contd.

in the previous portion of that section. Where a separate account in respect of a 3 as odd share owned by H in a revenue paying estate was registered in the Collector's books as for a 7 as odd share and revenue proportionate to a 7 as odd share was apportioned to it *Held*, that upon sale of the share under s. 13 of Act XI of 1859, the purchaser acquired the share recorded in the Collector's books and not the share actually owned by H *Debi Das Chowdhury v Bypra Charan Ghosal, 1 L R 22 Calc 611, Banalata Das v Monmolia Nath Goswami, 11 C W N 821, Annoda Prosad Ghose v Rajendra Kumar Ghose, 1 L R 29 Calc 223, s c 6 C W N 375, and Gangadhar Misser v Kheroo Mandal 14 B L R 170, relied on KUMESH CHANDRA RAKSHIT v ABDUL HAMID SIDDIKI (1915) 19 C. W. N. 782*

s. 14—Separate account—Separated share not in fact in arrear shown in Collector's books as in arrears—Consequential sale of whole estate, if valid—Failure of co sharers to buy share—Sale of whole estate after closing separate accounts—Up to what date accounts to be closed—Sale as for March kist without arrears after estate falls into arrear for June kist if valid—Mahalwar Register, extract from, if evidence Where owing to the revenue, payable on account of a share of a revenue paying estate in respect of which a separate account had been opened, being erroneously recorded in the Collector's books as Rs 10 11 6 when the correct amount was Rs 2 11 11 less, the share though not in fact in default was shown in those books to be in arrears at the end of the March kist of 1904 (29th March, 1904) to the extent of Rs 54 3 5 and was put up for sale for that amount on 6th June, 1904, but the bids not reaching that amount the Collector gave 10 days time s. c. up to 17th June, 1904, to co sharers to buy up the share by paying the arrears under s. 14 of Act XI of 1859, but the latter not doing so the Collector closed the accounts of the whole estate up to 29th March, 1904, and found the arrears for the whole estate on that date to be Rs 3 odd but by reason of payments made since 29th March 1904 there were in fact no arrears due for the March kist on 17th June 1904, though an arrear of Rs 2 0 6 appeared to be due if the June kist was included, and the whole estate was put up for sale on the 19th September, 1904 as for the arrears due up to 29th March, 1904 *Held* (by the High Court) that as in point of fact the share in question was not in arrear on 29th March, 1904, the proceeding for the sale of that share was void and consequently the sale of the entire mahal under s. 14 was also void. That assuming that the Collector's books were correct, the Collector was bound to close all the separate accounts on 17th June, 1904 on which date he became entitled to sell the whole estate and as on that date there were no arrears due in respect of the March kist a sale of the estate as for arrears due to the March kist was *ultra vires*, though the sale might legitimately have been held for the June kist *Bal Kishan Das v Simpoval, 1 L R 25 I A 151, s c 1 L R 25 Calc 833, 2 C W N. 813, followed* An attested copy of entries in Mahalwar Register kept under s. 4 of Act VII of 1876, B C, showing the revenue assessed on each of two mauzas comprising a revenue paying estate was admissible in evidence. The mere fact

REVENUE SALE LAW ACT (XI OF 1859)—
contd.

s. 14—contd.

that the Register bore the signature of the Superintendent of Survey on one corner did not make it a document kept by that officer. The Judicial Committee saw no reason to interfere with the judgment of the High Court *MITASADDI MIAN v MAHOMED IDRIS (1915) 19 C W. N. 764*

**ss. 14, 33—Separated share not fetch-
ing enough to pay arrears—Several co sharers making deposits within time allowed, who as purchaser—
Sale how attacked** When on a share of a revenue paying estate, in respect of which a separate account has been opened, being put up for sale, the highest offer does not equal the amount due thereon, and the Collector stops the sale and declares that the entire estate will be put up to sale for arrears, unless the other recorded sharer or sharers or one or more of them shall within 10 days purchase the share in arrears by paying to Government the whole arrear due from the share, and more than one such recorded co-sharer separately make the necessary payment within the time specified, the Collector must recognize as purchaser the depositor who first pays the whole amount, or if there are more depositors than one to recognize as joint purchasers those whose payments first amount to the total arrears due. S. 33 of Act XI of 1859 applies to sales under s. 14, and when the first payer has been declared by the Collector to be the purchaser, a co sharer who has paid up the arrears subsequently cannot have the sale set aside by suit in the Civil Court except upon proof of the circumstances specified in s. 33. Such a sale under s. 14 cannot be attacked as a nullity and as such not requiring proof of those circumstances *Chooterbhoy Dutt v Ishri Mui, 1 L R 21 Calc 834 Gombadal Ray v Ramjanam Misser, 1 L R 21 Calc 70, followed Quare* Whether the s. 14 of Act XI of 1859 precludes sharers of the share exposed for sale from purchasing the defaulting share *SAMESO KUOR v HARIVAR PRESHAD (1914) 18 C W. N. 1071*

s. 25—

See COMMISSIONER

I. L R 40 Calc. 552

ss 25, 2 and 3—Date from which revenue due becomes an arrear—Sale before such date illegal—power of Commissioner to set aside sales not restricted to case of error of procedure In a revenue paying estate in which there were three separate accounts and a residuary share one of the separate accounts and the residuary share were in arrears when the March kist of 1915 became due, to the extent of Rs 3 10 0 and Rs 6 8 6 respectively while there was a total excess of Rs 7 1 0 in respect of the other two separate accounts. In April Rs 3 10 0 was paid in respect of the separate account in arrears with the permission of the Collector and this account was exempted from sale in May. The residuary share was put up for sale in respect of the arrear of Rs 6 8 6 and sold. The Commissioner set aside the sale on the ground that Rs 3 10 0 having been paid, the excess payment in respect of the other two separate accounts was sufficient to cover the arrear due on the residuary share. The purchaser sued for a declaration that the residuary share was sold for its own arrear of revenue and that he had acquired a good title. *Held*, (i) that

REVENUE SALE LAW ACT (XI OF 1859)

—contd.

ss. 25, 2 and 3—contd.

after Rs. 3100 had been accepted in respect of the separate account in arrear there was no arrear due on the whole estate and the residuary share was no longer liable to be sold; (ii) that the default in payment did not become an arrear until the 1st April and the property was not liable to be sold until the date fixed by the Board of Revenue, namely, the 23rd June 1882 of the Revenue Sales Act 1859, does not restrict the Commissioner's power to set aside a sale to cases in which there has been an irregularity in procedure. CHAKRAWAT SINGH v THE SECRETARY OF STATE FOR INDIA IN COUNCIL. 5 Pat. L. J. 66

ss. 25, 37—Sale of entire estate for arrears if *pro facto annuo* encumbrances—Sale voidable at purchaser's option—Option how may be exercised—Annulment by notice—Mere profits, claim for, when arises—Compensation for use and occupation. The sale of an entire estate for arrears of revenue does not *pro facto* avoid encumbrances and under tenures but only renders them voidable at the option of the purchaser. The purchaser may elect to annul an under tenore not only by institution of a suit, or by giving notice to vacate, but may forfeit it by other means. The delivery of possession by the Collector under s. 20 of Act X of 1859 does not convert under tenore holders into trespassers. The persons whom, in terms of that section, the Collector may remove in delivering possession must refer to the former proprietors or persons claiming proprietary right through them and does not refer to under tenore holders. *Mir Waziruddin v. Lala Deokinandan*, 6 C. L. J. 472, referred to. The purchaser is not entitled to mere profits for the period antecedent to the exercise by him of his option of annulment. He is only entitled to compensation for use and occupation on the basis of the rent payable by the tenore holder of the first decree. Where the under tenore has been annulled by notice, the purchaser is entitled to claim mere profits from the date on which the notice was expressed to expire. DURGAT SINGH v BHAWATI KOER (1913)

[17 C. W. N. 934]

s. 31—

See ARREARS OF REVENUE.

I. L. R. 47 Cal. 331

See SALE FOR ARREARS OF REVENUE.

I. L. R. 33 Cal. 537

ss. 31, 53—Estate left in arrear and purchased by proprietor *beneficiarius* of revenue sale—Encumbrancers, if can demand satisfaction from both surplus sale proceeds and the mortgage property—Court's power on appeal to grant relief in favour of party who did not appeal—Civil Procedure Code (Act V of 1908) ss. 107, 108 and O. XLI, r. 33—Estoppel by conduct in suit—Fraud, punishment of. During the pendency of a suit by B to enforce a mortgage upon a revenue paying estate, the mortgagor deliberately let the property fall into arrear, which being sold under Act XI of 1859 was purchased by the mortgagor in the *beneficiarius* of another. A suit was then brought by K to enforce a prior mortgage over the property, in which (not being presumably aware of the real character of the sale) he claimed a decree for payment of his dues out of the surplus sale proceeds. Before this suit was decreed, B (whom K had joined as a party in his

REVENUE SALE LAW ACT (XI OF 1859)

—contd.

ss. 31, 53—contd.

suit) brought a suit in which he alleged the purchase at the sale for arrears of revenue to have been *beneficiarius* for the proprietor and claimed a decree either for setting aside the sale or for a declaration that his mortgage should remain valid and operative against the estate. In view of this suit, the Court whilst decreeing K a suit as prayed further ordered that in the event of the sale being set aside, the mortgage monies, interest and costs due to A should be realised by the sale of the mortgaged property. B appealed against this decree and this appeal was heard in the High Court along with appeals against B preferred from decrees obtained by him in his suits, by one of which his allegations as to the real character of the purchase at the revenue sale had been found proved, whilst the other had given him the usual mortgage decree. All three appeals were dismissed but at the instance of the mortgagor, the High Court varied the decree in A's suit by setting aside the direction that his mortgage monies should be paid out of the surplus monies of the revenue sale. Upon further appeals to the Privy Council, the mortgagor urged *inter alia*, that B was estopped by his conduct as defendant in K's suit from questioning the sale under Act XI of 1859, and B urged that K not having appealed to the High Court, the decree of the lower Court could not be varied in the manner stated, and also that K was, in spite of what was found as to the real character of the sale, entitled to be satisfied out of the proceeds of the sale, so that in case K was entirely paid off out of the sale-proceeds, B would have a more abundant security in the mortgaged property to satisfy his decree. *Held*, that s. 53 of Act XI of 1859 distinctly contemplates purchase of property by a recorded proprietor, and the only effect of the finding that the purchase was *beneficiarius* by the proprietor was that, so far as the encumbrances were concerned, the sale was of no effect, and that, therefore, the direction of the High Court in K's suit was in accordance with the law. That the High Court had abundant power to give that direction, notwithstanding that A did not appeal, under ss. 107 and 151 of the Civil Procedure Code and O. XLI, r. 33 thereof, the Court having had authority under the first mentioned provision, if necessary, to take additional evidence. That B who had no power of controlling the form of K's suit and did not appear to have taken any step therein irrevocably asserting his intention to rely on the sale and not impeached the whole proceedings, was not estopped from claiming the reliefs which he prayed for in his suit to set aside the sale. That if the sale had in fact been to a stranger, the encumbrances would have been transferred to the sale proceeds, since the purchaser would obtain a title free from encumbrances. It is not right to punish a man for fraudulent behaviour by making him suffer other penalties than those which are the direct consequence of his fraud. TARNI CHARAN SARKAR v BISNU CHAND (1917)

23 C. W. N. 505

s. 33—

See s. 14. 18 C. W. N. 1071

See SALE FOR ARREARS OF REVENUE

Revenue Sale Law (Act XI of 1859), ss. 5, 23, 33—Exemption in respect of land revenue—Sale of property for arrears other than

REVENUE SALE LAW ACT (IX OF 1859)

—*contd.*s. 33—*contd.*

land revenue for which certificate proceedings initiated—*Formal order of exemption, absence of—Special notice under s. 5, necessity for* Where after an estate has been advertised for sale for arrears of land revenue, the Collector, upon the defaulter's application for exemption, ordered that the arrears "may be accepted if paid to day," and the plaintiff duly paid the amount and the same was received and acknowledged, but nevertheless the property was put up to sale on account of certain arrears of embankment charges, the intention to recover which by sale under Act XI of 1859 did not appear to have been conveyed to the defaulter by the Collectorate mohurrir when enquiries were made of him as to the amount to be deposited, and which arrears the Collector has already elected to recover by the certificate procedure from the defaulter and a usufructuary mortgagee from him—*Held*, that the Collector was not justified in putting up the property for sale on account of these arrears, without serving special notice on the defaulter under s. 5 of Act XI of 1859, on the mere ground that no special exemption order had been made. There were in the circumstances no arrears for which the property could be sold. *Gobind Lal Roy v. Ramyanam Misser*, 1. L. R. 21 Calc. 70, 83, *Bunwari Lal v. Mahabir Prasad*, 12 B. L. R. 297, *Demandan Singh v. Manbadh Singh*, 1 L. R. 32 Calc. 111, referred to *HARI DASI DEB v. DHIRAJ CHANDRA BOSE* (1910) 15 C. W. N. 38

ss. 33, 34—*Sale for arrears of revenue, set aside on appeal by Commissioner—Commissioner's order reversing that order and affirming sale declared by Civil Court to be ultra vires—Application to execute decree—Limitation* Where the Commissioner of Revenue, on appeal preferred by the proprietors of a revenue paying estate, set aside a sale for arrears of revenue, but subsequently in review cancelled that order and affirmed the sale, and the Civil Court, in a suit by the proprietors, declared the Commissioner's order on review *ultra vires* and upheld his previous order setting aside the sale, and also awarded possession and mesne profits to the plaintiffs—*Held*, that the decree was not one annulling a sale as contemplated by s. 34 of Act XI of 1859, as it only held that the Commissioner's order setting aside the sale must stand good. That s. 34 did not apply to this case as it was not a suit under s. 33 of the Act to annul a sale, the contention of the plaintiffs being that there was no subsisting sale to be annulled. S. 34 refers to cases brought under s. 33, and the rule of limitation laid down in s. 34 (requiring the decree holder to apply for execution within six months of the decree) applies only to suits brought under s. 33. *BALNATH GOENKA v. BALNATH SINGH* (1914) 19 C. W. N. 464

s. 36—*Suit against certified purchaser for specific performance of agreement to convey purchased property made before purchase—Maintainability* The plaintiff who wished to purchase a mahal at a revenue sale requested the defendant to watch the sale and to offer bids, and the defendant agreed to do so and to convey the property to the plaintiff. Defendant bid for the property in plaintiff's absence, took one fourth of the purchase money for deposit from the plaintiff and

REVENUE SALE LAW ACT (XI OF 1859)

—*contd.*s. 36—*contd.*

deposited the same, but refused to accept the balance of the purchase money from the plaintiff, and having procured the same from other sources took out a certificate in his own name. *Held*, that a suit by the plaintiff against the defendant for specific performance of the contract was maintainable, and s. 36 of Act XI of 1859 was no bar to it. *MOUMTHA NATH PAL v. GIRISH CHANDRA RAY* (1912) 17 C. W. N. 75

s. 37—

See s. 29 . . . 17 C. W. N. 934

See HOMESTEAD LAND.

I. L. R. 42 Calc. 639

See OCCUPANCY HOLDING

I. L. R. 42 Calc. 745

See REVENUE SALE.

I. L. R. 48 Calc. 730

Public documents, chartas prepared for distributing public revenue on partition of an estate if—Revenue Sale Law (Act XI of 1859), s. 37—Protected interest—Portion of taluk existing at Permanent Settlement but transferred and held under different names if protected When a portion of a taluk existing from before the time of the Permanent Settlement is transferred and the said portion is subsequently held as a proportionate jama under a name different from the original taluk but the subsequent transfers and descent thereof can be traced from the original taluk, the portion so transferred is also protected under s. 37 of Act XI of 1859. *NOBENDRA KISHORE ROY v. DURGA CHARAN CHOWDHURY* (1910) 15 C. W. N. 515

"Purchaser" if means "certified purchaser"—*Person in adverse possession for more than 12 years, if may be ejected—Thak map, evidence of possession and so of title—Presumption backward when proper* The word "purchaser" in s. 37 of Act XI of 1859, does not mean the "certified purchaser" only, and the "certified purchaser" is not the only person who can sue an incumbrancer for ejectment under that section. An adverse possessor is an incumbrancer within the meaning of that section. The Thak map is used primarily as evidence of possession of the party who relies thereon, and as soon as it is established from the Thak map that the claimant was in possession at that time such possession may legitimately be attributed to title. Where the Thak map, however, showed the lands as included in the plaintiff's estate but to be in possession of the defendant this principle did not apply. Although it cannot be affirmed as a proposition of law that merely because certain specified lands were included in an estate at the time of the Thak survey in 1859, they must have been included within that estate at the time of the Permanent Settlement, yet it is open to the Court to draw such inference from all the surrounding circumstances. The land in dispute in this case not being *chur* land and its history not showing that its area or situation had in any way been changed from the time of the Permanent Settlement: *Held* that the Courts below were justified in inferring from all the circumstances of the case that the land (shown in the Thak map of 1859, as within a certain estate), was included within that estate at the time

REVENUE SALE LAW ACT (XI OF 1859)—

—contd

—s. 37—contd

of the Permanent Settlement Jagadindra Nath Poy v The Secretary of State, 1 L. R. 30 Calo 201 s.c. 7 C. W. N. 193, distinguished. **MOHURDI BISWAS v ISHAN CHANDRA DAS (1910)**

15 C. W. N. 706

*Revenue Sale Law (Act XI of 1859) s. 5—The question of notice if may be raised after confirmation of sale—Laches if can arise without knowledge—Mortgagee in possession, a trustee, default in payment of revenue and subsequent purchase of mortgaged property, mortgagee if bound to account—Co-sharer, if may make default and purchase at revenue sale—Trustee for co-sharer, position of. Although the question as to proper service of notice cannot be raised after confirmation of a sale under Act XI of 1859, that is only so far as setting aside the sale on the ground of irregularity is concerned, but it does not prevent the Court from ascertaining for other purposes whether notice was so served as to fix on the party served the knowledge of it. Defendant was the mortgagee of a share belonging to some of the plaintiffs out of a revenue-paying estate. Defendant was bound, under the mortgage contract, to pay his share of the land revenue for the portion of the estate held by him. In one of these instalments he made an over payment of Rs. 3-6 as which was credited as an excess in the usual account. On a subsequent occasion the other co-sharers took advantage of the excess standing to the credit of the estate and paid only the balance remaining due from them. After this the defendant on one occasion paid Rs. 3 less than he was bound to pay without however asking to be credited with the excess paid by him previously. Some days after this short payment the plaintiffs paid their share of the revenue. For the short payment thus made by the defendant the estate was subsequently sold under XI of 1859 and purchased by the defendant. *Held*, that, in the absence of evidence that they knew of the default the plaintiffs could not be held guilty of laches in not seeing whether there was a deficit, as laches signify knowledge or at least such abstinance from legitimate enquiry as to amount to constructive notice. That the defendant as mortgagee could not take advantage of his purchase as against his mortgagors. A mortgagee in possession is for certain purposes a trustee for his mortgagors and cannot take advantage of that position to the detriment of his mortgagors. *Ansab Siddique Nazim Ali Khan v Oodhagam 26 Moos. J. A. 514*, referred to. Where a co-sharer who makes default in paying up his share of the land revenue subsequently purchases the property at a sale for arrears of revenue the purchase enures to the benefit of all co-sharers. *Lalor v. Worne, 1 Ex. Ca. 457, Khadim v Sheemung S. D. N. W. P. 1854-57, p. 164 (1855)*, referred to. A trustee for co-sharer cannot derive any benefit for himself at the expense of the co-sharers of the *cestus que trust* by committing a breach of trust. **JANKI SINGH v DEBENDRAN PRASAD (1910)***

15 C. W. N. 778

Onus of proof—Lakhi poy or mal lands. In a suit for khas possession free of incumbrance of lands on the ground that they were included within a taluk purchased by the plaintiff at a revenue sale it was found

REVENUE SALE LAW ACT (XI OF 1859)—

—contd

—s. 37—contd

that the defendants held certain rent free tenures within the estate and that these tenures existed from before the Permanent Settlement. *Held*, that the onus was on the plaintiff to prove that the lands in suit were included within the *mal lands* of the estate. **HALODHAR CHATTOPADHYA v RAMESH NARAIN RAY CHOWDHURY (1912)**

16 C. W. N. 980

Purchaser's suit for recovery of possession—Defendant's plea that land included in howda which is protected—Onus. Where a suit for recovery of possession of land by a purchaser of an undivided share in an estate at a revenue sale was resisted by the defendants on the plea that the land in suit was included within their *howda* which was a protected interest. *Held*, that the onus lay on the defendants to prove their allegation on. **Rhody Krasta v Naban Chunder, 12 C. L. R. 457, Pajendro Kumar v Mohan Chunder, 3 C. W. N. 763 explained. Sheodent Roy v Chatoorbhaj Roy, 12 C. L. J. 376 approved. RUTKESOR SEN v KALI KUMAR BIDYARHMAN (1912)**

16 C. W. N. 693

Taluk in existence before permanent settlement—Portion thereof transferred and held under a new name—Such portion if protected, when it can be traced to original taluk. When a portion of a taluk existing from before the permanent settlement is transferred and that portion is subsequently held in proportionate *jama* under a name different from the original taluk, but the subsequent transfer and descent thereof can be traced from the original taluk, the portion so transferred is also protected under a 37, Act XI of 1859. **DOYAMAYER CHOWDHURANI v NARENDRA KISHORE ROY (1913)**

19 C. W. N. 79

Registered putnadar pur chasing estate at revenue sale, if may annul subordinate tenures. The plaintiff, who was the owner of a *putni* which was specially registered and so protected at a sale for arrears of revenue purchased the parent estate at a sale for arrears and sought to annul the tenures subordinate to the *putni*. *Held*, that the plaintiff was not entitled to annul the tenures subordinate to the *putni*. **SATCOMER CHATTERJEE v PRIYANATH BASU (1913)**

18 C. W. N. 672

s. 37 (4)—purchaser at revenue sale, if may eject lakhteydar from land which has been pl. annulled upon—Incumbrance how annulled. S. 37 of the Revenue Sale Law does not protect land held without payment of rent upon which dwelling houses, manufactories or other permanent buildings have been erected or whereon gardens plantations, etc., have been made. The assignee or transferee of the auction purchaser at a Revenue sale is entitled to exercise the rights of a purchaser. It is not essential on the part of the auction purchaser or his assignee who seeks to annul an incumbrance to give a formal written notice to avoid it. All that is necessary is to notify to the incumbrancer by some unambiguous act the intention to annul. **KRISHNA KALYANI DANI v R. BRAUNFIELD (1915)**

20 C. W. N. 1028

—s. 53—
See s. 31

22 C. W. N. 503

REVENUE SALE LAW (ACT (XI OF 1859)—*—concll.*

s. 54—

See s 13

19 C. W. N. 782

See SALE FOR ARREARS OF REVENUE

I. L. R. 43 Calc. 46

s 58—

*Collector's peon starting the bidding according to custom by bidding one rupee—Subsequent bids falling short of arrears—Collector, if may legally buy property for the highest bid—Irregularity or illegality—See 6 and 7—Notices signed by Sub Deputy Collector, if whistles sale Where a revenue paying estate in arrears having been put up for sale, the peon, a Government official, started the bidding according to custom as a matter of form by bidding Re 1, and, thereafter, other people having bid for the property, the highest bid came up to Rs 58, which being less than the amount in arrears, the Collector purporting to act under s 58 of Act XI of 1859 purchased the property for the highest amount bid Held (by the majority), that this was a different case from *Halsamunnessa Choudhuran v The Secretary of State for India*, 1 L R 31 Calc. 1036, 8 C W N. 880, and the purchase by the Collector was not in contravention of the letter or the spirit of s 58 of the Revenue Sales Act The fact that the notices under ss 6 and 7 of the Act were signed not by the Collector or other officer authorised to hold sales but by a Sub Deputy Collector on behalf of the Collector did not vitiate the sale *AMRITA LAL ROY v SECRETARY OF STATE FOR INDIA* (1918) 22 C. W. N. 769*

REVERSAL OF JUDGMENT.

Effect of, on connected and dependent orders—Restitution of money taken away by decree holder in execution of decree under erroneous decision on question of limitation—Restitution, if must be with interest—Limitation Act (IX of 1908), Art. 181 The decree holders made an application for execution of a decree by attachment and sale of moveables, which was opposed by the judgment debtors on the ground of limitation The objection was treated as a separate case While this application for execution was pending, the decree-holders made a fresh application for execution to attach funds in Court standing to the credit of two of the judgment debtors This application was treated as a separate proceeding The objection case was decided against the judgment debtors and the Court thereupon made an order in the second execution case directing the decree-holders to take steps Then on the decree-holders' application payment of the fund in deposit in Court was ordered. An appeal was preferred to the High Court in the objection case but none against the payment order This appeal was decreed and the High Court directed that any sums taken away by the decree-holders under the order of the Court below must be refunded at once. The judgment-debtors whose deposit had been taken away by the decree-holders then applied to the Court below for restitution: Held, that it is a general rule that upon the reversal of a judgment, order or decree all connected or dependent judgments or orders fall with it, specially judgments subsequently entered and dependent thereon although this rule does not operate by implication so as to set aside a distinct and independent judgment

REVERSAL OF JUDGMENT—contd.

*or proceeding though it forms a part of the same litigation. That the payment order was in essence ancillary to the decision in the objection case and the cancellation of the order in the objection case by the High Court in appeal involved by necessary implication a cancellation of the consequential payment order The judgment debtors were therefore entitled to restitution even though they did not formally appeal against the payment order That the only Article of the Limitation Act which may possibly apply to an application by the judgment-debtors for restitution is Art 181 and the period of three years provided therein commences from the date when the erroneous order is set aside. That restitution must be made of the sum withdrawn together with interest thereon at 6 per cent. per annum *ASUTOSH GOSWAMI v UPENDRO PRASAD MITRA* (1916) 21 C. W. N. 564*

REVERSAL OF SALE.

See PARTIES I. L. R. 39 Calc. 881

REVERSIONARY HEIR.

See CONSENT DECREE I. L. R. 38 Calc. 639

See LIMITATION ACT (IX of 1908), SEC 1, ARTS 141, 144

I. L. R. 42 Bom. 714

REVERSIONARY INTEREST.

See HINDU LAW—PARTITION

I. L. R. 43 Calc 1118

— attachment of—

See HINDU LAW—WIDOW

I. L. R. 39 Mad. 565

— transfer of—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 6 I. L. R. 41 All. 611

*Transferability of The interest of a Hindu reversioner is an interest expectant on the death of a gratified owner. It is not a vested interest but a spes successionis or mere chance of succession It cannot be sold, mortgaged, assigned or relinquished and is not transferable under s 6 of the Transfer of Property Act, 1882, but he may estop himself from claiming as Reversioner *ANNADA MOHAN ROY v GOVIND MOHAN MALLIK* 25 C. W. N. 496*

REVERSIONARY TRUST.

See WILL I. L. R. 45 I. A. 257

REVERSIONER.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXIII, r. 1 (3)

I. L. R. 39 Mad. 987

See DECLARATORY DECREE

I. L. R. 45 Calc. 510

See DECLARATORY DECREE, SUIT FOR.

I. L. R. 43 Calc. 694

See FRAUD I. L. R. 36 Bom. 135

See HINDU LAW—ADOPTION

I. L. R. 40 Mad. 818

See HINDU LAW—ALIASATION

I. L. R. 40 Calc. 721

I. L. R. 41 Calc. 793

I. L. R. 45 Bom. 105

REVERSIONER—*contd.**See* HINDU LAW—GIFT

I L R 37 Calc. 1

See HINDU LAW—JOINT FAMILY

I L R 42 Bom. 69

See HINDU LAW—PERVERSIONER*See* HINDU LAW—WIDOW

14 C W N 228

I L R 32 All 178

18 C W N 106

I L R 34 All 207

I L R 35 All 328

I L R 47 Calc. 488

I L R 39 All 1, 520

I L R 43 Bom. 249

I L R 43 All 535

See LIMITATION ACT 1908—

SCH. I, ART 91

I L R 40 Bom. 51

SCH. I, ART 100

I L R 41 Mad. 659

See SPECIFIC RELIEF ACT (I OF 1877)

s. 42

I L R 33 All 430

See SUCCESSION CERTIFICATE ACT s. 4

15 C W N 1018

See TRANSFER OF PROPERTY ACT (IV OF 1899), s. 8, CL. (a)

I L R 32 All 83

——— claim by—

See HINDU LAW—INHERITANCE.

I L R 40 Mad. 654

——— consent of—

See HINDU LAW—ALIENATION

I L R 42 Calc. 878

See HINDU WIDOW

I L R 42 Bom. 719

——— redemption by, after foreclosure

decree—

See MORTGAGE I L R 38 Mad. 428

——— relinquishment of right of suit by—

See REGISTRATION ACT (XVI OF 1908)

s. 17

I L R 40 All 384

——— right of—

See APPEAL TO PRIVY COUNCIL.

I L R 38 Mad. 408

——— right of several, independent—

See LIMITATION ACT (IX OF 1908) s. 6.

SCH. I, ART 125

I L R 38 Mad. 570

——— suit by—

See ABATEMENT OF SUIT

I L R 73 Mad. 406

See HINDU LAW I L R 33 Mad. 410*See* LIMITATION ACT (XV OF 1877) SCH.

II, ART 141

I L R 33 All 312

See LIMITATION ACT, 1908

ART 113

I L R 41 Bom. 728

ARTS. 140 141 I L R 40 Bom. 239

——— title of—

See PRAJUDICATA I L R 41 Calc. 89**REVERSIONER—*concl.***——— contingent interest of reversioner
during widow's lifetime—*See* HINDU LAW I L R 45 Bom. 1167——— Gift by a Hindu widow—Reversioners
alone can dispute validity of—*See* HINDU LAW I L R 45 Bom. 105——— deed of gift by widow and next
reversioner—*See* HINDU LAW I L R 44 Bom. 488

——— Widow's estate—

See HINDU LAW I L R 44 Bom. 255**REVIEW***See* APPEAL I L R 43 Calc. 178

14 C W N 244

See APPEAL TO PRIVY COUNCIL.

I L R 41 Calc. 734

See ARBITRATION I L R 43 Calc. 290*See* ARBITRATION BY COURT

I L R 38 Calc. 421

See CIVIL PROCEDURE CODE, 1908—

s. 2

4 Pat L J 57

ss. 14 151; O XLVII s. 1

I L R 42 All 71

s. 114

O XLVII

O XLVIII s. 1 I L R 33 All 588

O XLVIII s. 9 I L R 38 All 280

See COMMISSIONER, POWER OF

I L R 40 Calc. 552

See COSTS I L R 47 Calc. 974*See* COUNTERVEIT COIN

I L R 44 Calc. 477

See CRIMINAL CASES

I L R 46 Calc. 60

See CRIMINAL PROCEDURE CODE s. 369

I L R 38 All 134

See EXECUTION OF DECREE.

3 Pat L J 571

See JURISDICTION

I L R 38 Bom. 416

See LIMITATION ACT (IX OF 1908) ss.

5, 14.

I L R 42 Bom. 295

See POSSESSORY SUIT

I L R 45 Calc. 519

See PRACTICE I L R 44 Calc. 28*See* PRIVY COUNCIL, PRACTICE OF

I L R 38 Calc. 526

See REVIEW OF JUDGMENT*See* SMALL CAUSE COURT SUIT

I L R 44 Calc. 950

See TRANSFER OF PROPERTY (VALIDATORY)

ACT 1917, s. 3

I L R 42 All 430

——— application for—

See LIMITATION I L R 44 I A. 218

——— High Courts power of—

See CRIMINAL PROCEDURE CODE, s. 362.

I L R 38 All 134

REVIEW—contd.

Power of the Small Cause Court to review its judgment—

See PRESIDENTY SMALL CAUSE COURTS ACT (XV of 1882), Chap VII, s 48

I L R 45 Bom 972

subsequent filing of appeal—

See CIVIL PROCEDURE CODE 1908, O XLVII, r 1 I L R 42 All 79

1. — Appeal against order granting review of judgment—Civil Procedure Code (Act V of 1908), O XLIII, r 1, d (w), and O XLVII, r 7 O XLIII, r 1, d (w) must be read with, and subject to, r 7, O XLVII. An order granting application for review of judgment can only be objected to on grounds specified in r 7 of O XLVII. *Jagernath Pershad Singh v Ram Anwar Singh* M A No 341 of 1909 (unrep) *Tripathi Choran Lal v Sorabji Bala*, C P No 123 of 1913 (unrep), *Surendra Nath Talukdar v Sita Nath Das Gupta*, M A No 188 of 1912 (unrep) referred to *HARI CHARAN SATHA v BAHAN KHAN* (1914)

I L R 41 Calc 748

2. — New Evidence—Dismissal of application for admission of second appeal—Application for review based on alleged discovery of new and important evidence—High Court, Jurisdiction of—Civil Procedure Code (Act V of 1908), O XLI, r 11 and O XLVII, r 1 The High Court has no authority, merely on the ground of alleged discovery of new and important evidence, to review an order dismissing an application for the admission of a second appeal under O XLI r 11 of the Code of Civil Procedure. *Bhagub Nath Tote v Kally Chander Chowdhury*, 16 W R 112 followed *Heera Lal Ghose v Pam Taruck Dey* 23 W R 323 discussed. *Banu Khatun v Momand* I L R 18 Mad 480, and *In re David Kishore*, I L R 32 All 71, referred to *RAJANI KANTA DAS v KALI PRASADNA MUKHERJEE* (1914)

I L R 41 Calc 809

3. — High Court judgment—Application for review presented to Court presided over by Chief Justice under special circumstances—Deputy Registrar certifying application not in order—Application if must be presented within seven days of return of application with such certificate The application for review was properly presented to the Court presided over by the Chief Justice, as there was no time after the application was put in order to present it to the Bench which had disposed of the appeal in the first instance, one of them having retired from the Court some days before and the other having gone away on furlough two days after that date. R. 4 of Chap XI of the Appellate Side Rules was intended to apply to the case where the Deputy Registrar gives a certificate that the review application was in order and not to cases where the certificate is to the effect that the proceedings were not in order. *GANGADHAR KARMACHAR v SREKHA BASINI DATTA* (1916)

20 C. W. N 967

4. — Application for review subsequent to filing of second appeal—Civil Procedure Code (Act V of 1908), s 114, O XLVII, r 1 Where an application for review of judgment is filed and later, during the pendency of the same, an appeal is preferred. *Held*, that the Court has power and in fact is bound to proceed with the application for review of judgment notwithstanding the fact that an appeal has been

REVIEW—contd.

subsequently filed. But the power exists so long as the appeal is not heard. *Bharat Chandra Mazumdar v Pampanga Sen*, (1866) B L R (F B) 362, *Chenna Peddi v Peddabob Reddi*, I L R 32 Mad 416, followed. *Thacoor Froed v Boluck Ram*, 12 C L R 64, *Sarat Chandra Dhal v Damodar Manna*, 12 C W A 885, *Narayan Purushottam Gargole v Laxmidas* I L R 35 Bom 416, referred to. On the other hand, if the application is successful the appeal cannot proceed. *Kanhaiya Lal v Baldeo Prasad*, I L R 28 All 240, referred to. *PTARI MOHAN HUNDU v KATU KHAN* (1917)

I L R 44 Calc 1011

5. — Appeals under clause 15 of the Letters Patent—*Letters for review in, maintainability of* It is competent to the High Court to review judgments in appeals preferred under clause 15 of the Letters Patent. *VENKATA SUBBARAYADU v SRI RAJAH KRISHNA YACHEN DRULU VARU BAHADUR* (1915)

I L R 40 Mad. 651

6. — Discovery of new and important matter of evidence—Procedure and Practice—Character of evidence—Trial of issue—Appeal against order granting review—Civil Procedure Code (Act V of 1908), O XLIII, r 1 (w), O XLVII, rr 1, 4, 7, 8 The plaintiff obtained a decree in a suit instituted against the defendant. Subsequently the defendant applied for a review of the decree on the ground of the discovery of new and important matter of evidence which was not within his knowledge and could not be produced by him at the trial, and obtained a Rule calling upon the plaintiff to show cause why the said decree should not be reviewed and why this suit should not be set down on the peremptory list of suits for hearing. Upon the Rule coming on for hearing the Court directed an issue to be tried as to the new and important matter discovered after the judgment in this case. This issue having come on for trial, the Court decided the issue in favour of the defendant and the Rule was made absolute. *Held*, that this application for review was not granted in contravention to r 4 of O XLVII of the Civil Procedure Code, and it was not possible for the Court on this appeal to say that the learned Judge ought not to have made an order for review. *Held*, also, that the additional evidence was of such an unsatisfactory nature and it came into existence in such an unsatisfactory way and the learned Judge was apparently in such doubt as to whether it should be accepted, that it ought not to be taken as sufficient to overrule the distinct and clear opinion which he had formed. *PER SANDERSON, C J* It is most important that there should be some finality in the trial of cases, and the greatest care ought to be exercised in granting a review, when that review is asked for upon the allegation that fresh evidence has been discovered since the judgment was given. In an ordinary case where the appeal is on a question of fact, where the learned Judge of the Court of first instance has heard and seen the witnesses and has come to a conclusion upon the question of fact upon the evidence on the one side and on the other, there is a very great onus upon the shoulders of the appellant when he comes to this Court and asks it to overrule the decision of the learned Judge upon the question of fact. *PER MOOKERJEE, J.* Under O XLVII, r 7, an order granting an application for review may be attacked by way of appeal on the ground that the application has been

REVIEW—contd.

granted on the ground of discovery of new evidence without strict proof of the applicant that such new evidence was not within his knowledge or could not be adduced by him when the decree was passed. **NANDALAL MULLICK v PANCHANAN MUKERJEE** (1917) **I L R 45 Calc 60**
21 C W N 1076

7 ——— Criminal cases—Order summarily rejecting an appeal—Application for review of the order—Criminal Procedure Code (Act V of 1898), s 369 The High Court has no power to review an order passed in its Criminal Appellate jurisdiction rejecting an appeal summarily. In the matter of *Gibbons*, **I L R 14 Calc 42**, followed. Where a case is disposed of merely for default of appearance, or an order is passed to the prejudice of the accused, and by mistake or inadvertence no opportunity was given him to be heard, the High Court may review the same. **Bibhu Mohan Roy v Damodar Das**, **7 C W N 211**, **Bibhu Mohan Roy v Damodar Das**, **10 C L J 30** and in the matter of an Attorney, **I L R 41 Calc 734**, referred to. **RAJIB ALI v EMPEROR** (1918)

I L R 46 Calc 60

8 ——— Power of Collector to review his own order—The Collector has no power to review his own order refusing to interfere with an order passed by his subordinate, confirming a sale for arrears of land revenue. **DAVID NADAR v MANICKA VACHAKA DESIKA GNANA SANKARANDA PANDARA SANNADI** (1909) **I L R 33 Mad 65**

9 ——— Application for leave to appeal to Privy Council—Order rejecting such application, if subject of review—Interest subsequent to decree, how far can be allowed by the High Court to be calculated—Order rejecting application for review by a Court other than High Court, if appealable—Civil Procedure Code (Act V of 1908), s 114, OO XLVII and XLIII, r 1 (b) An order rejecting an application for leave to appeal to His Majesty in Council comes within the description of orders contemplated in s 114 of the Code of Civil Procedure, 1908, and is subject to review. **Lutf Ali Khan v Asgar Raza** **I L R 17 Calc 435**, distinguished. The High Court should not grant leave to appeal to His Majesty in Council in cases in which the specified amount of Rs 10,000 can only be reached by the addition of interest subsequent to the decree. **Gooperooand Akceod v Jugguchunder**, **8 Moo I A 165** followed. **NAND KISHORE SINGH v RAM GULAM SARKI** (1912)

I L R 39 Calc. 1037

10 ——— Appeal from original decree—Review of judgment—Effect of order on review—The effect of the granting of an application for review is to supersede the decree which is the subject of such application. No appeal can, therefore, be maintained against the decree anterior to the review, but only against the subsequent decree. **Kuar Sen v Gangra Ram** **All Weekly Notes** (1890) 144 and **Kanhaiya Lal v Baldeo Prasad**, **I L R 23 All 240**, followed. **Uma Kumbhari v Jorbandhan**, **I L R 30 All 479** distinguished. **BRABHAI LAL v SALGI RAM** (1912)

I L R 34 All 282

11 ——— Application for review—Sui—Res judicata—Compromise decree An application for review is not a suit within the meaning of s 13 of the Code of Civil Procedure, 1902, and a decision of a question arising in an

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application for review cannot operate as constructive *res judicata*. **Gulab Koor v Badshah Bahadur**, **19 C L J 420**, referred to. **Ram Gopal Majumdar v Prasanna Kumar Samad**, **2 C L J 598**, distinguished. **SURESH CHANDRA PAL CHOWDHURY v TRIGUNA PRASAD PAL CHOWDHURY** (1913)
I L R 40 Calc. 541

12 ——— Vendor and purchaser—Conditions of sale, effect of—Tale—Commissioner of Partition sale by, not sale by Court—Rules and Orders of the High Court, r 426, scope of Under an order of Court that he "be at liberty to sell" a Commissioner of Partition sold certain property by public auction. The conditions of sale, *inter alia*, stipulated that "there were no documents of title, except those mentioned in the abstract of title, that the purchaser should not be entitled to call for any other document or to object to the title on the ground of the non production thereof and that no objection to the title should be allowed." The purchasers at the auction subsequently obtained an order of Court directing the Registrar to enquire and report under r 426 as to the vendor's title. On an application for review of judgment *Held*, that the review must be granted on the ground that the sale was not a sale by the Court. **Gulam Hossein Cassim Ariff v Fatah Begum** **16 C W N 394**, and **Chandranath Banerjee v Banwarath Banerjee**, **6 B L R 4982** n, followed. The conditions of sale did not preclude the purchasers from raising the question of the vendor's title where it appeared (i) that the abstract of title commenced with a bond of indemnity which was in no sense a root of title and (ii) that the abstract did not expressly disclose the nature of the title, or indicate that the property was subject to a permanent lease at a small rent. **JOJENAYA DASSEE v AKHOY COOMAR DAS** (1912)
I L R 40 Calc 140

13 ——— Criminal cases—Power of a Division Bench of the High Court to review its judgment discharging a Rule before signature—Discharge of the accused in a part heard case for absence of remaining witnesses without consideration of the evidence already on the record—Criminal Procedure Code (Act V of 1898) ss 253, 263—Practice It is competent to a Division Bench of the High Court, which has erroneously discharged a rule on a point of law and a misapprehension of the facts in connection therewith to review its judgment before it has been signed. In the matter of the petition of *Gibbons*, **I L R 14 Calc 42**, **Queen Empress v Lalit Thakur**, **I L R 21 All 117**, referred to. **Queen Empress v Fox**, **I L R 10 Bom. 176**, dissented from. Where a Magistrate after some of the prosecution witnesses had been heard by another Bench of Magistrates, discharged the accused because the other witnesses were not present, the High Court set aside the order of discharge and directed him to dispose of the case after argument with reference to the evidence already on the record. **ANODINT DASSEE v DARSAN GHOSH** (1911) **I L R. 33 Calc. 828**

14 ——— Point of law not taken during trial—Whether affords ground for review—Code of Civil Procedure (Act V of 1908), O XLVII, r 1—Other sufficient reasons—occupancy hold-up—mortgage to proprietors—sale to co proprietor to satisfy mortgage whether valid The mere fact that a point of law which might have been raised was not raised during the trial is not necessarily

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in itself sufficient to support an application for review. *Query*—Whether an omission to raise a point of law which, had it been raised, might and probably would have brought about a different result, is necessarily a mistake or error apparent on the face of the record for which a review can be claimed. *Query*—Whether, in the case of a mortgage to the landlords of a riyasat holding, where the holding is not transferable without the landlords' consent, they are bound to permit the mortgagor to transfer the holding to anybody whom he may chose (in this case a co proprietor) in order to put himself in funds to pay off the mortgage. **KANLA PRASAD CHOWDREY v KUMJ BEHARI MANDER**
5 Pat. L. J. 344

15. ——— **Appeal—Revision—Revision of an order rejecting an application for review not maintainable when the original decree has been the subject of appeal** A Munsif decided a suit in favour of the plaintiff. One of the defendants filed an application for review of judgment, whilst another of them filed an appeal in the court of the District Judge. The application for review was rejected, and the applicant then applied in revision to the High Court against the order of rejection. Before, however, this application came on for hearing, the appeal before the District Judge had been disposed of. *Held* that, although the Munsif might have been wrong in rejecting the application for review, the Munsif's decree no longer subsisted and the application for revision could not be heard. **RAM PRASAD UPADHYA v NAGESHAR PANDY**
I. L. R. 42 All. 317

16. ——— **Discovery of new matter or evidence—Appeal—Strict proof,** meaning of—*Civil Procedure Code (Act XI of 1882)*, ss. 626 cl (b), 629. *Civil Procedure Code (Act V of 1908)*, O XLVII rr 4 (2) (b), 7 (1) (b). In a 626 of the Code of 1882 "strict proof" does not mean proof that convinces the Appellate Court but that there must be legal proof adduced before the Court that has to deal originally with the question of granting a review. The whole scheme of the Act recognises that with proper safeguards the Court of first instance is the proper Court to determine whether or not there should be a review, but that before a review is granted those safeguards must be observed. *Per JENKINS, C.J.* "Proof" ordinarily has one of two meanings, either the conviction of the judicial mind on a certain fact or the means which may help towards arriving at that conviction. The use of the word "strict" points to the second of these two meanings, and "strict proof" means anything which may serve directly or indirectly to convince a Court and has been brought before the Court in legal form and in compliance with the requirements of the law of evidence. It is a formality that is prescribed and not the result that is described. *Per WOODBOFFE, J.* Cl (b) of sub s. (1) of r 7 of O XLVII of the new Code does not refer to the weight or sufficiency of the evidence. If the legal formalities are observed it is no objection that the probative force of evidence legally taken appears to be different to the Appellate Court from what it appeared to the Court granting review. "Strict proof" means proof according to the formalities of law. It does not refer to sufficiency of proof in securing a particular conviction. Whether the proof is according to law or not is within the jurisdiction of the Appellate Court to determine; the question of sufficiency

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of evidence is for the Court admitting the review. **Gyanund Asram v Begun Mohun Sen**, 1 L P 22 Calc 731, **Bhuyub Chunder Surmah Choudhury v Madhub Chunder Surmah**, 11 D L R (F B) 423; 20 W R 84, **Chunder Churn Aggrodany v Loodunram Deb**, 25 W R 324, **Kolemoodeen Mundul v Herun Mundul**, 24 W R 186 referred to. **AHID KHONDKER v MAHENDRA LAL DE** (1915)
I. L. R. 42 Calc 830

17. ——— **Appeal against order granting review—New and important evidence—Civil Procedure Code (Act I of 1908)**, O XLVII, rr 1, 4 and 7. An application for review was made by a defendant on the ground that the evidence of B, who could not be got at the time the decree was made, was very relevant and material and if that could be given at the time of hearing might possibly have altered the judgment. The applicant obtained a rule and that was made absolute, without strict proof as to the important nature of the evidence, its discovery after the decree or the applicant's inability to produce it at the time the decree was made. *Held*, that the order for review was made in contravention of O XLVII, r 4, of the Civil Procedure Code, consequently there was a right of appeal. *Per MOOKERJEE, J.* It is the duty of the Court to come to the conclusion, before it grants an application for review, that the evidence in question is new and important and that it was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order was made. **Ahid Khandalar v Mahendra Lal De**, 1 L R 42 Calc 830. **Nanda Lal Mullick v Panchanan Mukerjee**, 1 L R 45 Calc 69, **Younis v Keraiah**, 81 L T 531 16 T R 52 and **Brown v Dean**, [1910] A C 373 referred to. **CHITRAJITIL RANJAL v TULSI RAM JANKINAR** (1919)
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* See SECOND APPEAL I. L. R. 2 Lah. 1

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Extradition warrant issued by Resident in Nepal—Proceedings thereon by District Magistrate in British India, and order of surrender of fugitive—Power of High Court to interfere in revision, with such order—Nepal, whether a "Foreign State"—Criminal Procedure Code (Act V of 1893), ss 435, 439, 491—Extradition Act (XV of 1903), ss 7, 16 Nepal is not a "Foreign State" within the meaning of the Indian Extradition Act (XV of 1903). Where a warrant has been issued by the Political Agent, under s 7 of the Act, its execution by the District Magistrate in British India, in accordance with the Act, is an executive act and the High Court cannot interfere in revision with the proceedings of the Magistrate and the order to surrender the fugitive criminal, but if the latter considers himself aggrieved thereby, he can invoke the action of the Government under s 16. The power of the High Court, however, to interfere under s 491 of the Criminal Procedure Code, which applies whatever be the occasion of the deprivation of the liberty of the subject, remains untouched by the Extradition Act GULLI SAHU v EMPEROR (1914) I. L. R. 42 Calc. 793

Civil Procedure Code (Act V of 1908), s 115—Government of India Act of 1915, s 107—Difference of opinion in a Divisional Bench in disposing of a Rule—Appeal under s 15, Letters Patent, if lies Judgment debtor whose two thirds share of a *patti* was sold in execution of his landlord's decree for rent and purchased by the owner of the remaining one third of the *patti* applied to have the sale set aside under O XVI, r 90, alleging *inter alia* that the value of the property sold was deliberately underestimated and the property sold at an inadequate value. The *Mansif* upheld both objections to the sale and set it aside, but the District Judge on appeal restored it holding that the value fetched was not seriously inadequate. To this conclusion the District Judge was led by assuming that what was sold was only one third and not two-thirds of the *patti* and that the purchaser was a stranger. On an application for revision, the Judges of the Division Bench (N R CHATTERJEE and MULLICK,

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J1) differing in opinion, the order of the senior Judge setting aside the order of the District Judge and remanding the case prevailed *Held*, per CURIAM, that a further appeal lay under s 15 of the Letters Patent *Held* (by the majority TRUNON, J, *contra*) (affirming MULLICK, J), that this was not a case for interference in revision, for, although the District Judge made a grave mistake of fact, the failure of justice was not due to a fault of procedure such as is contemplated by s 115, cl (c), of the Civil Procedure Code, nor was it a case for interference under s 107 of the Government of India Act, as this mistake could have been corrected by an application for review *Per* TRUNON, J (agreeing with N R CHATTERJEE, J).—The District Judge having in this case set himself to value not the property sold but an entirely different property the error was not one of fact only, and the High Court should interfere CHANDRA KISHORE ROY CHOUDHURY v BASARAT ALI CHOUDHURY (1917) 22 C. W. N 627

Delay in applying to High Court The Revisional jurisdiction of the High Court is discretionary and the Court will not interfere in revision at the instance of applicants who do not shew reasonable diligence in prosecuting their cases Avadh Behari Mishra v Dwarka Prasad Singh 1 Pat. L. J. 165

Proceeding under s 145, Criminal Procedure Code—Difference of opinion—Jurisdiction of High Court—Grounds for exercise of its jurisdiction—Omission to add a party—Material prejudice—Criminal Procedure Code, ss 145, 435, 439—Government of India Act (s 4 & 6 Geo V, c 61) s 107—Letters Patent, cl 36 S 439 of the Criminal Procedure Code does not apply to a proceeding under s 145 which is outside s 435 On a difference of opinion, on revision of such a proceeding, the opinion of the senior Judge prevails under cl 36 of the Letters Patent *Laldhari Singh v Sukdeo Narain Singh*, I L R 27 Calc 322, and *Shankh Suroddi Mondal v Corb*, 22 C W N 493, commented on *Emperor v Har Prasad Das*, I L R 40 Calc 477, relied on *Malhara Sahu v Damri Ram*, 15 C L J 337, and *Bayu v Bapu*, I L R 39 Mad 750, approved *Queen Empress v Dada Aso*, I L R 15 Bom 452, dissented from *Semle*. If it be held that cl 36 applies only to original or appellate jurisdiction, the Court should act, in the absence of any provision to the contrary upon the principle underlying the clause. The power of the High Court to interfere under s 107 of the Government of India Act, in cases under s 145 of the Criminal Procedure Code is not confined to questions of jurisdiction alone. It may also interfere when the Magistrate has acted with illegality or material irregularity, and a party has been prejudiced thereby. *Sukh Lal Shrivastava v Tara Chand To*, I L R 33 Cole 68, followed *Per* HAZWUD, J. The omission to add a party in a proceeding under s 145 of the Code is not an error of jurisdiction. *Krishna Komini v Abdul Juddar*, I L R 30 Calc 155, followed. There was no irregularity in the present case resulting in such material prejudice as would justify the Court's interference *Per* SHAMS-UL-HUDA J. Where the refusal of the Magistrate to add a party on his application, to the proceedings has resulted in a serious failure of justice, the Court will set aside

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the order under s 145. There was such failure of justice in the case **MARIAM BEWA v MERJAN BARDAR** (1919) **I. L. R. 47 Calc. 433**

Injunction issued by Mamladar—Order set aside by Collector—Summary proceedings—High Court not to exercise powers of revision unless the party has no other remedy in a case where the proceedings which are sought to be revised are purely summary proceedings and which do not finally decide the dispute between the parties, the High Court should not exercise its powers of revision **INBARAFFA v BASINGOWDA** (1919) **I. L. R. 44 Bom. 595**

Power of High Court to interfere where Subordinate Courts with concurrent jurisdiction have not been moved—Code of Criminal Procedure (Act V of 1898), ss 107, 435, and 438 In cases where the High Court has concurrent revisional jurisdiction with a subordinate Court the aggrieved party should, in the first instance, seek his remedy before the subordinate Court. The High Court will not interfere with an order under s 107 of the Code of Criminal Procedure, 1898, unless and until the party aggrieved by the order has moved, and failed to obtain satisfaction from the District Magistrate or Sessions Judge **BEVIN BISHABI MUKHERJI v KING EMPKON** **3 Pat. L. J. 302**

Withdrawal of suit—Order of appellate Court granting withdrawal—Revision, power of High Court to interfere in—Code of Civil Procedure (Act V of 1908), s 115 and O XVIII, r 1 The High Court has power in its revisional jurisdiction to interfere with an order passed by a subordinate appellate Court granting the plaintiff leave to withdraw his suit with permission to bring a fresh suit upon the same cause of action. Where, in an appeal by the plaintiff from an order dismissing his suit, the plaintiff defendants filed cross appeals in which they alleged that the suit must fail owing to a formal defect in the pleadings: Held, that the Court had power to allow the plaintiff to withdraw the suit with permission to bring a fresh suit on the same cause of action **BRINSHBA ANIR v BAIRYA MISIR** **3 Pat. L. J. 630**

REVISIONAL AND APPELLATE JURISDICTIONS.

Distinction between. Held (as regards the application for revision of the order of the District Judge), that a Court in the exercise of its appellate jurisdiction investigates the facts, and, if necessary, substitutes its own appreciation of the evidence for that of the primary Court, but when the Court as a Court of revision looks into the evidence, it does so with a view to determine whether the subordinate Court has assumed a jurisdiction which it did not possess or declined a jurisdiction which it did possess, or has in the exercise of its jurisdiction acted illegally or with material irregularity, and in the present case the High Court could not be rightly invited by the petitioner to examine the evidence with a view to determine whether the District Judge correctly appreciated its effect **RASHMONT DASBI v. GANODA SUNDASI DASBI** (1914) **19 C. W. N. 84**

REVISION SURVEY.

See **LAND REVENUE CODE (BOM ACT V OF 1879), s 48** **I. L. R. 42 Bom. 128**

REVISIONAL JURISDICTION.

See **APPEAL, RIGHT OF** **I. L. R. 44 Calc. 804**
See **CIVIL PROCEDURE CODE, 1908, s 115.**
See **HIGH COURT, JURISDICTION OF** **I. L. R. 39 Calc. 473**

See **REVISION.**

See **SANCTION FOR PROSECUTION.** **I. L. R. 43 Calc. 537**

over **Presidency Small Cause Court—**

See **HIGH COURT, ORIGINAL SIDE, JURISDICTION OF** **I. L. R. 37 Calc. 714**

REVIVAL.

of pending execution—

See **MORTGAGE.** **I. L. R. 37 Calc. 798**

of proceedings—

See **SANCTION FOR PROSECUTION** **I. L. R. 40 Calc. 584**

of decree, **Original Side of the High Court—**

See **LIMITATION ACT (IX OF 1908), SEC. 1, ART. 183** **I. L. R. 38 Mad. 1102**

Procedure and practice—**Execution of decree—Decree barred by limitation**

Application for transmission—Notice—Order on the notice, effect of—Master, authority of—Court, Jurisdiction of—Civil Procedure Code (Act XIV of 1882), ss 223, 224, 235, 248 and 249—Ed chambers' Rules and Orders, r 370—Limitation Acts (XV of 1877) Sec II, Arts 179 and 180. (IX of 1908) Sec I Arts 182 and 183 On the 21st May 1898 the plaintiffs obtained a money decree in the High Court against the defendant. This decree was subsequently transmitted to the District Court of Purnea for execution, but was returned by that Court as unsatisfied. Thereafter, another application for execution by arrest and imprisonment of the defendant was made to the High Court on its Original Side and the returnable date of the order on this application was fixed finally for the 12th July, 1901. No further steps were again taken until the 1st June, 1908, when the plaintiffs made another application to the High Court on the tabular form provided under s 235 of the Code of Civil Procedure, 1882, for execution of their said decree by transmission of the same to the District Court of Murshidabad and attachment of the defendant's property situate within the jurisdiction of the latter Court, and the Registrar directed notice to issue on the defendant under s 248 (a) of the Code. On the 30th June, 1908, the defendant not having appeared to show cause, the Master ordered execution to issue as prayed. Again no steps were taken until the 18th January, 1915, when a fresh application was made to the High Court for execution by attachment of No 147, Cotton Street, in Calcutta. The defendant thereupon applied to set aside

REVIVAL—*contd*

this attachment, but the High Court refused his application as barred. On appeal to the High Court in its Appellate Jurisdiction reference was made by this Court to a Full Bench. *Held* that the application of the 1st June 1908 and the order of the 30th June 1908 did not constitute a revivor within Art 183 of the 1st Schedule of the Limitation Act 1908. *Per* SANDERSON C J. The substance and not the form of the matter must be looked at and considered from that point of view the application was for the transmission of a certified copy of a decree together with a certificate of non satisfaction and no more, and the order made in substance was that the application should be granted. The notice which was issued under s 948 was inapplicable to the proceedings in question. The question whether a decree was capable of execution would have to be determined by the Court itself under s 249 of the Civil Procedure Code. The Registrar was not clothed with authority to decide such a question as arises in this case viz., whether the decree was barred by the Statute of Limitation P 370 in Del chambers' Rules and Orders was not consistent with the scheme of the Code of 1882. These rules must be read as modified by the Civil Procedure Code 1882 under which the application in this case was made and the notice issued and the order made did not operate as a revivor within the meaning of Article 183 of the Limitation Act Schedule I. The fact that the word "revivor" is used in Art 183 instead of the different matters specified in Art 182 being set out again or referred to in Art 183 as might have been done shows that something different to such matters was intended. Further, the conditions dealt with by the two clauses are essentially different and the periods of limitation vary materially. *Per* WOODROFFE J. An order for transmission as such is not an order on an application for execution, though it is an order on an application in execution. It is a proceeding taken with a view to further action by way of execution elsewhere on which action unless previously determined the question of the right to execute the decree is decided. If the Registrar had power to issue as a "quasi-judicial Act" notice under s 248 he had no power to determine judicially that the decree was alive had the debtor contested the point. The Judge must have done that and the fact that the debtor did not appear on the notice, cannot give the order passed that judicial character which is necessary for an order operating as a revivor. The last two words of the Order ("Let execution issue as prayed") make the order operative as one for transmission of the decree; for this was what was asked. *Per* MOORE J. J. B. 230 makes it plain that the application for execution must be presented to the Court to which the decree has been transmitted for execution, while the explanation to s 248 shows that the notice required by that section must where the decree has been transmitted, be issued by the Court to which the decree has been sent for execution. Consequently the issue of the notice in this case under s 248, on the basis of the application for transmission of the decree was not in conformity with the Code of 1882 which was in force at the time. Upon the application for transmission of the decree under s 222, a notice under s 248 could not properly be issued; such notice though issued did not by itself operate

REVIVAL—*curd*

as revivor of the decree and there was not in act and could not in law be such a determination by the Master under s 249 as would operate to revive the decree. *CHATTERJEE SINGH v SAIT SUNDARI MULL* (1916) I L R 43 Calc 903

REVOCAION**See HINDU—Law—Will**

I L R. 39 Mad. 107

See LETTERS OF ADMINISTRATION

I L R. 40 Calc 5

See PROBATE.

I L R. 37 Calc 387

I L R. 42 Calc. 489

See SANCTION FOR PROSECUTION

I L R. 40 Calc. 423

— of authority—**See GUARDIAN** I L R. 38 Mad. 807**— of gift—****See MUHAMMADAN LAW—GIFT**

I L R. 38 All. 233

See CONTRACT Act, s 19

I L R. 38 Bom. 37

— power of—**See GIFT** I L R. 39 Calc 933**— presumption of—****See WILL** I L R. 45 Bom 906**REVOLUTIONARY ACTIVITY****See SECURITY FOR GOOD BEHAVIOUR**

I L R. 46 Calc 215

RHANDERIAS**See MUHAMMADAN LAW—ENDOWMENT**

I L R. 43 Calc 1085

RICE MERCHANTS ASSOCIATION RULES**See JURISDICTION OF CIVIL COURTS**

I L R. 34 Bom 13

RIGHT OF APPEAL**See APPEAL TO PRIVY COUNCIL**

I L R. 40 Calc 21

RIGHT OF AUDIENCE**See JURISDICTION**

I L R. 43 Calc. 798

RIGHT OF CROSS-EXAMINATION**— continuance of—****See CROSS-EXAMINATION**

I L R. 37 Calc. 236

RIGHT OF OCCUPANCY**See LANDLORD AND TENANT**

I L R. 37 Calc 419

See OCCUPANCY HOLDING**See OCCUPANCY TENANT****— acquisition of—****See LANDLORD AND TENANT**

I L R. 23 Calc. 422

RIGHT OF PRIVATE DEFENCE

- See **ASSESSORS, EXAMINATION OF**
I L R 40 Calc 163
 See **PENAL CODE, ss. 96 to 100**
 See **PRIVATE DEFENCE.**
 See **RIGHTS** **I L R 39 Calc 296**
I L R 41 Calc 43
 See **SEAR & WITHOUT WARRANT**
I L R 38 Calc. 304

RIGHT OF RE-ENTRY

- See **BOMBAY RENT (WAR RESTRICTIONS ACT (1 OF 1918)) ss. 3, 9 AND 12**
I L R 45 Bom 535

RIGHT OF REPLY

- See **APPEAL** **I L R 38 Calc 307**

Right of reply—Duty of Appellate Court to determine accomplice character of Evidence—Criminal Procedure Code (Act V of 1893), s. 421—Practice The appellant has a right of reply to the Crown on the hearing of an appeal. *Promoda Bhushan Roy v. Emperor, 11 C W N 211*, followed. The Appellate Court is bound to find specifically whether witnesses said to be accomplices are so or not, and to weigh their evidence accordingly. *AMANAT SARDAR v. NAGENDRA BISWAS (1910)*

- I L R 38 Calc 307**

Exhibiting documents not part of the record, on behalf of the accused during the cross-examination of the prosecution witnesses—Doctrine of surprise—Criminal Procedure Code (Act V of 1893) ss. 239 and 242 S. 242 of the Criminal Procedure Code is not to be read independently but in connection with s. 239, and gives a right of reply only when the accused, or any of them, adduces evidence after the case for the prosecution has concluded. The prosecution has no right of reply when the counsel for the accused has, during the cross-examination of a prosecution witness and before the close of the case for the Crown put certain letters which do not form part of the record to such witness, and then tendered and had them admitted in evidence. The question whether the prosecution has been taken by surprise is not the correct test under s. 242 of the Code. *EMERSON v. SATEYATRA MANPATRA (1910)*

- I L R. 43 Calc 428**

RIGHT OF SUIT

- See **ALIEN EXENT**
I L R 46 Calc. 526
 See **CIVIL PROCEDURE CODE (ACT V OF 1903) ss. 47, 73 104**
I L R. 23 Mad. 570
 See **CONTRACT**
I L R 38 Mad 728
 See **EXEMPTION SALE**
I L R. 39 Mad. 803
 See **LESSOR AND LESSEE**
I L R 39 Mad. 1042
 See **PARTIES** **I L R. 45 Calc 862**
 See **RIGHT TO SUE.**

destruction of—

- See **DEED** **I L R. 38 Mad 740**
 See **RIGHT TO SUE.**

RIGHT OF SUIT—contd

1. *Non-service of Summons—Fraud—Civil Procedure Code (Act XIV of 1882), s. 108—Ex parte decree* A fresh suit would not lie to set aside a decree on the mere ground of non-service of summons, though it would be maintainable on the ground of fraud. *Radha Ramon Shaha v. Pran Nath Roy, I L R 23 Calc 475*, and *Khagendra Nath Mahala v. Pran Nath Roy, I L R 29 Calc. 395*, referred to. *Puran Chand v. Seodatt Rai, I L R 29 All 212*, followed. *NARAYAN DAS v. RAYKAR (1909) I L R 37 Calc. 197*

2. *Suit by person not party to an instrument—sustainable when charge created in such person's favour—Decree for relief not specifically asked for when allowable* A plaintiff asking for certain specific reliefs and for such other relief as the Court should deem fit, should on being found disentitled to the specific reliefs asked for, be given such relief as the circumstances justify. A person who is no party to a document but in whose favour a charge is created by such document is entitled to maintain a suit to enforce its terms either as the actual beneficiary or as the charge holder. *SURPRU ANMAL v. SUBRAMANIAN (1903)*

- I L R. 33 Mad. 238**

3. *Election suit—Madras District Municipalities Act (IV of 1881)—Election as Municipal Councillor—Declaration of its invalidity by Collector under s. 36 of Election Rules—Civil Courts, no jurisdiction to question in—Appointed by election in s. 10—Meaning of "election"* An order of a Collector declaring the invalidity of an election of a candidate to a seat in a Municipal Council, passed under s. 36 of the Election Rules after enquiry and based on proper grounds (i.e., those set forth in s. 35) and otherwise complying with the requirements of the rules framed under s. 250 of Madras Act IV of 1881 (District Municipalities Act), cannot be questioned in a civil suit, but is conclusive as far as the result of the election is concerned. *Bhaskant v. The Municipal Corporation of Bombay, I L R 31 Bom 604*, 609 followed. *Marwell on Interpretation of Statutes*, 4th Edition, p. 197 referred to. *Vijaya Raghu v. The Secretary of State for India, I L R 7 Mad 465*, *Solihkar Singh v. Abdul Gaffar I L R. 24 Calc 107*, *Lalhas v. The Municipal Commissioner of Bombay, I L R 33 Bom 334*, distinguished. *PER CURIAM*: The status of a Municipal Councillor is the creation of a 10 of Act IV of 1881, and the creation is subject *inter alia*, to the conditions imposed by the Election Rules framed by the Governor in Council under s. 250 of the Act and invested by clause (3) with the force of law. One of these rules in s. 36, the election gives the candidate elected no vested status, as the election is liable to be declared invalid, an invalid election can confer no status whatever. The words "appointed by election" in s. 10 refer only to a valid election, i.e., one which is not set aside under s. 36. *Scemle* If an order is passed without any enquiry at all or is based on grounds other than those set forth in s. 35 a suit would probably lie to set it aside *as ultra vires*. A suit for damages in consequence of an invalid order and a suit for a declaration of the validity of an election and an injunction stand on very different footings though based on the same facts. The former may be decreed while the latter may not. *NATARAJA MUTALIYAR v. THE MUNICIPAL COUNCIL OF MAYA VARAN (1913)*

- I L R. 36 Mad. 120**

RIGHT OF SUIT—*contd.*

4 ——— Suit for exemption from land revenue—Owner alone can bring suit for land, by A against B, ending in favour of A.—Third parties cannot question—*Res Judicata Civil Procedure Code, Act V of 1908, s 13, not exhaustive.* A suit for a declaration that the land is not liable to a assessment can be instituted only by the person entitled to it as owner. If a suit relating to ownership of the land, between two persons, has ended in favour of one of them, third parties having no interest in the land at the time of the litigation cannot in the absence of any collusion or fraud on them dispute the settlement of the dispute between them as to title, even for supposed want of jurisdiction, and it is equally true that neither of the parties to the litigation can be permitted to aver as against third persons in the like position that the land belongs to himself and not to his opponent in the litigation. Second Appeal No 574 of 1909, followed. Bigelow on Estoppel, 5th edition 44, referred to. *Per CURIAM*. The question does not depend upon the application of the doctrine of *res judicata*. S 13 Civil Procedure Code, does not cover all cases of estoppel by judgment. The suit was for a declaration that the defendant, the Secretary of State for India, was not entitled to levy any assessment on certain lands which the plaintiffs claim as part of their *agraraham*. In previous suits by B against plaintiffs once for a declaration of title and afterwards for possession of the lands, the judgments were in favour of B. *Held*, (i) that the plaintiffs in the present suit cannot be permitted to prove as against the present defendant that they were the owners, and (ii) that the suit was not maintainable. *Semble*. Even if the previous litigation had ended in favour of the present plaintiffs, the Government, though it would not be entitled to question the plaintiff's title, would not be bound to regard the land as exempt from revenue. RAMA MURTI DHORA v SECRETARY OF STATE FOR INDIA (1913) 1 L. R. 38 Mad. 141

5 ——— Transfer of property in consideration of transferee paying sums to third parties—Failure of transferee to pay in reasonable time—Right of transferor to sue for same irrespective of damage. If A transfers his property to B in consideration of B agreeing to pay certain sums to third person A is himself entitled to sue B for the recovery of those sums as if they are due to him in case of B's failure to pay the third persons within a reasonable time and A is not in such a case bound to show that he was in any way damaged by B's failure. *Doraiswami Trevar v Arunachalam Chetty* 1 I R 23 Mad 411, *Rungachalam v Appala Vaidu* [C M A No 119 of 1908 (unreported)], and *Gopala Aiyar v Pantheasami Sastriyal* [S A No 183 of 1907 (unreported)], followed. *Siva Subramania Mudaliar v Unava Sambanda Andalar Sannadhi* 21 Mad L J 359, *Chenchuramayya v Subramanyam* 9 Mad L J 79, *Doraiswami Trevar v Lakshmanan Chetty* 18 Mad L J 284, *Thangammal Nachiar v Sallabammal*, 18 Mad L J, 20 *Putti Narayanaswamy Aiyar v Marimuthu Pillai*, 1 L R 26 Mad 31, *Kumar Nath Bhattacharyya v Nolo Kumar Bhattacharyya*, 1 L R 28 Cal 411, and *Iscat un Niam Deyan v Kuvavar Periah Singh*, 1 L R 361, A 293 distinguished. *Sudha Naidu v Bathala Bee Saluba*, 8 Mad L J 189 referred to. *Rasmi-NATHA v SADAGOPA* (1913) 1 L. R. 38 Mad. 343

RIGHT OF SUIT—*contd.*

6 ——— Acquisition of inam land by Government for municipal purposes—*Madras District Municipalities Act (I) of 1884*, s 279, effect of—Sale by Municipalities—Imposition by Government of ground rent on occupier—Ground rent liability to pay—G O No 210 of 20th February 1889, effect of—Exemption from ground rent to be express. Even an inam land which is subject only to a quit rent becomes, when acquired by Government under the Land Acquisition Act, ordinary Government land liable to assessment in the hands of any person who might afterwards become the occupier whether deriving his title directly from the Government or from a Municipality which after such acquisition by the Government becomes owner under s 279 of the *Madras District Municipalities Act (IV of 1884)* by payment of the amount settled as compensation. Acquisition is only by the Government and not by the Municipality hence the previous inamdar's right to exemption from assessment does not rest in the Municipality. A transferee from the Municipality of such land cannot therefore claim as against the Government exemption from assessment. A person who claims exemption from the payment of such assessment as the Government may fix, must show some grant exempting him from the payment of the ordinary assessment. No exemption can be claimed without a grant or exemption in express words. Effect of G O, No 210, dated 20th February 1889, permitting Municipal Councils to transfer lands vested in them by sale, mortgage or otherwise, was not to exempt the transferees from ordinary assessment that might be imposed but was only to remove all objection to the transfer on the ground that the transferor is a Municipal Council. *HANU-MANLU v SECRETARY OF STATE* (1913)

I L. R. 38 Mad. 373

7. ——— Title to property seized—*Civil Court—Jurisdiction—Order of forfeiture passed by Magistrate—Criminal Procedure Code (Act I of 1898) ss 523 524—Disposal of property—Sale proceeds credited to Government—Suit to recover the amount*. The plaintiff's house was searched in connection with a dacoity and certain property was attached on suspicion. On a proclamation being issued by the 2nd Class Magistrate under s 523 (2) of the Code of Criminal Procedure, 1898, the plaintiff appeared before the Magistrate to establish his claim to the property. The claim was disallowed and an order was passed under s 524 of the Criminal Procedure Code, for sale of the property. The sale proceeds having been credited to Government the plaintiff brought a suit for the recovery of the amount. The defendant pleaded that a Civil Court had no jurisdiction to entertain the suit. The Assistant Judge decided the suit in plaintiff's favour. The District Judge, on appeal, dismissed the suit holding that as under s 524 the property was at the disposal of Government, Government had an absolute right to it, and that the special provisions relating to investigation of claims to property mentioned in s 523 made the decision of the Magistrate final and deprived the person aggrieved of any right of action. On appeal to the High Court.—*Held*, reversing the decree that the order of the Magistrate disposing of the property under s 524 of the Criminal Procedure Code was not final and that it did not deprive the plaintiff of his right to establish his claim in a Civil Court. *Queen Empress v Triloka-*

RIGHT OF SUIT—contd

van Manstchland, I L R 9 Bom. 131, followed Secretary of State for India in Council v Lakshmanji Bhagwanji, I L R 19 Bom 603, discussed WASAPPA v SECRETARY OF STATE FOR INDIA (1913) I L R. 40 Bom. 200

8 ———— **Co-owners—Suit in ejectment against trespasser—Suit by one co-owner alone—Other co-owners, not parties—Suit, if maintainable—Local inspection by Judge—Judgment based solely on such inspection, if valid—Civil Procedure Code (Act V of 1908), O XXII, r 8, Civil Procedure Code (Act XIV of 1892) s 292 One of several co-owners can maintain an action in ejectment against a trespasser without joining the other co-owners as parties to the action A judgment should not be based solely on the result of the personal local inspection made by the judge This rule applies to cases instituted under the new Code of Civil Procedure (Act V of 1908) as under the old Code (Act XIV of 1892) SHUTABAI v THE MADRASITE SYNDICATE, LIMITED (1913) I L R. 34 Mad. 501**

RIGHT OF TRIAL BY JURY.

See JURY, RIGHT OF TRIAL BY
I L R 37 Cal. 467

RIGHT OF WAY.

See EASEMENT I L R I Lah. 206
I L R 43 All. 345
See HINDU LAW—PARTITION
I L R. 38 Bom. 379
See PUBLIC RIGHT OF WAY
I L R. 37 All. 9

————— *Suit for non-joinder of person interested in servant tenement, effect of, village road—Right of way suit for declaration of, and removal of obstruction—Defect of parties—Non-joinder of one of the persons interested in the servant tenement, effect of—Suit, if liable to dismissal for such non-joinder—Civil Procedure Code (Act V of 1908), Or I, r 9—Parties—Non-joinder—Suit, maintainability of Where in a suit for declaration of a right of way as a village road and for removal of obstruction thereon, an objection was taken that one of the persons interested in the servant tenement had not been made a party to the suit, which was over ruled by the Courts below on the ground that it was taken at a late stage, and the Courts below decreed the suit. Held—That the non-joinder of the person in question as a party to the suit was a fatal defect, and on that ground the suit was dismissed. Notwithstanding the provisions of Or I r 9 of the Civil Procedure Code, the Court will not entertain a suit in which no effective decree can be made in the absence of the interested party. If it is discovered that a person interested in the servant tenement has not been made a party to the suit, the Court will not proceed to make a decree. The decree, if made, must be infructuous, if a suit is instituted by the absent person for an injunction to restrain the Plaintiff from executing the decree there is no possible answer to the prayer. When the Court, in the present case, was apprised that the person in question was interested in the servant tenement, steps should have been taken by the Plaintiff to bring him before the Court. **MAHAN SHUKLA v RAMCHANDRA BHATTACHARYA.** 23 C. W. N. 248*

RIGHT TO ARREST.

See PENAL CODE, [XLI] OF 1860—
s. 211 I L R. 44 Mad. 918

RIGHT TO BEGIN.

See EVIDENCE I L R. 47 Cal. 871
See INCOME TAX I L R. 45 Cal. 161

RIGHT TO PARTITION.

See PARTITION I L R. 37 Cal. 918

RIGHT TO SUE.

See RIGHT OF SUIT
See TRANSFER OF PROPERTY ACT (IV OF 1892), s. 6 (c) I L R. 23 Mad. 123

—————

————— *accrued of—*
See LIMITATION I L R. 43 L. A. 113
20 C. W. N. 833

—————

————— *survival of—*
See APPEAL TO PRINCE COURTEL.
I L R. 38 Mad. 406
See CIVIL PROCEDURE CODE (ACT V OF 1908) s. 2, cl. (11); O XXII, s. 1
I L R. 39 Mad. 352

RIGHT TO WORSHIP.

See UTILITY MORTGAGE
I L R. 39 Cal. 227

"RING" GAME.

See OSTENSIBLE MEANS OF SUBTLETY
I L R. 40 Cal. 702

RIOTING.

See ASSESSORS, EXAMINATION OF
I L R. 40 Cal. 183
See CHARGE I L R. 40 Cal. 183
See CRIMINAL PROCEDURE CODE s 626
I L R. 33 All. 583
See CUMULATIVE SENTENCES.
I L R. 40 Cal. 511
See JURY, TRIAL BY
I L R. 40 Cal. 267
See PENAL CODE, s 147
See PRIVATE VIOLENCE.
3 Pat. L. J. 419
See SEARCH WITHOUT WARRANT
I L R. 38 Cal. 304
See SENTENCE.
3 Pat. L. J. 611

1. ———— *Test of liability of owner, or person having or claiming an interest in land, for the acts and omissions of an agent or manager—Appointment of latter by the mother, and not by the adopted son—Legality of the connection of the son—Penal Code (Act XLV of 1860), s. 153 The criminal liability of a person specified in s 164 of the Penal Code for the acts or omissions of an agent or manager depends upon the question by whom the latter was appointed. V. Bern, therefore it was shown that three Hlin in yordanashin ladies had the management of the estate and were responsible for the appointment of the man who had fomented the riot, and that their adopted sons had nothing to do with such appointment, though they took some share in the active management*

RIGHT OF SUIT—*contd.*

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8. ——— Co-owners—Suit in ejectment against trespasser—Suit by one co-owner alone—Other co-owners, not parties—Suit, if maintainable—Local inspection by Judge—Judgment based solely on such inspection, if valid—Civil Procedure Code (Act V of 1908), O XXVI, r 9, Civil Procedure Code (Act XIV of 1882) s 392 One of several co-owners can maintain an action in ejectment against a trespasser without joining the other co-owners as parties to the action. A judgment should not be based solely on the result of the personal local inspection made by the judge. This rule applies to cases instituted under the new Code of Civil Procedure (Act V of 1908) as under the old Code (Act XIV of 1882) *SHUTARI v THE MAGNESITE SYNDICATE LIMITED* (1915) 1 L R 34 Mad. 501

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1 L R 36 Bom. 379

See PUBLIC RIGHT OF WAY
1 L R 37 All. 9

————— Suit for non joinder of person interested in servient tenement, effect of, village road—Right of way suit for declaration of and removal of obstruction—Defect of parties—Non joinder of one of the persons interested in the servient tenement, effect of—Suit, if liable to dismissal for such non joinder—Civil Procedure Code (Act V of 1908) Or I, r 9—Parties—Non joinder—Suit, maintainability of Where in a suit for declaration of a right of way as a village road and for removal of obstruction thereon, an objection was taken that one of the persons interested in the servient tenement had not been made a party to the suit, which was over ruled by the Courts below on the ground that it was taken at a late stage, and the Courts below decreed the suit. Held—That the non joinder of the person in question as a party to the suit was a fatal defect, and on that ground the suit was dismissed. Notwithstanding the provisions of Or I r 9 of the Civil Procedure Code, the Court will not entertain a suit in which no effective decree can be made in the absence of the interested party. If it is discovered that a person interested in the servient tenement has not been made a party to the suit, the Court will not proceed to make a decree. The decree, if made, must be infructuous, if a suit is instituted by the absent person for an injunction to restrain the Plaintiff from executing the decree there is no possible answer to the prayer. When the Court, in the present case was apprised that the person in question was interested in the servient tenement, steps should have been taken by the Plaintiff to bring him before the Court. *HARAN SURIKUR v RAMESH CHANDRA BHATTACHARJEE*. 25 C. W. N. 249

RIGHT TO ARREST.

See PENAL CODE, (XLV of 1860)—
s 341 1 L R 44 Mad. 913

RIGHT TO BEGIN.

See EVIDENCE 1 L R 47 Cal. 671
See INCOME TAX 1 L R 48 Cal. 161

RIGHT TO PARTITION.

See PARTITION 1 L R 37 Cal. 918

RIGHT TO SUE.

See RIGHT OF SUIT

See TRANSFER OF PROPERTY ACT (IV of 1882), s 6 (e) 1 L R 38 Mad. 133

————— accrual of—

See LIMITATION L R 43 I. A. 113
20 C. W. N. 833

————— survival of—

See APPEAL TO PRIVY COUNCIL
1 L R 38 Mad. 406

See CIVIL PROCEDURE CODE (Act V of 1908), s 2, CL (17), O XXII, r 1
1 L R 39 Mad. 282

RIGHT TO WORSHIP.

See UNFRACTURARY MORTGAGE
1 L R 39 Cal. 227

"RING" GAME

See OSTENSIBLE MEANS OF SUBSISTENCE
1 L R 40 Cal. 702

RIOTING.

See ASSESSORS, EXAMINATION OF
1 L R 40 Cal. 163

See CHARGE 1 L R 40 Cal. 168

See CRIMINAL PROCEDURE CODE, s 526
1 L R 33 All. 593

See CUMULATIVE SENTENCES.
1 L R 40 Cal. 511

See JURY, TRIAL BY
1 L R 40 Cal. 267

See PENAL CODE, s 147

See PRIVATE DEFENCE
3 Pat. L. J. 419

See SEARCH WITHOUT WARRANT
1 L R 38 Cal. 304

See SENTENCE
3 Pat. L. J. 841

1. ——— Test of liability of owner, or person having or claiming an interest in land, for the acts and omissions of an agent or manager—Appointment of latter by the mother, and not by the adopted son—Liability of the conviction of the son—Penal Code (Act XLV of 1860), s 151 The criminal liability of a person specified in s 151 of the Penal Code for the acts or omissions of an agent or manager depends upon the question by whom the latter was appointed. Where, therefore it was shown that three Hindu *gardaashis* ladies had the management of the estate and were responsible for the appointment of the man who had fomented the riot, and that their adopted sons had nothing to do with such appointment, though they took some share in the active management

RIOTING—*contd.*

of the estate *Held*, that the ladies were alone liable under s. 154. It is impossible to punish in every case every person who has any interest in the land. The responsibility depends on the fact of the person who caused the riot being himself the person who has an interest in the land, or an agent or a manager of such person, and one of the facts to be proved is, whose agent or manager the person fomenting the riot is. *SIVA SUNDARI CHOWDHRAVI v. EMPEROR* (1912). **I. L. R. 39 Calc. 834**

2. — **Common object—Charge—**
*Offence—Common object—Necessity of stating the common object in the charge under ss. 143, 147 and 149 of the Penal Code—Effect of omission to the common object—“Succeeded by another Magistrate” meaning of—Criminal Procedure Code (Act V of 1898) ss. 221, 223, 350. An offence can be legally described by its specific name in the charge and the question whether any further particulars are necessary under s. 223 of the Criminal Procedure Code is a question of discretion according to the circumstances of each case. In cases of rioting the common object should be stated in the charge, but omission to state it, under ss. 143 and 147 of the Indian Penal Code does not vitiate a conviction if there is evidence on the record to show it. It is otherwise with a charge under s. 149 Indian Penal Code, for, then there is no specific name for the offence, and the fact that any offence is committed in prosecution of the common object is of the essence of the case, and there could be no conviction for any offence committed with a different object. It is obligatory to set out the common object in a charge under s. 149 unless it has already been specified in the main charge under s. 147. *Basuruddi v. Queen Empress*, **I. L. R. 21 Calc. 827**, referred to. The words “succeeded by another Magistrate” in s. 350 of the Criminal Procedure Code should not be construed in a narrow sense, but should be interpreted to mean—cesses to exercise jurisdiction in the particular inquiry or trial, and not in the particular party. *Thakur Das Manjhi v. Namdar Mundul*, **24 W. R. Cr. 12**, *Emperor v. Purshottam Kara*, **I. L. R. 26 Bom. 118** referred to. *Mohesh Chandra Sahav Emperor* **120 W. N. 416** and *Ali Mahomed Khan v. Tarak Chandra Banerji*, **13 C. W. N. 420**, followed. *Queen Empress v. Radhr*, **I. L. R. 12 All. 66** *Deputy Legal Membrancer v. Upendra Kumar Ghose*, **12 C. J. N. 140**, not followed. **KUDRUTILLA v. EMPEROR** (1912).*

I. L. R. 39 Calc. 781

3. — **Common object not unlawful—Entering upon land held jointly by the judgment-debtors to take symbolical possession thereof—Right of private defence—Liability of a person for individual acts done in excess of such right—Power of Appellate Court to alter a finding of acquittal under ss. 472 of the Penal Code into one of conviction under s. 323—Penal Code (Act XLV of 1860) ss. 99, 147 and 323—Criminal Procedure Code (Act I of 1898), s. 423. Where a body of about ten men, belonging to the decree-holder's party, went with the Civil Court officers upon a plot of land in the joint possession of the judgment-debtors to take symbolical possession thereof, and the drummer was assaulted by one of the latter whereupon the appellants and their party replied by an attack on their opponents, during the course of which one of the appellants' party, not before the Court, fractured the skull**

RIOTING—*contd.*

of the drummer's assailant by an isolated act, but the appellants continued to beat him after he had fallen helpless on the ground. *Held*, that the appellants had a right of private defence under the circumstances, that their common object was, therefore, not unlawful and that the conviction under s. 147 of the Penal Code was bad, but that having exceeded such right by beating the wounded man after he had fallen, they were guilty under s. 323. When an attack is made on persons acting in the lawful exercise of their right over property, they are entitled to the right of private defence, and the only question that arises thereafter is whether any member of the party in individually exceeded the right. Persons exercising their lawful rights are not members of an unlawful assembly, nor can the assembly become unlawful by their repelling an attack made on them by persons who had no right to obstruct them, nor by exceeding the lawful use of their right of private defence. In such a case each is liable only for his individual acts done in excess of such right. When an accused charged under ss. 147 and 472 of the Penal Code is convicted of the former and acquitted of the latter offence, the Appellate Court has power to acquit him of rioting, and convict him of hurt under s. 323. **KUNJA BRUTIA v. EMPEROR** (1912).

I. L. R. 39 Calc. 896

4. — **Grievous hurt—Delivery of possession alleged to be of doubtful legality and objected to—Objection pending for decision at the time of occurrence—Effect of such delivery and actual possession thereunder—Distinction between enforcing and maintaining a right—Right of private defence—Penal Code (Act XLV of 1860), ss. 147 and 472. Where the servants of a party, who had obtained delivery of possession of certain land, in execution of a decree, went upon it accompanied by a number of others armed with *lathis*, and were engaged in ploughing it, when they were attacked by a large body of men belonging to the party of the judgment debtor, and thereupon a fight ensued in the course of which some members of both sides received injuries. *Held*, that their master having been put in actual possession by a competent Court, the servants were not guilty of rioting or of constructive grievous hurt though the delivery of possession was alleged to be of doubtful legality and was the subject of an objection by the judgment debtor pending decision at the time of the occurrence. A delivery not merely gives possession to a party but confers permission to utilize the subject of it in any lawful manner such as entering upon the land tilling it, growing and harvesting the crops, and enjoying the produce. Persons engaged in the exercise of a lawful right, of which they are in enjoyment, cannot be said to be enforcing a right but merely to be maintaining it. *Tachhauri v. Queen Empress*, **I. L. R. 24 Calc. 686**, followed. **PATEL SIRON v. EMPEROR** (1913).**

I. L. R. 41 Calc. 47

5. — **Assaulting a public servant in execution of duty—Power of police inspector or sub-inspector to enter a house to arrest without warrant persons found illicitly distilling liquor—Search—Formalities before search—Penal Code (Act XLV of 1860) ss. 147 and 323—Legal Notice Act (Act I of 1902) ss. 67 and 70—Order by Local Government—J. No. 72—Instruction of Board of Revenue—Chapter XI, r. (2), F. 27 of the**

RIOTING—contd

Bengal Excise Act (V of 1909) confers wide powers on excise officers (then were given under the former Act Under a 67 read with 73 of the Rules framed by the Local Government an excise inspector and sub-inspector may enter a house for the purpose of arresting without a warrant a person found in the house in the act of liquor. A 67 does not relate to any search as it is an officer not below the rank of a sub-inspector or a ganga house for the purpose mentioned there is not required to comply with the formalities prescribed in Ch. X of the Indian Code of the Board of Police unless he finds it necessary further to make a search in the house. Where an excise sub-inspector or an officer of a constable and two constables enter a house, search it, take one of the accused in order to arrest all the others, warrant is not needed in the act of the sub-inspector and was a search and taken by them before they had time to enter or leave the same. Held that they were acting legally under a 67 of the Bengal Excise Act and that the accused were rightly convicted under ss 14 and 153 of the Penal Code. On a charge of rioting with the common object of assaulting a police officer persons shown to have committed a violation of a 313 of the Penal Code may be separately sentenced thereunder. Criminals required by law prior to search consider L. P. HOSAIN (MADRAS HIGH COURT) (1914)

L. L. R. 41 Cal. 836

6. ——— Sub-Inspect — Common object Penal Code (Act 23 of 1902) ss 79, 111, 117 and 312—Criminal Procedure Code (Act II of 1909) s 401. Federal police constables were convicted of rioting. Two of them were previously tried and acquitted on a charge of wrongful confinement for having taken into custody some persons in course of such rioting. Held that the second trial was not vitiated by non-mention of the rule embodied in s 401 (2) of the Criminal Procedure Code. R v. HARRISON (1911) 2 K. B. 670 followed. *Suresh Chandra v. Pandey* C. L. J. 672 distinguished. *Ram Narayan v. Inspector* (1909)

L. L. R. 48 Cal. 78

RIPIARIAN RIGHTS

See FISHING

L. L. R. 37 Mad. 304

See FISHING

See MADRAS IRRIGATION ACT

L. L. R. 40 Mad. 836

See NAVIGABLE RIVER

L. L. R. 40 Cal. 200

Nature of — Rights of upper riparian owner.—Grant of right for water apart from the tenement valid if not a local reservation by natural stream grant by riparian owner of right to take water from, not by of—Obstruction to exercise of riparian rights.—Limitation Act (IX of 1908), ss 23 and 25. The right of a riparian owner is not an easement, but a right based on the principle that all streams are publici juris and all the water flowing down any stream is for the common use of mankind lying on the banks of the stream. A riparian owner is entitled to use the water from a stream for all reasonable purposes and may therefore permanently divert water for the purpose of irrigating his tenement. He may also make a grant to another riparian owner to take water by

RIPIARIAN RIGHTS—contd

means of a channel running through the grantor's land, from an artificial reservoir created by the grantor. The question as to whether such an owner is the reasonable owner depends upon the proper requirements of all the riparian owners. A 25 of the Limitation Act, 1908, has no application in the case of an obstruction to the right to take water from a stream whether such right is founded on riparian owner's property or grant. An obstruction to such enjoyment is a continuing wrong within the meaning of s 23. *Manikya Lal Bhaba Deyal Oin v. Misrahar Phawari & Co.*

J Pat. L. J. 31

Natural stream flowing in artificial channel not a servitude. The proper remedy when the use of water in a natural stream flowing in an artificial channel is that the same as if the stream had been a natural one that is that the water should come without obstruction. *L. M. Khatun Nisam v. Hanuman Nisam*

6 Pat. L. J. 6

RISK NOTE

See CONTRACT I L. R. 43 Bom. 789

See RAILWAYS ACT ss 2 and 5

See RAILWAY COMPANY

Senders responsibility—Railway administration liable only if cargo is packed but, whether exposed to public policy. The sender's risk note issued in the East Indian Railway system under which the Railway Company takes liability only when there is a loss of a complete package due to theft and not when a part of the cargo is lost. The servants is not exposed to public policy. *Kail Das Moller v. E. I. Railway Co. (1911)*

21 C. W. N. 815

RITES AND CEREMONIES

See HINDU LAW—MARRIAGE

L. L. R. 38 Cal. 700

RIVAL CANDIDATE

See MUNICIPAL ELECTION

L. L. R. 46 Cal. 132

RIVAL DECREE-HOLDERS

See EXECUTION OF DECREE

L. L. R. 44 Cal. 1072

RIVER

See GRANT I L. R. Mad. 310

See RIVER BED

RIVER BED

See GRANT

See PUBLIC NAVIGABLE RIVER

21 C. W. N. 630

S. v. REGULATION VI of 1873.

See RIPIARIAN OWNERS.

—Right of riparian owner to become navigable whether part of public domain when river admitted or proved non-navigable.—Interruption that it was part of permanently settled estate—Grant to control wrongful encroachment of such river bed.—Limitation—Reg II of 1819 ss 22, 23, 24.—Reg III of 1823 s 10—Act IX of 1847. As soon as it is shown or admitted that a river within the ambit of the riparian owner was never a public navigable river the course which lies on the remainder to show that its bed was included within the limits

RIVER BED—*contd.*

of his permanently settled estate is discharged or shifted. The test for determining whether a river is a public navigable river or not is whether or not the river is navigable for boats at all seasons of the year. The question of size may not be without importance, but speaking generally the presumption in the one case is that the bed belongs to the public or is public domain and in the other that the bed belongs to a private proprietor. In the absence of any other evidence than that afforded by a *thak* or survey map these natural presumptions may be sufficient to displace the contrary evidence of the map. *Maharaja Jagadindra v Secretary of State, L R 30 I A 44 s c I L P 30 Calc 291, 7 C W N 193 (1902)* *Horidas v Secretary of State, 25 C L J 590 (P C) (1917), Secretary of State v Bujay Chand Mahatab I L R 46 Calc. 390 s c 22 C W N 872 (1918) and Secretary of State v Fahamudunissa, L R 17 I A 40 s c I L R 17 Calc. 590 (1889)*, referred to. The bed of a river included in a permanently settled estate is in no respect different from other waste lands included in the estate, and whatever changes may have occurred from natural or artificial causes and however the land may have improved in value Government is not entitled to add additional revenue for such lands. *Lopez v Muddun Molun 13 M I A 467 at p 477 5 B L R 521, 14 W P 11 (1870)* and *Bala Surya Prasad v Secretary of State, L R 44 I A 166 at p 185, s c I L P 40 Mod 886, 21 C W N 1059 (1917)*, referred to. When the bed of such a river silts up and becomes fit for cultivation, neither Reg II of 1819 nor Act IX of 1847 authorises the revenue authorities to assess the lands with revenue. Where nevertheless the revenue authorities have assessed such land with revenue under Act IX of 1847 *Quare*—Whether upon the enactment of Act IX of 1947 the limitation provided by s 24 of Reg II of 1819 ceased to be applicable to a suit by the owner to contest the validity of the assessment and to recover possession of the land. **SECRETARY OF STATE FOR INDIA v PRAPULLA NATH TAGORE**

24 C W N 809

*Suit to contest order of Lord of Revenue confirming assessment of land formed by silting up of river bed—Limitation—Reg II of 1819 s 24—Leg III of 1878, s 10—Act IX of 1847, s 6—Bed of public navigable river shown in *thak* and revenue survey maps as within permanently settled estate—Bed if to be presumed part of estate. The rules contained in s 10 of Reg III of 1829 and s 24 of Reg II of 1819 govern a suit to contest an order of the Board of Revenue under s 6 of Act IX of 1847 confirming an assessment under the Act and to obtain incidental relief such as recovery of possession of lands of which possession has been taken under s 10 of Reg III of 1829. *Fahamudunissa's case I J R 14 Calc 67 (P B) (1886)*, on P C L P 17 I A 40 (1889) referred to. An order under s 6 of Act IX, 1847, confirming an assessment of revenue corresponds to a decision of the Board under Reg II of 1819 and unless the suit of the nature indicated by cl (3) of s 10 of Leg III of 1829 is brought within the time limited by s 24 of Reg II of 1819 the decision of the Board declaring the land liable to assessment becomes final and conclusive for all purposes. Where the Board of Revenue found that a river the channels whereof had not materially changed between 1793 and 1874,*

RIVER BED—*concl.*

was a public navigable river, but the *thak* and survey maps of 1809 1861 showed the whole width of the river as included in the permanently settled estate of the Plaintiff, the Plaintiff offering no other evidence. *Held*—That the *thak* and survey maps were not in themselves sufficient to justify the Court in saying that the Board's order was wrong and should be reversed. *Maharaja Jagadindra's case L P 30 I A 44 s c I L R 30 Calc 291, 7 C W N 193 (1902)*, referred to. The question whether a river or watercourse is navigable or not does not depend on its name. **PRAPULLA NATH TAGORE v SECRETARY OF STATE FOR INDIA**

24 C W N 813

RIWAJ-I-AM

- See CUSTOM* I L R 39 All 574
 ----- *evidentiary value of—*
See CUSTOM I L R 44 Calc 749
 ----- *Jhelum District, Jats, succession to acquired property—*
See CUSTOM (SUCCESSION).
 I L R 2 Lah 98
 ----- *Karnal District—Succession by daughter to self acquired property—*
See CUSTOM—SUCCESSION
 I L R 2 Lah 366
 ----- *Ludhiana District—Adoption by an adopted son—*
See CUSTOM (ADOPTION)
 I L R 1 Lah 39
 ----- *Jullundur District—Adoption of daughter's son—*
See CUSTOM (ADOPTION)
 I L R 2 Lah 193
 ----- *Jullundur District—Succession of sister—*
See CUSTOM (SUCCESSION)
 I L R 1 Lah 1 & 433
 ----- *Jullundur District—Adoption of brother's daughter's son—*
See CUSTOM (ADOPTION)
 I L R 1 Lah 15
 ----- *Jullundur District—Succession—daughter or collaterals—*
See CUSTOM (SUCCESSION)
 I L R 1 Lah 464
 ----- *Shahpur—Succession—daughter or near collaterals—*
See CUSTOM (SUCCESSION)
 I L R 1 Lah 284
 ----- *Tahsil Chakwal District Jhelum—alienation in favour of daughter—*
See CUSTOM (ALIENATION)
 I L R 2 Lah 170

ROAD

See BRACDARI VILLAGE.

I L R 37 Bom 87

See MUNICIPALITY

I L R 43 Calc 100

*making and maintenance of—**See TOWNSHIP* I L R 23 Mad 351

RIOTING—*concl'd*

Bengal Excise Act (V of 1909) confers wider powers on excise officers than were given under the former Act. Under s. 67 read with r. 75 of the Rules framed by the Local Government, an excise inspector and sub inspector may enter a house for the purpose of arresting without a warrant a person found in the illicit distillation of liquor. S. 67 does not relate to any search, and an excise officer not below the rank of a sub inspector entering a house for the purpose mentioned therein, is not required to comply with the formalities prescribed in Ch. V, r. (8) of the Instructions of the Board of Revenue unless he finds it necessary further to make a search in the house. Where an excise sub inspector accompanied by a constable and two chowkidars and excise peons went to the house of the accused in order to arrest without warrant persons found in the act of illicit distillation of liquor, and were attacked and beaten by them before they had time to enter or search the same. *Held* that they were acting legally under s. 67 of the Bengal Excise Act, and that the accused were rightly convicted under ss. 147 and 333 of the Penal Code. On a charge of rioting, with the common object of assaulting public servants, persons shown to have committed a separate offence under s. 333 of the Penal Code may be separately sentenced thereunder. Formalities required by law prior to search considered. *PROKASH CHANDRA KUNDU v. EMPEROE* (1914)

I. L. R. 41 Cal. 838

6. — *Antefossa acquit*—Common object—Penal Code (Act XLV of 1860), ss. 79, 141, 147 and 312—Criminal Procedure Code (Act V of 1893), s. 403. Several police constables were convicted of rioting. Two of them were previously tried and acquitted on a charge of wrongful confinement for having taken into custody some persons in course of such rioting. *Held*, that the second trial was not vitiated by contravention of the rule embodied in s. 401 (1) of the Criminal Procedure Code. *R v. Barron*, (1914), 2 K B 570, followed. *Suresh Chandra v. Banku*, 2 C L J 622 distinguished. *RAM SAHAY RAM v. EMPEROE* (1920)

I. L. R. 48 Cal. 78

RIPARIAN RIGHTSSee **ASSIGNMENT**

I. L. R. 37 Mad. 304

See **FISHERY**See **MADRAS IRRIGATION CEYS ACT**

I. L. R. 40 Mad. 886

See **NAVIGABLE RIVER**

I. L. R. 48 Cal. 390

Nature of—*Rights of upper riparian owner*—*Grant of right for user apart from the tenement validly of—artificial reservoir fed by natural stream, grant by riparian owner of right to take water from, validity of*—*Obstruction to exercise of riparian rights*—*Limitation Act (IX of 1908), ss. 23 and 26*. The right of a riparian owner is not an easement, but a right based on the principle that all streams are public jura and all the water flowing down any stream is for the common use of mankind living on the bank of the stream. A riparian owner is entitled to use the water from a stream for all reasonable purposes, and may, therefore, permanently divert water for the purpose of irrigating his tenement. He may also make a grant to another riparian owner to take water by

RIPARIAN RIGHTS—*concl'd*

means of a channel running through the grantor's land, from an artificial reservoir created by the grantor. The question as to whether such an user would be reasonable would depend upon the proper requirements of all the riparian owners. S. 25 of the Limitation Act 1908, has no application to the case of an obstruction to the right to take water from a stream, whether such right is founded on riparian ownership or a lost grant. An obstruction to such enjoyment is a continuing wrong within the meaning of s. 23. *MAHANTA KRISHNA DATTA GU v. MUSAMMAT BHAWANI KOKR*

3 Pat. L. J. 51

Natural stream flowing in artificial channel, rights of user in. The proper inference for the user of water in a natural stream flowing in an artificial channel is that the same as if the stream had been a natural one that is that the water should come without obstruction. *RAM HARPAL SINGH v. HANUMAN SINGH*

6 Pat. L. J. 6

RISK NOTE.See **CONTRACT** I. L. R. 43 Bom. 769See **RAILWAYS ACT**, ss. 72 and 75.See **RAILWAY COMPANY**

Senders risk-note—making Railway administration liable only if complete package lost, whether opposed to public policy. The sender's risk note used in the East Indian Railway system under which the Railway Company takes liability only when there is a loss of a complete package due to wilful negligence of their staff or theft by their servants is not opposed to public policy. *KALI DAS MULLICK v. E. I. RAILWAY CO* (1917)

21 C. W. N. 815

rites and ceremonies.See **HINDU LAW—MARRIAGE**

I. L. R. 38 Cal. 700

RIVAL CANDIDATE.See **MUNICIPAL ELECTION**

I. L. R. 46 Cal. 132

RIVAL DECREE-HOLDERS.See **EXECUTION OF DECREE**

I. L. R. 44 Cal. 1072

RIVER.See **GRANT**

I. L. R. Mad. 840

See **RIVER BED****RIVER BED.**See **GRANT**See **PUBLIC NAVIGABLE RIVER**

24 C. W. N. 639

See **REGULATION XI. OF 1825**See **RIPARIAN OWNERS**

—silt up and becoming cultivable whether part of public domain, when river admitted or proved non navigable—*Presumption that it was part of permanently settled estate—Suit to contest wrongful assessment of such river bed*—*Limitation—Reg. II of 1819, ss. 22, 23, 24—Reg. III of 1825, s. 10—Act IX of 1847*. As soon as it is shown or admitted that a river within the ambit of the zamindari was never a public navigable river, the onus which lies on the zamindar to show that its bed was included within the limits

RIVER BED—*contd*

of his permanently settled estate is discharged or shifted. The test for determining whether a river is a public navigable river or not is whether or not the river is navigable for boats at all seasons of the year. The question of size may not be without importance but speaking generally the presumption in the one case is that the bed belongs to the public or is public domain and in the other that the bed belongs to a private proprietor. In the absence of any other evidence than that afforded by a *thak* or survey map these natural presumptions may be sufficient to displace the contrary evidence of the map. *Maharaja Jagadindra v Secretary of State* L R 30 I A 44 s c I L R 30 Calc 291 7 C W N 193 (1902) *Haridas v Secretary of State* 26 C L J 590 (P C) (1917) *Secretary of State v Dwyer Chand Mahatob* I L R 46 Calc 390 s c 22 C W N 872 (1918) and *Secretary of State v Fahamidunnissa*, L R 17 I A 40 s c I L R 17 Calc 590 (1889) referred to. The bed of a river included in a permanently settled estate is in no respect different from other waste lands included in the estate, and whatever changes may have occurred from natural or artificial causes and however the land may have improved in value Government is not entitled to additional revenue for such lands. *Lope v Muddun Mohun* 13 M I A 467 at p 477 5 B L R 521, 14 W R 11 (1870) and *Bala Surya Prasad v Secretary of State* L R 44 I A 166 at p 185 s c I L R 40 Mad 888 21 C W N 1039 (1917) referred to. When the bed of such a river silts up and becomes fit for cultivation, neither Reg II of 1819 nor Act IX of 1847 authorizes the revenue authorities to assess the lands with revenue. Where nevertheless the revenue authorities have assessed such land with revenue under Act IX of 1847 *Quare*—Whether upon the enactment of Act IX of 1947 the limitation provided by s 24 of Reg II of 1819 ceased to be applicable to a suit by the owner to contest the validity of the assessment and to recover possession of the land SECRETARY OF STATE FOR INDIA v PRAPULLANATH TAGORE 24 C W N 809

*Suit to contest order of Board of Revenue confirming assessment of land formed by silting up of river bed—Limitation—Reg II of 1819 s 24—Reg III of 1828 s 10—Act IX of 1847 s 6—Bed of public navigable river shown in map and revenue survey maps as within permanently settled estate—Bed is to be presumed part of estate. The rules contained in s 10 of Reg III of 1828 and s 24 of Reg II of 1819 govern a suit to contest an order of the Board of Revenue under s 6 of Act IX of 1847 confirming an assessment under the Act and its admission incidental relief such as recovery of possession of lands of which possession has been taken under s 10 of Reg III of 1828. *Fahamidunnissa v case* I L R 14 Calc 67 (F B) (1886) on P C L R 17 I A 40 (1889) referred to. An order under s 6 of Act IX of 1847 confirming an assessment of revenue corresponds to a decision of the Board under Reg II of 1819 and unless the suit of the nature indicated by cl (3) of s 10 of Reg III of 1828 is brought within the time limited by s 24 of Reg II of 1819 the decision of the Board declaring the land liable to assessment becomes final and conclusive for all purposes. Where the Board of Revenue found that a river the channels whereof had not materially changed between 1793 and 1854*

RIVER BED—*contd*

was a public navigable river but the *thak* and survey maps of 1859 1861 shewed the whole width of the river as included in the permanently settled estate of the Plaintiff, the Plaintiff offering no other evidence. *Held*—That the *thak* and survey maps were not in themselves sufficient to justify the Court in saying that the Board's order was wrong and should be reversed. *Maharaja Jagadindra v case* L R 30 I A 44 s c I L R 30 Calc 291 7 C W N 193 (1902) referred to. The question whether a river or watercourse is navigable or not does not depend on its name. *PRAPULLA NATH TAGORE v SECRETARY OF STATE FOR INDIA* 24 C W N 813

RIWAJ-I-AM

- See CUSTOM I L R 29 All 574
 ——— evidentiary value of—
 See CUSTOM I L R 44 Calc 749
 ——— Jhelum District, Jats, succession to acquired property—
 See CUSTOM (SUCCESSION) I L R 2 Lah 88
 ——— Karnal District—Succession by daughter to self acquired property—
 See CUSTOM—SUCCESSION I L R 2 Lah 306
 ——— Ludhiana District—Adoption by an adopted son—
 See CUSTOM (ADOPTION) I L R 1 Lah 39
 ——— Jullundur District—Adoption of daughter's son—
 See CUSTOM (ADOPTION) I L R 2 Lah 193
 ——— Jullundur District—Succession of sister—
 See CUSTOM (SUCCESSION) I L R 1 Lah 1 & 433
 ——— Jullundur District—Adoption of brother's daughter's son—
 See CUSTOM (ADOPTION) I L R 1 Lah 15
 ——— Jullundur District—Succession—daughter or collaterals—
 See CUSTOM (SUCCESSION) I L R 1 Lah 464
 ——— Shahpur—Succession—daughter or near collaterals—
 See CUSTOM (SUCCESSION) I L R 1 Lah 284
 ——— Tahall Chakwal, District Jhelum—alienation in favour of daughter—
 See CUSTOM (ALIENATION) I L R 2 Lah 170

ROAD

- See BHAGDARI VILLAGE. I L R 37 Bom 87
 See MUNICIPALITY I L R 43 Calc 136
 ——— making and maintenance of—
 See FORT I L R 39 Mad 351

ROAD AND PUBLIC-WORKS CESS ACT.

See CESS ACT

ROAD CESS

ATTAINS OF—

See PUBLIC DEMANDS RECOVERY ACT, s
10 14 C W. N. 607

SALE FOR ATTAINS OF—

See MUTT, HEAD OF
I. L. R. 38 Mad. 358

ROAD CESS RETURN

See TRINIKHANA PAPER.

(I L. R. 39 Calc. 895)

1 ——— Evidence—Road cess return filed by a temporary lessee—Bengal Cess Act (IX of 1880), s 95—Evidence Act (I of 1872) s 21 The provisions of s 95 of the Bengal Cess Act are not exhaustive They merely limit the application of s 21 of the Indian Evidence Act, and exclude road cess returns when they are sought to be admitted in favour of the person by or on behalf of whom they have been filed A road cess return filed by a person in his capacity as a temporary lessee of a certain property is admissible in evidence in favour of the superior landlord, inasmuch as he could not be regarded as a person by or on behalf of whom the return was filed. *BENKIO NARAY SINGH v AJODHYA PRASAD SINGH* (1912) I L. R. 39 Calc. 1005

2 ——— Statements made in road cess returns by *khopashdars* or holders of a maintenance grant as to the character of their tenure are good evidence of title against a defendant claiming under them, if not as admissions, certainly as positive evidence in support of plaintiff's claim *KALI SANKAR SAHAI v MAHARAJA PRATAP UDAI SINGH DEO* (1911)

16 C. W. N. 683

ROAD CESS ACT (BENG IX OF 1880)

ss. 6, 72, 76, 80, 81—The Royalty or percentage on the products of a mine payable by mine owners, to the proprietor of the land is part of the annual net profits of the mine and liable to cess. *MAHARAJA MANINDRA CHANDRA NANDI v THE SECRETARY OF STATE*

15 C. W. N. 201

s 20—Rent, suit for—Rent claimed at higher rate than amount entered in Road Cess Return Unless there has been a material alteration of the holding a landlord is not entitled to claim rent at a rate higher than that stated in the Road Cess Return Mere alteration in area due either to re-measurement or encroachment will not take a case out of s 20 of the Road Cess Act, 1880 Neither an entry in the Record of Rights which only raises a presumption, nor an entry in a *fama* *wasul* *baks* which states what the tenant's rent for a particular year, was, can over-ride the provisions of the Act. *DHANAKRISHNAI MARTON v SAYED SERAJUL HUDA*

1 Pat. L. J. 521

ss. 47 and 64 (A and B)—

See BENGAL TENANCY ACT 1885, s 65
1 Pat. L. J. 161

ROYAL PROCLAMATION OF AUGUST 1914.

See CONTRACT WITH ENEMY

I L. R. 44 Bom. 631

ROYALTY.

See INCOME TAX ACT, 1918, s. 5

6 Pat. L. J. 62

See MINES I L. R. 38 Calc. 372

action for—

See TRADE MARK
I. L. R. 42 Calc. 262

attains of—

See MORTGAGE. I L. R. 39 Calc. 810

payment of—

See LANDLORD AND TENANT
I. L. R. 46 Calc. 552

suit for—

See LIMITATION
I L. R. 44 Calc. 759

ROYALTY OR SEIGNIORAGE FEES.

right of Government to buy—

See IRAM I. L. R. 40 Mad. 268

RULES

See CALCUTTA RENT ACT 1920
25 C. W. N. 661See ULTRA VIRES
I. L. R. 43 Calc. 955

RULES AND ORDERS OF COURTS

See UNDER VARIOUS HIGH COURTS

RULES OF EVIDENCE.

See APPEAL I L. R. 38 Calc. 143

RULING CHIEF.

suit against—

See CIVIL PROCEDURE CODE, 1908, s. 86
6 Pat. L. J. 185
I. L. R. 23 Mad. 635

RULING OF COURT

of co-ordinate jurisdiction. A Judge on the Original Side is ordinarily bound to consider with respect to the decision of another Judge on the Original Side produced before him, but that if he is convinced that the decision is erroneous, he is not under any obligation to follow it against his own judgment. *VENKATY DAS MOOLJI v BISSERSWAR LAL HARGOVIND*
24 C. W. N. 1022

RYOT

See MADRAS ESTATES LAND ACT (I OF 1908) s. 3 I. L. R. 38 Mad. 1155

RYOTI LAND

See MADRAS ESTATES LAND ACT (MAD I OF 1908)—

s 3 I. L. R. 38 Mad. 738
I. L. R. 40 Mad. 529ss. 9, 11, 151 157
I. L. R. 37 Mad. 43

RYOTI RENT

See MADRAS ESTATES LAND ACT (I OF 1908) s 3 I L R 38 Mad. 738

RYOTWARI LAND OWNER

See MADRAS ESTATES LAND ACT (I OF 1908) s 189 I L R 39 Mad. 239

RYOTWARI LANDS

———— acquisition of, by Government—

See MADRAS ESTATES LAND ACT (I OF 1908) ss 6 SUB S. (6) 8.
I L R. 39 Mad. 944

RYOTWARI TENURE

See MADRAS ESTATES LAND ACT (I OF 1908) ss 6 SUB S. (6) 8
I L R. 39 Mad. 944

S**SACRIFICE OF GOAT**

See PROVINCIAL SMALL CAUSE COURTS ACT s 23 15 C W N 668

SADALWAR AND MATHIRI KASUVU

See MADRAS ESTATES LAND ACT (I OF 1908) s 13 CL. (3)
I L R. 39 Mad. 84

SALARY

See ATTACHMENT
See CIVIL PROCEDURE CODE (1908) s 60
See HINDU LAW—JOINT FAMILY PROPERTY 25 C W N 534

SALE

See APPEAL I L R 41 Calc 418

See CHAUDHARI CHAKARAN LANDS I L R 45 Calc 765

See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 47 144 151
I L R 43 Bom 235

See CONSTRUCTION OF DOCUMENTS
I L R 42 All 437
I L R 33 All 337 585
I L R 41 Bom. 5

See CONTRACT I L R 33 All 166

See CONTRACT ACT (IX OF 1872)—
s 11 I L R 35 All 370
s 70 I L R. 40 All 555
s 74 I L R 38 All 52

See COURT SALE.

See DEKKAN AGRICULTURISTS RELIEF ACT 189 s. 10 I L R. 45 Bom. 87

See ESTOPPEL I L R 48 Calc 591

See EXECUTION OF DECREES
I L R 38 Calc 622

See EXECUTION SALE

See EXECUTOR, SALE BY
I L R. 38 Mad. 575

See HINDU LAW—JOINT FAMILY PROPERTY I L R. 43 Bom. 42

SALE—contd

See HINDU LAW—WIDOW

I L R 39 All 463

See INSOLVENCY I L R 44 Calc. 1016

See JURISDICTION I L R 34 Bom. 13

See LAND REVENUE CODE (BOM ACT V OF 1879), s 74.
I L R 41 Bom. 170

See LIMITATION ACT (IX OF 1908)
SCH I—
ART 44 I L R 42 Bom 626

ARTS 6^o AND 97
I L R 38 Mad. 887

ART 116 I L R 40 All 805

See MAHOMEDAN LAW—PRE EMPTION
I L R. 37 All 522

See MORTGAGE I L R 38 Calc 923
I L R 40 Calc 534
I L R 42 Calc 780

See OCCUPANCY HOLDING
I L R. 48 Calc 184

See PRE EMPTION I L R. 34 Bom. 567

See PRIVATE SALE
I L R 45 Calc 780

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 34. I L R 37 All 452

See PATTI TALUK I L R. 48 Calc 454

See RECEIVER 14 C W N 580
I L R 43 Calc 124

See SALE BY GOVERNMENT

See SALE IN EXECUTION OF DECREE

See SALE FOR ARREARS OF REVENUE.

See SALE OF GOODS

See SPECIFIC RELIEF ACT (I OF 1877)
s 27 I L R 38 All 184

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 40 I L R 40 Bom 493

s 54 I L R 34 Bom 139
I L R 37 All 631

s 55 I L R 43 All 314
15 C W N 655

s 53 CL 4 (b) I L R 33 Mad. 446
I L R. 38 All 254

ss 55 123 I L R 34 Bom 287

ss 60 67 AND 93
I L R. 39 Mad. 896

See VENDOR AND PURCHASER.
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———— agreement to recovery—

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———— application to set aside—

See CIVIL PROCEDURE CODE 1882 s 244
14 C W N 823

See CIVIL PROCEDURE CODE (1908) O XXI B. 90 I L R 38 All 358

See DEPOSIT IN COURT
I L R 43 Calc 100

See PAYMENT INTO COURT
I L R 43 Bom. 967

See SALE IN EXECUTION OF DECREE
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- by Mahomedan to Hindu.
See PRE EMPTION I L R 45 Bom 658
- by mother—
See MAHOMEDAN LAW—MINOR
 I L R 37 Mad. 514
- by prior mortgagee—
See MORTGAGE I L R 45 Calc 702
- by servant or partner—
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 I L R 39 Calc 682
- Constructive Notice—
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- by minor co-parcener—
See PARTITION SUIT
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- by a Municipality without written contract
See BOMBAY DISTRICT MUNICIPALITIES
 ACT (BOM ACT III OF 1901) ss 96
 AND 40 (6) I L R 45 Bom 797
- By natural guardian—
See CIVIL PROCEDURE CODE 1908 O
 XXXII s.7 I L R 44 Bom 574
- Compromise in a suit for land—
 whether a sale—
See LUNACY (DISTRICT COURTS) ACT 18 8
 I L R 1 Lah 109
- consideration—whether pas co-
 habitation sufficient—
See CONTRACT I L R. 44 Bom. 542
- claimant paying into Court the
 decretal amount to set aside sale—
See CIVIL PROCEDURE CODE (ACT V OF
 1908) O XXI ss 85 90 (2)
 I L R 45 Bom. 1094
- Execution proceedings transferred
 to the Collector—
See HIGH COURT CIVIL CIRCULARS F
 106 s. 17 I L R 45 Bom 1132
- Decree against a judgment-debtor
 who dies—
See CIVIL PROCEDURE CODE (ACT V OF
 1908) s 2 CL (II) O XXI s 22
 I L R. 45 Bom 1188
- Oral evidence to prove transaction
 only a mortgage—
See DEKKHAN AGRICULTURISTS RELIEF
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- confirmation of—
See CIVIL PROCEDURE CODE 1882 s 316
 I L R 33 All. 63
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 I L R 41 All. 526
- See* PRE EMPTION I L R 33 All 45
See SECOND APPEAL
 I L R 39 Calc 687
- contract of—
See CURRENT RIGHT
 I L R 42 Calc 28
See VENDOR AND PURCHASER.
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- Deposit or Earnest money on—
See CONTRACT I L R 41 All. 324
- free of incumbrance—
See PROVINCIAL INSOLVENCY ACT (III
 OF 1907) ss 20 22
 I L R 39 Mad 479
- in execution of a decree—
See CIVIL PROCEDURE CODE (1908) O
 XXI s 90 I L R 38 All. 358
- knowledge of—
See LIMITATION ACT (IX OF 1908) SCH
 I ART 120 I L R 38 Mad 67
- necessity of—
See MAHOMEDAN LAW—MINOR
 I L R 35 Bom 217
- of mortgaged property—
See MORTGAGE I L R. 37 Calc 282
- of mortgagor's rights—
See BUNDELKHAND ALIENATION ACT (II
 OF 1907) s 3 I L R 37 All 467
- of right title and interest of mort-
 gagor—
See TITLE I L R 37 Calc 239
- of trust property—
See TRUSTS I L R 43 Bom 519
- properties advertised for by the
 Official Receiver as subject to mortgage—
See PROVINCIAL INSOLVENCY ACT (III
 OF 1907) ss 40 AND 22
 I L R 39 Mad. 479
- Patal Taluk—
See PATENT REGULATION 1819 s 14
 25 C W N 42
- right of repurchase reserved on—
See CONTRACT I L R 42 Bom 344
- stay of—
See MORTGAGE I L R 37 Calc 897
- suit for on a mortgage—
See CIVIL PROCEDURE CODE (1908) O
 XXXIV ss 4 5 AND 10
 I L R. 40 All 109
 s. 5 I L R 40 All 203
- to prior mortgages after creation of
 a pulse mortgage—
See MORTGAGE I L R 38 Mad. 18
- validity of—
See CERTIFICATE OF SALE
 I L R 37 Calc 187
- See* CIVIL PROCEDURE CODE (ACT V OF
 1908) ss 47 AND "O"
 I L R 38 Mad 1076
- See* TRANSFER OF PROPERTY ACT (IV OF
 1882) ss 85 91
 I L R 37 Mad. 418
- I ——— Order for stay of—Order
 becomes effective only when communicated to the
 lower Court. An order by the Appellate Court for
 stay of sale takes effect only when communicated
 to the lower Court; and a sale by the lower Court;

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after the passing of the order but before the order was communicated is valid *Besswanger Chowdhury v Horroosunder Moosunder* 1 C W N 286 followed *Hukum Chand Best v Kamala Nand Singh* 1 L R 33 Calc 327 not followed *MUTHUKUMARASAMI ROWTHEN MINDA NATINAR v KUPPURAMI AYYANGAR* (1909)

I L R 33 Mad. 74

2 ———— **Option of re-purchase—Suit by vendor's grandson against the vendee's daughter in law—Co-ena to re-purchase purely personal** A deed of sale with an option of re-purchase contained the following clause— I have given the land unto your possess on if ye have at any time I require back the land I will pay you the afore-said Rs. 600 and any money you may have spent on bringing the land into good condition and purchase back the land In a suit brought 35 years after execution of the deed by the grandson of the vendor against the daughter in law of the vendee to exercise the option of re-purchase— *Held* that the covenant to re-purchase was purely personal and the suit was not maintainable *GURUWATH BALAJI v YAMANAVA* (1911)

I L R 35 Bom 258

3 ———— **Sale by Receiver—Sale by the Court and sale by Receiver under direction of Court distinct between—Sale by Receiver if requires confirmation of sale certificate by Court—Civil Procedure Code (Act 1 of 1908) O XVI rr 9 and 24** A sale by a Receiver under direction of Court is not a sale by Court and in such a sale the Court does not grant a sale certificate nor does it confirm the sale *Minaloonna B Bee v Alahoonna B Bee* 1 L R 21 Cal 479 explained *GOLAM HUSSAIN CASSIM ARIF v FATIMA BEGUM* (1910) 18 C W N 394

4 ———— **Covenant for title—Claim made against purchaser compromised *ante* suit brought—Right of purchaser to claim indemnity from covenantor** The purchaser of immovable property concerning which the seller has covenanted to indemnify the purchaser in the event of the title proving defective is not bound to wait until a suit is brought and he is deprived of the property by reason of a decree passed thereon but if a claim which the purchaser has an incidental reason to believe to be valid is brought against him he may after notice to the covenantor compromise such claim and sue the covenantor on his covenant to recover the amount paid by him to effect the compromise *Sauk v Compton* 3 B & A 40 referred to. *DURGAPPAH v KALI CHARAN* (1913) I L R 35 All 168

5 ———— **Contract for sale—Transfer of Property Act (IV of 1887) s 54—Patri-Pent liability for—Mere possession without assignment of lease, effect of** A contract for sale as defined by s. 54 of the Transfer of Property Act does not of itself create an interest in property and therefore a mere agreement to buy does not create a liability to pay the rent of the tenure the subject matter of the contract for sale *Car v Pashop & Duggal* 11 G 816 and *Chatterbhuj Moroy v Jenson* 1 L R 9 Bom 323 referred to. Mere possession on a patri will not render a man liable for rent if the lease has not been assigned to him *Cass v Willshire* 1 Den 112 *Sandee v Benson* 4 Den 350 *Flit v Lingley* 7 Sim 143 and *Palch v Lonsdale* 1 R. 41 CA 9 referred to. *Ipsema Coomer Paul Choudhury v Keyash*

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Chander Paul Choudhury & N P 428 Macnaghten v Bheekare Singh 2 C L R 373 *Kan Kar Sen v Salyendra Nath Bhadra* 15 C W N 191 and *Abdul Rob Choudhury v Eggar* 1 L R 35 Calc 139 distinguished. *AXANDA CHANDRA FOY v ABDULLAH HOSEIN CHOWDHURY* (1913) I L R 41 Calc 148

6 ———— **Court sale—Acceptance of bid—if incomplete without Court's sanction—Court and Nazir's respect & functions in regard to bids** *Per COXE J.*—Under the rules it is the Nazir's business to complete the sale though the Court (as well as the Nazir) has a discretion to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so. The Court has a quasi-judicial discretion in the matter and is not required itself to knock down the property. If a person goes to bid at a sale and in full knowledge of the condition offers bids for the property and the property is knocked down to him the mere fact that the Court has subsequently the discretion to confirm or annul the Nazir's act does not leave it open to the bidder to withdraw his bid. *Quare* Whether a second appeal lies from an order refusing leave to the decree holder to withdraw his bid. *RAJENDRA PRASAD JHA v UPENDRA NATH JHA* (1913) 19 C W N 633

7 ———— **Execution sale decrees reverses & alters—Purchases in parts by decree holder by a defendant not a judgment-debtor and by a stranger how affected—Moth v infant defendants appointed guardian without express consent—Decree if binds infants—Infants interest if passes at sale** A Court is not competent to appoint the mother of infant Defendants their guardian ad litem without her express consent. Where in a mortgage suit the mother who was proposed by the plaintiff as guardian did not appear or signify her willingness to act as guardian ad litem of the infant defendants, but the Court nevertheless appointed her guardian and the suit ended in a decree and a sale of the infants and others' properties. *Held* that the infants were not properly before the Court and were not bound by the decree and the sale did not pass the right title and interest of the infants. Where a decree is set aside subsequently to a sale in execution of the decree the sale will be cancelled if the purchase has been made by the decree holder but not when the purchaser is a stranger. The sale will also be cancelled when the purchaser though not the decree holder is one who was a party to the proceeding. Though s. 4 of O XXXIV of the Civil Procedure Code contemplates a sale of the mortgaged property as the decree must be suitably modified in exceptional circumstances e.g. when the mortgaged properties have already been converted into money by operation of law. *HARENDRA CHANDRA MANDAL v JOGENDRA NARAYAN LOY* (1914) 19 C W N 637

8 ———— **Execution of rent-decree—Encumbrances—Bengal Tenancy Act (1111 of 1885), ss. 159, 163 to 167—Decree for arrears of rent—Sale under the Bengal Tenancy Act effect of—Increase by landlord** Where a tenure is sold under the provisions of the Bengal Tenancy Act in execution of a decree for arrears of rent and the procedure provided in the Act has been observed the result therein decreed as follows namely the purchaser becomes entitled to annul

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all encumbrances other than registered and notified encumbrances, the consequences of the sale does not depend upon the amount of the bid offered by the successful purchaser, it is independent of the value of the bid. S 165 of the Act was enacted solely for the benefit of the decree holder, if the bid is not sufficient to satisfy his decree and costs it entitles him to have the property sold with power to annul all encumbrances, but it is not obligatory upon him to adopt this extreme measure and he is not in peril if he decides not to pursue this special remedy. *Banbhai Aapur v Khetra Pal Singh Roy*, 1 L R 38 Calc 293, not followed *SALIMULLAH v. RAHNUDDIN* (1915) 1 L R 43 Calc 283

9 ——— District Board, sale by—*Im moved* *Im property*—Transfer of Property Act (IV of 1882) s 31—*Incorporated Company*—Suit dismissal of—Contract rescission of—Waiver—Respondent—Cross objection—Civil Procedure Code (Act V of 1908) O XLII, rr 22 (3), 33—*Corporation*, duty of, when it receives money under an illegal or ultra vires agreement S 64 of the Transfer of Property Act provides that a sale of tangible immovable property of the value of Rs 100 and upwards can be made only by a registered instrument. Title to land, therefore cannot pass by a mere admission when the statute requires a deed. *Jad Nath v Rup Lal*, 1 L R 33 Calc 967. *Dharam Chand v Manji Sahu*, 18 C L J 436, *Aarak Lal v Mangoo Lal*, 22 C L J 350, referred to. *Hemadra Nath Mukerjee v Kumar Nath Roy* 1 L R 32 Calc 169 distinguished. The effect of rr 93 and 98 of the Statutory Rules made by the Lieutenant Governor on the 15th December 1885 under s 138 (d) of Bengal Act III of 1885 is that no immovable property vested in a District Board can be sold except with the previous approval of the Local Government and except by an instrument under the common seal signed by the Chairman and by two members of the Board. It is well settled principle of interpretation that Courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it, although such interpretation has not by any means controlling effect upon the Courts and may be disregarded for cogent and persuasive reasons. *Baleshwar v Bhagprathi* 1 L R 35 Calc. 701, referred to. When a public body or a Company is established by statute or is incorporated for special purposes only and is altogether the creature of Statute Law the prescriptions for its acts and contracts are imperative and essential to their validity. *Ward v Beck*, 13 C B (N S) 663, *Stapleton v Haymen* 2 H & C 918, *The Andalusian* 1 R 3 F D 182, *Le Feuvre v Miller*, 8 E & B 321. *Cope v Thomas Haren*, 5 Exch 441, *Daggle v London and Blackwell Ry*, 5 Exch. 412, *Friend v Bennett*, 4 C B (N S) 576, *Cornwall Mining Co v Bennett* 5 H & N 423, *Irish Post Co v Phillips*, 1 B & S 538, *Bottomley v Case* 16 Ch D 631 and *J. R. Gifford and Bury Town Council* 29 Q B D 363, referred to. A suit need not be dismissed merely because the authority for its institutions such as a certificate under the Penions Act, 1861 or s 78 of the Land Registration Act or s 60 of the Bengal Tenancy Act or s 4 of the Succession Certificate Act is not produced with the plaint. But this principle has no application

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to a case where the plaintiff at the date of the institution of the suit has no title at all. *Sarat Chandra v Apurba Krishna*, 14 C L J. 53, referred to. One contract is rescinded by another between the same parties, when the latter is inconsistent with and renders impossible the performance of the former, but, if, though they differ in terms their legal effect is the same, the second is merely a ratification of the first and the two must be construed together, where the new contract is consistent with the continuance of the former one, it has no effect unless and until it is performed. *Hunt v South Eastern Railway Co* 45 L J C P 87, *Dodd v Chilton*, (1897) 1 Q B 562, *Palmore v Colburn*, 1 Cr M & R 65, *Thornhill v Nates*, 8 C B (N S) 551, referred to. But where parties enter into a contract which if valid would have the effect, by implication of rescinding a former contract and it turns out that the second transaction cannot operate as the parties intended it does not have the effect, by implication, of affecting their rights in respect to the former transaction. *Noble v Ward*, 4 H & C. 149. *L R 1 Exch 177*, *Dosdem Biddisip v Poole* 11 Q B 713, referred to. Where the question is whether the one party is set free by the action of the other the real matter for consideration is whether the acts or conduct of the one do or do not amount to an intimation of an intention to abandon and altogether to refuse performance of the contract. The true question is whether the acts and conduct of the party evince an intention no longer to be bound by the contract. *Mersey Steel and Iron Co v Naylor Benzon and Co*, 9 App. Cas 434, *General Billposting Co. v Atkinson*, (1908) A C 113, referred to. The Court requires as clear evidence of the waiver as of the existence of the contract itself, and will not act upon less. *Carolan v Brabator*, 3 J & L 209, referred to. Where a corporation receives money or property under an agreement which turns out to be ultra vires, or illegal, it is not entitled to retain the money. The obligation to do justice rests upon all persons, natural and artificial, if one obtains the money or property of others, without authority, the law, independently of express contract, will compel restitution or compensation. *Chapleo v Brunswick Building Society* 6 Q B D 698, referred to. As an ordinary rule a respondent in an appeal is not entitled to urge cross objections except as against the appellant. But r 22 (3) of O XLII of the Code of 1908 has materially altered the pre-existing law by the substitution of the words "party who may be affected by such objection" for the word "appellant" contained in s 561 (3) of the Code of 1882. Further, r 33 of O XLII has conferred wide discretionary powers on the Court of Appeal to alter the decree of the Court below as the case may require. *MATHURAN MOHAY SANA v RAM KUMAR SANA* (1915) 1 L R 43 Calc. 760

10 ——— *Benami*—Suit by purchaser under registered khabala against defendant in possession—Plaintiff, if has to prove pawning of consideration—Recital in deed admitting receipt of consideration null—Second appeal—Onus. A plaintiff has to prove his title when a defendant in possession pleads he is only a benamidar but he shows a prima facie title by producing and proving a conveyance which usually contains a recital of

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the receipt of consideration. The onus in such a case is on the defendant to show non payment of consideration. The fact that the defendant is in possession is an important element to be taken into consideration in determining whether the transaction is *benami*. But there is no presumption in favour of *benami* even where the defendant is in possession. Where the lower Appellate Court held that the plaintiff's purchase was *benami* being influenced by the erroneous view that the onus was on the plaintiff though it relied also on the fact that the defendant was in possession, the finding was reversed in second appeal and the case was sent back for rehearing. A recital in a deed of sale admitting the receipt of consideration is evidence though not conclusive against the vendor. *DURGA CHARAN CHANDRA v THE KHARDA Co., Ltd* (1915) 20 C W N 254

11 ——— **Sale of Tenancy—Bengal Tenancy Act (VIII of 1885)—Status of the decree holder—Effect of the cessation of interest (partial or entire) of the landlord** Where the decree holder continued to be the sole landlord at the date of the application for execution of the decree and in his character as landlord decree holder took the necessary steps for the sale of the under tenure in conformity with the statutory provisions, the effect of the execution sale is to pass the under tenure to the purchaser, even though the decree holder has lost his interest as landlord before the actual sale. *Forbes v Maharaj Bahadur Singh I L R 41 Cal 926* distinguished *Hem Chander Bhunia v Mon Mohini Das, 3 C W N 604 Chhatrapati Singh v Gopi Chand Bothra I L R 26 Cal 750 Srivastav Roy v Mahadeo Mahata, I I R 31 Cal 559 Akhara Pal Singh v Kartarhamoy Das I L R 33 Cal. 566 Profulla v Asanbannasa 24 C I J 331* referred to *Syedunnissa Khatun v Amiruddi* (1917) I L R 45 Cal 294

12 ——— **Date of sale—Whether date of confirmation—Bengal Tenancy Act (VIII of 1885), s 167, 169** The words date of sale referred to in s 167 of the Bengal Tenancy Act mean the date when the sale is confirmed and not the date when the property is actually sold to the purchaser. *Matangini Choudhury v Sreenath Das 7 C W V 552* referred to *Banko Behary Das v Krishna Chandra Bhattach 18 C W N 349 13 C L J 170* approved. *Yusuf Gazi v Asmat Mollah 17 C W V 410* dissenting from *NANDA LAL BANERJEE v UNESH CHANDRA DAS* (1917) I L R 45 Cal. 151

13 ——— **Application to set aside—Limitation—Civil Procedure Code (Act V of 1908) s 47 O XXI r 90—Application to set aside a sale in execution of a decree on the ground that the property did not belong to the original judgment debtor—Limitation Act (IX of 1908) Sch. II, Arts 166 181** An application under s 47 of the Code of Civil Procedure for setting aside the sale of a property on the ground that it did not belong to the original judgment debtor is governed by Art 166 of the Limitation Act and not Art. 185. *BATISH CHANDRA KUNJUNOOR v NISHI CHANDRA DUTTA* (1919) I L R 46 Cal. 975

14. ——— **Application to set aside sale on the ground that application for execution was barred by limitation—grounds for setting aside sale which has been confirmed** No application to set aside a sale held in execution

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of a decree on the ground that the application for attachment and sale was barred by limitation can be made after confirmation of the sale. *Lakshu Rai v Maharaja Kesho Prosad Singh Bahadur* 2 Pat L J, 157

15 ——— **Application to set aside sale—Fraud involving suppression of processes and submission of false returns, its continuing influence—Burden of proving clear and definite knowledge of facts constituting fraud—Civil Procedure Code (Act V of 1908), s 115i** In a case to set aside sale under O XXI, r 90 Civil Procedure Code the applicant must have knowledge not merely of the factum of the sale but a clear and definite knowledge of the facts which constitute the fraud before time can run against him or her. When by a fraud involving suppression of processes and submission of false returns, the applicant is kept out of knowledge of the sale of his property such fraud must be held to have a continuing influence. Indeed in such a case it is for the other side to show that the injured party had clear and definite knowledge of the facts which constitute the fraud at a time from which *time* as a starting point *time* is barred by limitation. *Narayan Sahu v Mohanlal Damodar Das 16 C W N 891 and Rohimkhoy Habibkhy v Turner I L R 17 Bom 341* referred to. The Court below in shutting out evidence acted with material irregularity in the exercise of its jurisdiction. *BRUSAN MANI DASI v PROFULLA KRISTO DAS* (1920)

I L R 48 Cal 119

16 ——— **Notice—In the case of an oral sale with possession and payment followed by a registered sale to another person with notice of first sale, it was held that first sale had priority and could claim a registered sale deed.** *DESAIBHAI JORABHAI v ISWAR JESHING*

I L R. 44 Bom. 586

17 ——— **Sale under mortgage decree—High Court Original Side—Mortgage Decree—Civil Procedure Code (Act V of 1908) O XXI r 89** The provisions of O XXI r 89, of the Civil Procedure Code (Act V of 1908) apply to a sale under a mortgage decree and in the Original side of a Chartered High Court. A Judge on the Original Side is ordinarily bound to consider with respect the decision of another Judge on the Original Side produced before him, but if he is convinced that the decision is erroneous, he is not under an obligation to follow it against his own judgment. *Surendra Krieto Roy v Gurus Pada Ghosh 24 C W N 536* overruled *Chaitram Rambhadr v Bruthchand Kervichand, I L R 42 Cal 1140* explained. *CHITRAV DASS MOOLJI v BISWAS LAL HARGOVIND* (1920)

I L R. 48 Cal 69

18 ——— **Procured by fraud—Reconveyance—Where a sale under Act XI of 1859 was brought about by deliberate default on the part of the agent of one of the co-owners of the estate and the purchase at the sale was effected under a pre arranged plan to which the said agent was a party in the name of a person who under that arrangement was to hold the property for the benefit of himself and the other parties to it: Held—That the sale had no higher effect than a private alienation and the purchaser who had taken with notice of or was implicated in the**

SALE—contd

fraud should be made to reconvey the property to the rightful owners **KUMAR SATISH KANTO ROY v SATISH CHANDRA CHATTOPADHYA**
24 C W N 682

19 ——— For rent arrears under Bengal Tenancy Act—In Orissa since the extension there to of Ch. XIV of the Bengal Tenancy Act 1895 a sale under Bengal Act VIII of 1905 is liable to be set aside under s. 174 of the Bengal Tenancy Act upon the Judgment Debtor depositing in Court within 30 days of the sale the amount of the decree **LAKSHMIDAR MAHANTI v JAYAKAR MANAPATRA** I L R 48 Calc 811

SALE ABSOLUTE

See **INSURANCE** I L R 43 Calc 558

SALE BY GOVERNMENT

See **WATER LANDS ACT 1863** s. 18
I L R 44 Calc 328

SALE CERTIFICATE

See **ADVERSE POSSESSION**
I L R 40 Calc 173
See **CIVIL PROCEDURE CODE, 1908—**
s. 60 24 C W N 1011
s. 115 AND O XXI R. 66 2 Pat. L. J 130
O XXI, R. 64
S & MORTGAGE I L R 44 Mad 433

See **SALE IN EXECUTION OF DECREE**
20 C. W. N. 819

——— *Misdescription of property to be sold—Right of auction purchaser to recover possession of property actually liable to sale*
Where a holding is sold in execution of a rent decree the paramount description in the sale certificate is ordinarily the general description of the holding. The plot numbers are a subordinate description. **RAJENDRA PRASAD SAHU v GANGAN KOER** 2 Pat. L. J 673

SALE-DEED

See **AGREEMENT TO SELL**
I L R 35 Bom 446

See **CONSTRUCTION OF DEED**
I L R 39 Bom 119
I L R 40 Bom 74

See **DEKAN AGRICULTURISTS RELIEF ACT (XII of 1899)** s. 3 CL. (y) AND 104
I L R 40 Bom 397
I L R 45 Bom 87

See **EVIDENCE ACT 1872**, s. 82
I L R 34 Bom 59
I L R 35 Bom 93

See **LIMITATION ACT 1877** SCH II ARTS 139 144 I L R 35 Bom. 433

See **LIMITATION ACT 1908** SCH I ART 91 I L R 42 Bom 638

See **SUIT FOR CANCELLATION OF DOCUMENT** I L R 35 All 232

See **TRANSFER OF PROPERTY ACT 1899** s. 54 I L R 40 Bom 313
I L R 41 Bom 350

See **TRUST ACT 1889** s. 88
I L R 43 Bom. 173

SALE-DEED—contd

——— for a low value from client—
See **PROFESSIONAL MISCONDUCT**
I L R 40 Mad 69

——— mistake in—
See **EVIDENCE ACT (II of 1872)** s. 92 CL. (a) I L R 39 Mad. 792

——— Minor's suit to set aside—
See **PRECEDENT RELIEF ACT 1877**, s. 41 I L R 44 Bom 173

——— Old document—admissibility of—
See **EVIDENCE ACT 1872** s. 92
I L R 44 Bom 710

——— price specified in—
See **EVIDENCE ACT (II of 1872)**, s. 92
I L R 38 Mad. 814

——— *Covenant for title breach of—Limitation Act (IX of 1908) Art 116—Transfer of Property Act (II of 1882) s. 55 (?)*
A suit for compensation for breach of an express or implied covenant for the quiet enjoyment in respect of a sale-deed executed after coming into force of the Transfer of Property Act is governed by Art. 116 of the Limitation Act. Case law reviewed **Sudhanya R. Dhar v Raja Gopala Riddhar (1914)** Mod L J 376 approved. Covenant for title under s. 55 (2) of the Transfer of Property Act is annexed to the contract of sale as well as to the conveyance. **ARUNACHALA v RAMASWAMI (1914)** I L R 38 Mad. 1171

——— *Unperfected agreement to reconvey—Mortgage by conditional sale—*
The plaintiff purchased the property in suit for defendant in 1893 and at the same time passed an agreement to reconvey the property after 5 years. This document was not registered. Thereafter the plaintiff leased the land to the defendant from time to time and in 1916 sued to recover possession on the strength of the rent notes passed to him by defendant. The Court of First Instance allowed the plaintiff's claim holding that s. 10A of the Dekkhan Agriculturists Relief Act did not apply and that the agreement to reconvey could not be looked into for want of registration. The lower Appellate Court reversed the decree on the ground that the sale-deed was obtained by misrepresentation and that the defendant would never have passed the same if the plaintiff had not assured him that his ownership was not lost and that he would be allowed to redeem. The plaintiff appealed to the High Court: Held decreeing the suit (1) that the lower Appellate Court's view that the transaction must be considered a mortgage because there had been a misrepresentation at the time the document was signed could not be upheld; (2) that the defendant's case did not proceed upon the footing that the two documents together constituted a mortgage by conditional sale nor was there evidence before the Court to come to that conclusion; (3) that the case set up by the defendant was one for specific performance of an agreement to reconvey and that defence could not succeed in law. **PER MACLEOD C J.**
Where the question is whether a sale-deed and the agreement to reconvey make together a mortgage by conditional sale the Court has strictly speaking to look to the actual contents of the documents and to construe them accordingly. But it may

SALE-DEED—*concl'd*

to that there is such extrinsic evidence and circumstances which show the relation of the written language to existing facts, that therefore it would be possible to come to the conclusion that the documents which on the face of them constitute a sale, and an agreement to reconvey within a certain period or after a certain period amount to a mortgage. **NANDU SATYAKAR v. DHANU** (1920). I L R 44 Bom 961

SALE FOR ARREARS OF RENT

See LIMITATION ACT, 1908, s 2

I L R 38 Mad. 832

See SALE

*Purchase of putns—Opposition to purchaser's possession—Application for proclamation—The District Judge or the Collector the proper authority to issue proclamation—Pent Recovery (Under Tenures) Act (Beng VIII of 1865) s 3—Repealing Act (XVI of 1874)—Regulations VIII of 1819 ss 8, 9 15 (2), I of 1850 and VII of 1832, s 16 Cl (2) of s 15 of Regulation VIII of 1819 has not been affected by s 3 of Beng. Act VIII of 1865. Proceedings taken to annul the sale of certain putns lands sold for arrears of rent having terminated in favour of the purchaser and the sale having become final and conclusive, the purchaser in attempting to realise the rents from the cultivators of the lands comprised in the tenure purchased by him was opposed in his attempt by some of the intermediate holders who claimed interest between the late putns and the cultivators. Thereupon, he applied to the District Judge to issue a proclamation under s 15 of the Putni Reg VIII of 1819. The District Judge returned the application and directed that it should be made to the Collector who was the proper authority to issue the proclamation. Held, that the view taken by the District Judge was erroneous and that he had failed to exercise the jurisdiction still vested in him by law under cl (2) s 15 of the Putni Reg VIII of 1819. **MAHMATIA NATH MITTER v. DISTRICT JUDGE, 24 PARAGANAS** (1916)*

I L R 44 Calc 715

*Sale under Ben Act VIII of 1865—Deposit in Court—Setting aside sale. In Orissa since the extension thereto of Ch. XIV of the Bengal Tenancy Act (VIII of 1855), a sale under Ben Act VIII of 1865 is liable to be set aside under s 174 of the Bengal Tenancy Act, 1885, upon the judgment-debtor depositing in the Court within 30 days of the sale the amount recoverable under the decree. Judgment of the High Court affirmed. **LAKSHMINAR MAHANTI v. RATYAKAR MAHAPATRA**, (1921)*

I L R 48 Calc 811

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See PROVINCIAL INSOLVENCY ACT 1907 ss 20 and 22 I L R 39 Mad. 479

See REVENUE SALE LAWS

See SALE

— Judgment Debtor remaining in Possession—Suit to recover—

See LIMITATION ACT 1908 SCH I, ART 12A I L R. 45 Bom. 45

1 — Irregularity—Substantial Loss—Sale Notification, incorrect entry in—Notice—Beng

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*Act VII of 1858 ss 8 11—Beng Act XJ of 1859, s 33. An incorrect entry in a sale notification resulting in misleading intending bidders is an irregularity such as is contemplated by s 33 of Bengal Act XI of 1859. **Dronandan Singh v. Manabodh Singh I L R 32 Calc 111** discussed. Though s 8 of Bengal Act VII of 1858 prevents a plaintiff from proving any irregularity in the service of notice required by a 11, yet it would not prevent him from proving that a notice in contravention of the provisions of that Act was served in a wrong mahal which in itself and by its service supported the conclusion that the mis statement in the sale notification constituted a serious irregularity. **RAJRAJ DAS v. GAYESH PRASAD SRICHANDAN MAHAPATRA** (1910)*

I L R 37 Calc 407

2. — Incumbrance—*Is pendens* if applies to property attached in execution of money decree—Attachment in execution of money decree, if creates a charge—Revenue Sale Law (Act XI of 1859) s 52—Attachment, if incumbrance—Sale for arrears of revenue, if alienation by proprietor. The doctrine of *is pendens* is applicable to sales in *salvum*. The doctrine is applicable to proceedings to realise the mortgage money after a decree for sale of the property. But where a property not mortgaged is attached in execution of a money decree the doctrine of *is pendens* does not apply to the sale of that property. Where a property was attached in execution of a money decree and in the course of the execution proceedings was sold for arrears of revenue. Held, that the attachment did not create any title or charge on the property and did not constitute an incumbrance within the meaning of s 54 of Act XI of 1859. **Frederick Peacock v. Madan Gopal, I L R 29 Calc 428** s c 6 C W A 377. **Mota Lal v. Karabulund Singh, I L R 25 Calc. 179** referred to. **Pears Lal Singh v. Chandu Charan Singh 5 C L J 80** s c 11 C W A 163 distinguished. Held, further that a sale for arrears of Government revenue cannot be regarded as an alienation made by the proprietor so as to make the doctrine of *is pendens* applicable. **MAHMOO SARAN SAHU v. THAKUR PRASAD SINGH** (1910) 14 C W N 877

3. — Incumbrance or under tenure how avoided and when—*Meane profits—Liability of several classes of tenure holders—Damages*. An incumbrance or under tenure is not *ipso facto* avoided by the sale of an estate for arrears of revenue, and is only liable to be avoided at the option of the purchaser at such sale. **Titu Bih v. Mohesh Chunder Bagchi, I L R 9 Calc 553**, followed. The law does not require any notice as a necessary preliminary to a suit to avoid an under tenure but the option of the purchaser may be exercised by the institution of a suit within the time approved by law. Where such a suit has been instituted the tenure must be regarded annulled from the date of the commencement of the suit. For the period antecedent to a suit for annulment of an incumbrance the possession of the under tenure holder is not wrongful and purchasers at the revenue sale are not entitled to claim by way of damages for use and occupation any sum in excess of what actually represents the rent payable by the tenure holder of the first decree. A decree for rent in such a case can be made only against such of the defendants as held the tenures directly under the

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defaulting proprietors, and not against all of them jointly and severally. In respect of mesne profits which accrue during the pendency of a suit for possession, the liability of different tenure-holders of the same degree, and of separate under-tenure holders of different degrees, should be apportioned according to the share of the profits intercepted by each. *Jotindra Mohan Lahiri v Guro Prasanno Lahiri*, 1 L R 31 Calc 597. L R 31 I A 91, referred to. A release of one joint wrong-doer without any intention to release the other joint tort-feasors, but only as a partial satisfaction, discharges the others only *pro tanto*. Where the plaintiffs released some of the wrong-doers from liability, the claim against the others have been split up by their own conduct, and a joint decree ought not to be passed against all the defendants. *Biswanath Tewary v Aoplashdany Narain Singh*, 2 May 297, followed. *RAMKRAN KAPALI v ASWINI KUMAR DUTT* (1910)

I L R 37 Calc 559

4. ———— **Liability of auction-purchaser in respect of payment of arrears of revenue.**—*Appropriation of payment to particular kist, and acceptance and acknowledgment of Treasury Officer.*—*Subsequent appropriation by Treasury Officer to earlier kist.*—*Sale for arrears so created, suit to set aside.*—*Contract Act (IX of 1872), ss 59, 60.* Where the proprietor of an estate made a payment in respect of arrears of revenue, and in the document which accompanied the payment to the Government, expressly appropriated it to the satisfaction of a particular kist, and the money was accepted and acknowledged by the Treasury Officer as paid on that account. *Held*, it was not in the power of one of the parties to the transaction without the assent of the other, to vary the effect of transaction by altering the appropriation in which both originally concurred. After a payment had been so specially appropriated and accepted as paid in respect of a kist due in January 1902, the Treasury Officer applied part of it to the satisfaction of an earlier kist due in September 1901, and only paid the remainder towards the January kist, with the result that an arrear was created in the January kist to which the payment had been wholly appropriated and a sale took place for such arrear. In a suit to set aside the sale. —*Held* (reversing the decision of the High Court), that no arrears in respect of the January kist were really due at the date of the sale which was therefore without jurisdiction and invalid. *See* ss 59 and 60 of the Contract Act (IX of 1872), relating to the appropriation of payments might have been applicable to the case, if the parties to the transaction had not by their own actions placed the matter beyond doubt. *MANOWAT JAW v GANGA BHAY SINGH* (1911)

I L R. 33 Calc. 537

5. ———— **Incumbrances extinguished by sale under mortgage-decree—at the date of sale, not of confirmation.**—*Liability of mortgage purchaser for revenue.*—*Act XI of 1859 s 51.* The appellant as a purchaser at a revenue sale of the property in suit sued to eject the respondent who claimed title under a certificate dated April 23rd 1900 confirming his purchase thereof on March 19th 1900, under a decree for sale obtained by himself as mortgagee. The revenue became in arrear on March 29th 1900. *Held*, that the respondent's

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proprietary title was complete on March 10th and that it passed to the appellant by the revenue sale. His mortgagee title could not be kept alive so as to operate on March 29th 1900, as an incumbrance within the meaning of s 54 of Act XI of 1859. *BHAWANI KUWAR v MATHURA PRASAD SINGH* (1912). L R. 39 I A 228

6. ———— **Common Tenancy—Revenue Sale Law (Act XI of 1859), ss 10, 11 and 63—Purchase at a revenue sale of an undivided interest of specific mouzas in an estate in respect of which separate accounts were opened, effect of.**—*Reference to a third Judge—Civil Procedure Code (Act XIV of 1852, s 375—Act V of 1890, s 98 (2).* *Per MOOKERJEE and VINCENT, JJ.* (BRETT, J. dissenting), that a proprietor, who is not a recorded sharer of a joint estate held in joint tenancy, within the meaning of s 10 of the Revenue Sale Law, nor a recorded sharer whose share consists of a specific portion of the lands of the estate within the meaning of s 11, but is recorded as proprietor of an undivided interest held in common tenancy of a specific portion of the lands of the estate, but not extending over the whole estate within the meaning of s 70 of the Land Registration Act, is not entitled to acquire the estate purchased by him at a sale held for arrears of revenue, free of encumbrances. The expression "estate held in common tenancy" in s 10 of the Revenue Sale Law means an estate where all the sharers have a common right and interest in the whole of the estate. Where, therefore, various co-sharers have certain interest, not in the whole estate, but only in particular villages of that estate, it cannot be said that the estate is held in common tenancy. *Aunoo Shaha v Ram Pershad Narain Singh*, 21 W. R. 35, followed. *MAHAMMAD MEHDI HASSAN KHAN v SHEORANKAR PERSHAD SINGH* (1911). I L R. 39 Calc 353

7. ———— **Government Land—Act XI of 1859, ss 2 and 3—Bengal Act III of 1868—Government tenure in mahal Panchannagram in the 24 Pergannahs—Katabhujat fixing date for payment of revenue in every year—Sale for arrears when no arrears were due.**—*Variation of contract of parties by general considerations or administrative rules not permissible.* S 2 of Act XI of 1859 enacts that "if the whole or a portion of a kist or instalment of any month, of the era according to which the settlement and *kist bands* of any mahal have been regulated be unpaid on the 1st of the following month of such era, the sum so remaining unpaid shall be considered as an arrear of revenue." S 3 provides that the "Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue shall be paid up in each district under their jurisdiction, in default of which payment estates in arrear shall be sold," and a notification duly published in compliance with that section on 6th October 1871 "fixed the 28th June of each respective year as the latest date of payment of the rents of all descriptions of tenures in Khas Mahal Panchannagram, in default of which payment on or previous to that date tenures in arrears in that Mahal will be sold." The appellant was the holder of a Government tenure in Dahi Panchannagram, to which, by virtue of Bengal Act VII of 1868, Act XI of 1859 was applicable, and the *katabhujat* under which he held stipulated for "payment of the whole jumma in the Collectorate within 28th

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June every year' The revenue remaining unpaid on 23rd June 1902, the tenure was, after the preliminary procedure prescribed by the Acts sold for arrears of revenue on 16th March 1903, and purchased by the respondent *Held* (reversing the decision of the High Court) that on the construction of the Acts and the above notification, the revenue was not in arrear until 1st July 1902, and the date fixed as that on which the tenure could be sold in default of payment of the arrears was 23rd June 1903. There were therefore at the date of the sale no arrears of revenue and in accordance with the decision in *Balkishan Das v Simpson* 1 L R 25 Calc 333 L P 25 I A 151, the sale was consequently invalid. No variation of the contract of parties and the statutory provisions applicable thereto is possible by reason of general considerations of administrative rules which have not the sanction of Indian statute. *HARI BUKSH ELANI v DURLAV CHANDRA KAR* 1 L R 39 Calc 981

8 ——— Sale within 30 days of service of sale proclamation, if nullity—*Revenue Sale Law Act (Act XI of 1859) ss 6-33—Question of one of due service—Beng Act VII of 1883 s 8—Second appeal—Finding of irregularity and inadequacy of price—Sale if must be held bad as matter of law* The fact that the proclamation of sale was affixed in the Collectorate less than 30 days before the date of sale in contravention of the provisions of s 6 of Act XI of 1859, does not make the sale a nullity. The sale in such a case is a sale under the provisions of the Act and the restrictions imposed by it on the right of the defaulter to have the sale set aside apply. *Lala Moharaj Lal v The Secretary of State*, 1 L P 11 Calc 200, held not binding by reason of the decision in *Tasadduk Rasul v Ahmad Hussain* 1 L R 21 Calc 68 and *Gobind Lal v Ramyanam* 1 L R 21 Calc 70. Where the Court of Appeal below found (i) that the sale proclamation was affixed in the Collectorate within less than 30 days of the sale; (ii) and that the price realised at the sale was inadequate; (iii) but that there was no evidence to connect the inadequacy of the price with the irregularity and dismissed the suit to set aside the sale. *Held* that it was not open to the High Court in second appeal to hold as a matter of law that the inadequacy of the price was the consequence of the irregularity and the appeal was concluded by the findings of fact of the lower Appellate Court. *Semble Per COX, J.*—The question whether notice of the proclamation was served in time is part of the larger question whether it has been duly served within the meaning of s 8 of Beng Act VII of 1883. *Janhari v Secretary of State* 7 C W N 377, *Sheikh Mohamed Aga v Jadunandan*, 10 C W N 137 *Sho Ratan v Aet Lal*, 1 L R Calc 1, 6 C W N 638 doubted. *GANGADHAR DAS v BHUKARI CHARAN DAS* (1911) 16 C W N 227

9 ——— Suit to recover from person in wrongful possession from before sale—*Revenue Sale Law (Act XI of 1859), s 54—Purchaser of share of revenue paying estate—Limitation* A purchaser at a revenue sale of a share in a revenue paying estate is not a person claiming from or through the defaulter but rather adversely to him and under a paramount title. A person who has not acquired title as against the defaulter,

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by adverse possession for the full statutory period cannot resist the purchaser's suit for recovery unless his possession has been adverse to the purchasers for the statutory period. *Kalamand Singh v Sarajaf Hosen*, 12 C W N 528, not followed. *BILAS CHANDRA MUKERJEE v ARSHOY KUMAR DAS* (1912) 16 C W N 587

10 ——— Purchase by mortgagee in execution of his mortgage decree of the mortgaged property—*Subsequent arrears of revenue and sale for such arrears—Liability of purchaser in execution of decree of Civil Court—Rights of purchaser at sale for arrears of revenue* S. 54 of Act XI of 1859 enacts that when a share of an estate is sold "the purchaser shall acquire the share subject to all incumbrances and shall not acquire any rights which were not possessed by the previous owner. On 9th August 1886 a mortgage was granted in favour of the respondent over a certain share in 4 out of 71 villages. On 31st May he obtained a decree on his mortgage which was made absolute on 19th December 1899. He executed his decree and a sale took place on 19th March 1900 at which the respondent himself became the purchaser. On 26th March an instalment of Government revenue on the 71 villages fell into arrear, and the whole residuary share of 71 villages including the 4 villages purchased by the respondent, was notified for sale. The respondent did not pay the revenue due but on 23rd April he obtained a certificate confirming the sale of 19th March in execution of his decree. On 6th June 1900 the whole of the villages was sold for arrears of revenue and was purchased by the predecessor in title of the appellant. In a suit against the respondent for the share purchased at the execution sale—*Held* by the Judicial Committee (reversing the execution of the High Court) that the sale in execution of the mortgage decree took effect from the actual date of the sale and not from its confirmation and, therefore, from 19th March 1900 the respondent by his purchase became the proprietor of the estate sold and not merely the purchaser of such right, title and interest in it as the mortgagor might have had. He was, therefore notwithstanding the provisions of s 54 of Act XI of 1859 (which in fact rather confirmed the view taken) not in a position to maintain as against himself or as against third parties unconnected with mortgage transactions upon the property, the position that his mortgage still remained an incumbrance thereon. That incumbrance had become extinct by the mortgagee's overriding right when he became complete owner of the lands. To keep it alive as the respondent sought to do, would introduce confusion into the mechanism of transfer and insecurity into the rights in immovable property which were not warranted by the Act. *BEHARI KUMAR v MATHURA PRASAD SINGH*, (1912) 1 L R 40 Calc 89

11 ——— Share of estate not sold at auction—*Payment of arrears by defaulting proprietor—Subsequent payment by co-sharer—Priority between depositors—Suit to set aside sale—Revenue Sale Act (XI of 1859) ss 13, 14, 33, 53* In respect of a certain low numerical separate accounts had been opened in the Collectors' register. The plaintiff had an interest in separate account No. 262, the 1st defendant in No. 168

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and the 2nd defendant in No 222. Several of those accounts fell into arrears and among them was No 222 and a residuary share No 222, which formed the subject matter of the present suit, was, among others, advertised to be put up for sale, on the 20th September, 1909, but as no bid was received the Collector, under s. 14 of Act XI of 1859, declared that the entire estate would be put up for sale at a future date, unless the other sharer or sharers paid up the arrears within 10 days. On the 21st and 25th September 1909, the 1st defendant paid into the Treasury the whole of the arrears in respect of all the various accounts including No 222 and the residuary share. On the 30th September 1909, the plaintiff deposited into the Treasury the arrears due on some of the accounts including No 222, but exempting the residuary share. Subsequently, the Collector declared the defendant No 1 purchaser of the estates represented by the various separate accounts. On appeal to the Commissioner the decision of the Collector was upheld and the sale confirmed on the 9th February 1910. Thereafter the 1st defendant took possession of the several properties and on the 21st December 1910, he conveyed the same by sale to the 3rd defendant. On the 7th February 1911, the plaintiff presented his plaint for recovery of possession of No 222 and in the alternative for the possession of the half share in it but owing to the plaint being insufficiently stamped, time to pay in the proper court fee was granted to the plaintiff with the compliance of the defendants. At the expiry of such time some holidays intervened and it was not till the 2nd March 1911, that the plaint was actually filed. The District Judge having decreed the suit, the 3rd defendant alone appealed to the High Court. *Held*, that the question of limitation could not now be raised, but it is improper for a Court to extend the period of limitation for the institution of a suit merely for the convenience of the plaintiff. *Held*, further, that there could be no doubt that the 2nd defendant was the real purchaser both in the purchase by the 1st defendant in September 1909 and in the sale by the 1st defendant to the 3rd defendant in December 1910. *Held*, further, that in s. 14 of the Revenue Sales Act, 1859, the words "other recorded sharer must mean a recorded sharer of a share other than the share exposed for sale." *Quære*. Whether the Legislature intended to exclude a defaulting sharer of a share exposed for sale from purchasing such share under s. 14. *Held*, further, that the estate could only be sold if the whole of it was in arrears, and that it could not be said that the plaintiff's deposit was insufficient without proof of that fact. *Held*, further, that as soon as the payment was made the purchase was complete and there was nothing left for any one else to buy and that the Collector was bound to recognize the depositor who first paid the whole amount or if there were more depositors than one to recognize as joint purchasers those whose payments first amounted to the total arrears due. *Debi Pershad v. Akho Koer & C. W. A. 465*, referred to. *Held* further, that the suit was barred by s. 33 of the Revenue Sales Act 1859. *Gosain Chaturbhooj Das v. Ishar Mul, I L R 21 Cal 841* and *Gobind Lal Roy v. Ramjanam Misser, I L R 21 Cal 70*, followed. *RAHURTA SAMBHO KHAR v. HARINAR PHARAD (1914)*. I. L. R. 41 Cal 1092.

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12. ———— *Setting aside sale—Irregularity—Arrears under Act XI of 1859 paid—Embankment charges due—Sale under Act XI of 1859 as for arrears of revenue instead of under Public Demands Recovery Act (Beng Act I of 1895 as amended by Beng Act I of 1897)—Embankment Act (Beng Act II of 1892)*. In this case the High Court set aside a sale for arrears of revenue, holding that where the Collector had acknowledged payment in full of the arrears of land revenue of which the sale had been advertised, and had elected to proceed by certificate procedure against an arrear of different character, and had already directed a sale under that procedure, he could not turn round and treat the arrear under the certificate as an arrear of land revenue without any notice to the parties under s. 6, and proceed to sell under the land revenue proclamation on the mere ground that no special exemption had been passed. The embankment charges ordered to be levied under the Certificate Act (Beng Act I of 1890 as amended by Beng Act I of 1897) were taken out of the purview of Act XI of 1859 unless and until fresh notices were issued under s. 6, and they could not be treated as arrears of land revenue. The sale therefore, not being for an arrear of land revenue, was liable to be set aside. An appeal from that decision was dismissed by their Lordships of the Judicial Committee, who said they saw no reason to interfere with it. *DURGA CHANDRA BOSE v. HARI DAS DIXI (1914)*. I. L. R. 42 Cal. 765.

13. ———— *Setting aside sale—Defect in specification of property to be sold in notification of sale—Jinali share in property where there are many separate accounts opened—Revenue Sale Law (Act XI of 1859) ss. 6, 10, 11, 13, 33—Inadequacy of price caused by want of proper specification of the property for sale. The jinali or joint share in a mahal in which 148 of the owners of specific but undivided shares had obtained from the Collector separation of accounts under ss. 10 and 11 of Act XI of 1859 was put up to sale for arrears of revenue, and purchased by the respondent. In the notification under ss. 6 and 13 of the Act, the specification of the share to be sold was in the following terms:—"Jinali share which cannot be specified excluding the separate accounts, number—". Then followed a list of the 148 separate accounts referred to and at the end it was stated that "All other shares besides that specified are excluded from the sale. And the entry in column 5 (the specification column) was "The jinali share cannot be particularised owing to separate accounts having been opened. The shares to be sold are those given in a separate sheet after excluding the shares in respect of which the separate accounts had been opened." In a suit to set aside the sale—*Held* (reversing the decision of the High Court), that the notification of sale was insufficient and irregular and not in compliance with the requirements of the law. Each case must depend on its own particular facts, and what had to be considered was whether, having regard to all the circumstances, the specification was sufficiently clear to induce likely buyers to appear and bid at the sale. It was not enough that they might go and obtain the requisite information from the Collector's office; the particulars in the notice should be sufficient in themselves to*

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tell purchasers what they were invited to bid for *Held*, also, on the evidence, that the property had been sold at an inadequate price, and that the lowness of the price was due to the defectiveness of the specification of the property to be sold in the notification of sale, which was not merely an irregularity but a defect that rendered the sale void *PANANSHWAR PRASAD SINGH v BALWANT RAM GOENKA* (1915)

I L R 42 Calc 897

14 ——— Purchaser of a share—Meaning of the words, "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners"—Revenue Sale Law (Act XI of 1859), s 54 At a sale under s. 13 of Act XI of 1859 it is not the rights of the recorded proprietor that pass, but the share itself. The policy of the revenue law is to protect the revenue and make the share on which the revenue is assessed available for the arrears of revenue due upon it. *Debi Das Chowdhury v Byro Charan Ghosal, I L R 22 Calc 611*, followed *Banolata Das v Monmaha Nath Goswami, 11 C W N 821*, *Kumar Kaland Singh v Syed Sarafat Hussain, 12 C W N 528*, *Rahmuddi Muvashi v Lalini Kanta Lahiri, 13 C W N 407*, *Balas Chandra Mulcrjee v Ashoy Kumar Das, 16 C W N 557*, *Bhawani Koor v Mathura Prasad, 7 C L J 1*, *Ananda Prasad Chose v Rajendra Kumar Ghose, I L R 29 Calc 223*, and *Gungadeen Muser v. Kheeroo Mundal, 14 B L R* referred to *KHEMESHI CHANDRA RAESHIT v ABDUL HAMID SIKDAR* (1915)

I L R 43 Calc 46

15 ——— Adverse possession—Limitation—Incumbrance—Limitation Act (IX of 1908), Sch 1, Arts 121, 122, 124—Assam Land and Revenue Regulation (I of 1880), ss 70, 71 In a suit for the possession and mesne profits in respect of certain lands purchased by the plaintiffs at a sale for arrears of Government revenue, the defendants contended that they had been in adverse possession of the said lands for a long time, that their occupation was in the nature of an incumbrance and that the plaintiffs were not entitled to avoid the same —*Held*, that the interest which the defendants acquired was an incumbrance within the meaning of Art 121 and the suit was barred by limitation *Karmi Khan v Brojo Nath Das, I L R 22 Calc 214* and *Ajfer Chandra Pal Chowdhury v. Rajendra Lal Goswami, I L R 23 Calc 167*, approved *Amar Kaland Singh v Syed Sarafat Hussain, 12 C W N 528*, and *Rahmuddi Muvashi v Lalini Kanta Lahiri, 13 C W N 407*, distinguished *PRASAKNA KUMAR DUTT v NARENDRA KUMAR DUTT* (1915)

I L R 43 Calc. 779

16 ——— Co-owners of a share of estate subject to usufructuary mortgage—Mortgagee in possession, undertaking by, to pay revenue—Default deliberately made by agents of minor mortgagee—Purchase at sale for arrears by mortgagee's agents—Estate purchaser—Fiduciary relation between mortgagee and mortgagees—Suit by other co-owners to set aside sale—Terms on recovery of property—Contribution towards expenses properly incurred by mortgagee—Duty of counsel in ex parte case—Entry Council, practice of, Of 12 annas share of revenue paying estate, a 3 annas share belonged to the plaintiffs (respondents) subject to a usufructuary mortgage of that share for the

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benefit of the defendant (appellant) a minor who, as mortgagee in possession, undertook (as was stipulated in the mortgage deed) to pay the revenue to Government for the mortgaged share. The remaining nine annas belonged to others of the plaintiffs. In June 1905, a sum of Rs 3, annas 8 in excess of the quota payable was paid on the mortgagee's behalf by his agents. In September 1906 only 1 s 0 instead of Rs 12 was so paid, and that left a balance owing which in due course amounted to an arrear within the meaning of Act XI of 1859 and to recover this arrear the 12 annas estate was sold by the Collector on 20th March 1907 and purchased by the agents benami on behalf of the mortgagee defendant. The High Court, reversing the judgment of the Subordinate Judge who had dismissed the suit, found that the purchase was fraudulent, while their Lordships of the Judicial Committee acquitted the minor of any personal misconduct in relation to the default or sale, and were of opinion that regarding the position as a whole it led to the conclusion that the revenue was intentionally allowed by the agents to fall into arrear with a view to the property being put up for sale and bought on behalf of the minor *Held*, that the arrear which occasioned the sale was due to the insufficient payment made in respect of the three annas share, and this was none the less the result of the default of those interested in that share because an excess payment had been made in June 1903, that had been long absorbed and had ceased to be an excess credit in the ledger. However free from personal blame the minor may have been, he could not profit by his agents' deliberate default committed in breach of the terms of his mortgage. As against his mortgagees, therefore the mortgagee could not be allowed to hold for himself any advantage gained by the default for which his agents were responsible, nor could he be permitted to hold such advantage to the prejudice of the co-owners. *Doorga Singh v Sheo Jeehad Singh, I L J 16 Calc 191*, dissented from *Fauzer Rahman v Maimuna Khatun, 17 C W N 1233* approved. The mortgagee here through his representatives had a duty to perform which was inconsistent with his becoming a purchaser in the way he did: his title, therefore, could not operate to the exclusion of his co-owners. It was no answer to say that Act XI of 1859 contemplates a purchase by a co-sharer. The sale would stand, but under the circumstances the transaction was in effect nothing more than payment of an arrear for the benefit of all. But that gave a right to contribution so that it must be a term of granting the plaintiff's equitable relief that they should contribute to the expenses properly incurred by or for the mortgagee in the purchase of the property. Where an appeal is heard ex parte it is the duty of counsel to bring to the notice of the Court adverse as well as favourable authorities. *DEO NARAYAN PRASAD v JANKI SINGH* (1916)

I L R 41 Calc. 573

17 ——— Defaulter—Defaulter—Assam Land Revenue Regulation (I of 1880), ss 63, 67, 68—Limitation—Limitation Act (IX of 1908), Sch 1, Arts 121, 122 Where persons are in actual possession of a part of the estate sold for arrears of revenue under the Assam Land and Revenue Regulation they are defaulters by reason of a 67 *Ajfar Ali v. Dorendro Kulkarni Poy Chowdhury,*

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24 C. L. J. 60, referred to. A suit for recovery of possession brought within 12 years from the date on which the Collector gave symbolical possession to the purchasers, is within time. *Mosaffer Wahid v. Abbas Samad*, 6 C. L. R. 639 followed. S. 63 cannot be construed as restricted to persons who profess to hold the land as included in the estate sold for arrears of revenue. *MATRU CHANDRA CHOWDHURY v. PITARI LAL DAS* (1916) 1 L. R. 44 Calc 412

18 ——— Notification of Sale—publication of—Act XI of 1859, ss 6 and 33—"Calcutta Gazette," the "Official Gazette" within the meaning of s 6—Non-publication in *Urfia* Vernacular Government Gazette not an illegality in sale proceedings—Grounds for annulling sale under s 33 of Act XI of 1859. The provisions of s 6 of Act XI of 1859 are, for the purpose of notifying a sale for arrears of revenue under the Act sufficiently complied with by the publication of the notification of sale in the *Calcutta Gazette*, which is the "Official Gazette" within the meaning of that section on its proper interpretation. Where a sale has been so notified the non-publication of the notification of sale in the *Urfia* Vernacular Government Gazette is not an illegality which renders the sale "contrary to the provisions of the Act," and is therefore not a ground for setting it aside under s 33. *SHARFUDDIN HOSSEIN v. RADHA CHAMAN DAS* (1918) 1 L. R. 48 Calc 255

19 ——— Act XI of 1859—secs 2 and 3—Bengal Act (VII of 1858)—Tenures in *Dihl* Panchannogram—Board's Notification regard time for sale, effect of—Sale for arrears of revenue when premature and ultra vires—Date of payment of revenue. The effect of the Notification of the Board of Revenue, dated the 6th October 1871, is that no holding can be sold till after the 23rd June next after the first day of the month following the month in which the revenue or rent should have been paid. The date on which the revenue is payable depends primarily not on general or administrative considerations such as the course of business in the Collectorate or the mode in which the accounts are kept but on the contract between the parties. Where a tenure was held under a *kahulyat*, dated the 10th November 1862, containing a stipulation to pay rent year by year in *Dihl* Panchannogram to which by virtue of Bengal Act VII of 1868 Act XI of 1859 was applicable, and the tenure was sold for arrears of revenue of 1914 and 1915 on the 17th May 1915, it was held that the sale was premature and ultra vires and conferred no title on the purchaser as the current demand for 1914-1915 was not payable till the 10th November 1914 so that the tenure could not be sold before the 23rd June 1915. *MANMATHO NATH MULLICK v. MAHAMED SOLEMAN* 26 C. W. N. 140

SALE IN EXECUTION OF DECREE.

See APPEAL TO PRIVY COUNCIL.

1 L. R. 40 Calc. 635

See ATTACHMENT BEFORE JUDGMENT

1 L. R. 45 Calc 780

See BENGAL TENANCY ACT (VIII of 1885), ss. 83, 159

1 L. R. 43 Calc 178

See CIVIL PROCEDURE CODE (ACT V of 1908), s 47

SALE IN EXECUTION OF DECREE—*contd*

See CIVIL PROCEDURE CODE, 1908.

s. 115, O XXI, s. 83

1 L. R. 43 Bom. 735

O XXI, s. 83 1 L. R. 40 Bom. 557

See EXECUTION OF DECREE

See EXECUTION SALE—

See PARTIES 1 L. R. 89 Calc 881

See SALE—

——— duty of Courts in India in conducting—

See CIVIL PROCEDURE CODE (ACT V of 1908), O XXI s. 66

1 L. R. 38 Mad 397

——— incorrect entry in sale notification—

See SALE FOR ARREARS OF REVENUE.

1 L. R. 37 Calc 407

1 ——— Caveat emptor doctrine of—Sale in execution of decree—Fiduciary of purchase money, suit for—Civil Procedure Code (Act XIV of 1882), ss 313-315 Under s 313 of the Civil Procedure Code (Act XIV of 1882), a purchaser can apply to have a sale set aside on the ground that the person whose property purported to be sold, had no saleable interest therein. The doctrine of caveat emptor has not the same effect under the Code of Civil Procedure of 1882 as under the old Code (VIII of 1859). *Dorab Ali Khan v. Executors of Khajsh Mohomeddeen*, 1 L. R. 8 Calc 806, and *Bowdaminet Choudhrai v. Kishor Kishore Poddar*, 12 W. R. 8 F. B. distinguished. Under s 315 of the Civil Procedure Code (Act XIV of 1882) a suit lies to recover purchase money paid at a Court sale for property to which the judgment-debtor had no title or saleable interest. *Haz Doyal Singh Poy v. Shesh Samundin & O. W. N. 240*, and *Asitnund Roy v. Jugut Chandra Ghosh*, 7 C. W. N. 105, followed. *RAM KUMAR SHANU v. RAM GOUR SHANU* (1909) 1 L. R. 37 Calc 67

But See CIVIL PROCEDURE CODE 1882, s 315

1 L. R. 25 All. 419

2. ——— Fresh proclamation—Civil Procedure Code (Act XI of 1882) ss 287, 291—Execution-sale proclaimed by July 13th, and held on July 20th without fresh proclamation—Sale upheld. A sale in execution was not in contravention of ss 287 and 291, Civil Procedure Code, merely because, having been proclaimed to be held at the monthly sale commencing on July 13th, it was not held till July 20th and then without a fresh proclamation. It appeared that July 13th was the day on which the monthly sales were to commence, that owing to the preaking officer's absence they did not actually begin till the 17th, that on that day a postponement was refused and that the monthly sale was continued on the 20th. *RANG LAL SINGH v. RAVANESHWAR PERNHAD SINGH* (1911) 1 L. R. 38 I. A. 200

3. ——— Claim or objection—Civil Procedure Code (Act V of 1908), s 47, O XXI, s 58 s 115—Claim or objection by purchaser during attachment in execution of money-decree, if may be entertained—High Court, Revisional jurisdiction exercised on appeal where order was without jurisdiction. Where after the attachment of the judgment-debtor's property in execution of a

SALE IN EXECUTION OF DECREE—*contd*

money decree, the property was sold in execution of a mortgage decree and the purchasers applied to the Court for exempting the property from sale. *Held*, that the purchase being subsequent to the attachment, the application could not be treated as a claim or objection under O XXI, r 53 of the Civil Procedure Code. That as the purchasers were really setting up an antagonistic title based on their purchase, they could not be said to be representatives of the judgment debtors for the purposes of s 47 of the Code. An order exempting the property from sale on the application of the purchasers, not being contemplated by any provision in the Code was without jurisdiction and can be set aside by the High Court in revision. **MAHADEO LAL v DARSAN GOPE (1910)** 15 C W N 512

4 ———— *Fraud—Execution sale—Suit to set aside as collusive and fraudulent, after application refused under s 311, Civil Procedure Code (Act XIV of 1908)—Bona fide purchaser allegation of—Misrepresentation by judgment debtor's pleader—Auction-purchaser is to be held responsible—Concurrent findings of fraud, reversed. In a suit to set aside an auction sale on the ground that it was brought about by the fraud of the decree holder and the judgment-debtor, it being alleged further that the auction purchaser was a *besamdar* of the judgment debtor, it was found that the debt and the decree of the decree holder were genuine, that the property was purchased by the auction purchaser who was a man of substance out of his own funds which thereupon went to pay off the judgment debtor's creditors. *Held*, on the evidence, that the allegation of fraud and conspiracy made against the auction purchaser had not been brought home to him, and that, under all the circumstances, there was no sufficient ground for setting aside a sale confirmed by the Court after prompt local enquiry and forfinishing on the auction purchaser a forfeiture of the considerable purchase money paid by him out of his own funds. *Held*, further, that if the allegation that the plaintiff's men were dissuaded from bidding at the sale by the pleader for the judgment debtor falsely assuring them that he had instructions to apply for a postponement, was true, the auction purchaser could not be held responsible for the misrepresentation. The concurrent judgments of the Courts in India holding the sale to be fraudulent and collusive reversed. **BISHUN CHAND BACHHAOT v BHOJ SINGH DUDHURIA (1911)** 15 C W N 648*

5 ———— *Understatement of value, if fraud—Limitation—Limitation Act (IX of 1908) s 13, Sch 1, Art 166—Sale before Act, new or old Act applicable—General Clauses Act (V of 1897), s 6 Per COKE, J (TEUCON, J, expressing no opinion). An understatement of value in the sale proclamation cannot by itself justify an inference of fraud on the part of the decree-holder. *See* s 18 of the Limitation Act does not apply to a case in which the fraud is antecedent to the accrual of the right. **Purna Chandra Mandal v Anukul Biswas, I L R 38 Cal 651, Rukmabai Hobibhoy v C 1 Turner, I L R 17 Bom. 341**, referred to. *Held*, that s 13 can apply only to such fraud as amounts to concealment and is intended to keep from the injured party the knowledge of the wrong or its remedy. The section therefore can have no application*

SALE IN EXECUTION OF DECREE—*contd*

where the fraud alleged by a party applying to set aside an execution sale is understatement of the value of the properties in the sale proclamation. The burden of proving fraud lies on the applicant. *See* s 18 of the Limitation Act. An application to set aside on the ground of fraud an execution sale held prior to the coming into operation of Act IX of 1908 will be governed by Art 166 of Sch 1 of that Act if made after that Act came into operation. S 6 of the General Clauses Act does not preserve the right the applicant had to apply within three years from the date of the sale. **RAIKISHORI DASIA v MUKUNDA LAL DUTT (1911)** 15 C W N 985

6 ———— *Agreement between judgment-debtor and decree-holder, before confirmation, setting aside sale—Auction purchaser, if bound—“Party—Right to object—Right of appeal—Civil Procedure Code (Act V of 1908), O XXI, rr 23, 90, 92, s 148—Limitation Act (IX of 1908), s 5—Extension of time to deposit decretal money etc., to set aside sale. Where, after the sale of a property in execution of a decree but before confirmation thereof, the decree holder consented to the sale being set aside on payment of the decretal amount by the judgment-debtor, and the payment was made and certified in Court. *Held*, that this did not preclude the auction purchaser, whose right is independent of that of the decree holder, from asking for confirmation of the sale in his own right. He would also, if his application were rejected, be entitled to appeal from that decision, being a party prejudicially affected by that order. *See* **Purna Chandra v Doorga Prasad, 3 Shome 104**, commented on. The High Court has no power to extend the time allowed to the judgment debtor by O 21, r 92 sub r (2) to deposit the decretal amount, etc., with a view to setting aside the sale, either under s 5 Limitation Act, or under s 148 Civil Procedure Code. **SHAROFAN v MAHOMED HABIBUDDIN (1911)** 15 C W N 685*

7 ———— *Application to set aside—Limitation Act IX of 1908 s 18, Sch. 1, Art. 16—Fraud employed to bring about sale, if may save bar of limitation—Fraudulent concealment, what amounts to—Fraud, plea of—Proof. When an application to set aside an execution sale was made more than 30 days after the sale, but it was urged that s 18 of the Limitation Act applied to the case. *Held*, that the fraud which it is necessary to prove to bring the case within s 18 of the Limitation Act may have occurred prior to the sale—for fraud, at any rate of the nature generally employed in bringing about an illegal sale, is a continuing influence and until that influence ends, it retains its power of mischief. **Purna Chandra Mandal v Anukul Biswas I L R 38 Cal 651**, explained. **Rukmabai Hobibhoy v Turner, I L R 17 Bom 341**, referred to. Fraud is not to be lightly charged or lightly found especially in cases of applications to set aside an execution sale, where this reserve is too often neglected. Misstatement of value, if it can be described as fraud, does not constitute fraudulent concealment, and non publication of sale proclamation in the *mofussil* even if it exposes the sale to attack at the instance of the judgment-debtor, would not by itself bring the case under s 18 of the Limitation Act, unless it is shown that the judgment debtor has, by means of fraud*

SALE IN EXECUTION OF DECREE—*contd*

of which the decree-holder was guilty or to which he was accessory been kept from the knowledge of his right *NARAYAN SAHU v. MONAHAN DAMODAR DAS* (1912) 13 C W N 894

3 ———— *Deposit—Civil Procedure Code (Act V of 1908), O XXI, r 89—Previous purchaser of property not affected by the sale, if may apply to make deposit—Condition of deposit if valid—Withdrawal of condition, effect of—Deposit not made on the last day owing to absence of Judge—Effect* Where on the last day allowed by law to make a deposit under r 89 of O XXI of the Civil Procedure Code for the purpose of setting aside a sale, the petitioner owing to the presiding officers having left the Court earlier than usual was unable to make the required deposit. *Held*, that the petition and the deposit were properly received on the next day, as no act of the Court itself ought to be allowed to prejudice the position of the petitioner. A conditional deposit is not a good deposit under r 89, O XXI, but where the petitioner withdrew the condition the moment the decree-holder auction purchaser objected. *Held*, that there were no sufficient grounds under the circumstances to treat the deposit as invalid. R 89 O XXI, does not confer a right to make deposit to a person who had purchased the property. *Id* so far back from the date of the sale and the execution proceedings that his interest was not affected by the sale. *DILIPY MATURA DAS KOER v. DASSI DAS SINGH* (1911) 13 C W N 894

9 ———— *Setting aside Sale—Application to set aside sale by some of the judgment debtors, if whole sale can be set aside—Sale proclamation, gross understatement of value by decree holder, if by itself vitiates sale—If error by judgment debtor of fresh sale proclamation, if amounts to waiver of other irregularities* Where a decree was obtained jointly against several persons and their respective liabilities were not ascertained thereon, and the decree holder proceeding against jointly had their property sold in execution. *Held* that upon good cause shown the whole sale should be set aside although only some of the judgment debtors applied within time to set aside the sale. The application of the other judgment debtors though made out of time could very well be treated as applications to be added as parties to the previous application of their co-judgment debtors having regard to the fact that all the applications were tried together and were thus virtually consolidated. Where on the date fixed for the sale of immovable property in execution of a decree, the judgment-debtor applied for a postponement and agreed that if the decree was not paid up by the adjourned date the sale might be held without the issue of fresh proclamation, and the decree not having been paid up the sale took place on the adjourned date. *Held* that in the absence of evidence to show that they were aware of the contents of the sale proclamation it could not be said that the judgment debtor had waived any irregularities in the sale proclamation which contained a gross understatement of the value of the attached properties. *Chudhary Singh v. Hurda Narain, L R 3 I A, 251; 20 H R 44, Arunachalam v. Arunachalam L. J. 13 I A 171, I L R 12 Mad 19*, distinguished. Where with the object of securing a very valuable property for the smallest possible

I L R EXECUTION OF DECREE—*contd*

price, the decree holder grossly understated its value in the sale proclamation with the consequence that he was able to purchase the property without competition at a fraction of its real price. *Held* that the deliberate understatement of value in the sale proclamation was by itself a sufficient ground for vacating the sale. *Sudan Mand Khon v. Pahl Kwar, I L R 20 All 412, I R 25 I A 146; 2 C B N 650*, followed. *Abdul Hashem v. Benode Lal, 12 C B N 757*, not followed. *KARLAVEND THAKUR v. PIRTHI CHAND LAL (MOWDTRY)* (1911) 18 C W N 704

10 ———— *Setting aside sale—Material irregularity, allegation of—Civil Procedure Code (Act V of 1908), r 287 288—Proclamation of sale—Sale fixed to take place at monthly sales, naming date, place and hour of commencement of such sales—Absence of presiding officer—A sale in execution of a decree was adjourned from 16th May until 13th July, and in the fresh proclamation of sale issued it was notified that in the absence of any order of postponement the sale would be held at "monthly sales commencing at 6 o'clock on the morning of 13th July 1903 at Monghyr." Owing to the absence of the presiding officer from the station, the monthly sales did not begin until 17th July, and in the course of them the sale in question was held on the 20th. On an application under s 311 of the Civil Procedure Code (Act XIV of 1902) to set aside the sale on the ground of "material irregularity" within the meaning of ss 287 and 291 of the Code. *Held* (affirming the decision of the Courts in India), that in holding the sale on 20th July the Court had not acted in contravention of the provisions of the Code, and there had been no "material irregularity" in publishing or conducting the sale. *HANS LAL SINGH v. PAVANESHWAR PERNAB SINGH* (1911)*

I L R 39 Cal 26

11 ———— *Description of property in schedule to execution proceeding—Confirmation of sale—Order granting certificate of sale of property different from that described in schedule—Illeged mistake—Order set aside as having been made without jurisdiction* Certain property to be sold under a decree was described in the schedule to the application for execution, and in the proclamation of sale as a six anna share of a mahal subject to an existing mortgage and after the sale had been confirmed the auction purchaser applied for a certificate of sale and, alleging, that a mistake had been made in the schedule by the omission of the word "not," asked to have the purchased property declared in the certificate to be a six-anna share of the mahal not encumbered by the mortgage. The alleged mistake was stated to have been corrected before the sale by an advertisement in the *Calcutta Gazette*. The Subordinate Judge granted a certificate of sale in that form, and his order was upheld by the High Court. *Held* (reversing those decisions), that what is sold at a judicial sale can be nothing but the property attached, which in this case was the property described in the schedule in the execution proceedings. It was not a case of misdescription which might have been treated as an irregularity. Identity and not description had here to be dealt with. An existing property was accurately described in the schedule and the order of the Subordinate Judge granted

SALE IN EXECUTION OF DECREE—contd

a sale certificate which stated that another and a different property had been purchased at the judicial sale. If by mistake the wrong property was attached and sold, the only course was for the decree holders to commence the execution proceedings over again. The advertisement in the *Ozette* purporting to correct the alleged mistake could not validate a sale of property which was not that to which the attachment related. The order of the Subordinate Judge was made without jurisdiction as there was no power to sell in the judicial proceedings the property which the certificate of sale declared had been purchased. Their Lordships set aside the order confirming the sale together with the sale certificate granted thereunder. **THAKUR BAHADUR JIBAN RAM MAHWARE (1913)**

I L R 41 Cal 590

12 ———— *Sale certificate—Purchaser at suit for rent by, after registration, under Land Registration Act—Decree obtained thereon, sale in execution of—Purchase by decree holder—Certificate sale subsequently cancelled—Rent-decree and sale, if thereby reversed A, having purchased property at a sale under the Public Demands Recovery Act, on 7th September 1908 sold it to B, who duly obtained a sale certificate from the revenue authorities, was placed in possession and had his name registered under the Land Registration Act. B then sued the tenant on the property for rent and obtained an *ex parte* decree in execution whereof the tenore was sold and purchased by the decree holder himself on 20th November 1909. The sale under the Public Demands Recovery Act was cancelled on 29th March 1910 on the ground that no notice had been served under s. 109 of the Act and that the proceedings were invalid and inoperative in consequence; *Held*, that the rent decree and sale thereunder which were duly and regularly had at the instance of a stranger who had no concern with the irregularities in connection with the certificate sale were not affected by the reversal of the certificate sale. **NAGENDRA NATH BOSE v. PARBATI CHAMAN (1914)** . 20 C W. N 819*

13 ———— It holds good when *ex-parte* decree set aside where property has been assigned by decree-holder purchaser to stranger—*Decree subsequently passed of validates sale—Court's power to take notice of facts which have occurred since institution of proceedings* The assignee from the decree holder who has purchased property in execution of his own decree is in no better position than his assignor, and the sale is set aside when the decree is set aside even when the decree holder has sold the property to a stranger. **Satis Chandra v. Ramswari, 20 C W N 655**, followed. As soon as an *ex parte* decree is set aside, the sale, where the decree-holder is the purchaser, falls through and is not validated by a fresh decree subsequently made. *See Umedmal v. Srinath Roy, 1 L R 27 Cal 310, see 40 W N 692; Hazari Mull v. Jannak Prasad 6 C L J 92, and Pirm Yead v. Bindwari, 6 C L J 102*, distinguished, the decree in those cases though temporarily set aside having been ultimately maintained. It is well settled that the Court may, in order to shorten litigation or to do complete justice between the parties, take notice of events which have happened since the institution of the proceedings and may afford relief to the parties

SALE IN EXECUTION OF DECREE—contd

on the basis of the altered conditions. **ABDUL RAHAMAN v. SARAFAT ALI (1915)**

20 C W. N 667

14 ———— *Sale in execution, when to be set aside when decree set aside—Decree holder purchaser—Purchase by stranger from latter before decree set aside—Equity* The Court as a matter of policy has a tender regard for honest purchasers at sales held in execution of its decree, though the decree may be subsequently set aside, where those purchasers were not parties to the suit and the decree had not been passed without jurisdiction. But the same measure of protection is not extended to purchasers who are themselves the decree holders nor can purchasers from such decree holders claim that the Court owes them any duty or to be within the policy which prompts the extension of protection to strangers, since they have bought from one whose title is liable to be defeated. *See Ismail Pancher v. Rajab Rauter, 1 L R 30 Mad 235*, dissented from by SATISH CHANDRA GHOSH v. RAMESHARI DASSI (1914)

20 C W N 665

15 ———— If void or voidable when decree fraudulent—*Suit to set aside decree barred by limitation—Sale if may be vacated* A sale in execution of a fraudulent decree is not a void but a voidable sale till vacated by an appropriate proceeding, the rights created thereby are effective. Such a sale cannot be set aside without setting aside the decree, consequently where the right to have the decree set aside as fraudulent has become barred by limitation no decree can be made setting aside the sale only as made in execution of a fraudulent decree. **Ram Sarayan v. Shew Bhujyan 1 L R 27 Cal 197**, distinguished **Raj Kumar Sarkel v. Raj Kumar Mali (1915)**

20 C W N 652

16 ———— *Sale of pawns in execution of decree for arrears of rent—Purchaser, if liable for arrears previous to confirmation of sale* The plaintiff purchased a pawns taluq at a sale held in execution of a decree for arrears of rent due thereon. Some of the pawnholders applied to set aside the sale and while the proceedings for setting aside the sale were pending the zemindar brought the suit against the recorded pawnholders for arrears of rent subsequent to the period covered by the decree in execution of which the sale was held at which the plaintiffs purchased the taluq. The plaintiffs were made parties to this suit which was decreed and in execution of the decree the pawns was put up for sale and the plaintiffs whose purchase at the previous sale had been by that time finally confirmed deposited the decretal amount and saved the pawns from sale. *Held*, that in the absence of anything to denote the contrary, a sale of a tenure held in execution of a decree for its own arrears of rent passes it free from liability for previous arrears and the plaintiffs were not liable for the arrears of rent for the period to the date of confirmation of sale at which they purchased the pawns. **MATHURA MOHAN SABA v. NABIN CHANDRA DUTY (1916)**

20 C W. N 749

17 ———— *Hindu Joint Family—Decree against father of joint mistakshara family—Suit by sons the other members of the family to have it declared that their shares were not affected by the sale under mortgage decree—Right, title and in-*

SALE IN EXECUTION OF DECREE—*concl'd*

Interest of judgment debtor—Substance and not technicalities of transaction to be regarded in cases of this kind. In execution of a mortgage decree against the father of a joint mutaksham family who was alone a party to the mortgage the decree and the execution proceedings his two sons the other members of the family objected that only one third of a *pattas taluk* forming the joint family property could be sold, on the allegation that the debts in respect of which the decree had been made were contracted for illegal and immoral purposes, and the order for sale was amended by adding the words right, title and interest of the judgment-debtor as and containing what was to be sold which expression the Court said was not calculated to affect the case of either party. The property was sold and purchased by the decree holder. In a suit by the sons to have it declared that only one third of the property passed by the sale both Courts in India found that the debts were for legal and necessary purposes. The Subordinate Judge made a decree in the plaintiffs' favour which was reversed by the High Court on appeal. *Held* (affirming the decision of the High Court) that the proper construction of the order for sale, as amended was that if the plaintiffs succeeded in establishing that the debts had been incurred for immoral purposes only one third of the property would be affected by the sale while if they failed in that contention the whole of the property would be held to have passed by the sale. The expression right title and interest did not limit what was to be sold to a one-third share. In cases of this kind the substance and not the mere technicalities of the transaction should be regarded. *Mahabir Pershad v Mohancharan Sahas* 1 L R 17 Cal 534, L R 17 I A 11 followed. *Sripat Singh Dugar v Prodyot Kumar Tagore* (1916) 1 L R 44 Cal 524

18 ——— *Benami purchase—Purchase on behalf of another person—Certified purchaser—Agreement to convey made after sale to carry out agreement made before sale—Civil Procedure Code, 1908 s 66 sub s (1) s 68 of the Code of Civil Procedure 1908 sub s (1) enacts that no suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff, or on behalf of some one through whom the plaintiff claims.* The appellant purchased at an execution sale certain immovable property which he had before the sale agreed with the respondents to convey to them. After the sale agreements were made by which the appellant bound himself to carry out the original agreement with the respondents. In suits by the respondents against the appellant for specific performance the defence was that the suits were barred by s 68 sub s (1). *Held* that the fresh agreements made after the sale, though carrying out those made before the sale were not affected by s 68 and the suits were therefore not barred. *Chetalappa v Jalappa* (1919) 1 L R 42 Mad 615 approved. *Vadivelu Mudaliyar v Peria Marikka Mudaliyar* (1920)

1 L R 43 Mad. (PC) 643

SALE OF GOODS

See CIVIL PROCEDURE CODE (1908) s 20

1 L R 28 All 308

SALE OF GOODS—*concl'd**See CONTRACT*

1 L R 43 Cal 77

L L R 47 Cal 458

1 L R 45 Bom 129, 1232

See CONTRACT ACT, 1872—

ss 55 AND 63 1 L R 43 All 237

ss 76 to 123

s 103. 1 L R 40 Bom. 630

——— contract for—Stamp duty on—

See STAMP DUTY 1 L R 39 Cal 669

——— re-sale on purchasers default—

See CONTRACT

1 L R 39 Cal 568

——— return of rejected goods

See CONTRACT

1 L R 35 All 325

——— Warranty of fitness for purpose for which bought—

See CONTRACT

15 C W. N 981

1. ——— Contract for forward monthly deliveries—Construction—Anticipatory breach—Measure of damages. In a contract, dated June 4th, for the purchase of 300 tons of Java sugar it was stipulated shipments to be made by steamers during July to December 1914 the agreement to be construed as a separate contract in respect of each shipment. Without giving any delivery, on the 18th August the sellers repudiated the contract. In an action for breach of contract brought by the buyer on the 26th August claiming damages in respect of the whole contract for 300 tons: *Held*, that on the true construction of the contract the buyer had the right to demand delivery of the goods by separate shipments spread over the months from July to December, and the true measure of damages was the aggregate of the differences between the contract price and the market price at the appointed times of delivery in each month. *Roper v Johnson*, L R 8 C P 167, *Wertheim v Chicoutimi Pulp Co.* (1911) A C 301 *Frost v Knight* L R 7 Ex 111 and *Brown v Muller* L R 7 Ex 319, referred to. *Per MOOREHEAD J.*—In the circumstances of the case the instalments must be deemed to have been intended to be distributed ratably over the period appointed for the delivery of the whole quantity of the goods. *Calamassini v Davalos Iron Co.* 47 L J Q B 575 *Coddington v Paleologos* L R 2 Ex 193 referred to. *Thornton v Simpson* 6 Taunt 530 *Taring v O'Riordan* 3 L R Ir 50 *Colonial Insurance Co. of New Zealand v Adelaide Marine Insurance Co.* L R 12 A C 128 cited by MOOREHEAD J.—It being found that the principle applied by the Court of first instance in assessing damages was erroneous but that on the application of the proper principle the damages to be allowed would be larger on the defendant's appeal the Court declined to disturb the judgment or order a remand. *BILLASTRAH TRADING CO. v GUNRAY* (1916) 1 L R 43 Cal 305

2. ——— C I F Contract—Insurance of goods against war risk without buyer's instruction—Buyer not obliged to pay for such insurance—Payments against documents—Bill of lading must be tendered—Bill of lading, when

SALE OF GOODS—*contd*

is a—War—Government proclamations prohibiting trading with the enemy—Effect of proclamations on contract, goods shipped in enemy port—Performance of contract becomes illegal On the 8th June 1914 the defendants purchased from the plaintiff, 5 tons round copper bottoms c i f Mahomerah, July shipment, and agreed to pay for the said copper in Bombay on being tendered the bills of lading and other documents in respect thereof. The copper was shipped on board the S S "Tangatan," on or about the 28th July 1914 the plaintiff obtained relative bills of lading and insured the goods against ordinary marine risks. On the 5th August in consequence of war having broken out between Great Britain and Germany the plaintiff's agent in England, although not instructed to do so by the defendants, insured the copper against war risks and paid 10 per cent premium. The documents arrived in Bombay on the 7th September where upon the plaintiff tendered them to the defendants and demanded payment of the invoice price of the goods including the abovementioned extra premium of 10 per cent in respect of insurance against war risks. The defendants refused to pay the amount demanded on the ground that they were not liable to pay the afore said extra premium. *Held*, that in the absence of express instructions from the defendants to effect insurance against war risks, the defendants were not liable to pay the extra premium. By another contract dated 17th July 1914, the defendants purchased from the plaintiff 900 bags of sugar c i f Mahomerah, July shipment, and agreed to pay for the said sugar in Bombay on being tendered the bills of lading and other documents in respect thereof. The plaintiff got the sugar shipped at Hamburg on the S S "Nicomedia" on the 28th July 1914 and obtained, as he alleged, relative bills of lading in respect thereof and he insured the goods. Subsequently after the documents relating to the said sugar had arrived in Bombay the plaintiff presented them to the defendants and demanded payment but the defendants refused to accept the document or to pay the money on the grounds firstly that by reason of the state of war which existed and the Government proclamations prohibiting trade with the enemy, performance of the contract would be impossible, and secondly, that the documents which the plaintiff presented as bills of lading were not bills of lading and were not therefore the proper documents to be tendered in accordance with the terms of a c i f contract. *Held*, that in view of the Government proclamations the tender of the shipping documents was not a valid tender and that acceptance of and payment against the said documents would be a violation of the said proclamation. *Duncan, Fox & Co v Schrempf and Bonke, (1915) K B 366*, followed. *Held*, also, that a bill of lading as known to merchants is a receipt for goods actually delivered over and shipped on board the ship named therein and signed by the Captain or his representative and that the documents tendered to the defendants as bills of lading were not bills of lading but mere receipts for warehousing or shipment. As such they were no evidence of any shipment and a purchaser under a c i f contract, if tendered such a receipt, would be entitled to ask for a bill of lading, for he is not obliged to pay upon proof merely that the goods

SALE OF GOODS—*contd*.

had arrived at the port of departure. *Nissim Isaac Bekhor v Haji Sultanali Shantary and Co (1915)* . I L R 40 Bom 11

3 ————— O I F contract
—Payment to be made after goods had been landed—
Breach of contract—Failure of vendors to deliver bill of lading or goods—Contract of affreightment—
Property consigned on enemy vessel—War declared whilst cargo at sea—Capture of vessel and cargo—
Adjudication by Prize Court—Condemnation of vessel—Release of cargo—Effect of war on executory contract—Impossibility of performance—Toid contract—Contract Act (IX of 1872) s 56 On the 2nd February 1914, the defendant firm agreed to sell to the plaintiffs 150 tons of basic steel bars under a c i f contract, free Hooghly. The shipments were to be made in June, July and October and delivery to be completed within three days from the date of the landing of the goods. Furthermore, it was agreed between the parties that 45 days' credit from the date of the delivery of the goods should be allowed to the plaintiffs. In respect of the July shipment, the goods which consisted of partly Belgian and partly German manufacture, were shipped on the 2nd July, 1914, from Antwerp per S S *Stensturm*, a German steamer. On the 4th August, 1914, when war was declared between England and Germany, the S S *Stensturm* was at sea. She was subsequently captured with her cargo by a British cruiser and taken to Colombo for adjudication. The Prize Court condemned the vessel but released the cargo which was brought to Calcutta at the expense of Government. The Government thereupon, notified the vendors that the goods had arrived and the latter immediately communicated with the purchasers asking them to take delivery of the goods on payment of certain extra charges to Government. The plaintiffs having refused to do so the goods were sold by the defendants on purchasers' account and risk. In a suit for breach of contract and for damages *Held* that the variation of the terms as to the time of payment did not alter the nature of the contract as a c i f contract. *Held*, also, that it was an implied part of the contract of the 2nd February, 1914, that the defendants should procure a contract of affreightment under which the goods would be delivered in the Hooghly. *Held*, also that the contract between the plaintiffs and the defendants included the performance of an act (*viz*, the procuring of the contract of affreightment under which the goods would be delivered in the Hooghly) which after the contract was made became impossible by reason of the outbreak of war, within the meaning of s 56 of the Indian Contract Act and consequently the contract of the 2nd February, 1914 was void. *MADHURAM HIRDO DAS v G C SATT (1917)*

I L R 45 Cal 28

4 ————— Contract under C I F terms—Policy of insurance omitted from shipping documents—Payment made under mistake—
Bank remitting the money to the drawer—Instructions by drawer to withhold payment after remittance—
Liability of the Bank as agent—Indian Contract Act (IX of 1872) s 72—Hoppel—Posting of a demand draft, whether equivalent to payment. In May 1915 the plaintiff entered into two contracts under c i f terms with one P. Vella for supply to him of certain goods. P. Vella drew

SALE OF GOODS—*contd*

a demand draft on the plaintiff and endorsed it over for collection to the Anglo Egyptian Bank, Ltd., Malta, who in turn endorsed it to the defendant Bank at Aden. On August 10th 1915 the plaintiff was informed by the defendant Bank that the latter held a demand draft upon him and would deliver shipping documents to him on payment of the draft. On August 12th, 1915, the plaintiff paid the amount due on the draft and removed from the Bank certain shipping documents among which on inspection at his office the plaintiff failed to discover the policy of insurance. On discovery of this omission, the plaintiff wrote to the defendant Bank on August 13th 1915, stating that the draft had been honoured under a mistake and requested the Bank not to pay the amount of the draft to the drawer of the bill, and in case the remittance had already been made to cable at the plaintiff's expense instructions to withhold payment. The defendants having refused to stop payment of the sum paid by the plaintiff the latter filed a suit claiming refund of the money. The defendant Bank replied that they were acting merely as agents for collection on behalf of the Anglo Egyptian Bank at Malta through whom the demand draft was received, and that they having given telegraphic intimation of the receipt of money to their principal on the 12th August, that is, before the receipt of the plaintiff's letter of the 13th *idem*, were unable to do anything further in the matter. The plaintiff's suit was dismissed by the Judge at Aden. He appealed to the Resident's Court and pending the appeal a reference being made to the High Court Bombay, under s. 8 of the Aden Act II of 1864, for consideration of questions *inter alia* (i) whether the money was paid by plaintiff to the defendant Bank under a mistake of fact as to the documents delivered in exchange therefor, (ii) whether the defendants could and should have stopped payment of the price as instructed by the plaintiff, (iii) whether the defendant Bank acted as principals or agents in collecting the price of goods, (iv) whether if defendants acted as agents in collecting the price of the goods they had any better rights than the sellers P. Vella, (v) whether in the circumstances the plaintiff was entitled to repayment of the price from the defendants under s. 72 of the Indian Contract Act 1872. *Held* (1) that the money was paid by the plaintiff to the defendant Bank under a mistake of fact, (2) that, although the posting of the draft was neither payment nor an act so prejudicing the defendant Bank that it would be inequitable to require them to refund yet in view of the telegraphic intimation to the defendant's principals at their express request to the effect that money had been paid by the plaintiff, he (the plaintiff) was estopped having regard to the peculiar relation of the parties and, therefore, the defendants could not nor should they have stopped payment of the price as instructed by the plaintiff, (3) that the defendant Bank were mere agents, (4) that the defendants had higher rights than P. Vella in consequence of estoppel arising from plaintiff's conduct; (5) that the plaintiff would not be entitled to repayment under s. 72 of the Indian Contract Act 1872, as that section should be read subject to the law of estoppel and in view of the facts in the present case there was a clear case of estoppel. *Deutsche Bank (London Agency) v.*

SALE OF GOODS—*contd*

Barro & Co 73 L. T. 669, referred to. *Saugan Chand v. The Govt., N. W. P. I. L. R. 1 A. 11 79*, dissented from. *Scolden & Jacob v. The National Bank of India, Ltd., Aden (1917)*

I L R. 42 Bom 18

5. ——— Indentor who has accepted the shipping documents and the draft for the amount due but refused to take delivery on the ground of error in description with description non-*Plea of failure of consideration—Whether admissible—C. J. F. Contract.* Defendants accepted the shipping documents and the drafts for the amount due, but refused to take delivery on the ground that the goods were not in accord with the description as entered in the indents. The contract was a *i f* contract, and the indents also expressly showed that the indentors were bound to pay the drafts at maturity, and if they had any claim in regard to the nature of the goods they would bring it in the manner laid down in the indent. *Held* that the defendants could not in answer to the claim upon the drafts plead failure of consideration because what they contracted for were the shipping documents and not the actual goods. *Marshall & Co v. Aguin Chand Phul Chand (37 Indian Cases 644)*, referred to. *STERLING MASON AND CO v. JAWALA NATH BAGHWAN DAS*

I L R. 1 Lah. 22

6. ——— Insolvency of purchaser before delivery—Vendor's right to refuse delivery—Official Assignee duties and rights of—*Floclon within reasonable time—Tender of cash before delivery—Presidency Towns Insolvency Act (III of 1909), ss. 52, 62, 64—Joint Hindu family, insolvency of member of—Infant partner—Contract Act (IX of 1872), s. 247.* On the insolvency of the karta of a *mitakshara* Hindu family, a suit is not maintainable by the Official Assignee for damages for breach of a contract entered into by the firm which was the joint business of the family. Under s. 52 of the Presidency Towns Insolvency Act, the rights that passed to the Official Assignee were the rights the insolvent had under the contract as an insolvent hence, it was the duty of the Official Assignee to declare his election to take up the contract within a reasonable time, and to tender cash before calling for delivery. *Ex parte Chalmers, L. R. 8 C. P. App. 289*, and *Morgan v. Davis, L. R. 10 C. P. 16*, followed. *GREY v. LAMOND WALKER (1913)*

I L R. 40 Cal. 523

7. ——— Bought and sold notes—"Bought by your order and for your account from our principals"—Principal and Agent—Personal liability of broker—Contract Act (IX of 1872), s. 230 (2)—Broker, an intermediary—Contract of employment—Award Where a broker signed and sent to a party a bought note in the following terms: "We have this day bought by your order and for your account from our principals 250 bales of jute (name) Brokers" and a corresponding sold note was signed and sent by the broker to another party, the names of the principals being disclosed to each other, by the broker, at a subsequent date: *Held* in proceedings taken by the buyer, that the broker was merely an intermediary and not an agent for sale, and was not liable under s. 230 (2) of the Contract Act. The contract (if any) between the broker and the buyer was a

SALE OF GOODS—*concl'd*

contract of employment, the employment being to negotiate, and not to sell, on behalf of another. *Southwell v. Booditch, L. R. 1 C. P. 374*, followed. *Gubby v. Aelcom, 1 L. R. 17 Cal. 419*, distinguished. *PATILAM BAKERJEE v. KANNANARAYAN Co., Ltd (1915)*. . . *I. L. R. 42 Cal. 1050*

8 ———— Exception clause excusing delay due to late shipment—*Failure of seller to deliver on due date—Tender on a subsequent date—Onus on party relying on exception—Shipment to be shown to be unavoidably delayed—“Shipment,” meaning of—Measure of damages* Defendant contracted with plaintiff to deliver to him in Calcutta 50 tons of Rangoon rice in June 1909, and another 50 tons in July 1909. A clause in the contract provided that no objection was to be raised by the plaintiff in case of the delivery of the goods being delayed by reason of the non arrival in time of the steamer carrying the goods on account of the shallowness of water at Diamond Harbour, damages to the steam engine, accidents of the sea and other causes not under human control, as also owing to late shipment at Rangoon. The June consignment was not tendered by defendant until the 9th of July and the July consignment until the 3rd August. The market rates on both these days were the same as those on 30th June and 31st July, respectively. The plaintiff refused the tenders on both days and sued for damages, being the difference between the contract price and the market price on the said two dates. Defendant relying on the clause relating to late shipment pleaded that under the contract there was no particular due date of delivery. *Held*, that the defendant could not rely on that clause unless he was able to prove that the circumstances which led to delay in shipment were not attributable to his negligence. *Dunn v. Bucknoll, (1902) 2 K. B. 614, 621*, followed. That the burden of establishing that his case was covered by the exception on which he relied was on the defendant. *Sandeman and Sons v. Tyzack and Branfoot Steamship Co., Ltd (1913) A. C. 680, 689*, followed. The term “shipment” in the contract included not merely the loading of goods on board the ship but also the starting of the ship. That as soon as the contract had been broken, the obligation of the purchaser to take delivery of the goods vanished and he was not bound to accept the goods when they were delivered and that the right measure of damages was the difference between the contract price and the market price on the dates of delivery originally agreed upon by the parties. *Grenon v. Lachmi Narain, 1 L. R. 24 Cal. 3*, relied on. *KALI KANTA SHARMA v. ISMAIL (1914)*. . . 20 C. W. N. 159

SALE OF GOODS ACT (56 & 57 VIC. C. 71).

——— ss. 45 and 47 ———— Stopped in transit—*Ultimate destination of goods—Duration of transit—Pledge of bill of lading—Measure of damages—Sale of Goods Act (56 and 57 Vic. c. 71), ss. 45 and 47* The plaintiffs, a Bombay firm, imported hardware goods from M & Co., of Manchester for sale on commission, the business being carried on and financed in the following manner. M & Co., on shipping the goods, handed over the complete shipping documents to B, and received from him an advance of 65 per cent of the invoice price. B then handed

SALE OF GOODS ACT (56 & 57 VIC., C. 71)

—*cont'd*——— ss. 45 and 47—*cont'd*

over the shipping documents to the National Bank of India in England, and himself received a similar advance by drawing on a credit opened with the Bank by the plaintiffs. The Bank then forwarded the shipping documents to India, where they were handed over to the plaintiffs in exchange for trust receipt, the plaintiffs becoming responsible to the Bank for any short fall in the advances made to B. On 12th February 1907 M & Co., contracted to purchase from L & Co. 250 boxes of tin plates delivery to be f. o. b. Newport in four or five weeks after date. On 20th February M & Co. wrote to L & Co., enclosing instructions and marks for shipment of the 250 boxes to Bombay, and on 2nd March requested them to forward the goods to W & Co., at Newport in time for shipment in S. S. “Clan Macleod” for Bombay. On 21st March L & Co. enclosed to M & Co. an invoice for 200 boxes and on 27th March another invoice for the remaining 50 boxes, the material part of the invoice in each case being “No claim concerning these goods can be recognised unless made within fifteen days from delivery to Messrs W & Co., Newport, for shipment on your account.” The 250 boxes were put on board the steamer by W & Co., as the agents of L & Co., but in obtaining a bill of lading for 500 boxes (including the 250 in question) W & Co. acted as the agents of M & Co. The steamer left Newport on 4th April. Following the usual course of business as above described, M & Co. handed over to B the shipping documents relating to the 500 boxes and obtained an advance of £250 5 2 (being 65 per cent of the invoice value). B, on the 6th April, obtained a similar advance from the Bank. On the same day M & Co., suspended payment, and on 9th April L & Co., as unpaid vendors of 250 boxes, notified the steamship owners, the first defendants, to stop these goods in transit. The S. S. “Clan Macleod” arrived in Bombay on 13th May, and the bill of lading which had been duly handed over by the Bank to the plaintiff on 29th April, was in due course presented by the latter. They were informed, however, of the stop put on the 250 boxes and were offered a delivery order for the remaining 250 alone. This they declined, refusing to accept anything but the full payment of the advance or the full amount of the goods. On 29th June the plaintiffs repaid the Bank the amount of the advance, and the trust receipt of 29th April was duly cancelled. On the plaintiffs subsequently suing the steamship owners and their agents for damages. *Held*, that the transit did not cease at Newport, and L & Co. were entitled to stop the goods after they had started for Bombay. *Ex parte Golding Davis & Co., 13 Ck. D. 628*, followed. *Held*, further, that the plaintiffs were after 29th June,—on which date they had fulfilled their obligations to the Bank,—pledgees for value of the bill of lading if indeed they did not occupy that position from 29th April, being transferees of the Bank's rights in respect of the advance as against the defendants. *Held*, further, that the plaintiffs were entitled to join both defendants in the suit. The utmost benefit which the defendants were entitled to obtain from the position of L & Co. as sureties (So to the plaintiffs for the advance made by the latter to M & Co.) was the right

SALE OF GOODS ACT (56 & 57 VIC., C 71)

—concl'd

ss 45 and 47—concl'd

to the security of the 250 boxes which they were willing from the outset should be received by the plaintiffs. The plaintiffs by refusing to take delivery of the 250 boxes had omitted to do an act which their duty to the surety required them to do, and to the extent to which that omission had resulted in loss the surety was discharged. *In re West-Indians, 5 B & Ad 817*, discussed. *BAPUJI SORANJI v THE CLAN LINE STEAMERS, LD (1910)* I L R 34 Bom 640

SALE OF LAND

See LIMITATION ACT (IV OF 1908), SCH I, ARTS 97, 92

I L R 37 Bom 538

See MORTGAGE

I L R 47 Cal 377, 974

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 55 (f)

I L R 39 Mad 997

—agreement for—

See SPECIFIC PERFORMANCE

I L R 38 Cal 805

By Municipality without written Contract

See BOMBAY DISTRICT MUNICIPAL ACT 1901 ss 96 AND 40

I L R 45 Bom 797

to pay revenue—Reservation of portion out of property sold—Agreement not binding on transferee. The vendor of a village reserved for her lifetime 196 bigas, and the vendee also agreed not to ask for rent of those 196 bigas. Vendee further did not insist upon payment of the proportionate share of Government revenue due from the vendor, but paid it himself. Held, that any agreement which might have existed as between the vendor and the vendee as regards the payment of Government revenue was a purely personal matter and could not bind the vendee after the death of the vendor when the land was in the possession of her legatee. *Sri Thakurji Maharaj v Lachma Narayan, 11 All L J 212* *Ram Gobind v Sri Thakurji Maharaj, 11 All L J 231*, and *Abd Hussain v Hakim-ullah, 11 L P 33 All 239*, referred to. *PACHAN SINGH v JANGIT SINGH (1916)* I L R 39 All 168

Duty of vendor—Right of vendee to be put in possession. A vendor of land, when he holds himself out in that capacity, is bound to ascertain whether in fact, the subject matter of what he is selling exists, and he must be in a position to give possession of the physical thing which he has contracted to sell. The obligation is upon the vendor to give the vendee possession, and not upon the latter to get possession for himself especially when any difficulty arises in identifying the particular land sold. *DARFAY KUR v KEDAR NATH* I Pat L J 140

Contract of re sale—Time, essence of the contract—Doctrine applicable to contracts of sale whether applicable to contracts of re sale—Rule of English law, applicability of in India. The doctrine, that time may not be of the essence of the contract which arises on the

SALE OF LAND—cont'd

construction of contracts of sale of immovable property, is not applicable to contracts of re sale of property conveyed. If the transaction is not a mortgage, the right to repurchase being an option must be exercised according to the strict terms of the power. Rule of English law followed—*Joy v Birch, 7 R R 22* *Pandey v Mellon, 62 F R 627*, and *Dobbins v Dibbins (1896) 2 Ch 313*, referred to. *SANABAPURI CHETTIAR v SUDARSANACHARI (1919)*

I L R 42 Mad 802

Non payment of price—Right of vendee to sue for possession—Decree for possession, whether can direct payment of price or be conditional on payment—Transfer of Property Act (IV of 1882) ss 54 and 55. A vendee who has not paid the purchase money of the lands bought by him, is entitled to a decree against the vendor for possession of such lands. The Court cannot make the decree conditional on payment of the purchase-money, nor can it decree payment of the price to defendant in the vendee's suit. *KRISHNANMA v MALI (1920)*

I L R 43 Mad 712

Duty of, to protect vendee's title—Caveat emptor. Where, in a suit brought by a third party against a vendor and vendee of immovable property, the former admits the claimant's title and the suit is decreed upon that admission, he cannot, in a subsequent suit for the recovery of the purchase money paid to him by the vendee, plead that the former suit was wrongly decided. *Per IMAM, J*—In vernacular conveyingance the expression *pak eaf* means a flawless title. *BHATTU RAM v GANOA PRASAD GORE* 3 Pat L J 358

Sale of specific area of land—vendees evicted from part of the area—Vendor's liability—Transfer of Property Act, IV of 1882, s 55—Measure of damages—Indian Contract Act, IX of 1872, s 73. On the 16th September 1907 C D and his son M B, the predecessors of defendants 3 to 8, sold to the plaintiff 79 kanals and 4 marlas of land. The property comprised several plots of land which formed part of different *Khasra* numbers specified in the sale deed. The price paid by the vendees was Rs 83,160, and was calculated, as expressly stated in the deed, at the rate of Rs 1000 per kanal. The plaintiffs asserted that they got possession of the 79 kanals and 4 marlas, but were subsequently evicted by the defendants 1 and 2 from an area measuring 4 kanals 4 marlas. It was found that defendants 1 and 2 were as a matter of fact the owners of the latter area. Held, that as under the terms of the deed of conveyance the vendors sold 79 kanals and 4 marlas at so much per kanal to the plaintiffs, it was the duty of the vendors either to make good the deficiency or to pay damages for the loss caused to the vendees, having regard to the admission by the defendants that there was a guarantee of title and to the provisions of s 55 of the Transfer of Property Act. Held, further, that the measure of damages is the price of the land at the time of eviction—*sic* s 73 of the Indian Contract Act. *AGARWAL SACHCHANDRA v AHMED KHAN (I L R 21 Bom 175)*, *Ramchad Bhagwan v Manmohandas (I L R 32 Bom 165)* and *Abinichandras Saha v Krishna Barua (I L R 38 Cal 458)*, followed. *JAI KISHOR DAS v ANA PRITI NIDHI SARKA* I L R 1 Lah 260

SALE OF MORTGAGED PROPERTY

See MORTGAGE I L R 39 Calc 527

SALE OR AGREEMENT TO SELL.See CONSTRUCTION OF DOCUMENT
I L R 37 Mad. 480**SALE OR EXCHANGE**See TRANSFER OF PROPERTY ACT (IV OF 1882) ss. 54 118
I L R 37 Mad 423**SALE-PRICE**

See PRE EMPTION 14 C W N 295

SALE PROCEEDSSee CRIMINAL BREACH OF TRUST
I L R 41 Calc 844

See LIMITATION, I L R 41 Calc 654

— attachment of—

See RATEABLE DISTRIBUTION
I L R 46 Calc 64

— surplus of—

See MORTGAGE I L R 37 Calc 907

— surplus sale proceeds in the hands of Collector attachment of—

See MORTGAGE 14 C W N 481

SALE PROCLAMATIONSee EXECUTION OF DECREE
I L R 39 Calc 482See PROVINCIAL INSOLVENCY ACT (III OF 1907) ss 20 22
I L R 39 Mad 479

— decision of question of valuation—

See CIVIL PROCEDURE CODE 1908 ss 2 AND 47
5 Pat L J 20

— Position of purchaser with notice of incumbrance—

See CIVIL PROCEDURE CODE 1908 O XXI s 66
I L R 43 All 489

Valuation of property
To order property which is to be put up for sale in execution of a decree to be valued at twenty times the Government revenue is merely a colourable pretence of making the valuation required by law and such an order cannot be sustained. *JAGGARNATH PERSHAD v CHITRAGUPTA NARAY SINGH*
3 Pat L J 580

Insertion of part of valuation on legalty of The insertion of any valuation in a sale proclamation on other than the valuation fixed by the Court is calculated to mislead intending bidders and is therefore wrong. Neither the valuation assessed by the decree-holder nor by the judgment-debtor should be inserted. *PAT BENT PERSAD v LODI SINGH*
4 Pat L J 37

SALE WITH OPTION OF RE-PURCHASE.

See SALE.

See CONSTRUCTION OF DOCUMENTS.
I L R 40 Bom. 378

A deed of sale contained the following decree "I have ren the land into your possession. If perhaps at any time I require it back I will pay you the aforesaid

SALE WITH OPTION OF REPURCHASE—
co id

Rs 600 and any money you may have spent in bringing the land into good condition and purchase back the land. In a suit 35 years later by vendor's grandson against vendee's daughter in law Held the option was personal. *GURUNATH RALAJI v YAMANTRA*
I L R 35 Bom 259

SALTPETRESee NIMAR SAYAB MEHAL.
I L R 41 Calc 286**SALT WORKS**

See ASSESSMENT I L R 42 Bom 692

SALVAGESee CIVIL PROCEDURE CODE 1908, O XXI s 89
2 Pat L J 676

See SHIPPING

SAMBALPUR DISTRICT

See APPEAL I L R 38 Calc 391
S e CENTRAL PROVINCES LAND REVENUE ACT 1881 s 136
1 Pat L J 290

SAME TRANSACTION

See JURY LIST OF TRIAL BY
I L R 37 Calc 467

SANAD

See BOMBAY LAND REVENUE CODE 1879 s 17
I L R 44 Bom. 110

See PROOF 16 C W N 633

See PRESUMPTION OF LAND
I L R 42 Bom. 668

— construction of—

See BOMBAY HEREDITARY OFFICES ACT, s 4
I L R 43 Bom 323

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) s 17
I L R 45 Bom. 463

See JAIGIR I L R 42 Calc 205

See PENSIONS ACT (XXIII OF 1871) s 6
I L R 32 All 148

See RESUMPTION I L R 39 Bom 279

Sanad construction of
—Grant creating title of Pash of Deur in 1857
—Meaning of Lands attached to Deur —Whether confined to lands in Satara where Deur is a hunter or extended to other lands in Bombay Presidency—
Use of contemporaneous exposition in interpretation of documents—*Jaghir* nature of tenure—*Saranam*—*Inam*—*Salan*—*Hakk*—Nature of evidence in interpretation of documents—*Alte* above of records
The plaintiff and the defendant were brothers descendants of the Bhoole family (Rajahs of Nagpur) whose powers only lapsed to the British Government in 1857. The object of the suit was to have it declared that the whole of the property in dispute (all situated in the Bombay Presidency) belonged to the two brothers in equal shares. The elder brother the defendant (appellant) was Pash of Deur and his defence was that he had succeeded to the property in suit under the law of primogeniture as an appanage to the title of Rajah conferred on him by a sanad issued by the Governor General Lord Canning in 1857. The question depended mainly on the construction

SANAD—

of that sanad in which the express words "lands attached to Dour" has been interpreted by the Courts in India as given to the defendant only lands in the district of Patana in which Dour is situated the rest of the lands being declared to be partly between the two brothers. Held by the Judicial Committee (reversing those decisions) that on the true construction of the sanad a restriction is added by the history of the family and the other documentary evidence in the case, which is in the principle of *contra proferentem* as a guide to its interpretation, on the defendant was entitled to the whole of the property in the Beglar Presidency and not only to that in which he was an appellant to the title. This was to be inferred from the official documents for 30 years, the language used in all of them being applicable to the possession of the Pajats in the Bombay Presidency as a whole from the intention of the Government to make suitable provision for the newly created title and enable the holder to support it with becoming dignity which he could not do if less were given, and from the facts as gathered from documents, that the Rajahs (of Nagpur) had properties in the Central Provinces as well as in the Bombay Presidency and the footing on which the Government had along proceeded during a long period was to allot the latter as an appanage to the title and the former to be partitioned among the younger sons which was done in 1887, 1893 and 1899. As to the tenure on which the lands were held, the whole of the lands previous to the grant in 1899 were jaghir lands implying no grant of the soil, but a personal grant of the revenues to the grantee. A grant of such lands was personal, not hereditary and resumable at pleasure. The grant being personal and temporary the lands were necessarily impartible. The impartibility and unity which attached to personal service was not related to, but on the contrary was but an effect of the idea of succession by force of law to the impartible lands; therefore could not be decided to be subject to the rule of primogeniture. The Maratta equivalent for "jaghir" was *asranjam* which came in course of time to be applied to the lands.

Asranjam was not confined to the lands in Patana as held by the lower Courts. The terms "*asranjam*" and "*inam*" were not mutually exclusive. "*Inam*" was a term of mere generic significance applicable to a Government grant as a whole. It has in the Bombay Presidency been dealt with comprehensively and as covered not by one name but by all or at least many of the names applicable to land and revenue rights as "*inam*", "*asranjam*", "*watan*", "*khatt*" etc. The argument to the effect that the Patana property and that alone was treated as "*asranjam*", while the other properties were throughout treated as "*inam*" was contrary to what were admitted to have been the original entries in the Collector's books. No place therefore could be placed on such a decomposition of the lands. The original state of the records before the several corrections were made and with the doubtful and uncorroborated intercessions and alterations, was that to which a Court of law should have looked as evidence. Too restricted an application had been made by the Courts before of the term "the lands attached to Dour" which these *Lords* were of opinion extended

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to the whole of the lands in suit which was consequently dismissed. *AGHOJIARAO SAREK & LAKSHMIBAI SAREK* (1912) 1 L. R. 38 Bom. 63

SANCTION

See CIVIL PROCEDURE CODE, 1908 s. 97

See CRIMINAL PROCEDURE CODE, s. 236
1 L. R. 45 Bom. 834

See PATRI LEASE
1 L. R. 42 Cal. 100

See SANCTIONS & PROSECUTION

the compounding of offences—

See CRIMINAL PROCEDURE CODE (ACT V of 1898) s. 439

1 L. R. 39 Mad. 601

SANCTION FOR PROSECUTION

See APPEAL, RIGHT OF
1 L. R. 41 Cal. 804

See APPEAL TO PRIVY COUNCIL
1 L. R. 41 Cal. 734

See CIVIL PROCEDURE CODE 1908—
s. 115 1 L. R. 33 All. 512

See CRIMINAL PROCEDURE CODE s. 4
1 L. R. 40 All. 641

ss. 191 to 197
s. 191 1 L. R. 37 Bom. 376

s. 403 (7) 1 L. R. 36 Mad. 309
1 L. R. 37 All. 107

s. 407 1 L. R. 34 All. 244

s. 437 1 L. R. 42 All. 129

s. 476 1 L. R. 37 Mad. 317

See FALSE INFORMATION
14 C. W. N. 763

See PENAL CODE (ACT XLV of 1860)
ss. 156, 211 1 L. R. 34 All. 822
1 L. R. 36 All. 212

s. 190 1 L. R. 35 All. 53

See PERJURY 1 L. R. 35 Mad. 471

See JUDICIAL JURISDICTION OVER THE
SUDAN SMALL CASES (OCT)
1 L. R. 37 Cal. 714

See UNITED PROVINCES LAND REVENUE
ACT (III of 1901) s. 18
1 L. R. 39 All. 297

See USING FORGED DOCUMENT
1 L. R. 39 Cal. 463

Application to higher Court where
lower Court refuse—

See CRIMINAL PROCEDURE CODE 1895,
s. 195 1 L. R. 1 Lah. 802

Fabrication of False Evidence—

See PENAL CODE (ACT XLV of 1860),
ss. 192 and 193
1 L. R. 43 Bom. 669

for false complaint—

See CRIMINAL PROCEDURE CODE (ACT V
of 1895), s. 193
1 L. R. 39 Mad. 1041

SANCTION FOR PROSECUTION—contd

by single Judge of Chief Court—

See CRIMINAL PROCEDURE CODE, 1898,
s 193 . . . I. L. R. 1 Lah 259

public servants—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898), ss 197, 230, 532

I. L. R. 43 Bom 147

refusal by 1st class Magistrate—

Whether Additional Session Judge may on
appeal—See CRIMINAL PROCEDURE CODE, 1898,
s. 59 . . . I. L. R. 44 Bom. 877

Subordination of Courts—

See CRIMINAL PROCEDURE CODE, 1898,
s 193 . . . I. L. R. 2 Lah 57

Perjury—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898), ss 236, 195 537 (b), 164

I. L. R. 45 Bom. 834

refusal of—

See DEFAMATION I. L. R. 48 Calc. 388

1. ————— Contradictory statements—*False statement before the Committing Magistrate retracted, and true evidence given, at the trial—Prosecution of witness for contradictory statements—Consideration of circumstances under which false evidence was given and repudiated—Criminal Procedure Code (Act V of 1898), s 195* It would be dangerous to hold that the mere fact of contradictory statements having been made by a witness would justify the Court in granting sanction to prosecute him for giving false evidence. It is necessary to consider the circumstances under which they were made and repudiated. Where a witness was arrested and, after pointing out the spot where the stolen property was concealed, as alleged, by one of the accused was released, but stayed with the police and was examined the next day in Court, before the date fixed for the hearing of the case, the question having been put by a police officer in violation of s 495 of the Criminal Procedure Code, and the evidence so given was false and was retracted at the trial, when he gave true evidence, alleging that he had been tutored and threatened by the same officer before his deposition in the lower Court. *Held*, that having regard to the events leading up to the examination before the Committing Magistrate, the conditions under which it was conducted and the fact that the witness did not persist in his false statements, but gave true evidence at the trial, sanction should not be granted. *INFERIOR v. TRIPURA SHANKAR SARKAR* (1910)

I. L. R. 37 Calc 618

2. ————— Procedure—*Criminal Procedure Code, s 195—Court of bound to take evidence* In disposing of the application for sanction to prosecute for bringing a false suit under s. 195 of the Criminal Procedure Code the Court has to decide whether the original suit was false, and whether, if it was false, sanction should be granted, and must make a full enquiry into the matter even if it involves trying the case *de novo*. So where there was no evidence in the records of the original case to prove that it was false, and the Small Cause Court refused sanction on the

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ground that it was not bound to go beyond the record, the Court ordered the case to be sent back and tried according to law. *RANDEEN BANTA v. SEWBAK SINGH* (1910). I. L. R. 37 Calc. 714
14 C. W. N. 808

3. ————— False information to Police—*Criminal Procedure Code (Act V of 1898), ss 195 (b), 476* No sanction should be granted or prosecution directed, unless there is a reasonable probability of conviction, though the authority granting a sanction under s 195, or taking action under s 476, should not decide the question of guilt or innocence. Great care and caution are required before the Criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which a prosecution is sanctioned or directed. *Ishri Parash v. Sham Lal, I. L. R. 7 All 871* *Kali Charan Lal v. Basudeo Varan Singh, 12 C. W. N. 3*, and *Queen v. Banjo Lal, I. L. R. 1 Cal 450* referred to. Where there had been prolonged litigation between the petitioner and the opposite party, in which the former had been successful, so that the case was by no means improbable, and two Magistrates had, in the course of the judicial investigations preceding the trial, accepted the prosecution story as substantially true, and the Assessors had only found the case not proved. *Held*, that, under the circumstances, it was not a proper case for a prosecution under s 476 of the Code. *JADU NANDAN SINGH v. EMPEROR* (1900)

I. L. R. 37 Calc. 250

4. ————— Disobedience of order—*Penal Code, s 188—Disobedience of order under s 144 of the Code of Criminal Procedure (Act V of 1898)—Sanction to prosecute essentials for granting* A Magistrate should not sanction a prosecution under s 188, Penal Code unless he thinks that all the elements necessary for a conviction are present. Where the order sanctioning a prosecution under s 188 Penal Code, for an alleged disobedience of an order under s 144 Criminal Procedure Code, did not show that the disobedience caused or tended to cause obstruction, annoyance or injury or a riot, the High Court set it aside in revision. *PROJAPAT JHA v. THE EMPEROR* (1909)

14 C. W. N. 234

5. ————— Forgery—*Criminal Procedure Code, s 195 (c)—Sanction for prosecution, want of, effect of* On the prosecution of the accused for an offence under s 467, Indian Penal Code, alleged to have been committed in respect of a document which was subsequently produced at the hearing of a suit tried on the original side of the High Court in which the accused was a party. *Held*, that the prosecution was incompetent without the previous sanction of the Court which tried the suit or of the Court to which it was subordinate. That s 463, Indian Penal Code, referred to in s 195 (c) of the Criminal Procedure Code covers forgery of the description for which penalty is provided under s 467, Indian Penal Code. *TENI SHAN v. POLANI SHAN* (1909)

14 C. W. N. 479

6. ————— Sanction refused by Magistrate—*Appeal—Sanction granted by Subordinate Judge—Jurisdictional—Criminal Procedure Code (Act V of 1898), s 195—Civil Courts Act (XII of 1857), ss 21 and 22—Civil Procedure Code (Act V of 1908), ss 24 (1) (a) and 115* A suit having been

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dismissed by the Munsif and, on appeal, by the Court of Appeal, the defendants applied to the Munsif for sanction to prosecute the plaintiffs for offences under ss 468 and 471 of the Indian Penal Code. This application was refused, but, on appeal, the Subordinate Judge granted such sanction. *Held*, that the Court of the District Judge was the only Court to which such an appeal would properly lie. *Per* N R. CHATTERJEE, J.—For the purposes of s 190 of the Criminal Procedure Code a Munsif is not subordinate to a Subordinate Judge. *RAM CHARAN CHANDA TALUK DAR v. TARIPULLA* (1912) *I L R 39 Calc 774*

7. ——— Jurisdiction—Application to District Judge under s 195 of the Criminal Procedure Code (Act V of 1898)—Transfer of such application to a Subordinate Judge for disposal.—Jurisdiction—Civil Courts (Act XII of 1857), ss 21 (2) (4) and 22 (1)—Appeal. An application made to a District Judge under s 195, sub s (6) of the Criminal Procedure Code, against the order of a Munsif, cannot be transferred by the District Judge to a Subordinate Judge for disposal. *Ram Charan Chanda Talukdar v. Taripulla I L R 39 Calc 774*, approved. *Semble*. An application under s 190, sub s (6) of the Criminal Procedure Code is not an "appeal" within the meaning of s 22 sub s (1) of the Bengal Civil Courts Act, 1887. *HARI MANDAL v. KESHAB CHANDRA MANA* (1912)

I L R 40 Calc 37

8. ——— Appeal—Right of—Grant or refusal of sanction by a lower authority—Application to superior authority whether a matter of appeal or revision—Limitation of the period of such application.—Criminal Procedure Code (Act V of 1898), s 195 (6)—Limitation Act (IX of 1908), Sch. I, Art. 154. Sub s (6) of s 195 of the Criminal Procedure Code does not confer a right of appeal to the superior authority, but only invests the latter with powers by way of revision. *Hardeo Singh v. Hanuman Dat Narain, I L R 26 All 244*, *Mathuramunda v. Venu Chetti, I L R 36 Mad 337*, discussed and distinguished. *Hari Mandal v. Keshab Chandra Manna 16 C W N 993*, *Mohd. Hama v. Tota Ram, I L R 15 All 61*, approved. *Ram Charan Talukdar v. Taripulla I L R 39 Calc 774* referred to. Where the question arises with reference to Art. 154 of the Limitation Act (IX of 1908), it has merely to be stated that there is a doubt as to whether an appeal lies or not in such a case in order to give the applicant the benefit of the longer period. The High Court accordingly directed the Sessions Judge to hear an application to revoke a sanction made to him after the expiry of a month from this date. *In re North. Ex parte Hasluck (1895) 2 Q B 264*, *Gopal Lal Sahai v. Bakora, 15 C L J 126*, followed. *Pratt v. Meenan v. Chatterjee (1912)*, *I L R 40 Calc 239*

9. ——— Jurisdiction—Criminal Procedure Code (Act V of 1898) s 195—Verbal application—Jurisdiction—Revocation—Power of Court granting sanction—Practice. Where a verbal application was made by counsel for sanction to prosecute under s 195 of the Criminal Procedure Code and granted by the Court, but no order could be drawn up as the application was not made upon formal petition. *Held*, that upon a formal petition being subsequently presented, the Court had jurisdiction to grant such sanction, the former

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sanction being inoperative. *Held*, further, that a Judge sitting on the Original Side has no jurisdiction to revoke a sanction previously granted by him, and that application for such revocation must be made to a Civil Appellate Bench of the Court. *Kali Kinkar Seth v. Duxobandhu Nundy I L R 32 Calc 379*, discussed. *THADDEUS v. JANAKI NATH SAHA* (1912)

I L R. 40 Calc 423

10. ——— Second sanction—Criminal Procedure Code (Act V of 1898), s 195—Subsequent order, only a repetition of the first order—Revival of Proceedings—Penal Code (Act XLV of 1860), ss 193, 471—Limitation. Where there are two orders purporting to grant sanction to the same prosecution, the later order will ordinarily be taken to be merely a repetition of the first and the period of limitation will begin to run from the date of the first order. *Durbari Mandal v. Jagoo Lal, I L R 22 Calc 573*, referred to. *DURGIA PRASAD PATHAK v. LACHMAN BANIA* (1913)

I L R. 40 Calc 584

11. ——— Disobedience of prohibitory order—Necessity of application for sanction—Police report setting forth the facts of disobedience and containing a request for prosecution—Criminal Procedure Code (Act V of 1898), s 195 (1) (a)—Penal Code (Act XLV of 1860), s 138. A police report which sets out the facts of disobedience of an order, under s 141 of the Criminal Procedure Code, prohibiting the slaughter of cows on a certain day, and contains a request that the accused should be prosecuted, under s 188 of the Penal Code is a sufficient application for sanction within s 195 (1) (a) of the Criminal Procedure Code. *Per* CHAIRMAN J.—No application for sanction is necessary in cases falling under s 195 (1) (a) of the Code. *PANCHU MANDAL v. EMPEROR* (1913) *I L R 41 Calc 14*

12. ——— Discretion—Judicial decisions, application of—Criminal Procedure Code (Act V of 1898), ss 4 (1) 195, 476, 492—S 195, scope of and practice under—Public Prosecutor. S 195 of the Code of Criminal Procedure vests in the Court an absolute discretion as regards granting sanction to prosecute; this discretion cannot be restricted by judicial decisions but must be fairly exercised according to the exigencies of each case, the Court being astute to see that there is no abuse of the administration of criminal justice. *Gardner v. Jay L R 29 Ch D 50* and *Saunders v. Saunders, (1897) F 89* referred to. Under s 195, no notice of the application for sanction need issue and the accused person need not even be named. The validity of the sanction cannot be questioned in the enquiry or the trying Court. *Per* STRANGE, J.—Proceedings under s 195 should frequently, and even usually, be *ex parte*. *In re. Parso Kun Hammond I L R 26 Mad 116*, *Pamapathi Sastri v. Subba Sastri, I L R 23 Mad 210*, *In the matter of Gouri Saha, I L R 6 All 114*, *Ram Prasad Roy v. Sola Roy I C W, N 409* *Padma Nath Laneyre, v. Khandu Mollah, I Marsh. 407*, *Queen v. Mahomed Hassan 18 W P C 37*, *Sharp v. Wakefield (1891) A C 173*, *Khepa Sahi Sikdar v. Ghosh Chunder Mukerji, I L R 16 Calc 739*, *Naperam Surma v. Gaurinath Dutt, I L R 20 Calc 471* *Mahomed Bhaklu v. Queen Empress, I L R 23 Calc 532*, *In the matter of Muffy Lal Ghose I L R 6 Calc 308*, cited and discussed by CHAUDHURI, J. An attorney

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is criminally liable for a false statement in an affidavit made by him in answer to a Rule issued against him under the disciplinary jurisdiction of the Court. *In re An Attorney* (1913)

I L R 41 Cal 448

13 ————— Jurisdiction of High Court and District Court—*District Judge—Criminal Procedure Code (Act V of 1898), ss 195 (1), cl (b) and 476—Revision—Civil Procedure Code (Act V of 1908), s 115* Neither the High Court nor the District Judge has power, under s 476 of the Criminal Procedure Code to direct prosecution for an offence committed before a Provincial Small Cause Court. *Begu Singh v Emperor* I L R 34 Cal 551, referred to. The High Court itself is precluded from granting sanction in such a case under s 195, sub-s (1), cl (b) of the Criminal Procedure Code, as a Provincial Small Cause Court is not subordinate to it within sub (7) cl (c), nor can it interfere under sub (6) with an order of a District Judge revoking a sanction granted by such Small Cause Court. *Hameyyuddin Mondal v Damodar Ghose*, 10 C W N 1026. *Girya Sankar Roy v Binode Sheikb* 5 C L J 222, and *Muthuswami Mudali v Veenu Chetti*, I L R 30 Mad 332, referred to. Where the District Judge revoked a sanction granted by a Subordinate Court to a District Magistrate on the ground that 'a sanction could not be granted to a third party,' and initiated proceedings under s 476 of the Criminal Procedure Code. *Held*, that he acted illegally in the exercise of his jurisdiction, and that the High Court had power to set aside his order under s 115 of the Code of Civil Procedure (Act V of 1908). *Hameyyuddin Mondal v Damodar Ghose*, 10 C W N 1026, distinguished. *In re Ram Prasad Malla* (1909)

I L R 37 Cal 13

14. ————— Jurisdiction—Resistance to attachment of movables on evidence only of the executing peon—Other evidence called for by the Court but not heard when produced, notwithstanding previous summonses on witnesses and adjournments for their appearance—Delay in granting sanction—*Criminal Procedure Code (Act V of 1898), s 195* The Court executing a decree has jurisdiction, if satisfied on the evidence, without cross-examination, solely of the peon, who was alleged to have been resisted in the attachment of movables, that a *prima facie* case had been made out, to sanction the prosecution of the persons so resisting execution under s 183 of the Penal Code notwithstanding the fact that the Court had previously called for evidence from both parties issued summonses on their witnesses, who were produced on the date of the hearing of the application for sanction and adjourned the case several times for their appearance. The High Court deprecated the dilatoriness in disposing of the application by the Court of first instance. *Makhan Lal Saha v Sarojendra Nath Saha*, (1920)

I L R 47 Cal 741

15 ————— Offences committed in the Court of a Deputy Magistrate—Transfer of same from the sub-division—Successor in office—Application for sanction to another Deputy Magistrate subsequently posted to the sub-division—Power of latter to grant sanction—*Criminal Procedure Code (Act V of 1898), s 195* Where there are several Deputy Magistrates at a place, and one of them is transferred, the Deputy Magistrate

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who comes to fill the gap is not the successor in office of the outgoing Magistrate. *Mohesh Chaitra Shah v Emperor*, I L R 35 Cal 457, referred to. Where a proceeding under s 107 of the Code, during the course of which a forged petah was filed 'and evidence given in support thereof was disposed of by H K G, a Deputy Magistrate, who became afterwards the officer next senior to the Sub-divisional Magistrate, and on the transfer of the former, two other Deputy Magistrates became successively the next senior officers and ultimately K L M, a Deputy Magistrate, joined the sub-division as the next senior officer, and an application was made to him for sanction to prosecute the petitioners for offences under ss 471 and 193 of the Penal Code, committed in the Court of H K G. *Held*, that K L M was not the successor in office of H K G and had no power to grant sanction under the circumstances. *Gurish Chandra Ray v Sarat Chandra Singh* (1914) I L R 42 Cal 687

16 ————— Revisional jurisdiction of High Court over Presidency Small Cause Court—*Civil Procedure Code (Act V of 1908) s 115—Criminal Procedure Code (Act V of 1898) s 195—Stage in a judicial proceeding, what is—Oath—'Delay'* A Judge of the Presidency Small Cause Court, Calcutta, had dismissed six applications for sanction to prosecute the plaintiffs for having made false claims. On an application to the High Court under s 115 of the Civil Procedure Code to set aside the orders. *Held*, that under s 195 of the Criminal Procedure Code the High Court is the superior Court to the Presidency Small Cause Court and has power to deal with the order which was made by that Court. *Held* also, that an application for leave to sue is a stage in a judicial proceeding where such leave is necessary to give the Court jurisdiction. *Held* also, that the delay in making the application for sanction to prosecute had been satisfactorily explained, and was not in the circumstances such as to prejudice the plaintiffs. *Burnu Lal v Chattu Gope* (1915)

I L R 43 Cal 597

17 ————— Information to the police reported false—No subsequent application to the Magistrate—Order of Magistrate calling on informant to prove case, and examination of witnesses—Grant of sanction—Necessity of sanction when false charge made to the police but not followed by complaint—Complainant—Power of Magistrate to direct prosecution himself in such case—*Judicial proceeding—Criminal Procedure Code (Act V of 1898), ss 4 (b), 19, (1) (b), 476* No sanction is necessary under s 195 (1) (b) of the Criminal Procedure Code to prosecute an informant under s 211 of the Penal Code when a false charge has been made by him only to the police. *Karim Baksh v King Emperor*, 2 Cr L J 60, *Bhamaraya Venkateswarulu v Moota Baspu* 13 Cr L J 430, *Emperor v Sheikh Ahmad*, 13 Cr L J 578, followed. But sanction is requisite under the section when he has subsequently preferred a complaint to the Magistrate praying for judicial investigation. *Queen Empress v Sham Lal* I L R 14 Cal 707, *Jogendra Nath Mookerjee v Emperor*, I L R 33 Cal 1, *Queen Empress v Sheikh Beari*, I L R 10 Mad 232, followed. When a person who has laid an information before the police, reported to be false, has not

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subsequently applied to the Magistrate for an investigation or has not impugned the correctness of the police report and has not moved for a trial, he has not made a "complaint" within the meaning of s 4 (A) of the Code. An order for prosecution cannot be made under s 476 of the Criminal Procedure Code when the alleged offence under s 211 of the Penal Code has not been committed in Court, but in relation to a police investigation only *Dharmadas Anwar v King Emperor*, 1 C L J 323 *Jadurandan Singh v King Emperor*, 10 C L J 261 followed. The procedure of calling on the informant who is reported by the police to have made a false charge to turn them, to prove his case and the examination of witnesses is not contemplated by the Code and the proceeding is not a judicial one within s 470 of the Code. *Munda Bawa v Nannu Singh*, 4 C W J 351, followed. *TATTELLIAH v EMPEROR* (1916). I L R 43 Cal 152

18. **Referring to false charge.**
Refusal to revoke by superior Court. Application to High Court to set aside refusal and Criminal Procedure Code (Act I of 1898) s 195 (6), maintainable by Judge of High Court, not divided in opinion.—*See* Judge's opinion to proceed under cl 26 Letters Patent—Criminal Procedure Code (Act I of 1898) s 429 and 430 applicability of, to such application.—Application to a superior Court under Criminal Procedure Code (Act I of 1898) s 195 to set aside a sanction given by an inferior Court not an appeal within the Indian Limitation Act (IX of 1908) Art 151, *Held*, by the Full Bench: (i) An order refusing to revoke a sanction granted by a lower Court is one granting sanction, from which an appeal lies to a superior Court under s 195 cl (6) Criminal Procedure Code. *Mukhanna Mudi v Iyer & Co*, 1 I L J 30 Mad 332 followed. (ii) When Judges composing a bench of the High Court are equally divided on opinion on hearing an application under s 195 cl (6) of the Criminal Procedure Code against an order of the lower Court in a sanction matter the procedure to be followed is that laid down in cl 26 of the Letters Patent and not the one in s 429 or 430 of the Criminal Procedure Code; accordingly the opinion of the senior Judge prevails. *PER CURIAM*.—The power conferred upon the High Court by s 195 (6), Criminal Procedure Code, is not a part of the appellate and revisional jurisdiction of the High Court conferred by Chapters 31 and 32 of the Criminal Procedure Code, but it is a special power conferred by s 195 (6) of the Code. *Held*, by the Division Bench (*SUNDARA AYYAR AND SPENCER, JJ.*), that an application to a superior Court under s 195 cl (6), Criminal Procedure Code, to revoke a sanction granted by an inferior Court is not an appeal within the meaning of Art 164 of the Limitation Act and hence is not governed by the rule of 60 days allowed by that Art for criminal appeals. *PER ERROR, J.*, in the Division Bench.—But delay in applying may be a ground for refusing to grant sanction. *DARY v DARY* (1912). I L R 30 Mad 730

19. **False information to the police followed by a complaint to the Magistrate.**—*Complaint investigated by the Magistrate.*—Necessity of sanction to prosecute informant only in respect of the false charge to the police.—Criminal Procedure Code (Act I of 1898) s 195 (1) (b). Where an information to the police is

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followed by a complaint to the Court based on the same allegations and the same charge and such complaint has been investigated by the Court the sanction or complaint of the Court itself is necessary even for a prosecution of the informant under s 211 of the Penal Code in respect of the false charge made to the police. *Tayebuloh v King Emperor* 24 C L J 331, 1 I L J 43 Cal 152, approved. *Isuram Jandav v Mahomed Kamm* 14 C W J 33, discussed. *Jadu Bandan Singh v Emperor*, 1 I P 37 Cal 250, distinguished. *Emperor v Hardwar Lal* 1 I L J 31 All 322 referred to. *LAHAR v ANANDA LAL NEILLER* (1916).

I L R 41 Cal 630

20. **Jurisdiction of High Court.**—*Procedure.*—*Procedure.*—*But in the Presidency Small Cause Court.*—*Sanction made in the course of a judicial proceeding.*—*Sanction refused by Presidency Small Cause Court.*—*Process by single Judge sitting on the Original Side of High Court.*—*Process.*—*Process of the Chief Justice to remit case for retrial by Division Bench of High Court.*—*Civil Procedure Code (Act V of 1908) s 115.*—*Criminal Procedure Code (Act I of 1898) s 195 (5) and (7) (a), 425 and 430.*—*High Court Rules, Appellate Side (Ch II, r 1).* The sanction of a Judge of a High Court in a matter of sanction to prosecute from the Presidency Small Cause Court be invoked only under s 195 (6) of the Criminal Procedure Code. Under that provision the only order which such a Judge is competent to pass is to revoke a sanction given or grant a sanction refused by the subordinate Court. He has no jurisdiction to remand the case to the Small Cause Court for further enquiry. Under the Rules of Court (Cl II, r 1) he would have such jurisdiction if this were a matter under s 115 of the Civil Procedure Code but as it falls within s 195 (6) of the Criminal Procedure Code, it can be decided only by a Judge or Judges to whom it may have been allocated by the Chief Justice. The Judge exercising jurisdiction under s 195 (6) of the Criminal Procedure Code is competent to take additional evidence to enable him to decide whether he should confirm or reverse the order of the Subordinate Court. *TRIBUN LAL v CHATTU GORE* (1916).

I L R 44 Cal 616

21. **"Produced," meaning of.**—*Document called for by a party and brought into Court, and referred to by his pleader and the Court.*—*Antecedent forgery and used before the Sub Judge.*—*Subsequent production of document in Court.*—*Necessity of sanction.*—*Criminal Procedure Code (Act I of 1898) s 195 (1) (c).* Where a document was called for by a party to a proceeding under s 145 of the Criminal Procedure Code, brought into Court and referred to by his pleader in argument and by the Magistrate in his judgement, though he expressly refrained from any opinion, as to its authenticity: *Held*, that the document was "produced." In the proceeding within the meaning of s 195 (1) (c) of the Code. *Guru Charan Shaha v Gurnya Sundari Dassi*, 1 I L R 29 Cal 887, *Akhil Chandra Pe v Queen Empress* 1 I L R 22 Cal 1001, *See Bullok Singh v Ramdhan Bano*, 14 C W J 806 and *In re Gopal Sadashekar*, 9 Bom L R 735, referred to. Where, before complaint made, a document has been produced in a Court by a party to a proceeding before it,

SANCTION FOR PROSECUTION—*contd*

the sanction of such Court is necessary for his prosecution in respect of an antecedent forgery and antecedent user before a Sub Registrar *Ten Shah v Bolahi Shah, 14 C B N 479, Emperor v Bhawan Das, 1 L R 33 All-169 and Pe Parameswaran Sambudri, 1 L R 39 Mad 677, followed Noor Mohamed Cassum v Kaikhoru Manasjee 4 Bom L R 263, disented from NALINI KANTA LAMA v ANUKUL CHANDRA LAMA (1917) 1 L R 44 Calc 1002*

22 ———— Procedure—*Propriety of process under s 500, Penal Code—Discharge—Accusatorial—Penal Code (Act XLV of 1860), ss 211, 500—Criminal Procedure Code (Act V of 1895), s 195* Where an offence though described as an offence under s 500 of the Penal Code, still remains an offence 'punishable' under s 211 Process should not issue under the former section on the application of a person discharged or acquitted when the Court has refused sanction under the latter section *Per RICHARDSON, J*—The care taken to protect complainants from being harassed by prosecutions for instituting false cases is a clear indication that the Legislature never intended that upon refusal of leave to prosecute under s 211 a person who has been discharged or acquitted or allowed to fall back upon s 500 To permit such a course to be taken would render entirely nugatory the salutary provisions of s 195 of the Criminal Procedure Code The question, moreover, does not rest entirely upon inferences in regard to the intention of the Legislature The offence charged in the present case, though it is described as an offence under s 500, is not altered by that description It still remains an offence 'punishable' under s 211 When the Magistrate had refused leave to prosecute under the latter section he ought not to have issued process under s 500 *PRAFULLA KUMAR GHOSH v HARENDRA NATH CHATTERJEE (1916) 1 L R 44 Calc 970*

23 ———— "Court"—"Court of Justice"—*Calcutta Improvement Tribunal, whether a "Court"—Criminal Procedure Code (Act V of 1895), s 195—Calcutta Improvement Act (Beng V of 1911), ss 70, 71 (a), (c) and 77, as amended by the Calcutta Improvement (Appeals) Act (XVIII of 1911)—Evidence Act (I of 1872), s 3* The word "Court" in s 195 of the Criminal Procedure Code has a wider meaning than "Court of Justice" under s 20 of the Penal Code, and includes a tribunal entitled to deal with a particular matter and authorized to receive evidence bearing thereon in order to enable it to arrive at a determination upon the question *Raghobhans Sahay v Kail Singh, 1 I P 37 Calc 872, and Chand Charan Giri v Gadadhar Pradhan, 22 O W N 165, referred to The Tribunal constituted by the Calcutta Improvement Act (Beng V of 1911) as amended by the Calcutta Improvement (Appeals) Act (XVIII of 1911), is a "Court" within the meaning of s 195 of the Criminal Procedure Code *Hare Pandurang v Secretary of State for India, 1 L R 27 Bom 424, distinguished NAYDA LAL GANGULI v BHETRA MOHAN GHOSH (1916) 1 L R 45 Calc. 585**

24. ———— Sanction by Deputy Collector in appraisal proceedings—*Appeal from orders in such proceedings—Jurisdiction—Subordination of such Deputy Collector to the District*

SANCTION FOR PROSECUTION—*contd*

Judge or Commissioner of the Division—Bengal Tenancy Act (VIII of 1885), ss 69 and 70—Criminal Procedure Code (Act V of 1895), s 195 (6), (7) (b) (c) A Collector, or a Deputy Collector exercising the powers of a Collector under ss 69 and 70 of the Bengal Tenancy Act (VIII of 1885), is a "Court" within s 195 of the Criminal Procedure Code *Raghobhans Sahay v Kail Singh, 1 L R 17 Calc 872 followed Abdullah Khan v Emperor, 1 L R 37 Calc 57 referred to Proceedings under s 69 of the Bengal Tenancy Act are civil in nature, and the Court of the Deputy Collector acting thereunder is subordinate to that of the District Judge under s 195 (7) *Per CHITTY, J*—S 195 (7) (c) is intended to apply only where no appeal lies from any decision of a particular Court and not where a particular order is nonappealable Appeals from the Collector under the Bengal Tenancy Act do not ordinarily lie to the Commissioner of the Division In some cases they lie to him and in others to the Civil Court The Collector, in proceedings under ss 69 and 70 of the Act by reason of s 195 (7) (b) of the Criminal Procedure Code, is subordinate to the Court of the District Judge *Per RICHARDSON, J*—Cl (c) includes both a particular case or class of cases in which no appeal lies, and a Court from which no appeal lies in any case *Nilaram Chandra Chakravarty v Akeloy Kumar Banerjee, 21 C B N 948 referred to Per CHITTY, J*—The words "Principal Court of Original Jurisdiction" do not refer to a Court of any particular class but to a Civil Criminal or Revenue Court according to the nature of the case in which the question of sanction arises *Ajudha Prasad v Pam Lal, 1 L R 34 All 197 referred to by RICHARDSON, J CHANDI CHARAN GIRI v GADADHAR PRADHAN (1917)**

25 ———— False suit—application for sanction to prosecute plaintiff for bringing a false suit—*Force—Revision—Delay* A defendant against whom an *ex parte* decree has been passed is not bound to have that decree set aside before applying for sanction to prosecute the plaintiff for bringing a false suit, and such sanction can be given even though the period of limitation for setting aside the *ex parte* decree has expired When an offence against public justice has been committed the offenders are liable to punishment irrespective of the state of affairs in the civil court Ordinarily delay on the part of a private prosecutor in obtaining sanction in respect of offences against public justice is material as bearing upon the question of bona fides but where the Government is in fact the real prosecutor the question of bona fides does not arise *JAGDESHWAR PRASAD v RAJMO MISRA 2 Pat L J 638*

26 ———— Delay in applying for—*Whether is evidence of mala fides when Government is the applicant—Revision* Generally delay by a private person in applying for sanction to prosecute indicates want of bona fides or culpable negligence or laches Where, however, the real applicant for sanction to prosecute for bringing a false suit was the Government, and before the application was made the Criminal Investigation Department of Bihar and Orissa had to make inquiries from the Criminal Investigation Department of the United Provinces, and a reference had also to be made to the Legal Attor-

949. HOW FOR PROSECUTION contd

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28. ----- Expiry of sanction before date of complaint - This of g. 27 of Division 1 and 2 of sanction without any such - Division of failure of justice - Criminal Procedure Code (Art 1 of 1871), s. 337 (3). Section 337 (3) of the Criminal Procedure Code applies equally to the case of an appeal sanction as to one of a trial warrant of it. A conviction of an offence mentioned in a 175 of the Code cannot be reversed or altered on appeal or revision on the ground that the sanction required by the law was not expressed when the prosecution was instituted, unless it is shown that the absence of sanction has in fact occasioned a failure of justice. Where the accused pleads guilty it was further held that there had been no failure of justice in the case. *Raj Chandra Mohandas v. Govd Chandra Marwari* 1 I. L. R. 11 (Cal. 1904) affirmed. *Sanjay Lal v. State of Madras*, 1 I. L. R. 41 (Mad. 1915) approved. *Jayaram Das v. Emperor* 1 I. L. R. 31 (Mad. 1912) affirmed. *Kutub Ali Khan v. Emperor* 29 (1901) 1 I. L. R. 63 (Cal. 1901).

SECTION OF COLLET

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SANCTION OF GOVERNMENT

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On 11, 24 and 25 May 1962, the Court of Appeal in *Wong v. Shewan* (1962) 100 L.R. 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908,

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"Can an 'average' person generally be
 not in the male sex. KENNEDY KENNEDY
 JAMES J. JOHNSON LAYMAN (1917)
 C. C. W. N. 238

APPENDIX

U. S. Supreme Court
1 L. R. 29 Rom. 188
14 C. W. N. 191

APLYDAS

See HINDU LAW--FRIEDMAN
I L. R. 43 Cal. 244
See HINDU LAW--LYNKAITAN, L.
I L. R. 42 Cal. 334

See HINDS L.A.W.—ADDITION
I L. R. 32 MAR. 77

SARANJAM.

See BOMBAY HEREDITARY OFFICES ACT,
1874, s 15 I L R 44 Bom 237

See REVENUE JURISDICTION ACT, s 4,
SUB-S. (a) I L R 34 Bom 232

See SARJAM . I L R. 36 Bom. 639

Grant of royal share of revenue—Resumption of Saranjam—Lands can be still held on payment of assessment—Suit to recover possession of land—Revenue Jurisdiction Act (X of 1876), s 4—Pensions Act (XXIII of 1871) s 4 It is well established that in the case of Saranjam or Jaghar (the terms being convertible) the grant is ordinarily of the royal share of the revenue and not of the soil and that the burden of proving that in any particular case it is a grant of the soil lies upon the party alleging it. *Krishnarao Ganesh v Rangrar*, 4 Bom H C R (A C) 1, *Ramchandra v Venkatarao*, I L R 6 Bom 538, 606, and *Pamkrishnarao v Nanarao*, 5 Bom. L R 333, followed. The right to the possession of the land in the case of the Saranjam grant of the royal share of the land revenue does not form part of the Saranjam and is independent of it. The Government can, therefore, resume what they granted as Saranjam, viz., the royal share of the land revenue, and the right to the occupation of the land subject of course to the payment of the full assessment can and does survive the resumption of the Saranjam. Neither s 4 of the Revenue Jurisdiction Act (X of 1876) nor s 4 of the Pensions Act (XXIII of 1871) bars a suit to recover possession of lands the Saranjam rights in which have been resumed by Government. *GURURAO SHRINIVAS v SECRETARY OF STATE FOR INDIA* (1917) I L R 41 Bom. 408

Inam rights—Miras (permanent tenancy)—Denial of Saranjamdar's title—Attornment to successive Saranjamdars—Estoppel—Claim to hold as Miras tenant—Limited interest—Adverse possession In an ejectment suit brought by an inamdar against persons claiming to hold as miras or permanent tenants, it was conceded that the inam rights in the land in suit appertained to a saranjam holder on political tenure and that the present incumbent of the saranjam was the plaintiff. The defendants resisted the plaintiff's claim to eject them on the ground that the inam rights were merely the right to receive the royal share of the revenue and that the proprietary rights in the soil were, prior to the date of the grant, vested in the grantee of the inam had descended to his heirs independently of the inam and furnished the lease hold or miras rights. *Held*, that the defendants' contention involved the denial of the title to the reversionary rights in the lands in the defendants' occupation of the successive, saranjamdars approved by Government. The defendants had, however, been continuously paying rent for their holding to the successive saranjamdars including the plaintiff. They were thus estopped by attornment, from disputing the plaintiff's title. *Lawder Doss v Babaji Rao*, 3 Bom H C R (A C) 175 and *Doe dem Marlow v Higgins*, 4 Q B 367, referred to. The rights of successive holders of hereditary and impartible estates not governed by the ordinary rules of inheritance but subject to the condition that Government shall approve of the heir may be barred by adverse possession. *Telani Ram Chander Singh v Srimati Modho Kumari*, L R 12 I A 197, referred to. Where

SARANJAM—concl.

in an ejectment suit by an inamdar it was shown that the defendants, for more than twelve years before the suit, openly asserted their claim to hold as permanent miras tenants. *Held*, that the defendants had acquired a title to the limited interest claimed by them and could not be ejected. *TRIDHAR RAMCHANDRA v SURESH GULAM ZILAFI* (1909) I L R 34 Bom. 329

Succession to Saranjam—Title by inheritance—Saranjam, rr 2 and 5 under Act XI of 1852—Suit by previous holder of Saranjam—Subsequent holder filing a suit for the same relief—Res judicata—Civil Procedure Code (Act V of 1908), s 11—Adverse possession against the previous holder—Rights of successive holder barred by limitation—Establishment of right to levy assessment—Indian Limitation Act (IX of 1908), Sch I, Art 130 The plaintiff was a Saranjamdar of an ancestral and hereditary Saranjam village where the lands in suit were situate. The lands were in defendant's possession on tenure in consideration of rendering certain Shetpanadi services. The defendants having no longer rendered any service the plaintiff prayed for possession of the lands or in the alternative for a declaration establishing his right to levy assessment. The defendants contended that the suit was barred by limitation and also by *res judicata* in consequence of a previous decision in a suit (No 458 of 1888) between the plaintiff's brother and the predecessors in title of the defendants for substantially the same reliefs as claimed by the plaintiff. *Held* that the previous decision operated as *res judicata* as against the present plaintiff because he was claiming under the previous holder and was litigating under the same title as the previous holder in 1888. *Held*, further that since the decision in suit of 1888, the defendants and their predecessors in title had been holding adversely without payment of assessment and therefore the claim for assessment was barred by limitation inasmuch as neither special mode of devolution nor an incapacity of alienation would prevent limitation operating against an estate. *Padhwal and Pemchandra Konkar v Anant Rao Bhagwant Deshpande* I L R 9 Bom 193, followed. *Per HEATON, J* The words between parties under whom they or any of them claim litigating under the same title in s 11 of the Civil Procedure Code 1908, are intended to cover, and do cover, a case where the later litigant occupies by succession the same position as the former litigant. The words of the section are not intended to make any distinction between different forms of succession. *MADHAYARAO HANDBARAO v ANANTYABAI* (1916) I L R 40 Bom 606

SARANJAM RULES

S c SARANJAMDAR

I L R. 45 Bom 694

SARANJAMDAR.

Grant of sub inam and Miras rights—Enjoyment of sub inam for statutory period—Sub inam binding on succeeding Saranjamdars—Saranjam, r 5—Indian Limitation Act (IX of 1908), s 28 Art 130 The defendant was the Saranjamdar of the village of Bagn which was descendible by inheritance to the eldest member of his family. An ancestor of his had many years ago, granted a sub inam of two fields in the village to an ancestor of the

SARANJAMDAR—contd.

plaintiff a suit when the plaintiff's family enjoyed the lands rentfree. After the introduction of the survey settlement into the village in 1903, the defendant levied assessment for the lands from the plaintiff. The plaintiff having sued to recover the amount of the assessment so levied from him—*Held* that the grant of a suit inam made by the Saranjamdar was binding on his successors, inasmuch as the Saranjamdar had, on the date of the subgrant absolute interest in the estate. *Das Das v. Ishwardas Jag. vardas* (1821) 15 Bom. 222 applied. *Held* further, that a suit to levy assessment on rent-free lands being a suit for possession of property under s. 23 of the Indian Limitation Act 1908, the effect of the failure to institute such a suit within the time allowed by Art. 139 of the Act was the extinguishment of the right to levy the assessment. *Alkay (Karnal) v. Kally Pershad (Katterjee)* (1857) 3 Cal. 949 followed. **SARANJAM GUYED v. TRIMBAKRAO RANCHANDRAKRAO** (1920)

I. L. R. 43 Bom. 694

SARANJAM.

meaning of—

See **LATYI LAKSH.**

25 C. W. N. 309

SARBARAKARS.

in Orissa—

See **LAND TENURE** I. L. R. 45 I. A. 248

I. L. R. 48 Cal. 378

*status of a holder of tenure holder—In Orissa papers—resumption and settlement of—Effect—Lands reserved to Dalbheras of resumption, tenure in the jagirdars of the military jagirs into which under Native Rulers, the greater part of Kishik Khurda (in Orissa) was parcelled out (styled Dalbheras) and native revenue officers known as Pradhans, Bhulmala, Kutekharans, Kowri Bhagdas, when the jagirs were resumed by the British Government engaged with Government under the denomination of sarbarakars for the collection and payment of the revenue assessed by it. *Held*, on the evidence that although from 1818 onwards the tenancy of Government and of the majority of its officers was to regard the sarbarakars as mere officers holders, they themselves had never before 1831 distinctly acknowledged that this was their position, and on the other hand had asserted their status as tenants and there were circumstances connected with their tenure of the lands which militated against the Government's view of their position as servants and their status under their engagement with Government was something higher than that of servants. That from 1831 to 1850, defendant No. 1, the present sarbarakar and his father before him were regarded and treated as tenants and they have successfully asserted their status and maintained their possession as such. That the defendant No. 1's status is that of a tenure-holder Sarbarakars who were originally Dalbheras jagirdars could not in any case be ejected from lands which were reserved to the Dalbheras at the general resumption of the jagirs. **KARABINDU JAY v. LAKHAYARD DAS** (1913) 18 C. W. N. 74*

SARBARAKARI TENURESee **BENGAL RENT ACT 1865** s. 13.

2 Pat. L. J. 75

SARBARAKARI TENURE—contd.See **LANDLORD AND TENANT**

14 C. W. N. 289

*Tenure holder of mouzas in Khurda in Orissa—Liability of Sarbarakar to dismissal for misconduct—Tenure is attached to dismissal—No revocable or transferable right in office of Sarbarakar. In this case which related to the tenure of a Sarbarakar in Orissa, and to the question whether the first defendant was a tenure holder under the plaintiff, or merely a Sarbarakar. *Held*, on the evidence (reports and other papers in "collections from the estate appendances on the settlement of the Khurda Estate in the district of Puri," Vols. I and II published in 1879 and 1881), that Sarbarakars in Khurda had under the Government no revocable or transferable right in their office of Sarbarakar or in the Sarbarakari jagirs; that they were liable to be dismissed for misconduct; and that on dismissal they lost all right to occupy any Sarbarakari jagirs; and that on the termination of a settlement they were bound to enter into a fresh engagement with the Government if they wished to be continued in the office of Sarbarakar. *Kaddananda Mohi v. Govardhan Mohi* 2 B. I. R. 230 16 W. R. 212, disapproved. *Held* therefore (reversing the decision of the High Court), that the first defendant was not a tenure holder; that he was liable to be dismissed for misconduct from his office of Sarbarakar; that he was rightly dismissed from that office; and that on his dismissal he ceased to be entitled to hold the Sarbarakari lands in mouzah Bhande; and that except as to the Sarbarakari lands in mouzah Panasa basta the plaintiffs were entitled to the decree in ejectment and for possession and to the declaration of title which the Subordinate Judge gave to them. **PARAMANANDA DAS GOWAMI v. ANIPASINDBU POT** (1918) I. L. R. 46 Cal. 378*

SARDESHMUKHI HAQSee **PENSION ACT (XXIII of 1871)** s. 4 AND 6 I. L. R. 45 Bom. 196**SARDRAKHITI.**See **INDIAN PAPER EVIDENCE ACT, 1913,** s. 3 I. L. R. 1 Lah. 567**SARSA WANTA LAND**See **GURJANATH TALVEDARS' ACT (HON ACT VI OF 1933)** s. 31 I. L. R. 35 Bom. 97**SATI.**See **PUNJ CODE, s. 306.** I. L. R. 36 All. 20**SATISFACTION**See **CIVIL PROCEDURE CODE (1882)** s. 237A I. L. R. 38 Bom. 219See **CIVIL PROCEDURE CODE (ACT V OF 1908)** O XXI s. 2

I. L. R. 40 Bom. 333

SATTA.See **CONTRACT ACT 1872**, ss. 20 AND 65 I. L. R. 42 All. 449**SATTAORAHIA MOVEMENT**See **HIGH COURT JURISDICTION OF** I. L. R. 44 Bom. 418

SAYADS.

of Kharkhanda—

See CUSTOM (SUCCESSION)—

I L R 2 Lah. 383

SCANDALOUS MATTER.

See AFFIDAVIT . 14 C. W. N 153

SCHEDULED DISTRICTS ACT (XIV OF 1874).

Whether applicable to South Par-
ganas—

See JURISDICTION I L R. 42 Calc. 116

s 7—R 44 not ultra vires—
Jurisdiction of High Court over conviction and sentences by Mewas Agent R 44 framed by the Government of Bombay under the Scheduled Districts, Act, 1874, is not ultra vires. The High Court of Bombay, may, therefore, take cognizance of any case decided by the Mewas Agent on the petition of a convicted party, and if it thinks fit send for the proceeding and pass a fresh decision. *EMPEROR v NAZAR MAHOMED* (1917)
I L R. 41 Bom. 657

IT 8, 16—

See AGENCY RULES OF GODAVARI DISTRICT . I L R 41 Mad. 325

SCHEME

See RELIGIOUS ENDOWMENT

[I L R 48 Calc. 493

SCHOLARSHIP.

See DEKHEAN AGRICULTURISTS' RELIEF
Act, s 2 I L R 36 Bom 199

SCHOOLMASTER.

Contract of service—
Termination by notice—Reasonable notice, what is in case of schoolmaster—Custom, how proved. One G H W. was appointed a teacher at the Armenian College, Calcutta, for a period of three years, from the 1st March 1912. After the expiry of the period he continued in the employ of the College until July 1916, when he received notice terminating his service as from the 1st August, and in lieu of a month's notice, was paid a month's salary and a certain sum of money for a month's board and lodging. Held, that he was entitled to a reasonable notice and that in such a case, in the absence of misconduct, either three months' notice, or a term's notice would be reasonable notice. *Toll v Kerrich*, 8 Exch. 151, referred to. Held, further, that, on the evidence adduced, no custom had been established by virtue of which the plaintiff's employment could be terminated by a month's notice. Usage is proved by the oral evidence of persons who become cognizant of its existence by reason of their occupation in the particular trade or business and the evidence establishing custom or usage must be clear, convincing and consistent, and to prove an usage in a particular trade it must be shown that the usage is consistent and reasonable and was universally acquiesced in, and that everybody acknowledged it in the trade and knew of it or might know of it, if he took the pains to enquire. *WITTENBACHER v J C. GALSTADT AND OTHERS* (1917) . I L R. 44 Calc. 917

SCIENCE—

Gains of—whether partible property of a joint family—

See HINDU LAW—JOINT FAMILY PROPERTY . I L R. 2 Lah. 40

SCOPE OF AGENCY.

See PRINCIPAL AND AGENT

[I L R. 43 Calc. 511

SCREENING OFFENCE.

See PENAL CODE (ACT XLV OF 1860),
ss 213, 214 I L R. 37 Bom 658

SCRIBE.

attestation by—

See EVIDENCE ACT 1872, s 68

I L R 35 All. 254

1 Pat. L. J 129

See MORTGAGE (MISC) 4 Pat L. J 511

See MORTGAGE BOND

I L R. 46 Calc. 522

See TRANSFER OF PROPERTY ACT 1882,
s 59 I L R. 44 Bom. 405

SEA CUSTOMS ACT (VIII OF 1878).

notifications under—

See CONTRACT ACT (IX OF 1872), s 56
I L R 40 Bom 301

ss 167 (3), 182, 183, 191—Attachment of silver ingots by Police—Inquiry by Customs clerk in absence of plaintiff—Sentence of confiscation and fine passed by the Collector of Customs merely on the report of the clerk—Civil suit by the plaintiff to recover value of silver confiscated and amount of fine levied—Jurisdiction of Civil Court to try the suit. A Sub Inspector of Police, while conducting a search of the plaintiff's house for a criminal offence, found no incriminating articles but came across silver ingots, which he attached and sent over to a clerk in the Customs Department. The clerk suspected that the silver was imported into British India without payment of duty, made an inquiry in plaintiff's absence, and submitted a report to the Collector of Customs. The Collector, without taking any evidence himself and without hearing the plaintiff, passed an order confiscating the silver under the provision of s 182, and fining the plaintiff in a sum of Rs 1,000 under s 167 (3) of the Sea Customs Act, 1878. The plaintiff sued to recover the value of the silver confiscated and the amount of the fine levied, but the trial Court rejected the claim on the ground that it had no jurisdiction to hear the suit, as the Collector's decision was final under the provisions of s 182 of the Act. The plaintiff having appealed—Held, that the jurisdiction of the Civil Court to hear the suit was not ousted, if it appeared that there had been no legal adjudication of the matter by the Collector in accordance with the provisions of the Sea Customs Act, 1878. *GANESH MAHADEV v. THE SECRETARY OF STATE FOR INDIA* (1918)
I L R. 43 Bom 221

SEAMAN.

See MERCHANT SEAMEN ACT (I OF 1839),
s 83, cl 4 I L R. 39 Bom 558

SEARCH.

See CRIMINAL PROCEDURE CODE—

ss. 98—105—

s. 103 . . . I. L. R. 42 All. 67

s. 163 . . . I. L. R. 39 All. 14

formalities of—

See RIOTING . . . I. L. R. 41 Calc. 836

irregularities in—

See Dacoity . . . I. L. R. 41 Calc. 350

Search by Police officers
Power to search the house of an accused for specific documents and things—Resisting such search—Criminal Procedure Code (Act V of 1898), ss. 94, 165—Penal Code (Act XLV of 1860), s. 353 See 94 and 165 of the Criminal Procedure Code extend to accused persons. The latter section authorizes a search of the house of the accused for specific documents and things necessary to the conduct of an investigation into an offence. *Malomed Jackrab & Co v Ahmed Malomed*, 1 L. R. 15 Calc. 109, followed. *Nizam of Hyderabad v. Jacob*, 1 L. R. 19 Calc. 82, referred to. *Bayrangji Gope v. Emperor*, 1 L. R. 33 Calc. 304, and *Frankhang v. King Emperor*, 16 C. W. N. 1078, commented on and explained. *Jahwar Chandra Ghoshal v. Emperor*, 12 C. W. N. 1016, distinguished. Where information was laid at the thana of criminal breach of trust by a servant, of a particular sum of money and he was arrested, and thereafter the sub-inspector of Police proceeded with the informant and searched a house in the joint possession of the suspect and his brothers, whereupon they and others resisted the search and assaulted the sub-inspector and confined and assaulted the informant; *Held*, that the search was lawful under s. 165 of the Criminal Procedure Code, and that the conviction therefor must be upheld. *Biswar Mishra v. Emperor* (1913).

I. L. R. 41 Calc. 261

SEARCH FOR ARMS.

See TREASPASS . . . I. L. R. 39 Calc. 853

Right of Magistrate
to search for arms—Arms Act (XI of 1878), s. 25
Judicial functions—Trespass—Criminal Procedure Code (Act V of 1898), ss. 36, 96, 105—Act XVIII of 1850 In a suit for trespass against the District Magistrate, instituted by one of the zamindars whose cutcherry had been searched and no arms of any kind found; *Held* (reversing the decision of the first Court and of the majority of the Appellate Court, and upholding the decision of BERRY, J.), that the search was warranted by the Code of Criminal Procedure (Act V of 1898). A serious offence had been committed against the public tranquillity into which it was the duty of the District Magistrate to enquire and by virtue of his superior rank he was, at Jamalpore, the proper person to conduct the enquiry. By s. 36 Sch. III, and s. 96 of the Code, the power of issuing a search warrant was among his "ordinary powers," and therefore under s. 105 he had power to direct a search to be made in his presence if he thought it advisable to do so. That being so, it was unnecessary to decide on the other defences set up but, *semble* (agreeing with the majority of the Court of Appeal), that the District Magistrate not having complied with the preliminary condition prescribed by s. 25 of the Arms

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Act (XI of 1878) could not defend his action under that statute. Also (agreeing with BERRY, J.), that the District Magistrate in directing a general search of the plaintiff's cutcherry in view of an enquiry under the Criminal Procedure Code, was acting in the discharge of his judicial functions and had it been necessary might have appealed for protection to Act XVIII of 1850. *CLARKE v. BRAJENDRA KISHORE ROY CHOWDHURY* (1912). . . . I. L. R. 39 Calc. 953

SEARCH FOR EXPLOSIVES.

See MAGISTRATE . . . I. L. R. 39 Calc. 119

SEARCH WARRANT.

See MAGISTRATE, JURISDICTION OF

I. L. R. 39 Calc. 403

See PENAL CODE ACT (XLV of 1860),

ss. 332, 323 . . . I. L. R. 37 All. 353

See PUBLIC GAMBLING ACT (III of 1867),

s. 5 . . . I. L. R. 34 All. 597

See UNITED PROVINCES EXCISE ACT (IV of 1910)—

s. 60 . . . I. L. R. 35 All. 575

s. 63 . . . I. L. R. 25 All. 358

Endorsement of warrant by officer to whom issued—

See PUBLIC GAMBLING ACT 1867, ss. 3, 4, 6, 10 AND 11 . . . I. L. R. 42 All. 385

Issue of—

See CRIMINAL PROCEDURE CODE, ss. 96, 98 . . . 22 C. W. N. 716

Search warrant for production of a person confined—Form of warrant—Use of warrant prescribed in Form 1111, Sch. V—Legality of warrant—Criminal Procedure Code (Act V of 1898), s. 100 It is immaterial what form is used for a search warrant under s. 100 of the Criminal Procedure Code, provided that the substance of it complies with the requirements of the section. A search warrant intended to be issued under s. 100 of the Criminal Procedure Code, and drawn up in accordance with Form VIII, Sch. V, relating to search warrants under s. 90, but with alterations adapted to meet the requirements of the former section, is legal. *Guramiah v. King Emperor*, 16 C. W. N. 336, approved. *Bisw Halder v. Emperor*, 11 C. W. N. 836, distinguished. *LEGAL REVENUE OFFICER v. MOZAM MOLLA* (1918). . . . I. L. R. 45 Calc. 905

Power of Magistrate to issue same—Condition of jurisdiction—Pendency of enquiry trial or other proceeding—Existence of materials on which he can form an independent opinion as to the necessity of granting it—Opinion of police officer as to such necessity unimportant—Criminal Procedure Code (Act V of 1898), s. 96 (1) A Magistrate must, under s. 96 (1), paragraph (3), of the Criminal Procedure Code, apply his mind to the question whether the purposes of any enquiry, trial or other proceeding under the Code will be served by a general search, and unless there are materials before him, connecting the person against whom the warrant is applied for with the offences alleged, upon which he can come to an independent decision on the point, he has no power to issue a search warrant. He cannot grant such warrant simply because a

SEARCH WARRANT—*conclld.*

police officer informs him that it is necessary and asks him to do so *Per CHAUDHURI J* A Magistrate has no power to issue a search warrant under paragraph (3) when there is no enquiry trial or other proceeding under the Code pending before him, but there is only some investigation into alleged offences being made by the police *Clarke v. Brojendra Kishore Poy Choudhury, I. L. R. 39 Calc 953, distinguished T R TRATT, v EMPEROR (1920)* . I. L. R. 47 Calc. 537

Purposes of enquiry trial or other proceeding—Legality of warrant for production of infringing books, plates, letters and orders relating thereto, to be dealt with under s 10 of the Copyright Act—Order staying execution of warrant on the passing of a bond for the production of infringing books, etc., in Court—Legality of such order—Criminal Procedure Code (Act V of 1898), s 96—Indian Copyright Act (III of 1914), ss 7, 10 The Magistrate has power, under s 96 of the Criminal Procedure Code, to issue a search warrant for the production of copies of the infringing books, proofs, plates printed, and set up matters, together with letters and orders with reference to the book, for the purpose of making an order under s 10 of the Indian Copyright Act (III of 1914) Where the person against whom such search warrant was issued prays for the stay thereof, and offers and undertaking not to sell copies of the infringing books but to produce them before the Court whenever required the Magistrate has jurisdiction to stay execution of the warrant conditionally on the execution of a bond to produce the copies in Court *Purna Chandra Bando padhya v Sasi Bhawan Mullick, 2 C W 322, distinguished KISHORI MOHAN BAGCHI v. HARI DAS BYRACK (1919)* . I. L. R. 47 Calc. 164

SEARCH WITHOUT WARRANT—

Power of the police to search the house of an absconding offender generally for stolen property on information of dacoity against him—Legality of Search—Criminal Procedure Code (Act V of 1898), ss 21 and 165—Rioting—Common object to resist such search—Right of private defence—Penal Code (Act XLV of 1860) ss 99, 147, 323, 353 S 165 of the Criminal Procedure Code does not authorize a general search for stolen property in the house of the absconding offender, against whom an information has been laid of having committed a dacoity It refers only to specific documents or things which may be the subject of a summons or order under s 94 of the Code, and the latter does not extend to stolen articles or any incriminating document or thing in the possession of the accused *Jahwar Chandra Ghosal v Emperor, 12 C W 3 1016*, referred to Where a Sub Inspector, on receiving information of the commission of a dacoity, searched the house of one of the alleged offenders accompanied by the complainant and the village officers, but without a search warrant, whereupon they were beaten by the petitioners who were charged with, and convicted of, rioting, with the common object of resisting the search, assault and causing hurt, under ss 147, 323 and 353 of the Penal Code — *Held*, that the search was illegal, and that, the common object having failed, the conviction under ss 147 was bad *BAJRANGI GOPAL EMPEROR (1910)* . I. L. R. 38 Calc 304

SEAWORTHINESS.

See BILL OF LADING
I. L. R. 38 Mad. 941

SEBAIL.

See BUSTEE LAND I. L. R. 41 Calc. 104
See LIMITATION L. R. 41 I. A. 267

See SHERAIT

— indemnity to estate of—

See PARTIES I. L. R. 37 Calc. 229

SECOND APPEAL.

See APPEAL . I. L. R. 38 Calc 391

See CIVIL PROCEDURE CODE 1882, ss 584, 585 I. L. R. 34 All. 579

See CIVIL PROCEDURE CODE 1908—

ss 14, 151, O XLVII, r 1

I. L. R. 32 All 71

ss 100 to 104 and O XLII.

s 110, O XLV, r 5

I. L. R. 42 Bom 609

O XLI RE 1 AND 3,

I. L. R. 43 All. 660

O XLI, R 23 AND 25

4 Pat. L J 645

See COURT FEES ACT 1870, s 17

I. L. R. 36 Bom. 628

See CUSTOM OR USAGE

I. L. R. 45 Calc. 285

See EASEMENT I. L. R. I Lah 206

See ESTOPPEL L. R. 44 I A 213

See EVIDENCE ACT 1872—

s 32 3 Pat L J 306

s 32 (5) I. L. R. 39 All. 426

See EXECUTION OF DECREE

I. L. R. 40 Calc. 45

See HOMESTEAD LAND

I. L. R. 42 Calc 638

See JUDGMENT 2 Pat. L. J 8

See JURISDICTION L. R. 46 I A 140

See LIMITATION ACT (IX OF 1908), s 5.

I. L. R. 33 Bom. 613

See MADRAS ESTATES LAND ACT (I OF 1908), s 192 I. L. R. 38 Mad. 655

See ORISSA TENANCY ACT 1913, s 31

3 Pat L J 351

See POSSESSORY SUIT

I. L. R. 45 Calc 519

See PRE EMPTION I. L. R. 37 All 524

See PROVINCIAL SMALL CAUSE COURTS

ACT (IX OF 1897), SCH II, ARTS 3

AND 23 I. L. R. 37 Mad. 533, 538

APT 8 . I. L. R. 41 Bom. 367

ART 13 . I. L. R. 39 Bom. 131

See REWARD I. L. R. 43 Calc. 1104

I. L. R. 42 Calc. 888

See RENT . I. L. R. 38 Calc. 278

See REVIEW . I. L. R. 41 Calc. 809

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SECOND APPEAL—contd

See SPECIAL APPEAL

See TRANSFER OF PROPERTY ACT (IV of 1882) s. 41 I L R 38 All 308

See VATAN I L R 37 Bom. 700

— construction of document—

See CONTRACT I L R. 42 Bom 344

— from an order passed under O XXI,

r 89—

See CIVIL PROCEDURE CODE 1908, ss 47 AND 104 I L R 44 Bom 472

— from order of Lower Appellate Court that appeal has abated—

See CIVIL PROCEDURE CODE 1908, O 1, r. 8 I L R 1 Lah 582

— interference by High Court on—

See EVIDENCE ACT (I of 1872) s 58 I L R 42 Bom. 352

— Misconstruction of document where confer a right of—

See CONSTRUCTION OF DOCUMENT 5 Pat L J 251

— In a rent suit as to the unit of measurement—If can be assailed in—

See RENT 25 C W N 328

— New point of law—Whether can be raised—

See CIVIL PROCEDURE CODE. O XVII, R. 3

6 Pat. L. J 650

— on point of custom—certificate granted after time—limitation—

See PUNJAB COURTS ACT, 1914 s 41 I L R 1 Lah 245

— on point of onus probandi in custom case—

See PUNJAB COURTS ACT, 1918, s 41 I L R 2 Lah 167

— Restoration of appeal—Whether sufficiency of cause for, can be reopened—

6 Pat L J. 625

— where lower Appellate Court has placed onus on the wrong party—

See NEGOTIABLE INSTRUMENTS ACT 1881, s. 118 I L R 1 Lah 429

1. — Second Appeal of *it lies from an order passed under O XXI, r 89 and 92 of the Code of Civil Procedure, 1908—Civil Procedure Code (Act V of 1908) ss 2 49 104 (2). O XXI r 89 92, O XLIII, r 1 (5)—Civil Procedure Code (Act XIV of 1932) ss 310A 312 and 558 No second appeal lies from an order passed in first appeal from an order under r 89 or 92 of O XXI of the Code of Civil Procedure 1908 S 104 sub s (2) of the Code of 1908 takes away the right of second appeal where a second appeal could lie in cases under s 310A read with s. 244 of the Code of 1932 ANANDJI SURESH V SUNDARI BISI (1911) I L R 38 Cal 339*

2. — Civil Procedure Code (Act XIV of 1932), s 556—Valuation of suit, determined by plaintiff—Suit for mesne profits, tentative valuation, value if may be increased on appeal

SECOND APPEAL—contd

— Court fees Act (VII of 1930) ss 7, 11—Suits Valuation Act (III of 1937), s 8 The plaintiffs in a suit for mesne profits valued their suit at Rs 300 and prayed that if the amount of mesne profits were found to be greater than Rs 300 they might be awarded a decree for the excess amount upon payment of additional Court fees. At an enquiry held by a Commissioner the plaintiffs put forward a claim to a rate of a rent which if accepted would increase the total claim to above Rs 500. The Commissioner however did not accept that rate and the plaintiff did not take any steps to get the plaint amended nor offer to pay additional Court fee. The Munsif gave a decree for Rs. 223 and the plaintiffs appealed against that decree valuing the appeal at Rs 357 calculating the mesne profits at the rate at which they were claimed before the Commissioner. Held, that for purposes of jurisdiction the suit must be held to have been valued at Rs 300 and that therefore no second appeal lay. *Jyotulla Bhuyan v Chandra Mohan Banerji, I L R 34 Cal 254 s c 11 C W N 1133 distinguished Sri Bollar Bhattacharya v Baburam Chattopadhyay, I L R 11 Cal 169, followed. It was not open to the plaintiffs in their appeal to put a higher value on their suit than in the plaint without an application to amend the plaint and such valuation did not have the effect of increasing the value of the subject matter of the suit. KALI KAMAL MAITRA v FAIZLAL RAHAMAN KHAN CHOWDHURI (1910) 15 C W N 454*

3. — Chota Nagpur Tenancy Act (Beng VI of 1908) ss 87, 224, 264—Civil Procedure Code (Act V of 1908), s 190—Landlord and tenant. No second appeal lies to the High Court from the decision of a Judicial Commissioner passed on appeal against the decision of a Revenue Officer under s 87 of the Chota Nagpur Tenancy Act. *RAGHUBAR SARKI v TROTAP UDOT NATH SARKI DFO (1911)*

I L R 39 Cal 241

4. — Sale application for confirmation of, by auction purchaser against judgment-debtor, under s 312 of the Code—Auction-purchaser is a necessary party in a proceeding under s 311 of the Code—Civil Procedure Code (Act V of 1908) ss 311, 312 No second appeal lies against an order refusing an application by the auction purchaser against the judgment debtor for confirmation of sale, under s 312 of the Code of Civil Procedure, 1908 inasmuch as such a case between the auction purchaser and the judgment debtor cannot be regarded as a proceeding between the parties to the suit or their representatives under s 244 of the Code. The auction purchaser is not a necessary party to an application under s 311 of the Code. *Karamat Khan v Mir Ali Ahmed Ali W N 2 (1909) 191, not followed. Ali Cusker Khan v Esmadhar I L R 15 All 407 distinguished. SURENDRA MONI DFO v AMAYEN CHANDRA CHATTERJI (1912)*

I L R 39 Cal 637

5. — Land Acquisition Act (I of 1924) s 54—Bombay Civil Courts Act (XIV of 1932) s 16—Civil Procedure Code (Act V of 1908) s 56 (1)—Reference to Assistant Judge—Award not exceeding Rs 6000—Appeal to the District Judge—Second appeal to the High Court not maintainable. A reference having been made in accordance with the provisions of the Bombay

SECOND APPEAL—contd.

Civil Courts Act (XIV of 1869) to the Assistant Judge, he tried the reference and made an award under the Land Acquisition Act (I of 1894) which did not exceed Rs 5,000. An appeal was presented against the said award to the District Judge and he having decided the appeal, a second appeal was preferred to the High Court. *Held*, that under s. 16 of the Bombay Civil Courts Act (XIV of 1869) the Court authorized to hear appeals from the Assistant Judge's Court where the value of the subject matter was less than Rs 5,000, was the District Court and not the High Court and no second appeal being expressly given by the Act, the (second) appeal to the High Court was not maintainable. **ANVEDHAI HANIDHOY v WAMAN DHOTDU (1913) 1 L. R. 33 Bom 337**

6. ——— *Boundary dispute—Thak map and Government chittas, which to be preferred—Chittas assumed to be public documents and therefore preferred—Error of law affecting weight to be attached to evidence—Remand* Where the lower Appellate Court in determining a question of boundaries preferred certain Government Chittas of the year 1844 to the Thak map, on the assumption, made without enquiry, that the chittas were public documents. *Held*, that if they were private documents, it was impossible for the High Court to say to what extent the lower Appellate Court was influenced by the idea that the chittas were public documents and the case should be remanded for a finding as to whether the chittas were public or private documents. That but for this, both the Thak and the chittas being evidence, it was for the lower Appellate Court to attach such value as it thought proper to each of them and the High Court in second appeal would not go into the weight to be attached to each. **NAKUDRA KISHORE ROY v RAHIMA BANTU (1915) 19 C. W. N. 1015**

7. ——— *Second appeal, if lies in suit for rent other than house rent not exceeding Rs. 500 in value* In suits for rent (other than house rent) although the value thereof does not exceed Rs 500 a second appeal lies to the High Court. **BAHODRA MODALI v NABIN CHAND BORA (1914) 19 C. W. N. 1030**

8. ——— *Order of Settlement Officer settling rent, whether open to second appeal—Bengal Tenancy Act (VIII of 1855), ss 105 & 106, 109A—Excess area. Per CURRIE* When in a proceeding under s. 105 of the Bengal Tenancy Act the Settlement Officer is asked to increase the rent under sub s. (4) in accordance with the rules laid down in s. 52, and the claim is refused on appeal to the Special Judge, on the ground that the land of the tenant is not proved to be in excess of the area for which rent has been previously paid a second appeal is not barred by s. 109A of that Act. **RAMESWAR SINGH v BHOONESWAR JHA, 1 C. L. J. 133, and Grant v Ram Kelka Bhagat, 11 C. L. J. 110, considered. Per MOOKERJEE, J.** If in any proceeding under s. 105 questions under s. 105A have been investigated and determined, the order of the Settlement Officer, though in form an order which settles a fair and equitable rent does in substance, embody a decision of questions within the scope of s. 105A, and consequently of s. 109. Such a decision is not one merely settling a rent within the meaning of s. 105A and is consequently liable to be challenged by way of second

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appeal to the High Court. **JANAKA SUNDARI CHOWDHURANI v ANUDI SARKAR (1916)**

I. L. R. 43 Calc. 603

9. ——— *Finding of fact—Benami transaction—Suit by husband on mortgage in name of wife—Wife impleaded as defendant—Presumption* *Held*, (i) that the question whether a person who sues on a mortgage, not being the mortgagee named in the document is or is not the true owner of the mortgage is not a question of fact, and (ii) that where a person so suing impleaded the nominal mortgagee (who was his wife) as a defendant and no objection was taken by her, there was a reasonable inference that the plaintiff's statement that he was true owner of the mortgage sued on was as between himself and his wife, correct. **DEJAI v SHIAM LAL (1915) 1 L. R. 38 All. 122**

10. ——— *Civil Procedure Code (Act V of 1908), s. 100—Question whether custom exists if of fact or law* While the question whether a given state of facts establishes a binding custom or usage is a question of law, the question whether such a state of facts has been proved by the evidence is a question of fact. **KAILASH CHANDRA DATTA v PADMAKISHORE ROY (1917) 21 C. W. N. 972**

11. ——— *High Court, if can see whether case decided by lower Court on surmise and conjecture* It is open to the High Court in second appeal to see whether the lower Appellate Court has as alleged, decided the case not on evidence but on surmise and conjecture. **DHRUPADA CHANDRA KOLEY v HARI NATH SINGH (1918) 22 C. W. N. 826**

12. ——— *New point taken in second appeal if to be allowed—New point of law involving questions of fact if can be taken for the first time in second appeal—Bengal Tenancy Act (VIII of 1855) s. 29 if can be applied in second appeal where there is no finding by the lower Courts as to whether the tenant is an occupancy raiyat.* Plaintiff sued for rent at Rs. 48 per year on the basis of a *labdilyat*, according to the terms of which a remission of Rs. 15 per year was to be allowed till the expiry of the lease and after which plaintiff would be entitled to realise at the full rate of Rs. 48. The suit was brought for rents of years after the expiry of the lease and defendant pleaded that the plaintiff had waived his right to realise at Rs. 48, by continuing to realise at the old rate even after expiry of the lease. On second appeal to the High Court a new point was taken that the lease was a mere device to evade the provisions of s. 29 of the Bengal Tenancy Act. *Held*, that it was not right in second appeal, to allow a point to be taken which was not taken in either of the lower Courts and which involve two questions of fact. First, it had to be shown that the defendant was an occupancy raiyat, and even if that were shown, it would further have to be proved that the contract was a mere device to evade the provisions of the statute. **JADAV CHANDRA MOULIK v MANIK SARKAR (1917) 22 C. W. N. 156**

13. ——— *Pleadings of both parties found false—Different facts found by lower Appellate Court on evidence—second appeal, High Court, if should proceed on pleadings* Where the lower Appellate Court found the cases set up

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by both parties to be false. *Held*, on second appeal, that the High Court should proceed not on the pleadings but on the facts found. **RAM NABESH OJHA v. GOUTI SHANKAR (1917)**

22 C. W. N. 149

14. — *Remand*—*whether court will remand in second appeal for admission of Record of Rights which was not in existence at the time of trial.* The court will not remand a case for a fresh hearing in order that a Record of Rights, which was published after the decision of the first Court, might be taken into consideration. **INITIAL HUSSAIN KHAN v. BEYVALI NONTA** . . . 2 Pat. L. J. 584

15. — *"Decree"*—*Execution of decree—order setting aside sale on ground of fraud whether second appeal lies from—Code of Civil Procedure (Act V of 1908), ss. 2, 47, O XXI, r. 90 and O XLIII.* It is not open to a party to impeach a sale under a 47 of the Code of Civil Procedure, 1908, on the ground of fraud in conducting the sale. If a Court, professing to act under s. 47, sets aside a sale on the objection of the judgment-debtor, the order setting aside the sale is not a decree. O XLIII provides for an appeal from an order setting aside a sale on the ground of irregularity or fraud in publishing or conducting the sale, but no second appeal lies from such an order. O XXI, r. 90, covers a case of fraud committed after the publication of the sale proclamation. Where the decree holder agreed not to hold the sale if payment was made within a certain time, and he then fraudulently proceeded to sell the property in contravention of this arrangement. *Held*, that this amounted to fraud in the matter of the conduct of the sale. **SHEIKH MAULI BUX v. RAQIB BAR GANJHU** . . . 3 Pat. L. J. 645

16. — *Findings* on facts of lower Appellate Court should be clear, for the High Court in second appeal cannot go behind them. **HANIPADA MUKHERJEE v. RADHA BOLLAV PAL (1919)** . . . 23 C. W. N. 1018

17. — *Filed orally* as a revision and allowed by admitting Judge to be converted into an appeal on deposit of Court fees—*whether the order is open to objection at the hearing—Limitation—date on which appeal must be filed to have been present—sufficient cause for extending period—Indian Limitation Act, IX of 1908, s. 5* Above was decided by the Lower Appellate Court on the 3rd of March 1915 and an application for revision was filed in the Chief Court on the 4th of June 1915 i.e., within ninety days. When it was pointed out to counsel who filed the revision that an appeal lay he merely stated that he had filed the revision instead of an appeal because he relied mostly on facts and not on law. The application coming on for preliminary hearing before a Judge in chambers he held that no revision lay as the defendant could file a second appeal and directed notice to issue to the opposite party. After hearing respondent's counsel the Judge, by his order, dated the 7th of February 1916, allowed the petition for revision to be treated as a second appeal subject to the payment of the necessary Court fee within one week. The Court fee was accordingly paid on the 11th of February 1916. The appeal coming on for hearing before a Division Bench it was contended on behalf of the respondent that it was time-barred. *Held*,

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that the appeal was one which under the rules of the Court had to be heard by a Division Bench, and that the order of the single Judge who admitted it was subject to all just exceptions and to anything which might be urged at the hearing. The appeal could not be considered to have been presented till the date on which the memorandum of appeal was properly stamped, and as there was no sufficient cause for extending the time under s. 5 of the Limitation Act the appeal was barred by time. **Ram Takal Singh v. Dubri Pasi (I L. R. 23 All 319)** and **Reval Singh v. Shadi (95 P. R 1917)**, followed. *Per* SCOTT SMITH J. "It was argued here that the Judge in Chambers who allowed the petition for revision to be treated as an appeal in reality extended the time for payment of the Court fee within the meaning of s. 149, Civil Procedure Code. The appeal, however, was one which under the rules of the Court has to be heard by a Division Bench and we are of opinion that the Judge who admitted it did not intend to decide any question of limitation. He could not admit the appeal at all until it was properly stamped and his order of admission was of course subject to all just exceptions and to anything which might be urged at the hearing." **UMED ALI v. MUNICIPAL COMMITTEE, JHANG-MAGHIANA** . . . I. L. R. 2 Lah. 1.

18. — *Power of Judicial Commissioner on second appeal to interfere with concurrent findings of fact of the lower Courts—Omission to decide real question in case or frame issue on it—Wrong decision on evidence—Civil Procedure Code (Act V of 1908), s. 100* In this case the Judicial Commissioner in a second appeal set aside the concurrent findings of fact of the Courts below in favour of the appellants, on the grounds that the real question in the case had not been considered, nor had an issue been framed on it, and that those Courts had wrongly decided that on the evidence there was fraud on the part of the respondent. The Judicial Commissioner found that there was no evidence to support the finding of fraud, and that the real question in the case should, on the evidence, have been found in favour of the respondent, and made a decree in his favour. *Held*, that under the circumstances of the case, the Judicial Commissioner had on the terms of s. 100 of the Civil Procedure Code, 1908, power to act as he had done, and to decide what was the real question in the case, notwithstanding that an issue had not been framed on it. **DANTRA v. ABDEL SAMAD (1919)**.

I L. R. 47 Cal. 107

19. — *Court sale*—*Application to recover deficiency of price from a defaulting purchaser—Civil Procedure Code (Act V of 1908), O XXI, r. 71—Claim for rupees less than five hundred—Application must be treated as one made in execution of a Small Cause Court decree—No Second Appeal lies* The plaintiff decree holder applied under O XXI, r. 71, Civil Procedure Code, 1908, to recover deficiency of price from a defaulting purchaser. The claim was made for rupees three hundred and sixty. Both the lower Courts disallowed plaintiff's claim. On appeal to the High Court, a preliminary objection was raised that no second appeal lay. *Held*, upholding the objection, that the application made by the plaintiff must be treated as one made in execution of a Small Cause Court decree

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and there was no second appeal from such an application. *RAJACHARYA v CHEMANNA* (1920) I. L. R. 45 Bom. 223

20 ————— *Held*, that a memorandum of second appeal to the High Court must be accompanied by a copy of the judgment of the Court of first instance, and if the latter is not presented till after the period of limitation has expired, the appeal should ordinarily be rejected as barred by limitation. *Dhanpat Mal v Mela Mal* (67 P. R. 1917), followed. *MOLU MAL v SRI RAM* I. L. R. 2 Lah. 227

20 (a) ————— *Misconstruction of a document does not always confer a right of second appeal.* It must be shown that there is a question of the legal effect of a document of title or a contract. *KULDIP NARAYAN RAI v BADWARI RAI* . 5 Pat. L. J. 251

20 (b) ————— *Held*, that where the question of burden of proof involves a question of custom no second appeal is competent without a certificate. *MILKHI v MAST POWNL* I. L. R. 2 Lah. 348

21 ————— *Held*, that although the High Court in second appeal is bound by the findings of the lower Court such findings cannot stand when they have been arrived at on a consideration of the documentary evidence alone and without taking into consideration the oral evidence in the case. *BANKARI RAI v KASHORI MANDAL* . 6 Pat. L. J. 72

22 ————— *Findings of fact when can be challenged in—* In a suit for khas possession the defendants pleaded that they held under a lease. The Court of Appeal below found that the lease required to be proved that there was no document evidencing settlement nor in fact any evidence in settlement at all, and that though there were two rent receipts they were not properly proved. In the Court of first instance the said rent receipts were admitted in evidence without objection by the plaintiffs. Further as a matter of fact there was evidence both oral and documentary about the settlement. *Held* that the rent receipts having been admitted in evidence without objection in the Court of first instance, no objection could be taken in the appellate Court that they were not properly proved. *Held* further that when there was evidence of the settlement in question the finding of fact arrived at by the lower appellate Court on the point could be successfully challenged in second appeal. 25 C. W. N. 891

23 ————— *Finding of fact arrived at on consideration of evidence not admissible.* The Lower Appellate Court in considering the question whether plaintiff had proved that he was a minor when he executed a certain mortgage referred to a judgment which was not admissible in evidence but which he considered could not be wholly ignored in a subsequent case in which plaintiff's age was in issue. *Held*, that a finding of fact arrived at on consideration of evidence which is inadmissible and which proceeds partly on such evidence can be assailed in second appeal. *Musammal Sumitra Kuer v Ram Kuer* (57 Indian cases 561), followed. *BALWANT SINGH v BALDEV SINGH* I. L. R. 2 Lah. 271

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24. ————— *Onus probandi—mortgage—admission by mortgagore before Sub Registrar of receipt of full consideration—onus on them to prove non receipt.* R. and others, the defendants, executed a mortgage in favour of G. R., the plaintiff, for Rs. 4,580, made up of sums due to previous mortgagee, previous debts due on bank account, price of buffaloes and payment of debts due to other persons. Before the Sub Registrar the executors admitted receipt of full consideration, but at mutation they stated that the whole of the consideration had not been received. Mutation was therefore refused and G. R. was forced to bring the present suit for possession as mortgagore. The first Court dismissed the suit holding that plaintiff had failed to prove that consideration had passed and the District Judge on appeal confirmed the dismissal. *Held*, that the question of *onus probandi* arising in this case was a question of law rendering a second appeal competent. *Held also*, that the admission before the Sub Registrar that full consideration had been received was a clear one and the onus to show that consideration had not passed in full was therefore upon the defendants who had made the admission. *Kishan Chand v Sohan Lal* (26 Indian cases 913), followed. *GANGA RAM v RULIA* . I. L. R. 2 Lah. 249

SECOND MARRIAGE

See MAHOMEDAN LAW—BIGAMY
I. L. R. 39 Calc. 409

SECOND MORTGAGE

See MORTGAGE I. L. R. 45 Calc. 702

SECOND MORTGAGEE.

————— *claim of—*
See MORTGAGE I. L. R. 37 Calc. 907
————— *Sale by—*
See MORTGAGE I. L. R. 47 Calc. 682
————— *suit by, for surplus proceeds—*
S & LIMITATION I. L. R. 41 Calc. 654

SECOND PROBATE

————— *duty on—*
See PROBATE I. L. R. 43 Calc. 625

SECOND SALE

See PATNI SALE I. L. R. 47 Calc. 780

SECOND SANCTION

See SANCTION FOR PROSECUTION
I. L. R. 40 Calc. 584

SECOND TRIAL.

See ACTRESS'S ACCUSE
I. L. R. 41 Calc. 1072

SECONDARY EVIDENCE.

See EVIDENCE . I. L. R. 33 ALL. 494
See EVIDENCE ACT
————— *of Parsi marriage—*
See PARSIS MARRIAGE AND DIVORCE ACT
(XV OF 1863) SE. 3 & 8 AND 9 TO 14
I. L. R. 43 Bom. 148

SECRETARY OF STATE FOR INDIA.

See CAUSE OF ACTION

I L. R. 38 Calc. 797

See COSTS I. L. R. 40 Bom. 588

See CROWN

See EAST INDIA COMPANY

—delegation of Authority—

See EXECUTION OF DECREE

I L. R. 38 Calc. 754

—if necessary party—

See PUBLIC DEMANDS RECOVERY ACT

(BENG I OF 1895) 14 C. W. N. 608

—liability of for Costs—

See CRIMINAL PROCEDURE CODE, s 524

5 Pat. L. J. 321

—non-liability of, for acts done in
exercise of Sovereign powers—

See TORT I. L. R. 39 Mad. 351

—mortgage by—

See BOMBAY CITY LAND REVENUE ACT

(BOM II OF 1876), ss 30, 35, 39, 40

I. L. R. 39 Bom. 664

—notice of suit against—

See CIVIL PROCEDURE CODE (ACT V OF

1908), s. 80 I. L. R. 37 Mad. 113

—status of—

See PARLIAMENT, MEMBER OF—

17 C. W. N. 753

—suit against—

See CIVIL PROCEDURE CODE, 1882, s 424

I. L. R. 35 Bom. 362

See JURISDICTION I L. R. 40 Calc. 308

391

See NOTICE I L. R. 40 Calc. 503

See PUNITIVE POLICE

I. L. R. 40 Calc. 452

—suit by—

See BOMBAY DISTRICT MUNICIPALITIES

ACT (BOM III OF 1901), s 42

I. L. R. 40 Bom. 168

See PENALTY I. L. R. 43 Calc. 230

1. ————— Pay and Pension

—Cause of action—Pensions Act (XIII of 1871),

s 4 The plaintiff, who was in the Educational Department drawing a salary of Rs 150 a month, was in 1881 employed by the Government on special duty under an agreement, one of the terms being "from the 1st September, 1881, his pay will be raised during good behaviour to Rs 300 a month." It was assumed that this meant "for the term of his natural life." The special duty was completed, but the plaintiff, in spite of his protests was retained on deputation till 1902, when he was made to revert to the Educational Department and was retired in 1904. Since or from shortly before his retirement he was paid only Rs 150 a month. In an action instituted by the plaintiff against the Secretary of State for a declaration that he was entitled to be paid Rs 300 a month for his natural life, and for arrears on the basis of that figure—*Held*, that the plaintiff must be taken to have treated the who's of his service under Government as one service, and that anything payable to him after the termination of that service was in the nature of a "pension" within the meaning of s 4 of the Pensions Act of

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1871, and hence the suit was not maintainable
SARAT CHANDRA DAS v SECRETARY OF STATE FOR
INDIA (1910) I. L. R. 38 Calc. 378

2. ————— Suit against in
respect of illegal order of District Magistrate under
Assam Labour Emigration Act (VI of 1901), s 91,
and also for alleged defamation in a Government
order—Damage, remoteness of—Liability of defendant
under the Government of India Act, 1858, not liable
here on the ground that the order was made in the
course of employment, nor for acts done by Govern-
ment servants in exercise of statutory powers—Alleged
ratification by the Local Government—Government
order—Absolute privilege Suit by the plaintiff,
who represented the Assam Labour Supply
Association in Ganjam and other districts, against
the Secretary of State for India in Council for
damages in respect of two orders of the District
Magistrate of Ganjam suspending and dismissing
one T. S., the local agent of the Association in
Ganjam and closing his depot to recruiting under
the Assam Labour and Emigration Act (VI of
1901), whereby the plaintiff was prevented from
earning from the members of the Association his
commission of seven rupees for each labourer sent
to Assam, and for an alleged libel on the plaintiff
in an order passed by the Governor in Council on
appeals by the plaintiff and other against the afore-
said orders, in which it was stated that the plaintiff's
own conduct was not altogether above suspicion.
Held, under the Notification issued pursuant to s. 91
of the aforesaid Act as amended relaxing the provi-
sions of the Act in favour of the Association the
District Magistrate had power to dismiss the local
agent but not to suspend him or to close his depot
to recruiting under the Act independently of the
Notification. *Semble* That the damage to the
plaintiff by reason of the loss of his commission
was too remote. The defendant's liability to suit
is the same as that of the East India Company
before the passing of the Government of India Act,
1858; it can only be altered by Act of Parliament,
and is not affected by s. 79, Civil Procedure Code.
Extent of such liability in respect of acts done in
the exercise of sovereign powers not being acts of
State, discussed. It was not sufficient to render
the Company liable that an act of this nature had
been done by its servant in the course of employ-
ment but without previous order or subsequent
ratification. Ratification must have been by the
Company and must now be by the Secretary of
State. Essentials of ratification discussed. In the
present case the defendant was not liable for the
act of the District Magistrate on the further ground
that it was done by him in the exercise of statutory
authority and not as an agent of Government.
Further, as to the alleged defamation, the order of
the Government of Madras, having been published
in the execution of its duty and without exceeding
it, was absolutely privileged, and in any case there
was no evidence of malice. *Bhagjee Dadajee v*
East India Company, 2 Mor Dig 307, *Pennineer*
and Oriental Steam Navigation Company v The
Secretary of State, 5 Bom H C R Appx 1, *Bari*
Bhargy v The Secretary of State for India, I. L. R.
4 Mad 344, *Sitabhojan v The Secretary of State*
for India, I. L. R. 28 Bom 314, referred to. *Vijaya*
Ragava v The Secretary of State for India, I. L. R.
7 Mad 466, questioned. *Ross v SECRETARY OF*
STATE FOR INDIA (1913) I. L. R. 37 Mad. 55

3. ————— *Held*, by the Court
on appeal (affirming the judgment in I. L. R. 37

SECRETARY OF STATE FOR INDIA—*concl*

Mad. 55 above) that (i) as the action of the Collector and District Magistrate who was found to have acted without any malice was not directed against the plaintiff, but only against others and as the injury to the plaintiff if any, was not the direct consequence of the Collector's act but was only very remotely connected with it the plaintiff had no cause of action, and (ii) the Governor in Council was not liable for the publication of the defamation and the same was done on a privileged occasion i.e., in the course of its official duties. *Held*, further by **SADASIVA AYYAR J** (a) Even the Collector and District Magistrate was not personally liable as he only did his duty imposed on him by the statute [viz s 2 Cl (3) of Assam Labour and Emigration Act (VI of 1901)], and (b) as in doing so he was not the agent of the Government and as the act was not done on Government's behalf the Government could not ratify the same nor can Government be liable even if it had ratified the same. *Held*, further, by **BAKEWELL J** that so far as the plaintiff was concerned as he was neither an employer nor his agent he was, according to the Act carrying on an illegal business and his suit was liable to be dismissed also on this ground. **ROSS v THE SECRETARY OF STATE FOR INDIA** (1915) I L R 39 Mad. 761

SECRET SOCIETY

See **JURY, RIGHT OF TRIAL BY**
I L R 37 Cal 467

SECURITIES ACT (XIII OF 1896)

See **GOVERNMENT SECURITIES**

ss 3 sub-s (2), 6 sub-s (1) cl. (f)—
See **RECEIVER** I L R 37 Cal 754

SECURITY

See **CIVIL PROCEDURE CODE (Act V 1908)**
O XXXVIII R 5
I L R 39 Mad 903

See **CRIMINAL PROCEDURE CODE—**

S 123 I L R 35 Bom 271
Ss 39 123 I L R 37 Bom 178
See **EXECUTION** 24 C W N 265
See **FORFEITURE** I L R 47 Cal 190
See **JURY** I L R 44 Cal 98
See **MORTGAGE** I L R 44 Cal 388
See **INDEMNITY ACT (I of 1910)** ss 3 (1) 4 (1),
17, 19 20 AND 22.
I L R 39 Mad 1085

See **PRIVY COUNCIL** 14 C W N 420

See **RECEIVER** I L R 46 Cal 70

See **SURETY** 24 C W N 879

See **STAY OF EXECUTION**
I L R 41 Cal 160

See **SUCCESSION CERTIFICATE ACT (II OF 1883)** ss 7 AND 9
I L R 40 All. 81

demand of, by Magistrate—

See **PRISER ACT (I of 1910)** ss 3 (1) 4 (1)
17, 19 20 AND 22
I L R 39 Mad. 1083

deposit of—

See **CIVIL PROCEDURE CODE (Act V of 1908)** O XXI, R 10 AND R 129
I L R 37 Bom 572

See **LIMITATION ACT 1908** FOR 1 ART
164 15 C W N 102

SECURITY—*concl*

for production of insolvent debtor—
See **FORFEITURE** I L R 39 Cal 104

Investing on unauthorised—

See **PRESIDENCY BANKS ACT (VI OF 1876)** ss 38 37
I L R 39 Mad. 101

See **TRUSTEE** I L R 38 Mad 71

mode of enforcement of—

See **CIVIL PROCEDURE CODE (1908)** s 145
O XXXIV, R 14
I L R 38 All 327

scope of—

See **MORTGAGE** I L R 43 Cal 595

SECURITY FOND—

See **EXECUTION OF DECREE**
I L R 38 Cal 754
I L R 42 All 158

by the Secretary of State for India—

See **EXECUTION OF DECREE**
I L R 38 Cal 754

for decree-holder—

See **PROCEDURE** L R 46 I A. 228

Discretion of Court—

See **CONTRACT ACT (IX OF 1872)** s 74
I L R 45 Bom 1213

SECURITY FOR COSTS

See **CIVIL PROCEDURE CODE (1908)**
ss 109 110 O XXI R 10
I L R 36 All. 325

O XXX R 1 I L R 35 Bom 421
I L R 36 Bom 415

O XXI, R. 10

See **COSTS** I L R 46 Cal 156

See **INSOLVENCY** I L R 43 Cal 243

See **LIMITATION ACT 1908**, ss 6 AND 16
3 Pat L J 132

See **PROCEDURE** I L R 48 Cal 481

Failure to comply with order for—

See **PROCEDURE**
I L R 48 Cal. 481

Infant plaintiff—*Civil*

*Procedure Code (Act V of 1908), Sec I O XXI, r 1—*It is not desirable to run any risk of stopping a suit filed on behalf of an infant, which may be a proper suit to bring merely because of some inability on the part of the next friend to give security for costs. **BNARSHANKAR AMBARNATH KER v MEHJI ASHARAY** (1910)
I L R 35 Bom 339

Appeal in *forma pauperis*—

Civil Procedure Code (Act V of 1908), O XXI, r 10 not applicable to *pauper* appellants.

Security should not be demanded. The plaintiff having obtained a decree in the lower Court, the defendants appealed and applied for leave to appeal in *forma pauperis*. The application was granted. The defendant appellant (lower) resided out of British India and was not possessed of sufficient immovable property in British India. The plaintiff respondent having demanded security for costs incurred in the lower Court and costs of the appeal.

SECURITY FOR COSTS—contd

under O. XLI, r. 10 of the Civil Procedure Code, 1903. *Held* that the general provisions relating to appeals in O. XLI, r. 10, Civil Procedure Code, 1903 did not apply to pauper appeals so as to impose upon the Court the duty of demanding security from a pauper appellant who having been found to be a pauper *ex hypothesi* could not give security. *Wille v. St. John*, (1910), 1 C.A. 701 followed. *KHEMRAJ SHETKISHANADAS v. KISAN LALA SURAJMAL* (1917) 1 L.R. 42 Bom. 5

In an appeal the Lower Appellate Court called upon the appellant to furnish security for costs under O. XLI, r. 10 and the order not being complied with dismissed the appeal. Against this order an appeal was preferred to the High Court. *Held*, it was not appealable either as a decree or an order. *ROMES CHANDRA DAS v. MONINDRA LAL DAS* 28 C.W.N. 1020

SECURITY FOR GOOD BEHAVIOUR

See CRIMINAL PROCEDURE CODE 1898—

Ss 108 AND 109

S 110

Ss 118, 123 1 L.R. 36 All. 495

Ss 119, 200 437

1 L.R. 35 Bom. 401

Ss 119, 417 1 L.R. 38 All. 147

S 123 1 Pat. L.J. 212

S 478 1 L.R. 43 All. 180

See LEXAL CODE, s. 223B

1 L.R. 43 All. 185

1. ——— Joint inquiry against members of a gang—Admissibility of evidence of association with a gang and of acts by the members thereof—Inquiry into the fitness of Sureties—Rejection on the report of a subordinate Magistrate or police officer—Order of Judge on reference contents of—Criminal Procedure Code (Act V of 1898), s. 117 (4) 122, 123 (3) 367, 424—Evidence Act (I of 1872) s. 11. An order under s. 113 (3) of the Criminal Procedure Code should show on the face of it that the Sessions Judge has considered the case of each accused on its own merits and separately from that of the others even if such order need not contain all the details required by a 367 *Jamnat Mullick v. Emperor*, 1 L.R. 35 Cal. 134 referred to. A joint inquiry under s. 117 of the Criminal Procedure Code against the members of a gang formed for the purpose of habitually cheating in concert, is not illegal under sub s. (4), though they were not all concerned together in each of the various acts alleged against them. When the question is whether a person is a habitual cheat the fact that he belonged to an organization formed for the purpose of habitually cheating in concert is not relevant under s. 11 of the Evidence Act, and it is open to the prosecution to prove against each person that the members of the gang do cheat. A surety cannot be called upon to state in writing what influence he has over the accused, nor can a Magistrate refuse to accept him on his failure to do so. *Per EVES J. (COKE, J. contra)*. Under s. 122 of the Criminal Procedure Code the Magistrate passing an order for security should himself hold the inquiry into the fitness of the proposed sureties, and he can not decide the matter merely on the report of a subordinate Magistrate or of a police officer, which

SECURITY FOR COSTS—contd

is not legal evidence. *Queen Empress v. Prithi Lal Singh*, (1898) All. W. N. 154 *Emperor v. Tata* 1 L.R. 23 All. 272, *Emperor v. Balwant*, 1 L.R. 27 All. 293, *Abdul Khan*, 10 C.W.N. 1027, and *Suresh Chandra Basu v. Emperor*, 3 C.L.J. 375, followed. *KALI MIRZA v. EMPEROR* (1899)

1 L.R. 37 Cal. 91

2. ——— Evidence of acts committed several years before the proceedings—Offences involving breach of the peace—Acts of highhandedness not accompanied with actual breaches of the peace—Liability of zemindar for acts of his naib and lathials committed in his interest—Abetment of offences involving a breach of the peace—Criminal Procedure Code (Act V of 1898), s. 110 (e). Evidence of acts falling within the scope of s. 110 of the Criminal Procedure Code but committed several years before the date of the institution of the proceedings thereunder, is admissible. *Wahid Ali Khan v. Emperor*, 11 C.W.N. 789, followed. To bring a case within the section a person must be found to have habitually committed attempted to commit or abetted the commission of, offences of which a breach of the peace is an ingredient. *Arun Samanta v. Emperor*, 1 L.R. 30 Cal. 366, followed. Where the only conviction against a zemindar was one under s. 150 of the Penal Code and there was evidence that he with his lathials (or his servants acting under his orders), took articles of food from bazar vendors, that he assembled lathials to enforce the performance of paise by his own peonies threatened a witness with violence for deposing against him and, with his lathials, uprooted some trees cut the crops of his opponents, molested rival fishermen in boats and attempted to stop a marriage procession, but no breach of the peace was committed or complaint made by the opposite party. *Held*, that such acts did not involve a breach of the peace so as to support a charge of habitually committing offences within cl. (e). But where the zemindar's naib had led several riots in his master's interest and had been convicted in several such cases, and there was evidence that certain lathials were always employed to help his cause. *Held* that he had habitually abetted the commission of offences mentioned in that clause. *Asa Sundar Roy v. Emperor*, 1 L.R. 31 Cal. 419 followed. A Magistrate should be careful to see that s. 110 is not employed by private persons to wreak vengeance under the guise of a Crown prosecution. *KALI PRASAD BOSE v. EMPEROR* (1910) 1 L.R. 39 Cal. 156

3. ——— Ostensible means of subterfuge—Return of absconding suspect home on writ of *habeas corpus*, and residence in his father's house without taking steps to conceal himself to commit an offence—Relevancy of evidence of previous connection with a criminal conspiracy or conviction under the *Cr. P. Code*—*Support by father possessing substance*—Jurisdiction of Magistrate to require a person to give an account of his presence while in another jurisdiction—Criminal Procedure Code (Act V of 1898), s. 109, cl. (a), (b). Cl. (a) of s. 109 of the Criminal Procedure Code should be read in its entirety. The concealment referred to therein must be with a view to committing some offence. Where a person against whom a warrant had been issued, absconded from home for two years, but returned thereto after its withdrawal, and was found living in his father's house, without having taken any particular

SECURITY FOR COSTS—*contd*

steps to conceal himself for the purpose of committing any offence thereafter, the fact of previous connection with a criminal conspiracy or of present correspondence with criminals outside the Magistrate's jurisdiction, is not relevant under s 109 though it might form basis or a substantive proceeding under s 110. A person cannot be called on to furnish security under s 109 in respect of an alleged temporary concealment in his father's house unconnected with any intent to commit an offence nor with any previous concealment outside the Magistrate's jurisdiction. As long as a young man, out of employment is staying in the house of his father, who is a man of substance and able, if necessary, to support him he cannot be held to be without ostensible means of subsistence. Where the account a person gives of his presence within the limits of a Magistrate's jurisdiction is satisfactory, e.g., that he has returned to, and is living in, his father's house in strict seclusion on the withdrawal of a warrant against him, he cannot be called upon by such Magistrate to give an account of his presence in any other jurisdiction. SATISH CHANDRA SARKAR v EMPEROR (1912)

I. L. R. 39 Calc 456

4 ——— Fair Trial—Proceedings taken and enquiry completed in one day—Production of party called upon for security under arrest before the Magistrate in Camp—Right of party to examine his own defence witnesses—Right of opportunity to examine or summon witnesses selected by such party—Criminal Procedure Code (Act V of 1895) ss 110 (d), 112, 117—Practice Under s 117 (2) of the Criminal Procedure Code a person called upon to furnish security for good behaviour must be given time, as in warrant cases to bring his witnesses and have their evidence recorded. Where a person was produced in custody before a Magistrate in camp while on tour when only a simple mukhtaar was available and a proceeding under s 110 (d) was drawn up immediately read and explained to him after which prosecution witnesses were examined and cross examined and he was called upon for his defence and some of the spectators who happened to be present were examined on his behalf, and the enquiry was completed and the order for security passed on the same day. Held that the order was bad, as the person directed to execute a bond had not been given the opportunity of selecting his own witnesses and of producing them or having them summoned, and that he did not, therefore have a fair trial. KERAM UDDIN SARKAR v EMPEROR (1914)

I. L. R. 41 Calc 806

5 ——— Dissemination of matter likely to promote enmity or hatred—between classes—Necessity of intention—Criminal Procedure Code (Act V of 1895), s 108 (b) Penal Code (Act XLV of 1860) s 153 A To justify an order under s 109 (b) of the Criminal Procedure Code, it is sufficient that the words used are likely to promote feelings of enmity or hatred between different classes, and it is not necessary to establish an intention to promote such feelings as it would be on a trial for the offence under s 153A of the Penal Code. Bhammalakda v EMPEROR, 12 Cr. L. J. 215, dissented from Joy Chander Sarkar v EMPEROR, 1 L. J. 38 Calc 211, Jarawanai Pat v Akhaurale, 5 Cr. L. J. 439, 10 P.W.J. 23, referred to. VITAL PRASAD v EMPEROR (1915)

I. L. R. 43 Calc 391

SECURITY FOR COSTS—*contd*

6 ——— Jurisdiction—Person within the local limits of the Magistrate's jurisdiction—Precedence—Commission of acts complained of within such local limits—Jurisdiction of Magistrate—Criminal Procedure Code (Act V of 1895), s 110 S 110 of the Criminal Procedure Code does not require residence within the local limits of the jurisdiction of the Magistrate who institutes proceedings thereunder. Where the habits of the persons called upon to furnish security for good behaviour were practised, and their evil reputation acquired, within the local limits of the jurisdiction of the Presidency Magistrate of the Northern Division of the town of Calcutta, though they might be occasionally residing elsewhere. Held, that the Magistrate was competent to take proceedings against such parties under s 110 of the Code. KETABO v Queen Empress, 1 L. P. 27 Calc 993, distinguished EMPEROR v DUTTA HALWA (1915) I. L. R. 43 Calc 153

7. ——— Previous convictions, proof of—Central Bureau register of thumb impressions, evidentiary value of—Extract from jail register with out proof of identity—Locus parentis—Criminal Procedure Code (Act V of 1895) s 110 Whenever proof of previous convictions is required, whether under s 75 of the Penal Code or Chapter VIII of the Criminal Procedure Code such previous convictions must be proved strictly and in accordance with law, and unless so proved no Court can take them into consideration. A register produced from the Central Bureau purporting to contain the thumb impression of the accused that his descriptive roll with a list of his previous convictions, when there was no evidence how it came to be made and lodged in the Central Bureau nor from what particulars the previous convictions were recorded and certified, was held insufficient proof of such convictions. An extract from the jail register showing previous convictions of a certain person with aliases and certified copies of previous convictions of the same in the absence of evidence of identity with the present accused held insufficient to prove previous convictions of the latter. A person who has served the period of his imprisonment should be given a chance of reformation and should not be proceeded with under s 110 of the Criminal Procedure Code soon after his emergence from jail. Junab Ali v EMPEROR, 1 L. R. 31 Calc 733 referred to. Although general statement of witnesses, e.g., that the accused are all pick pockets and that every one is afraid of them, may not be wholly inadmissible in evidence no Court should act on a body of such evidence without testing the statements of the witnesses and obtaining from them some particulars of the facts in which their general statements are made. The case of each accused should be differentiated in the evidence and the order of the Court. EMPEROR v SHAKIB ABDUL (1916) I. L. R. 43 Calc 1128

8 ——— Menace—"Any person within the local limits"—Person in custody on the date of the initiation of proceedings—"Desperate and dangerous"—Menace to person and property—Association to spread a seditious doctrine—Recruit enemy army and recruitment by members thereof—Connection of Association with an organisation to commit dacoity—Excessive security—Criminal Procedure Code (Act V of 1895) ss 108 110 111—Admissibility of evidence of finding of seditious essays and literature in the possession of one convicted as against the

SECURITY FOR COSTS—*conold*.

*rest, to ascertain the object of the association—Evidence Act (I of 1872) s 10. Cl. (f) of s 110 of the Criminal Procedure Code is not limited to the case of menaces to property, but applies also where the security of the person is jeopardized. *Rajendra Nara Singh v Emperor* 17 O W N 233, explained and distinguished. A man of desperate and dangerous character means one who has a reckless disregard of the safety of the person or the property of his neighbours. *Wahid Ali Khan v Emperor* 11 O W N 739, approved. Where it was found that the petitioners were associated for the purpose of spreading disloyal doctrines among school boys and were conspiring to commit an offence under s. 121A of the Penal Code, that they were engaged in inculcating ideas of armed revolution in the minds of such persons and were collecting recruits and subjecting them to a course of self discipline, and further that they were connected with an organization the object of which was the collection of money by dacoity. *Held* that such facts involved a menace not only to the person but also to the property of the community, and brought the case within s 110, cl. (f) of the Code, though the time for the occurrence of the proposed revolution and dacoities had not been proved. The mere fact that s. 103 of the Code may be applicable to the findings does not necessarily make s. 110 applicable. Where the Sessions Judge used the finding of certain said literature and essays in the possession of one of the petitioners as evidence against the others under s. 10 of the Evidence Act to prove the object of the association and it was contended that he had done so wrongly thereunder as such literature might have been obtained and the essays written before the association was formed. *Held* that the fact of the literature having been bought and the essays written before the formation of the association would not preclude the Court from considering the possession of them as one of the facts in the case independently of s. 10 of the Evidence Act in order to ascertain the object of the association. The words "any person within the local limits" in s 110 of the Code do not imply residence but extend to the case of a person who has left the territorial jurisdiction of the Magistrate, and has been brought back within the same in police custody and is in jail under the Defence of India Act on the date of the institution of the proceedings. S 114 of the Code is not limited to arrest within the jurisdiction. *Held* also, that, under the circumstances the amount of the security was not excessive. *MAHENDRA MOHAN SANYAL v EMPEOR* (1916) . . . I L R 43 Calo 215*

SECURITY TO KEEP THE PEACE

See CRIMINAL PROCEDURE CODE 1893 —

Ss 106 AND 107

S 125 . . . I L R 33 All 624
I L R 35 All 103
I L R 37 Mad. 125
I L R 39 All 468
I L R 41 All 651

Ss 526, 107, 117 118

I L R 32 All 642

See LETTERS PATENT (24 & 25 VICT. C. 104), cl. 15. I L R 39 Mad. 539

SECURITY TO KEEP THE PEACE—*conold*

PROCEEDINGS FOR—

See TRANSFER . I. L. R 41 Calo. 719

1. ———— *Conviction under s 143 of the Penal Code—Absence of finding of acts involving breach of the peace or evil intention of committing the same—Legality of order for security—Criminal Procedure Code (Act V of 1893) s. 106. To bring a case within the terms of s. 106 of the Criminal Procedure Code the Magistrate should expressly find that the acts of the accused involved a breach of the peace or were done with the evident intention of committing the same or at all events the evidence must be so clear that, without an express finding a superior Court is satisfied that such was the case. *Jib Lal Gur v Jagmohan Gur*, I L R 25 Calo 576, followed. A finding that the common object of the unlawful assembly was by means of criminal force or show thereof to take possession of land cultivated by tenant of the rival land lord, and that, but for the direction of the latter to the tenants to retire, which was carried out, there might have been a serious riot, held insufficient to bring the case within the purview of s. 106 of the Code. *ABDUL ALI CHOWDHURY v EMPEOR* (1915) . . . I L R. 43 Calo. 671*

2. ———— *Criminal Procedure Code, s 107—Nature and quantum of evidence necessary before passing order for security. There must be definite evidence in the case of any and every person charged under s. 107 of the Code of Criminal Procedure, that there is danger of a breach of the peace by him. It is clearly insufficient against a collective body of persons to suggest that there are indulging in feelings of hostility towards another body of persons. *Queen-Empress v Abdul Kader* I L R 9 All 453, referred to *EMPEOR v SHANBHU NATH* (1916)*

I L R 38 All. 468

SEDITION

See FORFEITURE I. L. R. 47 Calo. 190

See HIGH COURT I L R. 34 Bom. 378

See PENAL CODE—

Ss. 107 124A. I L R 34 Bom 394

Ss 124A 511 I L R 34 Bom. 378

See PRESS ACT.

See PRINTING PRESSES AND NEWSPAPER ACT

1. ———— *Attempt to publish sedition—Penal Code (Act XLV of 1860) ss 511, 124A Under the Indian Penal Code (Act XLV of 1860) all that is necessary to constitute an attempt to commit an offence is some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish sedition is complete as soon as the accused knowingly sells a copy containing the seditious article. It is none the less an attempt because something external to himself happens which prevents a perusal of the article by the buyers or any other member of the public. In cases of sedition, the question of intention is one of fact. *EMPEOR v GANESHI BALVANT MODAK* (1909) . . . I L R 34 Bom. 378*

2. ———— *Wholesale imputation of bribery against ministerial and police officers and of neglect on the part of Govern-*

SEDITION—*contd.*

ment to inquire into such abuses—*Sedition*—*Attempt to promote enmity between different classes*—*Invecting against Hindus and Mahomedans alike*—*Penal Code (Act XLV of 1860), ss 124A and 153A*—*Convictions at one trial under ss 124A and 153A of the Penal Code—Appeal to the High Court—Criminal Procedure Code (Act V of 1898), ss 35 (3), 408 prov (c)* A single expression that the people of Bengal are trodden under the feet of outsiders used incidentally in a newspaper article, otherwise innocuous, does not constitute the whole seditious. An article imputing whole sale bribery to the ministerial officers of the Law Courts and to the lower officers of the police force, and expressing grave doubts as to whether the Government ever inquire into such abuses so much as it is occupied with investigations of boycott, dacoity and sedition, published when sedition is rife and the minds of people excited, may have the effect of creating a feeling that the Government is not doing its duty, and exceeds the limits of fair comment and is seditious, irrespective of the question of the truth of the allegations. Where the writer of an article inveighed both against the Babas and Moahs as professing brotherhood with the poor Mahomedan riyots and then robbing them, and referred to the alleged conduct of Christian missionaries towards their converts, by way of illustration, without any deliberate attempt to excite one class against another, the conviction under s. 153A of the Penal Code was set aside as bad in law. *Per RICHARDSON J*—If a particular article is charged as being seditious on the ground that it says more than appeals on the face of it, it is the duty of the prosecution to show that it has, in fact, the guilty meaning or intent attributed to it. *See* *Semble*. An appeal lies under ss. 35 (3) and 408, prov (c), directly to the High Court from a conviction and separate sentences under ss. 124A and 153A of the Penal Code passed on the same trial. *JOY CHANDRA SARKAR v EMPEROR (1910)* I. L. R. 38 Calc 214

3. — *Liability of declared printer and publisher of a newspaper for seditious matter appearing therein—Sedition—Absence during the period of the publication of the seditious articles, bond fides not made out—Printing Presses and Newspapers Act (XXV of 1867), s 7* The declared printer and publisher of a newspaper containing seditious articles is responsible for them unless he makes out, on sufficient evidence, that he had in fact nothing to do with them. Where the editor of a newspaper was convicted and sentenced under s. 124 A of the Penal Code, and the accused made his declaration as printer and publisher thereafter, and continued so to act after the editor had resumed work on release from jail and further allowed his name to appear as such, though he was absent from the town of publication of the paper when certain seditious articles appeared therein and engaged during the period in his own private business without taking any interest in the paper, it was held that he had not made out the bond fides of his absence, and was, therefore, legally responsible for the articles. *SHREYAS PRASAD TANIJI v EMPEROR (1910)* I. L. R. 38 Calc 227

4. — *Attack on rival political party—Did not on Government established by law in British India—Limits of legitimate criticism of acts and measures of Government—Construction of letter or article in a newspaper—Admissibility of*

SEDITION—*contd.*

articles in other issues not forming the subject of the charge when the identity of the writer is not proved—*Penal Code (Act XLV of 1860), s 121A—Evidence Act (I of 1872), s 15—Liability of registered printer and publisher—Printing Presses and Newspapers Act (XXV of 1867), s 7* A letter or an article in a newspaper containing an attack on a rival political organization and not on the Government established by law in British India, is not seditious within the meaning of s. 121A of the Penal Code. A man may criticize or comment on any act or measure of the Government legislative or executive, and freely express his opinion on it. He may express the strongest condemnation of such measures, and he may do so severely and even unreasonably, perversely or unfairly provided he does not, whether in his comments on measures or not, hold up the Government itself to hatred and contempt. *Queen-Empress v Bal Gangadhar Tilak, 1 L. R. 22 Bom 112*, approved of. It is not sedition for a writer to describe the Reform Scheme as being monstrous and misbegotten, because it is not founded on democratic principles and not a genuine reform or a genuine initiation of constitutional progress, or to assert that some of the police officials and the judiciary are corrupt, unscrupulous and partial, or to state that if an organisation which he believes to be lawful is suppressed by proclamation it is arbitrary, and that in such case the responsibility will not rest on him for the madness which crushes down open and legal political activity in order to give a desperate and sullen nation into the hands of ferociously enthusiastic and unscrupulous forces, or to inculcate the doctrine of passive resistance or refusal of co-operation with the Government within legal limits, or to describe the British Courts in India as ruinously expensive. In construing a newspaper article its meaning must be taken from the article as a whole and not from isolated passages. Words and expressions such as arbitrary executive must not be looked at as if the writer was a constitutional lawyer instead of a journalist. *Queen-Empress v Bal Gangadhar Tilak, 1 L. R. 22 Bom 112*, approved of. Articles not forming the subject of the charge and appearing in other issues of the same paper, are not admissible to show the intention of the writer in the article complained of in the absence of proof of his identity. The declared printer and publisher of a letter or article in a newspaper is amenable to the law merely on proof that it is calculated to excite feelings of disaffection, hatred or contempt against the Government, but the prosecution must prove either that the writer does in fact excite such feelings or that his intention was to do so. The writer of an article may be guilty of sedition no matter how guardedly he attempts to conceal his real object, but the registered printer and publisher cannot be punished if the concealed object is not established by the evidence on the record. *Queen-Empress v Amba Prasad, 1 L. R. 20 All. 35* referred to *MANOHAR GHOSH v EMPEROR (1910)*.

5. — *Publication, proof of—Necessity of proving posting or printing and publishing under the directions of the accused, when it is shown that the handwriting is his, and that the seditious matter was actually printed and published—Seditious manuscript transmitted by post but intercepted before it reached addressee—Attempt to commit sedition—Penal Code (Act XI of 1860), s 121A* It is not necessary, in order to establish the fact of publi-

SEDITION—*could*

cation of seditious matter transmitted through the post office on a charge under s. 124 A of the Penal Code to prove the actual posting nor that it was printed and published under the directions of the accused. If the seditious writing is shown to be in the handwriting of the accused, and it is further proved that the contents were in fact printed and published, there is sufficient evidence of publication by him. *Regina v. Lovell* 9 C. & P. 462 followed. The sending through the post of a packet containing a manuscript copy of a seditious publication with a covering letter requesting the addressee to circulate it among others when the same was intercepted by another person and never reached the addressee constitutes an attempt within the purview of s. 124 A of the Penal Code. *SURENDRA NARAYAN ADHICARY v. EMPEROR* (1911) I L R 39 Cal. 522

6. ——— Handwriting, proof of—*Admissibility and value of expert opinion not based on comparison made in Court with admitted or proved handwriting of the person alleged—Penal Code (Act XLV of 1860) s. 194 A—Evidence Act (I of 1872) s. 45* On a charge under s. 124 A of the Penal Code the sending of a pamphlet by post addressed to a private individual not by name but by designation as the representative of a large body of students amounts to publication. It is necessary for the admission of the evidence of a handwriting expert under s. 45 of the Evidence Act that the writing with which the comparison is made should be admitted or proved beyond doubt to be that of the person alleged, and that the comparison should be made in open Court in the presence of such person. *Cresswell v. Jackson* 2 F. & P. 24 *Cobbet v. Akin* under 4 F. & P. 499 and *Phooddes Bee v. Govind Chander Roy* 22 W. R. 372 referred to. *SURESH CHANDRA SANYAL v. EMPEROR* (1912) I L R 39 Cal. 606

SEDITIONOUS LIBEL.

See FORFEITURE I L R. 47 Cal. 100

SEIGNIORAGE FEES OR ROYALTY

——— right of Government to levy—

See INAM I L R. 40 Mad. 268

SEIZURE IN CUSTOM HOUSE

See COCAINE IMPORTATION OF I L R. 41 Cal. 545

SELF ACQUIRED PROPERTY

See CUSTOM I L R. 2 Lah. 368

See HINDU LAW—JOINT FAMILY I L R. 32 All. 415

See HINDU LAW—PARTITION I L R. 34 Bom. 106

See HINDU LAW—SELF ACQUISITION I L R. 32 All. 394

——— blending of—

See HINDU LAW—JOINT FAMILY I L R. 45 Cal. 733

——— Meaning of—

See CUSTOM (SUCCESSION) I L R. 1 Lah. 365

SELF-ACQUISITION.

See ALIYASANTANA LAW I L R. 39 Mad. 12

See MALABAR LAW I L R. 38 Mad. 43

SELLER

——— duty of—

See CHUKANI RIGHT I L R. 42 Cal. 23

SENATE AND SYNDICATE

——— respective powers of—

See SPECIFIC RELIEF ACT (I of 1877), s. 45 I L R. 40 Mad. 125

SENTENCE

See CRIMINAL PROCEDURE CODE 1898—

S. 35 3 Pat. L. J. 188

S. 106 (J) I L R. 33 All. 48

S. 235 3 Pat. L. J. 433

Ss. 397 123 I L R. 37 Bom. 178

Ss. 408 415 I L R. 32 All. 510

S. 423 I L R. 39 All. 485

S. 439 I L R. 39 All. 549

See MURDER I L R. 44 Mad. 443

See OFFENCE COMMITTED ON THE HIGH SEAS I L R. 38 Cal. 487

See PENAL CODE (ACT XLV of 1860), s. 69 I L R. 36 All. 395

See PRACTICE I L R. 35 Bom. 418
I L R. 39 Bom. 328

——— Alteration of—whether amounting to enhancement—

See CRIMINAL PROCEDURE CODE, s. 423 I L R. 36 All. 485

——— enhancement of—

See CRIMINAL PROCEDURE CODE s. 419 I L R. 36 All. 378

See RAILWAY PASSENGER I L R. 41 Cal. 279

See CRIMINAL PROCEDURE CODE s. 433 25 C. W. N. 212

——— Exceeding Legal Maximum—

See CRIMINAL LAW I L R. 44 Mad. 297

——— Conviction and sentence for rioting and for being member of unlawful assembly causing grievous hurt val d ty of—Penal Code (Act XLV of 1860) ss. 71 147, 149 and 325—Convict on for rioting and causing grievous hurt val d ty of Where the accused were charged with offences under ss. 147 and 325 read with 149 of the Indian Penal Code and were convicted and sentenced on both charges. Held that the lower appellate Court could not substitute for the convictions under s. 325 read with s. 149 convictions under s. 325, and that the High Court in revision would not convict the accused of this offence in the absence of any opportunity to plead to a charge in respect of it. Held, that it is illegal to record separate convictions for offences under s. 147 and s. 325 read with s. 149 and that therefore separate sentences in respect of the two offences are also illegal. An accused cannot in addition to being

SENTENCE—contd.

convicted under s 147 be also convicted under s. 323 although it be shown that he himself caused grievous hurt to the opposite party **PALIV SINGH v KING EMPEROR** 3 Pat. L. J. 641

SEPARATE CONVICTIONS.

See PENAL CODE ACT (XLV OF 1860)
ss. 71, 147, 323 I. L. R. 39 All. 623

SEPARATE OFFENCES

See CHARGE I. L. R. 41 Calc. 66
See POLICE ACT 1861 s 29
I. L. R. 42 All. 22

SEPARATE SENTENCES.

See CRIMINAL PROCEDURE CODE, 1898,
s. 235 3 Pat. L. J. 433
See CUMULATIVE SENTENCES
I. L. R. 40 Calc. 511
See MISJOINDER I. L. R. 38 Calc. 453

SEPARATE TRIAL

See EVIDENCE I. L. R. 47 Calc. 671

SEPARATION.

See HINDU LAW—JOINT FAMILY
I. L. R. 35 All. 80
I. L. R. 43 Calc. 1031

See HINDU LAW—PARTITION
I. L. R. 39 Mad. 159

— evidence of—

See HINDU LAW—INHERITANCE
I. L. R. 42 Calc. 1179

SERVANTS' QUARTERS.

— acquisition of—

See LAND ACQUISITION
I. L. R. 43 Calc. 665

SERVICE INAM

See HINDU LAW—JOINT FAMILY
I. L. R. 44 Mad. 179

See MADRAS PROPRIETARY ESTATES VII
LAGE SERVICE ACT (II OF 1894), ss
5, 10, CL. (2) I. L. R. 39 Mad. 830

— resumption of—*Resumption not a fresh grant and does not put an end to prior encumbrances—Regulation—VI of 1831 s 2—Emoluments granted for gadaba service not within regulation*
Resumption consists in putting an end to the grant, remitting the services and requiring the grantee to pay the full assessment. It has not the effect of putting an end to prior encumbrances. *Gadaba* or bearer service is of a personal nature and an *inam* for such service does not fall within Regulation VI of 1831, where the grantee of an *inam* for *gadaba* service mortgages the *inam* and the *inam* is afterwards resumed by Government, such resumption does not extinguish the mortgages. **SREEVADU LAKSHMANA v DOKKHA KANNAMMA** (1912) I. L. R. 35 Mad. 704

SERVICE OF NOTICE.

See FOREIGN JUDGMENT
I. L. R. 37 Mad. 163
See NOTICE TO QUIT
I. L. R. 46 Calc. 458

SERVICE OF NOTICE—contd

See TRANSFER OF PROPERTY ACT, 1882,
s. 106

— effect of omission of—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898), ss. 439, 422, 423
I. L. R. 39 Mad. 505

— order of—

See PUBLIC DEMANDS.
I. L. R. 45 Calc. 496

SERVICE OF SUIT.

— on principals outside jurisdiction—

See FOREIGN JUDGMENT
I. L. R. 37 Mad. 163

SERVICE OF SUMMONS.

See CIVIL PROCEDURE CODE O 5.

See SUMMONS I. L. R. 42 Calc. 67

See SUMMONS TO PRODUCE DOCUMENTS
I. L. R. 47 Calc. 647

SERVICE TENURE

See GRANT I. L. R. 39 Bom. 68

See GRANT OF LAND I. L. R. 43 Bom. 37

See MADRAS REGULATION (XXV OF 1802)
s 4 I. L. R. 38 Mad. 620

SERVIENT ESTATE.

See EASEMENT.

— forfeiture of—

See MADRAS IRRIGATION CESS
L. R. 46 I. A. 302

SESSIONS JUDGE.

— powers of—

See CRIMINAL PROCEDURE CODE, s 339
I. L. R. 37 All. 331

— power of, to grant bail—

See BAIL I. L. R. 37 Calc. 439

SESSIONS TRIAL

See CRIMINAL PROCEDURE CODE s 339
I. L. R. 37 All. 331

See CROSS EXAMINATION

I. L. R. 41 Calc. 299
— Refusal to enforce at
tendance of defence witnesses—*Trial if vitiated thereby* Where in a Sessions case the Judge refused to enforce the attendance of some defence witnesses who had been summoned by the Commis-
sionary Magistrate but who did not appear, on the ground that the application should have been made at an earlier date, the High Court in appeal set aside the conviction and sentence holding that the trial was vitiated. **FOZUDDIN v KING EMPEROR** 24 C. W. N. 527

SET BACK.

See BOMBAY MUNICIPAL ACT (BOM ACT
III OF 1889), ss 297, 301
I. L. R. 43 Bom. 161

SET FORWARD

See BOMBAY CITY MUNICIPAL ACT (BOM
ACT III OF 1889), ss 297, 301
I. L. R. 43 Bom. 161

SET-OFF

S e ATTORNEY

I L R 43 Calc 932

See CIVIL PROCEDURE CODE 189^o s. 111

14 C W N 170, "88

See CIVIL PROCEDURE CODE (ACT V OF 1908) s. 70 O XXI n. 72

I L R 42 Bom 621

O VIII n. 6

O XXI n. 18 I L R 38 All 669

O XXI n. 18 19 20.

I L R 33 All 240

O XXI n. 19 I L R 40 Bom 60

See HANDNOTE. 2 Pat L J 451

See INSOLVENCY ACT s. 39

I L R. 33 Mad 53 & 467

decree holder allowed to bid—
Power of Court to allow set-off—

See CIVIL PROCEDURE CODE, 1908 O
XXI n. 72 I L R. 44 Bom. 348

equitable—

See MORTGAGE I L R 40 Mad. 633

1 ——— Equitable set off
when to be entertained—Court may impose terms on
defendants—Barred debt, claim of set-off in respect
of The right of set off exists not only in cases
of mutual debts and credits but also where cross
demands arise out of the same transaction or are
so connected in their nature and circumstances
as to make it inequitable that the plaintiff should
recover and the defendant be driven to a cross
suit. *Clarke v. Rethnaveloo* 2 Mad H C R.
296 followed. As the inquiry into the cross-
demand made in this case by the defendant
would involve great delay the High Court allowed
the inquiry to be made in this suit on certain terms
imposed on the defendants. *RAMDHARI SINGH v.*
PERMARUND SINGH (1913) 19 C W N 1183

2 ——— *Lam ted Company*

—Right of shareholder to appropriate a loan calls
to wards debt due from him to Company—Joint Stock
Company as Friendly Societies and Building Societies
—Discrepancy between as to rule of set-off A share-
holder in a Permanent Benefit Fund with limited
liability who obtained a loan on executing a mort-
gage to the Fund which subsequently went into
liquidation is not entitled to appropriate by way
of set-off his paid up calls towards the mortgage-
debt but is bound to pay the entire mortgage-debt
before he can redeem the property Principle of
set off in Court laid down in English decisions in
the case of Joint Stock Companies and Friendly
Societies as distinct from Building Societies,
applied. *In re Overend, Gurney & Co. Orinell's*
case L R 1 Ch. App. 578 *In re Paragvanu Steam*
Transocean Company L R 8 Ch. App. 251 and *In re*
Harum Mazri & Lamp Company [1903] 1 Ch. 70
followed. *Brown v. Russell*, 8 A C 335 and
Josh v. North British Building Society 11 A C
459 distinctly. THE MYLAPORE PERMANENT
BENEFIT FUND LTD v. ARAGHAWAMY PILLAI
(1916) I L R 40 Mad. 1004

3 ——— A barred decree

cannot on equitable grounds be set off against a
decree under execution *MOHAMMAD ALI v. AMIR*
CHAHAN DAS (191) 21 C W N 1147

SET OFF—contd

4 ——— Suit by liquidators
on joint promissory note—Claim to set off separate
debt—*Ind an Companies Act* (VII of 1913) s. 299—
Provincial Insolvency Act (III of 1907) s. 30—
Mutual deal ngs—Ind an Contract Act (IX of 1872)
s. 43 One of two defendants sued on a joint
promissory note by the liquidators of a bank
sought to set off an amount admittedly due to him
from the bank on his own separate deposit account.
Held that under the *Indian Companies Act* (VII of
1913) s. 299 the provisions of the *Provincial Insol-*
veny Act (III of 1907) s. 30 applied and the deal-
ings in question not being mutual dealings with
the meaning of that term on the amount claimed
could not be set off As to the effect of s. 43 of
the *Indian Contract Act* *Per MacLEOD J*
I do not think that the mere fact that a set
could be set off one of two joint promissors could
alter the fact that the original liability of defen-
dant No. 2 was incurred not on his own account
only but jointly with another and so result in the
nature of the dealings taken as a whole being
altered *GOKHALE v. RAMCHANDRA TRIMBAK*
(1901) I L R 45 Bom 1219

SETTING ASIDE.

S e AWARD I L R 47 Calc 806

See EXPARTE DECREE 14 C W N 182

See LIMITATION ACT 1908 ART 91

See SALE I L R. 48 Calc 811

See SALE FOR ARREARS OF REVENUE.

I L R. 42 Calc "65

——— Court Sale —

See CIVIL PROCEDURE CODE 1908, O
XXI n. 89 to 9"

SETTLEMENT

See ANJAM LAND AND REVENUE REGULATION
s. 6 14 C. W N 990

See HINDU LAW—ADOPTION

I L R 37 Bom. 251

See KHOJA MAHOMEDAN

I L R. 36 Bom 214

S e OCCUPANCY RAIYAT

I L R 46 Calc 160

See STAMP ACT 1909—

S 2 (4) SCH I ART "

I L R 35 Bom 444

S 4

I L R 37 All 153 204

See SURVEY AND SETTLEMENT ACT

I L R 36 Bom 290

——— entry at last Settlement—

See ANJA TENANCY ACT 1901 s. 9

I L R. 43 All. 615

——— of family property—

See REGISTRATION I L R 37 All 105

——— construction of—Settlement of mal-
kans or dastard payable to amdar in 1780—
Allowance as compensation for portions of land
taken by Government for the creation of jagirs—
Liability of jagirdars—Resumpt on by Government
effect of—Suit for ann referred to as mal kans in
settlement and account of 1865—Low neps exercise
in ann set off in 1780 This was a suit in which
the appellant the Maharaja of Darbhanga, claimed

SETTLEMENT—contd

to be paid an annual sum of Rs 482 odd by the Government of India as *dastur* or *malikana*, an allowance by way of compensation to the proprietors for the loss of their proprietary rights in portions of their land taken by the Government for the creation of jagira (or revenue free holdings) and which until resumption by Government was payable by the jagirdars, but for the payment of which on resuming them the Government themselves became liable. The claim was based upon an order of 10th May 1865 by which the appellant alleged that the annual *malikana* payable to him in respect of land called Mauzah Sahu was permanently fixed at Rs. 482 0-3. The defence was that the *malikana* payable in respect of a jagir known as Meherullah Khan of which Mauzah Sahu formed part was settled in 1780 at Rs. 796 2-9, and nothing further was recoverable, and that the order made in 1865 did not give the right claimed. The sum of Rs. 796 2-9 had admittedly been paid to the predecessors in title of the appellant since 1780, and was still being paid to the appellant himself but he claimed to be paid the sum of Rs. 482 odd in addition. His contention was that the fixing of the *malikana* in 1780 was not a final ascertainment of the rights of his predecessors in title in respect of it, but was merely a temporary fixing of the percentage by which the amount should be ascertained from time to time, as it varied together with the variation of the amount of the proceeds of the land. Both Courts in India held that the appellant was entitled to nothing more than the Rs. 796 2-9 already paid to him. *Held* (affirming the decisions) that what was done in 1780 amounted to a final settlement of the owner's rights in respect of the *malikana*, the payment of which was to be made regularly every year from 1780, no term being fixed. That it was regarded as final by the parties concerned was clear from the fact that the payment was made thenceforward for a century without any suggestion that it was in any way wrong or was subject to revision. The settlement of 1865 only dealt with the method of payment of the *malikana*. It provided neither for any alteration nor for any addition to the *malikana* already fixed in 1780. The account attached to the settlement was made for the purposes of the settlement only, and the reference in it to *malikana* was made merely because the *malikana* was an item to be taken into account in fixing the annual *jama* to be paid by the person in whose favour the settlement was made in respect of the *mouzas* comprised in the settlement. That this was the right view to take of the settlement of 1865, and the account annexed to it, was confirmed by the fact that no claim was ever made by the appellant for payment of the *malikana* until 1892, 27 years after the date of the permanent settlement, and that no such payment had ever been made to him. **RAMESHWAR SINGH v SECRETARY OF STATE FOR INDIA** (1911) **I L R 39 Cal 1**

SETTLEMENT BY A HINDU WOMAN ON TRUSTS

The Indian Trusts Act (II of 1882) s. 35—Trusts failing after settlor's death—Resulting trust in favour of settlor's heirs at the time of her death—The Indian Succession Act (X of 1865), s. 191 effect of—The Probate and Administration Act (I of 1851) s. 4, effect of—Where by a deed of settlement a Hindu woman conveyed an immovable property to trustees on

SETTLEMENT BY A HINDU WOMAN ON TRUSTS—contd

certain trusts, some of which failed after her death (as being in favour of persons unborn at the date of the settlement) *Held*, (i) that there was a resulting trust in favour of the settlor (ii) that the persons entitled to the property on the failure of the trusts were the heirs of the settlor to be determined at the time of her death. Where a person dies intestate and no administration is granted to his estate, the term 'legal representative' in s. 83 of the Trusts Act must include the person or persons beneficially entitled who represent the interests of the deceased by virtue of inheritance. The representative by inheritance is to be found according to law at the moment of the death of the deceased the maxim being "*Solus deus hunc dem facere potest, non homo*" **DWARAKADAS DAMODAR v DWARAKADAS SHAMJI** (1915) **I L R. 40 Bom. 341**

SETTLEMENT COURT

order of, relating to attached lands—

See DISPUTE CONCERNING LAND

I L R 37 Cal 331

SETTLEMENT OFFICER

enquiry by—

See 'JUDICIAL PROCEEDING'

I L R 37 Cal 52

order of—

See HIGH COURT JURISDICTION OF

I L R 40 Cal 477

See SECOND APPEAL

I L R 43 Cal 603

power of—

See BENGAL TENANCY ACT (VIII OF 1880) s. 102 **I L R 43 Cal 547**

SETTLEMENT OF ACCOUNTS

See MINOR **I L R 43 Mad. 429**

SETTLEMENT OF RENT.

See RECORD OF RENT

I L R 47 Cal 1006

SETTLEMENT REPORTS

See ITAM **I L R 47 Cal 979**

SETTLEMENT OF REVENUE

Temporary Settlement—Effect on permanent interest—Entry in settlement records effect of. Certain lands were held under the Government under a temporary settlement during the currency of which the holders granted a permanent sub-lease to the plaintiffs who before the expiration of the lease granted by Government granted a permanent lease to one of the grantors. Ever since then the sub-lessee and his successors in interest were in occupation of the land, the settlement being from time to time renewed by Government in favour of the original settlement holders or their representatives, but in the course of the last settlement the sub-tenants were not mentioned in the settlement records. Held (in a suit for rent by the plaintiffs) that the mere omission of the settlement authorities to make an entry in the settlement records in respect of the tenants and under tenancies cannot affect the rights of the parties; and the effect of the re-settlement by the Govern-

SETTLEMENT OF REVENUE—*contd*

ment with the original settlement holders was to keep alive the contractual obligation of the subordinate holders among themselves. The rights and obligations of the parties were mutual, the plaintiffs being bound to make good the title of the defendants as soon as by virtue of the resettlement they were placed in a position to continue the lease in favour of the defendants, and the defendants being under an obligation to continue as tenants under the plaintiffs on the basis of the lease and to pay rent accordingly. **MOHENDRA NATH BISWAS v SHYAM LAL BANERJEE** (1912)
18 C. W. N. 997

SETTLEMENT PROCEEDINGS.

See **WAJIB UL ABZ**

I. L. R. 45 Calc. 793

SEWER PIPE.

See **BOMBAY CITY MUNICIPAL ACT (BOM ACT III of 1888), ss 303 AND 3 (w) (x) AND (y)** I. L. R. 43 Bom. 122

SHAFI.

right of—

See **MAHOMEDAN LAW—PRE EMPTION**

I. L. R. 41 Calc. 943

SHAFI MAHOMEDANS.

See **WARF** I. L. R. 37 Bom. 447

SHAFI-KHALIT.

See **PRE EMPTION** 4 Pat. L. J. 420

SHAH JOG HUNDI.

See **HUNDI SHAH JOG**

I. L. R. 39 Bom. 513

See **NEGOTIABLE INSTRUMENTS ACT, 1881, s 118** I. L. R. 1 Lah. 429

SHARE.

suit by a Mahomedan for a distributive share of estate of an intestate—

See **LIMITATION ACT 1908, SCH. I, ARTS 123 AND 144** I. L. R. 45 Bom. 519

SHARE CAPITAL.

See **PROVIDENT INSURANCE**

I. L. R. 42 Calc. 309

SHARE CERTIFICATES.

See **SHARES** I. L. R. 40 Calc. 331, 342

SHAREHOLDER.

See **COMPANIES' ACT, 1882—**

Ss 23, 45, 61 I. L. R. 36 Bom. 557

Ss. 45, 58 I. L. R. 42 Bom. 595

See **COMPANY** I. L. R. 42 Bom. 264

See **COSTS** I. L. R. 39 Bom. 383

See **PREFERENCE SHAREHOLDERS**

petition by—

See **COMPANY** I. L. R. 39 Bom. 16

SHARE OF ESTATE.

See **SALE FOR ARREARS OF REVENUE.**

I. L. R. 41 Calc. 1092

SHARES.

See **EXCESS PROFITS DUTY ACT.**

25 C. W. N. 875

See **IMPERFECT GIFT**

I. L. R. 48 Calc. 986

See **PRESIDENCY BANKS ACT (XI of 1876),**

s 23 I. L. R. 45 Bom. 138

allotment of—

See **COMPANY** I. L. R. 36 All. 412

pledge of—

See **ADMINISTRATION**

I. L. R. 45 Calc. 653

See **COMPANY** I. L. R. 42 Bom. 159

purchaser of at a Court Sale—

See **COMPANIES ACT (VII of 1913), s 38**

I. L. R. 41 Bom. 76

registration of—

See **COMPANIES ACT (VII of 1913), s 38**

I. L. R. 41 All. 619

sale of—

See **COMPANY** I. L. R. 36 All. 305

See **DAMAGES** I. L. R. 43 Calc. 493

1. ———— *Transfer by a person in possession—Judicial possession—Possession for a particular purpose—Contract Act (IX of 1872), s 103—Bond fide purchaser for value—Share certificate with blank transfer deeds, whether negotiable—Usage* The defendant Bank bought 25 jute shares for one of their constituents which consisted of the share certificate and a blank transfer deed signed by the registered holder which were made over by the officer in charge of their Safe Custody Department to the Head Clerk of that Department in usual course. The clerk fraudulently disposed of them to Sham Das Bui, who again sold them to other persons. The plaintiff firm bought them from the defendant firm of Baidnath Champalali. Both the plaintiff firm and the defendant firm were bond fide purchasers for value. *Held*, that the Head Clerk was not in possession of the shares within the meaning of s 103 of the Contract Act and that the plaintiffs acquired no title in them. *Held*, also, that the share certificates with blank transfer deeds signed by the registered holder were not negotiable instruments. **ROOP CHAND JANKIDAS v THE NATIONAL BANK OF INDIA, LD** (1918)
I. L. R. 46 Calc. 342
22 C. W. N. 1042

2. ———— *Transfer by a person in possession—Contract Act (IX of 1872), s 103—Obtaining possession by fraud—Transfer to a bond fide purchaser for value—Negotiability by custom—Share certificate with blank transfers, whether negotiable—Negotiability by estoppel—Goods—Meaning of—Validity of the bond fide purchaser for value—Costs* Share certificates accompanied by transfer deeds endorsed in blank by the registered holder are not negotiable. Before an instrument can be considered negotiable it must be in a form which renders it capable of being sued on by the holder of it *pro tempore* in his own name and it must be by the custom of trade transferable, like cash, by delivery. The right principle to adopt with reference to such blank transfers duly signed by the registered holder of the shares is to hold that each prior holder confers upon the bond fide holder for value of the certificate for the time being

SHARES—contd

an authority to fill in the name of the transferee and is estopped from denying such authority, and to this extent, and in this manner, but no further, he is estopped from denying the title of such holder for the time being. The plaintiff firm claimed to be the owners of 25 jute shares which they purchased from the defendant L on the 7th May 1917 and got their names registered in the books of the Company. At the time of the sale the plaintiff obtained possession of the certificate for the said shares and a blank transfer deed signed by the registered holder. The defendant L bought the said shares from one U who fraudulently obtained possession of them from the defendant S who was the owner of the said shares. It was not clear what was the nature of the transaction between the defendants L and U. The purchase by the plaintiff was *bona fide* and for value. *Held*, that the plaintiff did not acquire any title to the said shares and were entitled to the value they paid for them from the defendant L with interest. **HAZARI MAL SROKAVLAL v SATIS CHANDRA GHOSH** (1918)

I. L. R. 46 Calc. 331
22 C. W. N. 1038

"SHAWLS, MEANING OF.

Railway administration, liability of parcel—Railways Act (IX of 1900), s 75 and Sch. II (m)—Value of contents of parcel if to be declared—Alien—Damages, suit, or—Costs
The term "shawls" in Sch. III, cl (m) of the Railways Act, refers to Indian Shawls of special value, and cannot be taken to apply to articles of inferior value such as *alwans*. **SARAT CHANDRA BOSE v SECRETARY OF STATE FOR INDIA** (1912)

I. L. R. 39 Calc 1029

SHEBAIT.

See EXECUTION OF DECREE.

I. L. R. 39 Calc. 298
I. L. R. 42 Calc 440

See HINDU LAW—ENDOWMENT

See HINDU LAW—SHEBAIT

See LAND ACQUISITION

I. L. R. 39 Calc 33

See LIMITATION I. L. R. 42 Calc 244

See PARTIES I. L. R. 46 Calc. 877

See SURETY.

— appointment of—

See RELIGIOUS TRUST

I. L. R. 40 Calc 251

— It may be permitted to reside in houses provided for idol—

24 C. W. N. 1028

— power of—

See HINDU LAW—ENDOWMENT

I. L. R. 33 Calc. 528

— power of, to grant permanent lease

See HINDU LAW—ENDOWMENT

I. L. R. 40 Mad. 709

— Removal of—

See RELIGIOUS ENDOWMENT

I. L. R. 43 Calc. 1019

— title of—

See PROVINCIAL SMALL CAUSE COURTS ACT, s. 23 . . . 15 C. W. N. 688

SHEBAIT—contd.

1 ————— *Suit on security bond executed in favour of shebait of idol if maintainable by succeeding shebait—Limitation Act (IX of 1877), Art 132* The Plaintiff as shebait sued the Defendant who was tehsildar of the debutter estate for accounts on a security bond executed by the Defendant in favour of the former shebait. *Held*, that the contract entered into between the Defendant and the former shebait did not terminate on the death of the latter but could be sued upon by the present shebait. **DASARATHI CHATTERJI v. ASIT MOHAN GHOSH MAULIK** 24 C. W. N. 879

2. ————— *Res judicata—Successor of a shebait, when bound by a decree passed against the shebait—Limitation Act (XV of 1877) Sch. II, Art 124—Hereditary office of a shebait—Adverse possession of the office.* The widow of a shebait of a certain temple who succeeded her deceased husband in that office, mortgaged some land, as also her interest in the temple income, to one J, who obtained a decree on his mortgage on the 24th of September 1880. In execution thereof he put up the temple income for sale, purchased it himself and obtained delivery of possession in 1892. The widow and the next reversioner then brought a suit to set aside the sale on the ground that the property sold was not saleable. That suit was withdrawn with liberty to bring a fresh suit. The widow alone then brought another suit which was dismissed on the ground that it was barred by s 244 of the Code of Civil Procedure (Act XIV of 1882). She having died, the reversioner brought a suit against the said J, on the 3rd of January 1910, for a declaration that he was entitled to the temple income inasmuch as it was not saleable. On objections taken by the defendant that the suit in so far as it related to the temple income was barred by the rule of *res judicata* and by limitation *Held*, that, inasmuch as there was no collusion or dishonesty about the former suits, and as in one of them the plaintiff himself was a party the decrees passed in the suit against the shebait (widow) would bind her successor (the plaintiff), and that therefore the present suit was barred by the rule of *res judicata*. *Held*, further, that Art 124 of Sch. II of the Limitation Act applied to the case, and that as the suit was brought more than twelve years after the date when the defendant obtained possession of the hereditary office by receipt of the temple income, it was barred by limitation. **JHARULA DAS v JALANDHAR THAKUR** (1912) . . . I. L. R. 39 Calc. 887

3. ————— *Alienation, power of—Dedicated property, acquisition of—Land Acquisition Act (I of 1894), s 31, cl (2)—Compensation money, withdrawal of* The position of a shebait is analogous to that of the manager of an infant. He is entitled to possess and to manage the dedicated property, but he has no power of alienation in the general character of his rights. s 31, cl (2) of the Land Acquisition Act applies to a shebait since he is not competent to alienate the land. **Kamini Devi v Promotho Nath Bhoosherjee**, 13 C. L. J. 597, followed. **RAMPRANAYNA NAIDU CHOWDHURY v SECRETARY OF STATE FOR INDIA** (1913)

I. L. R. 40 Calc 895

4 ————— *Lease by a previous shebait in excess of his authority, suit for cancellation of, by succeeding shebait—New cause of action if accrues to each succeeding shebait—Adverse possession, when commences, and if interrupted by*

SHETSANADI LANDS—*contd*

appointed one Y as the new *shetsanadi* but under the rules framed under Bombay Act XI of 1859 Government continued the *shetsanadi* lands to the family of B on condition of the r paying full survey assessment on the lands. The remuneration of Y was made payable out of the extra assessment recovered in 1905. Government resumed the lands and handed them over to Y for his services. *Held* that both the order passed in 1865 and the action taken under the rule framed under Bombay Act XI of 1859 had in law the effect of converting the land from a *Shetsanadi talan* into a *rayatwari* holding and investing the holder of the land with the rights of an ordinary occupant entitled to it so long as he paid the survey assessment. *Held* also that the proceedings of 1905 were on the supposition that what was done in 1865 on B's death had the effect of continuing the lands in dispute as one reserved for *shetsanadi* service but that was not its effect and the proceedings in question were *ultra vires*. *YELLAPPA v MARLING GAFFA* (1910) I L R 34 Bom 560

SHIAS

- See* MAHOMEDAN LAW—CITY,
I L R 38 All 289
See MAHOMEDAN LAW—WAOF
I L R 38 All 431
See MAHOMEDAN LAW—GUARDIAN
I L R 36 All 466

SHIP

- See* ARREST OF SHIP
I L R 42 Calc 85
See CONFISCATION I L R 42 Calc 334
See PRIZE COURT I L R 44 Bom 61

SHIPOWNER

liability of—

- See* CHARTER PARTY
I L P 41 Bom 119

SHIPPING

- See* ARREST OF SHIP
See CONFISCATION
See MARINE INSURANCE
See MERCHANT SEAMAN ACT (I OF 18 9)
s 83 CL (f) I L R 39 Bom 558
See PRIZE
See SALE OF GOODS
I L R 45 Calc 28
See CONTRACT I L R 41 Calc 670

SHIPPING DOCUMENTS

- See* C. I F CONTRACTS
I L R 42 Bom 473

SHIPPING ORDERS

- See* CONTRACT ACT (IV OF 1872) ss 56
60 I L R 40 Bom 529

SHIVARPANA

- See* CIVIL PROCEDURE CODE 188 s 539
I L R 36 Bom 29

SHORT DELIVERY

- See* CARRIERS I L R 39 Calc 311
See RAILWAYS ACT s. 140
14 C W N 888

SHROTRIEMDAR

See MADRAS ESTATES LAND ACT (I OF 1908) s 8 EXCEPT

I L R 38 Mad 843

SHUDRAS

- See* HINDU LAW—SHUDRAS
See HINDU LAW—INHERITANCE
I L R 34 Bom 221 553
See HINDU LAW—LEGITIMACY
Adoption by widow though unchaste valid in Bombay—
See HINDU LAW I L R 45 Bom 459
Succession of illegitimate daughter to her mother in the absence of any nearer heir—
See HINDU LAW I L R 45 Bom 557

SICCA RUPEES

- See* SUIT FOR RENT
I L R 46 Calc 347

SIGNATURE

- See* TRANSFER OF PROPERTY ACT (IV OF 1897) s 59 I L R 41 Bom 384
genuineness of—
See SPECIFIC PERFORMANCE
I L R 38 Calc 805

SIKKIM

- Court of the Political Agent of—
See POLITICAL AGENT SIKKIM
I L R 38 Calc 859
15 C W N 992

SIMANADARS

Chaukidars Chakaram Land Act (Beng VI of 1870) s 1 whether applicable—Bengal Distr ct Gazetteer reference to by High Court. The High Court is entitled to use the Bengal Distr ct Gazetteer as a book of reference. The Chaukidari Chakaram Land Act applies to *simanadars* as the Gazetteer for Bankura shows that in thana Indas (where the lands in suit are situated) the *simanadars* perform those duties which are described in s 1 of the Act. *LALU DOME v BEJOY CHAND MAHATAF* (1915)
I L R 43 Calc 227

SIMILARITY OF NAMES

- See* TRADE NAME I L R 40 Calc 570

SIMPLE INTEREST

- See* RECEIPT I L R 42 Calc 546

SIMPLE MORTGAGE

- See* ADVERSE POSSESSION
I L R 39 Mad 811
I L R 44 Calc 425

SIMULTANEOUS ADOPTION

- See* HINDU LAW—ADOPTION
I L R 38 Calc 694
I L R 39 Calc 582

SINGLE JUDGE

- See* HIGH COURTS ACT (24 & 25 VICT c. 104) ss 9 AND 13
I L R 39 Bom 604
judgment of—
See LETTERS PATENT APPEAL
I L R. 43 Calc. 80

SINGLE JUDGE—contd

— order by—

See APPEAL I L R 42 Calc 735
I L R 44 Calc 804

— revision by—

See SANCTION FOR PROSECUTION
I L P 44 Calc 810

— ruling of—

See REGISTRATION ACT 1908 s 17
I L R 1 Lah 25

SIR LAND

See AGRA TENANCY ACT (II OF 1901)—

Ss 19 AND 20 I L R 32 All 383
S 104 I L R 38 All 223

See GROVE LAND I L R 42 All 433

— mortgage of—

See CENTRAL PROVINCES TENANCY ACT
(VI OF 1898) s 43 SUBS (1) (6)
I L R 45 I A 179

See ESTOPPEL I L R 48 Calc 591

See MORTGAGE I L R 33 All 434

Mortgage by proprietor having such land and sale in execution of mortgage decree.—A person whose proprietary rights in land comprised Sir land mortgaged his entire interest therein including the right in the Sir land in the decree for sale instead of including the cultivating rights in Sir should comprise the property with all actual and reputed rights as detailed in the mortgage. *Held* that in the face of the decree it was not open to the mortgagor to urge that the rights of the mortgagee to sell the Sir lands were taken away by the decree. *GULAB SINGH v DIWAN RAHADUR BALLABH DAS*
25 C W N 839

SISTER

See BURMESE LAW—INHERITANCE.
I L R 41 Calc 887

See HINDU LAW—SUCCESSION
I L R 39 Calc 319

— Succession to self-acquired property—

See CUSTOM (SUCCESSION)
I L R 1 Lah 433
I L R 2 Lah 98

— Succession of Muhammadan Rajputs
Jullundur—

See CUSTOM (SUCCESSION)
I L R 1 Lah 1

— Whether an heir—

See HINDU LAW (SUCCESSION)
I L R 1 Lah 583 603

SISTER'S SON

See HINDU LAW—SUCCESSION
I L R 39 Calc 319

SLANDER

See DETRAMATION

SLANG TERMS

See MISDIRECTION I L R 45 Calc 557

SLAUGHTERING FEES

See MADRAS DISTRICT MUNICIPALITIES
Act 1881 s 191
I L R. 38 Mad. 213

SLAVERY BOND

See BOND I L R 42 Calc 742

SMALL CAUSE CASE

See APPEAL I L R 40 Calc 537

SMALL CAUSE COURT

See CIVIL AND REVENUE COURTS
I L R 40 All 51

See CIVIL PROCEDURE CODE (ACT V OF
1908) s 24 I L R 38 Mad. 25

See COMPENSATION I L R 44 Calc 87

See GENERAL CLAUSES ACT, 1897 s 3
(25) I L R 35 All 156

See PROVINCIAL SMALL CAUSE COURTS
ACT 1887

See VATAN I L R 37 Bom. 700

— appeal from order of—

See CRIMINAL PROCEDURE CODE, 1898
s 105 4 Pat L J 609

— Decree of—amendment—after revision to High Court rejected—

See AMENDMENT OF DECREE
I L R 1 Lah 342

— Error by—

See HIGH COURT JURISDICTION OF
I L R 39 Calc 473

— jurisdiction of—

See BHAGDAR 23 C W N 614

— new trial—

See PRESIDENCY SMALL CAUSE COURTS
ACT (XV OF 1882) s 38
I L R 42 Bom. 80

— Suit by Zamindar to recover part
of price of trees sold by tenant—

See PROVINCIAL SMALL CAUSES COURT
ACT 1887 SCH II ART 13
I L P 42 All 448

— suit not cognizable by—

See CIVIL PROCEDURE CODE (ACT V OF
1908) O XXI s 91
I L R 35 Bom. 29

1 ———— *Suit by mortgagor against mortgagee for means profits.* A suit by a mortgagor against the mortgagee for means profits for the period during which he held wrongful possession of the property is maintainable in a Small Cause Court. Art 31 of Sch II of the Provincial Small Cause Courts Act is no bar to such suit being instituted in a Small Cause Court. *SABAH DUTT v. SURESH ANANDY* (1910) 14 C W N 1001

2 ———— *Provincial Small Cause Court of means profits.* —Means profits if recoverable when plaintiff out of possession. —What must be proved.—In a Small Cause Court suit the Judge is no doubt competent to decide the question of title upon which the claim depends but if he does so it is incumbent on him to decide the question correctly and according to law. The maxim *de minimis non curat lex* should not be applied to Small Cause Court suits for damages in respect of immovable property for the importance of the case to the parties is not to be measured by the pecuniary limit of the claim. *Prima*

SMALL CAUSE COURT—contd

City v Ramji I L R 21 Bom 250, referred to
ELAHU BEKSH MANDAL v RAM NARAYAN GHOSH
 (1911) 18 C W N 258

8 ————— Jurisdiction of,
 to try suit for specific sum of money involving possible
 examination of accounts—Civil Procedure Code (Act
 I of 1908) rr 6 & 7 O XLVI—Circumstances neces-
 sitating action under The plaintiff sued to recover
 from the defendant a certain aggregate amount
 made up by sums due on account of salary and
 house rent as also money borrowed by the defend-
 ant The plaint stated that if the correctness of
 the amounts was questioned the amount due may
 be determined on examination of the accounts
 The suit was filed in the Court of the Munsif who
 returned the plaint for presentation to the Court of
 Small Causes where on being presented the plaint
 was returned on the ground that Court had no
 jurisdiction. The plaint on being again presented
 before the Munsif was returned a second time
Held that a suit for the recovery of a specific sum
 of money does not assume the character of a suit
 for accounts merely because in the determination
 of the question in controversy accounts may have
 to be examined and the present was not a suit for
 accounts and was cognizable by the Court of Small
 Causes That the Small Cause Court Judge in-
 stead of returning the plaint should have taken
 action under r 6 or r 7 O XLVI and submitted
 the record to the High Court with a statement of
 his reasons for the doubt as to the nature of the
 suit *ASHUTHA NATH BAKHJI v KALIDASI DAS*
 (1910) 21 C W N 784

SMALL CAUSE COURT DECREE

See CIVIL PROCEDURE CODE 1908 s 151
 I L R 34 Bom 135

See FRAUD I L R 48 Calc 298

See PRESIDENCY SMALL CAUSE COURTS
 ACT 1862—

S. 43 I L R 45 Bom 1048

S. 48 I L R 47 Bom 972

See PROVINCIAL SMALL CAUSE COURTS
 ACT 1887 s 17

I L R 62 All 438

See SECOND APPEAL.

I L R 45 Bom 223

SMALL CAUSE COURT SUIT

See CIVIL PROCEDURE CODE 1908—

S. 24 I L R 39 All 214

I L R 49 All 525

S. 115 I L R 39 All 101

See PROVINCIAL SMALL CAUSE COURTS
 ACT (IX of 1867)—

Sec II ART 8 I L R 41 Bom. 267

Sec II ART 131

I L R. 40 All 142

Sec. 23 AND 27 I L R. 38 Bom. 100

S. 23 I L R. 41 All. 42

Dismissed for default—

Application for restoration of suit—*Procedural*
 Procedure Code (Act I of 1908) O. IX, rr 1 & 9
 O XLIII, r 1—Provincial Small Cause Courts
 Act (IX of 1867) s 17 Where a Small Cause
 Court suit is dismissed for the plaintiff's default in

SMALL CAUSE COURT SUIT—contd

the presence of the defendant, and an application
 made under O IX, rr 4 and 9 for the restoration
 of that suit is also dismissed for the plaintiff's
 default in the presence of the defendant's pleader,
 and where again an application is made under
 O IX, r 9 for the rehearing of the case and an
 other application for treating it as an application
 for review *Held* that an application under O IX
 r 9 lay O XLVII r 1, applied to all orders of
 the Court which may be reviewed under certain
 circumstances *Held* further that the provisions
 of s 17 of the Provincial Small Cause Courts Act
 did not apply to miscellaneous applications
Dejani Aschha Bibee v Hemant Kumar Pany, 19
 C W A 753, followed. *DIPIN BHABH SHAHA v*
ABDUL BAKI (1916) I L R 44 Calc 950

SOCIETY

See PROFIT & PREVENTION.

2 Pat L J 323

SOHAG GRANT

See DARUANA GRANT

See HINDU LAW—CUSTOM

SOLDIER

—decree against a—

See ARMY ACT (44 & 45 Vic c 58)
 ss 145, 190 I L R. 43 Bom 368

SOLEHNAMA

See LEASE I L R 37 Calc 803

—construction of—

See LIMITATION I L R 46 Calc. 870

SOLICITOR

—duty of—

See GIFT I L R 39 Calc 933

Professional misconduct—*mis*
 conduct—Proceeding to strike off from Polls—Con-
 tempt of Court pursuing remedy in Criminal Court
 when Supreme Court refused civil remedy having
 disbelieved information of amounts to Forgery,
 striking out names of witnesses names by solicitor
 after informing responsible officer—Intent to defraud,
 if any—Bad faith—Right to be heard on matters
 relating to professional misconduct Where a
 plaintiff who has been refused a warrant for the
 detention of the defendant by a Civil Court straight-
 way starts a criminal process on the same subject
 matter and by means of allegations to which the
 Civil Court attached no credit obtains his warrant
 from a different Court almost as a matter of course
 he undoubtedly runs several risks of a serious
 character. He is not however restricted by law
 to a single form of remedy. He may pursue all
 the legal remedies appropriate to his grievance and
 his conduct does not necessarily invite any pun-
 ishable contempt of the Civil Court whatever may
 be its other consequences. Where in such a case
 the arrest by warrant of the Criminal Court was
 obtained without getting the necessary fiat of Gov-
 ernment and it was even so but the prisoner was
 then discharged on the ground that the warrant
 was in excess of the Magistrate's jurisdiction and
 it appeared that the Magistrate was not misled
 into issuing the warrant by any concealment or
 deceit on the part of the applicant, but that it
 might have been due to the Magistrate's own in-

SOLICITOR—contd

advertence, and there was no evidence to show that the applicant did not believe in the justice of his claim and did not so instruct the solicitor who acted for him in the matter *Held*, that the conduct of the solicitor, though it might from other points of view be shown to be open to strong animadversion, could not in the absence of proof that the proceedings were tainted by his fraud be held to constitute contempt of Court, nor did it show bad faith on the part of the solicitor. Where two persons, on being served with subpoenas taken out by the solicitor on behalf of certain accused persons stated that they knew nothing of the case, and thereupon the solicitor took back the subpoenas and mentioned to a responsible Court officer that he wanted the names of witnesses to be substituted, and on his making no objection struck out their names and substituted those of two other persons in their place. *Held*, that there being nothing to show that the intent of the solicitor in so doing was to defraud, the facts did not establish the charge of forgery brought against him who at most had committed an irregularity and for which a pecuniary penalty of £20 imposed on him was an adequate punishment. That an order striking the solicitor's name from off the Rolls on account of the said two alleged offences of contempt and forgery, could not in the circumstances be maintained. References in the order to the solicitor's "conduct in other professional matters," when no such matters were specified in the information before the Court and upon which the solicitor had not been heard, could not be relied on against him. *In the matter of TAYLOR* 16 C. W. N. 386

SOLICITOR'S LIEN FOR COSTS

See Costs . I. L. R. 43 Calc. 673
I. L. R. 48 Calc. 1079

Practice—Directed as a n of partnership—Assets in hands of receiver—Judgment—creditor—Charging order—Solicitor's lien for costs. The rule at common law that a solicitor is entitled to a lien for his costs on property recovered or preserved by his exertions has always been followed by this Court, and, where there are assets of a partnership in the hands of a receiver appointed in a partnership suit, the solicitors engaged in that suit are entitled to ask for a charge on those assets in priority to the creditors of the partnership. *Hindu v. Thorne*, [1902] 2 Ch. 311, followed. Where a plaintiff has obtained a decree against a partnership firm the available assets of which are in the hands of a receiver appointed in a previous partnership suit, his proper course is not to issue execution against those assets but to ask the Court for a charging order, and to undertake to deal with the charge according to the order of the Court. *Keweenaw v. Atwell*, 31 Ch. D. 345 followed. *A. HARRISMAN AND CO v. RABINAT* (1909)

I. L. R. 34 Bom. 484

Charge of Solicitors—Inspection of documents—Administration suit. The right to be extended by a Solicitor claiming a lien largely depends upon the circumstances under which he has ceased to act for his client, the test being whether the Solicitor has discharged himself or has been discharged by the client. The obligation on the Solicitor to give inspection of and to produce documents in his possession over which he has a lien in an administration action is confined to those cases where they are essential to the deter-

SOLICITOR'S LIEN FOR COSTS—contd

mination of those questions which arise in the normal administration proceedings when the estate is being actually administered. *Bevington v. Eoughton*, 23 Ch. D. 169 and *In re Capital Fire Insurance Association*, 24 Ch. D. 408, considered. *ALSHABAR v. AHMED BIK ESSA* (1910)

I. L. R. 35 Bom. 352

SOLVENT COMPANY—

See COMPANY (IN LIQUIDATION)

I. L. R. 1 Lab. 358

SON.

See HINDU LAW—ADOPTION

I. L. R. 42 Bom. 547

after born—Effect of—

See HINDU LAW I. L. R. 1 Lab. 118

See LIMITATION ACT, 1908, s. 6

I. L. R. 1 Lab. 533

birth of, subsequent to the execution of the will—

See HINDU LAW—WILL

I. L. R. 38 Mad. 389

death of, before the testator—

See HINDU LAW—WILL

I. L. R. 38 Mad. 389

liability of—

See HINDU LAW—DEBT

I. L. R. 39 Calc. 662

See HINDU LAW—JOINT FAMILY.

See HINDU LAW—SUCCESSION

I. L. R. 39 Calc. 643

See MALABAR LAW

I. L. R. 38 Mad. 527

See MORTGAGE I. L. R. 40 Calc. 342

Locus standi of in deceased father's insolvency proceedings—

See INSOLVENCY I. L. R. 43 Calc. 87

of a concubine (status of)—

See MAROMEDAN LAW—FERTILITY

I. L. R. 46 Calc. 259

Succession by—to office and property of grahiti, Goldi, Tumpi, Amritsar—

See CUSTOM (RELIGIOUS INSTITUTIONS)

I. L. R. 1 Lab. 511, 540

SONTAL PARGANAS

See LEADNAV . 5 Pat. L. J. 656

See SONTAL PARGANAS ACT

1. ———— High Court Jurisdiction of—Suits exceeding Rs. 1,000 in value—Sontal Parganas Civil Rules, 1905 s. 23—Sontal Parganas Act (XXV of 1955) as amended (2) and 2—Sontal Parganas Settlement Regulations (111 of 1972) s. 27—Sontal Parganas Justice Regulation (V of 1937), s. 6—Civil Procedure Code (Act V of 1908) s. 118—The Charter Act (24 & 25 Vic. c. 104) s. 15. In a suit in which the matter in dispute exceeds Rs. 1,000, the High Court is not debarred by anything in the local Acts and Regulations of the Sontal Parganas from revising the proceedings of the Subordinate Judge, who is subject to the jurisdiction of the High Court under the general powers of superintendence over the subordinate Courts, as contained in the Charter, and an order

SONTHAL PARGANAS—contd

by the Subordinate Judge adjoining a mortgage sale, pending an enquiry directed to be made by the Deputy Commissioner, may be revised by the High Court. The High Court, however, cannot interfere with an order of the Deputy Commissioner directing an enquiry or with an enquiry by the Sub divisional Officer. *Dungaram Marwary v Raykushore Deo*, I L R 18 Calc 133, followed *Tey Ram v Harshukh*, I L P 1 All 101, referred to *SARDHARI SAH v HICKLIN CHAND SAH* (1914)

I L R 41 Calc 878

2 ————— Mortgage of land in, not completely settled—Suit in Civil Court at Bhagalpur on mortgage, if lies—Limits of Civil Court's Jurisdiction—Exclusive jurisdiction of special officers appointed by Lieutenant Governor—Stipulation in bond that suit might be instituted at Bhagalpur—Court having jurisdiction in Sonthal Parganas, if includes Civil Courts at Bhagalpur—Sonthal Parganas Regulation, III of 1872 (read with Act XXXVII of 1885 and Act X of 1887) ss—5, 6—Interest—usury rules enforceable by all Courts Sonthal Parganas Justice Regulation (V of 1893), s 9—Civil Procedure Codes (Act VIII of 1859, Act XLIII of 1861, Act X of 1877, Act XIV of 1882) how far applicable in Sonthal Parganas—Civil Courts Acts (Act VI of 1871 and Act XII of 1887), how far apply in Sonthal Parganas—Scheduled Districts Act (XII of 1874) if applied to Sonthal Parganas—Jurisdiction, objection to, taken at a late stage when entertainable Held, that on 20th June 1904, the date on which the present suit was instituted in the Subordinate Judge's Court at Bhagalpur to enforce a mortgage of properties two thirds of which was in the Sonthal Parganas, no suit could lie in any Court established under the Civil Courts Act of 1871 or 1887, in regard to any land or interest in or arising out of any land or for the rents or profits of any land, but such suits must have been brought under s 5 of Sonthal Parganas Regulation of 1872 before the Settlement Officers or Courts of officers appointed by the Lieutenant Governor of Bengal under s 2 of the Sonthal Parganas Act, 1865 and the Sonthal Parganas Justice Regulation of 1893 Part 2 so long as the land had not been settled and the settlement declared by a notification in the *Calcutta Gazette* to have been completed and concluded. That as it appeared that portions only of the mortgaged land had been settled and notification made prior to the institution of the suit of the completion of the settlement in respect of such portions only, the suit came within s 5 of the Sonthal Parganas Regulation of 1872 and the Subordinate Judge of Bhagalpur had no jurisdiction to entertain it. The provision in s 8 of that Regulation which places all contractual stipulation as to compound interest in a position of non enforceability and limits statutorily the total interest which can be decreed on any loan or debt is not one of procedure but of substance, and applies to all Courts having jurisdiction in the Sonthal Parganas and acting under and by virtue of such jurisdiction. All Courts having jurisdiction in the Sonthal Parganas in s 6 do not refer only to Courts locally situated in the Sonthal Parganas and dealing with matter purely local. A stipulation in the mortgage bond that the mortgagees might enforce it in the Court at Bhagalpur was inoperative, as the parties could not by consent give the Court jurisdiction thereby nullifying the express prohibition of s 5 of the Regulation of 1872. The Civil Procedure Codes of

SONTHAL PARGANAS—contd

1861, 1877 and 1882 applied to suits cognizable in the ordinary Civil Courts, and these, since the enactment of s 9 of Reg V of 1893, were suits of which the value exceeded Rs 1,000 and which were not excluded from their cognizance by, amongst others, the provisions of s 5 of the Regulation of 1872. *Quære* Whether the Civil Procedure Code was intended by the Notification of 19th August 1867 to apply to Courts held by officers appointed by the Lieutenant Governor of Bengal in those suits in which they were not required to try and determine the case according to the several laws and regulations prevailing in Bengal. *Semble* The true interpretation of cl (1) of the Act XXXVII of 1885 (before its operation was modified by subsequent enactments and notifications) was that even suits on which the matter in dispute exceeded Rs 1,000 in value were to be tried by the special officers appointed by the Lieutenant Governor, but in trying and determining them, they were to observe the general laws and regulations obtaining in Bengal. *Sorboyst Roy v Ganesh Prasad Misser*, I L R 10 Calc 761, doubted. **MAHA PRASAD SINGH v RAMANI MOHAN SINGH** (1914)

L R 41 I A 197

I L R 42 Calc 116

18 C W N 994

SONTHAL PARGANAS ACT (XXXVII OF 1885).

See SPECIFIC RELIEF ACT, 1877

2 Pat L J 379

s 1—

See JURISDICTION I L R 41 Calc 915

See SONTHAL PARGANAS

I L R 41 Calc 878

s 2—

See JURISDICTION I L R 42 Calc 116

SONTHAL PARGANAS JUSTICE REGULATION (V OF 1893)

part 2, s 10—

See JURISDICTION I L R 42 Calc 116

SONTHAL PARGANAS SETTLEMENT REGULATION (III OF 1872)

See JURISDICTION [I L R. 41 Calc. 915

See SPECIFIC RELIEF ACT, 1877

2 Pat L J 379

See SONTHAL PARGANAS

I L R. 41 Calc 878

ss 5, 6—

See JURISDICTION I L R. 42 Calc 116

s 6—

See EXECUTION OF DECREES

4 Pat. L. J 49

ss 10 11—Sonthal Parganas Settlement Rules, No 27—Succession to *jote* held by Hindu *gola*—Local Custom (if applies to Hindu immigrants)—Point incidentally decided in settlement proceeding, *res judicata* A finding of the Settlement Officer in a proceeding under the Sonthal Parganas Regulation III of 1872, which was not necessary for the purpose of the proceeding and was arrived at only incidentally does not operate as *res judicata* R 27 of the Sonthal Parganas Settlement Rules under which resident relatives who have taken part in the management of the family *jote* are to be given preference as heirs, is only applicable to

SONTHAL PARGANAS SETTLEMENT REGULATION (III OF 1872)—contd

ss. 10, 11—*contd*

suits before Settlement Officers. The Rule was intended to meet the peculiar customs of the Sonthals and aborigines in the locality and does not apply to persons governed by the Hindu Law, who have settled in the Sonthal Parganas. **BASKI MAURET v SETHAL MAURET (1913)**

18 C. W. N. 333

ss. 11, 14, 25, 25A—

1. **Record of rights, effect of—Suits challenging record, maintainability of—Special limitation—Limitation Act (I.A. of 1908), s. 29, how far affects Regulation III of 1872—Minors, how affected by the Regulation.** The plaintiffs some of whom were minors sued the defendants for partition of lands held in common but not as joint family property. In the record of rights prepared under Reg. III of 1872 the defendants had been recorded as proprietor and *mokarardar* in respect of the lands. The suit was brought after three years from the date of the publication of the record. *Held*, that the policy of Regulation III of 1872 was to have a complete record of rights and interests in land in the Sonthal Parganas and to exclude the jurisdiction of Civil Courts except in certain matters provided for in the Regulation. That the suit so far as it regarded the proprietary rights in the land was barred by limitation under s. 23A of the Regulation. That the Limitation Act is applicable to the Sonthal Parganas, but s. 29 of Act IX of 1908 saves all provisions of local laws as to limitation and does not therefore affect the three years' rule under s. 23A of the Regulation. That the Regulation does not make any exception in favour of minors and the minority provisions of the general Limitation Act has reference to the periods of limitation prescribed in that Act. That the notice provided by s. 14 is to the people of the village irrespective of age or intelligence and as the law makes the record of rights conclusive proof of the rights and interests therein recorded the defendants could not be called upon to prove the service of the required notices. **JANCKI PERSAD JHA v BABU LAL JHA (1914)**

19 C. W. N. 499

2. **Effect of the Regulation on the jurisdiction of Civil Courts—Elements necessary for a suit to come within s. 23A—Sikmi ghatawali, Khorposh grant, share in it a right of a zamindar or other proprietor.** The plaintiff brought a suit for declaration of his title to a share in a certain mauza in the Sonthal Parganas which formed the subject of a sikmi ghatawali Khorposh grant and for registration of his name in the settlement records in respect thereof. It appeared that rent was payable to the ghatawali and no land revenue was payable direct to the Government in respect of the land which was not free from Government revenue. *Held*, that the effect of ss. 11, 14 and 25 of Reg. III of 1872 was that the jurisdiction of the Civil Courts was absolutely excluded except in cases specially provided for in s. 23A. That in order that the plaintiff's case should fall within the provisions of s. 23A, it was essential for the plaintiff to show that he was a zamindar or other proprietor, and the interest in land like that claimed by the plaintiff did not come within the description of a right of a zamindar or other proprietor. That the only remedy the plaintiff had was to apply to the Gov-

SONTHAL PARGANAS SETTLEMENT REGULATION (III OF 1872)—concl'd

ss. 11, 14—

ernment under s. 23 of the Regulation to direct the revision of the record of rights. **NEMO DEO v PABHATI KUMAR (1914)**

19 C. W. N. 549

ss. 11, 25, 25A—**Entry in record of rights operating as decree—Claim not expressly negatived by Settlement Court, if open to investigation in Civil Court—Entry in record set up as plea in bar—What must be proved for entry to operate as *res judicata*—Proof that entry obtained by fraud.** Where in a suit for rent instituted by the plaintiff in part as zamindar and in part as *mokarardar*, the defendants objected to the recovery of the rent alleged to be due to the plaintiff as *mokarardar* on the ground that in the record of rights prepared and finally published under the Sonthal Parganas Regulation, III of 1872, the defendants were recorded as *proprietors* only: *Held*, that under s. 11 of the Regulation the entry operated as a decree of a Civil Court. That it was not open to the plaintiff to urge that as there was no express decision of the Settlement Court upon the question of the *mokarardar* status of the defendants the matter was open for investigation in a Civil suit inasmuch as it must be held that there was such a decision by implication. *Held* however, that it was for the defendants who pleaded the entry as a bar, to establish the circumstances in which the decree was made and to prove conclusively that the decree does operate as *res judicata*. That the defendants must prove that in the preparation and final publication of the record of rights the requirements of the statute had been fulfilled, and it was open to the plaintiff to urge and prove that the entry which was to operate as a decree was obtained by fraud. **Bom Narain Singh v Ram Runjan Chakraverty, 1 L. R. 13 Cal. 245, Nadar Chand Singh v Chandra Bikkor Sadhu, 1 L. R. 15 Cal. 763, Raj v Lakhan, 1 L. R. 27 Cal. 11, Asaram v Nundani, 1 L. R. 30 Cal. 369, relied on MOZAFFER ALI v KALI PRASAD SAHA (1913)**

18 C. W. N. 271

s. 27—

See SONTHAL PARGANAS—

1 L. R. 41 Cal. 878

SOVEREIGN PRINCE.

suit against—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 86. 1 L. R. 38 Mad. 635

SOVEREIGN RIGHTS.

See ACT OF STATE.

1 L. R. 39 Cal. 615

See ASSESSMENT 1 L. R. 43 Cal. 973

SPECIAL APPEAL.

See SECOND APPEAL.

Civil Judge of Vinchur—Appeal to High Court—Regulation IV of 1872, s. 92—Regulation XIII of 1839, s. 6—Civil Procedure Code (Act V of 1908), ss. 4 and 100. A special appeal, on the grounds mentioned in s. 100 of the Civil Procedure Code (Act V of 1908), lies to the High Court, from the decision of the Civil Judge at Vinchur. **RAMCHANDRA ANANDRAO v PANDU (1913)**

1 L. R. 38 Bom. 340

Second Appeal in cases under Madras Rent Recovery Act VIII of 1865, s. 69—Civil Procedure Code (Act VIII of 1859), s. 379—

SPECIAL APPEAL—contd

Civil Procedure Code (Act XII of 1882), s 584—Concurrent findings of fact—High Court ignoring concurrent findings and deciding contrary to them on second appeal. Although s 69 of the Madras Rent Recovery Act (VIII of 1865) only provides for a regular appeal (on law and fact), and there is no further appeal to the High Court from the decision of the District Judge on appeal from the Collector given by the terms of the Act itself, yet under s. 372 of Act VIII of 1859 which was the Civil Procedure Code in force when Madras Act VIII of 1865 was passed, and which regulated the procedure of the Civil Courts in India outside the Presidency towns, a special appeal lay "to the Sudder Court from all decisions passed in regular appeal by the Courts subordinate to the Sudder Court, and when the District Court was substituted for the Zillah Court and the High Court for the Sudder Court a special appeal lay from the District Court to the High Court. The terms of the latter Civil Procedure Code (Act XIV of 1882) which was the Code in force when the suits out of which the present appeals arose, were instituted are clear on the point that on appeal lies from the order of the District Judge to the High Court unless that right is taken away by express legislation or some express provision of law. And a second or special appeal to the High Court in cases arising under Madras Act VIII of 1865 has been held to lie in *Veeraswamy v Manojer, Pottapur Estate, I L R 26 Mad 518*. The practice has been ever since the passing of the Act for such appeals to be preferred to the High Court and their Lordships would not be disposed to interfere with such a long standing practice even if they thought there was an implied rule against second appeals lying from the decisions of the District Judge with respect to adjudications under the Act by the Collector. S 584 of the Code of Civil Procedure, 1882 distinctly prohibits second appeals on questions of fact, and confines the competency of the High Court to deal with law and procedure. Where, therefore, in a suit by landlord under s 9 of the Madras Act VIII of 1865, to enforce acceptance of a patta by his tenants, and the sole question was whether on the evidence an arrangement which had been previously come to between the parties was permanent, and the Collector and the District Judge concurrently found in the defendant's favour that it was permanent, but the High Court on second appeal ignored that finding and held that the landlord was entitled to revert to a system of rates which had existed prior to such arrangement: *Held*, that the High Court had acted in inadvertence of s 584 of the Code and had thereby assumed a jurisdiction which it did not possess, and its decision was set aside and the case remitted to India. *Durga Choudhury v Jerahir Singh Choudhury, I L P 18 Cal 23 s C L R 17 I A 122*, followed *Ravi Veeraswamy v Venkata Narasimha Naidu Bahadur (1914) I L R 37 Mad. 443*.

Second Appeal in suit under Bengal Tenancy Act (VIII of 1885), ss 108, 109, A(2)—Civil Procedure Code (Act XIV of 1882), s 584—High Court entertaining second appeals where no ground existed within s 584—Perusing evidence and deciding contrary to decision of Special Judge, on facts—Disturbing findings of facts—Questions of law and fact. S 190A (3) of the

SPECIAL APPEAL—concl'd

Bengal Tenancy Act makes applicable to an appeal to the High Court from the decision of a Special Judge the provisions of Chapter XLII of the Code of Civil Procedure, 1882, and the right of appeal is therefore limited by the provisions regulating the right of appeal to the High Court from a subordinate Court contained in s 584 of that Code, the power as to the regulation of rents being dependent and consequent upon the alteration of the judgment on specified grounds, and only such grounds are permissible. Where, therefore, it was found that such an appeal to the High Court was not within any of the grounds in s 584, but that nevertheless the High Court had entertained the appeal, reversed the decree of the Special Judge on questions of fact, making suggestions of prejudice and unreasonable assumptions on his part for which there was no justification and so reversing the evidence with which it was not competent to deal. *Held*, that the High Court had exceeded its jurisdiction by exercising functions completely circumscribed by the provisions of a statute passed for the express purpose of securing some measure of finality in cases where the balance of evidence, verbal and documentary, arose for decision, and its decree and judgment so made were set aside. Questions of law and of fact are sometimes difficult to disentangle. The proper legal effect of a proved fact is essentially a question of law, so also is the question of admissibility of evidence and the question of whether any evidence has been offered on one side or the other. But the question whether the fact has been proved when evidence for and against has been properly admitted is necessarily a pure question of fact. *MAFAR CHANDRA PAL CHOWDHURY v SHEKHAR SINGH (1918) I L R 46 Cal 189*.

SPECIAL BENCH

power of—

See *PARDON I L R 37 Cal 845*

SPECIAL CITATION

See *LETTER OF ADMINISTRATION*

I L R 47 Cal 829

SPECIAL CONSTABLES

Dispute regarding ferry—Proceeding for security to keep the peace drawn up against one party—Appointment of members thereof as special constables—Refusal to act as such—Legality of appointment and of prosecution for such refusal—Police Act (V of 1861) ss 17, 19. The only legitimate object of appointing special constables under s 17 of the Police Act (V of 1861) is to strengthen the ordinary police force by the addition of suitable persons. When the appointments are not made with such an object, a prosecution under s 19 of the Act for refusal to act as such will not be permitted. When the members of one party to a ferry dispute were appointed as special constables, and the circumstances showed that it was never really intended to utilize them as police officers, the High Court quashed the order of the District Magistrate directing the prosecution under s 19 of the Act and the issue of warrants against them. *PARDIN SINGH v EMPEROR (1916) I L R. 43 Cal 277*.

SPECIAL COURT

— *WFA n excludes jur s*
Action of ordinary Courts Before the jurisdic-
 tion of the ordinary Courts of the country can be
 excluded by a Special Court there must be clear
 words in the statute excluding such jurisdiction.
SARKI BHUSAN HAIRA v SURESH ESHABAR ALI
NAZIR (1915) 19 C W N 636

SPECIAL DAMAGE

See LIMITATION I L R 40 Calc 893
See TORT I L R 33 All 237

SPECIAL JUDGE

— *decision of—*

See SECOND APPEAL
 I L R 46 Calc 189

— *order of—*

See APPEAL I L R 45 Calc 638

SPECIAL LEAVE TO APPEAL

See PRIVY COUNCIL, PRACTICE OF
 I L R 41 Calc 568

SPECIAL PROCEDURE

See BAIL I L R 37 Calc 439

SPECIAL TRIBUNAL

See MADRAS CITY MUNICIPAL ACT (III
of 1904) s 287 I L R 38 Mad 41

See RECORDS POWER TO CALL FOR
 I L R 43 Calc 239

SPECIFIC AREA

See LEASE I L R 37 Calc 293

SPECIFIC MOVEABLE PROPERTY

— *Specific Relief Act (I*
of 1877) s 11—Civil Procedure Code (Act V of
1908) O XXI r 31—Pleadings—Suit against a
carrier—Non delivery of goods—Compensation—
Limitation Act (IX of 1908) Arts 31 49 and 115—
Motion general a specialibus non derogant appli-
cations of. In order to entitle the plaintiff to obtain
 delivery of specific moveable property by suit and
 to enforce the decree so obtained by the stringent
 methods provided in O XXI r 31 of the Code of
 Civil Procedure it is necessary that he should
 allege and prove facts which entitle him to compel
 the delivery of specific moveable under the provi-
 sions of s. 11 of the Specific Relief Act. Where
 in a suit a plaintiff carries the plaintiff asked for the
 recovery of one plank of wood that was not deliv-
 ered to the consignee and also for Rs. 21 12 0
 being the loss of interest but contends no allega-
 tion on that the defendant was in possession of the
 plank in question and it was obvious from the
 correspondence that he was not in possession of the
 same. *Held*, that in so far as the suit could be
 regarded as a suit for the return of the specific
 plank, the case did not come within s. 11 of the
 Specific Relief Act and the suit must be dismissed
 that if the suit was regarded as one for compensa-
 tion for failure to deliver the plank in breach of the
 contract under the bill of lading it was governed
 by Art. 31 and not by Art. 49 or 115 of the Limi-
 tation Act. By the amendment in 1899 of Art.
 31 of the Limitation Act the Legislature clearly
 indicated its intent on that the Article should
 apply to a claim against a carrier for compensation
 for non delivery of goods irrespective of the ques-

SPECIFIC MOVEABLE PROPERTY—contd

tion whether the suit was laid in contract or in tort.
 Art. 49 is inapplicable to such a case even if it
 were applicable its operation would be excluded
 by the special Art. 31 as amended on the principle
 general a specialibus non derogant. *The British*
India Steam Navigation Co v Hajee Mahomed
Esack & Co I L R 3 Mad 107. *Danmull v*
British India Steam Navigation Co I L R 12
 Calc 477 and *Creat Ltd and Peninsula Railway Co*
v Russell Chandmull I L R 19 Bom 165 referred to
 VENKATASUBBA PAO v THE ASIATIC STEAM
 NAVIGATION CO, CALCUTTA (1911.)
 I L R 39 Mad 1

SPECIFIC PERFORMANCE

See AGREEMENT TO LEASE
 I L R 47 Calc 495

See BYGAL AGRA AND ASSAM CIVIL
COURT ACT 1837 s 18
 4 Pat L J 447

See CHOTA NAAGPUR ENDCUMBERED ESTATE
ACT 1876 s 17 4 Pat L J 580

See CHOWKIDARI CHAKRAM LANDS
 I L R 37 Calc 57
 I L R 48 Calc 173

See CIVIL PROCEDURE CODE (ACT V OF
1908) O II n
 I L R 38 Mad 698

See CONTRACT I L R 46 Calc 771
 I L R 45 Bom 1170

See CONTRACT ACT 1872 s 55
 I L R 40 Bom 289

See GUARDIAN AND MINOR
 I L R 38 All 433

See HINDU LAW (JOINT FAMILY)
 2 Pat L J 513

See JURISDICTION
 I L R 43 Calc 882

See LEASE I L R 39 Calc 683

See REGISTRATION ACT 1908 ss 17 AND 49
 I L R 45 Bom 8

See SPECIFIC RELIEF ACT 1877 s 30
 I L R 34 All 43

See TRANSFER OF PROPERTY ACT (IV OF
1882) s 54 I L R 41 Bom 438

— *agreement whether complete and*
enforceable—

See REGISTRATION ACT 1908 ss 17 AND 49
 I L R 45 Bom 8

— *of contract to sell—*

See COURT FEES ACT (VII OF 1970) s 7
 CTS (v) AND (x) I L R 38 All 292

— *partition and possession suit for—*

See CIVIL PROCEDURE CODE (ACT V OF
1908) O I s 3
 I L R 40 Mad 365

— *suit for—*

See EJECTMENTS
 I L R 39 Mad 554

See HINDU LAW—ALIENATION
 I L R 38 Mad 1187

See SPECIFIC RELIEF ACT (I OF 1877)
 s. 27 I L R 38 All 184

SPECIFIC PERFORMANCE—*contd.*

—unstamped agreement for sale partly performed—

See CONTRACT . I L. R. 45 Bom. 1170

1. — Agreement to lease—*Specific performance, suit for—Registration, if necessary—Indian Registration Act (III of 1877) ss 3, 17 (1) and 49—Transfer of Property Act (IV of 1882), s 51—Present demise—Interest in land.* Unless an agreement to lease certain premises operate as present demise, it does not, of itself, create any interest in or charge on the property agreed to be demised and can, therefore, be given in evidence for the purpose of enforcing specific performance of it, without its having been registered under the provisions of the Indian Registration Act *Purmananddas v Dharsey, I L R 10 Bom 101*, not followed *Kondras Srinivasa v Cottumukkala Venkataraja, 17 Mad I J 218*, followed. An unregistered agreement to lease provided for the grant of lease for a period of five years commencing from the day following the day on which the agreement was entered into and also provided that the proposed lessee would get a proper *kabuliyat* granted to him to be registered at his own cost. *Held*, that on the day the agreement was come to, there was no present demise, and, therefore, the agreement could be adduced in evidence for the enforcement of specific performance thereof *SATYENDRA NATH BOSE & ANNI CHANDRA GHOSH (1908)* 14 C. W. N. 65

2. — Sale of immoveable property—*Marketable title, to the satisfaction of the purchaser's solicitors* When a vendor of immoveable property desires to enforce a contract for sale with a condition that the title adduced should be to the satisfaction of the purchaser's solicitors, he must prove either that the solicitors did approve of the title or that there was such a title tendered as made it unreasonable to approve of it *Clack v Wood, 9 Q B D 276*, followed *TREACHER & Co v MAHOMEDALLY ADAMI PRERBOY (1910)* I L. R. 35 Bom 110

3. — Denial of execution of agreement by defendant—*Conflicting evidence as to genuineness of signature—Consideration as to which story best agrees with admitted facts—defendant in pecuniary difficulties—Plaintiff in a position to "dominate his will"—Bargain onerous but not unconscionable—Absence of fraud or misrepresentation by plaintiff—Discretion in granting or refusing specific performance* In a suit to enforce specific performance of an agreement dated 4th April 1906, for the sale of land, in which the defendant (appellant) denied that he ever signed the agreement, the evidence on that point was conflicting, though otherwise there was much unanimity on the general facts. The two lower Courts (of the Chief Court of Lower Burma) differed, the Original Court holding that the defendant's signature was a forgery, and the Appellate Court reversing that decision and making a decree for specific performance. *Held*, by the Judicial Committee, that the proper courts was to examine the admitted facts and circumstances as furnishing the safest guide to a correct conclusion. On this test their Lordships were of opinion that the plaintiff's (respondents) account of the transaction best fitted in with the admitted facts and that the defence was untrue. The defendant when he acquired the land in 1901, was admittedly in pecuniary difficulties, and had bought it with money raised by mortgaging it. In

SPECIFIC PERFORMANCE—*contd.*

1905 his mortgagee was pressing for payment, and another creditor had taken out execution. The arrangement he was obliged to make with the plaintiff was, therefore, necessarily of a somewhat onerous nature. *Held*, that in the absence of any evidence of fraud or misrepresentation on the part of the plaintiff, which induced the defendant to enter into the contract, or that the plaintiff under the circumstances took an improper advantage of his position or the difficulties of the defendant, and having regard to the character of the agreement, which, in their opinion, though onerous, was not unconscionable, their Lordships saw no reason in the exercise of their discretion for refusing to grant specific performance. The decree of the Appellate Court was therefore upheld *DATIS & MAHA SHWE GOH (1911) I. L. R. 38 Cal 805*

4. — Minor—*Right to specific performance of contract entered into on his behalf by his guardian and manager of his estate—Contract for purchase of immoveable property and sale of it to minor—Power of guardian and manager—Want of mutuality* In a suit for specific performance by a minor of an agreement for the purchase and sale to him of certain immoveable property, entered into by the manager of the minor's estate and his guardian on his behalf. *Held*, by the Judicial Committee, that it was not within the competence either of the manager of the minor's estate or of the guardian of the minor, to bind the minor or the minor's estate by a contract for the purchase of immoveable property, that as the minor was not bound by the contract there was no mutuality; and that consequently the minor could not obtain specific performance of the contract. *MIR SARWARJAN v FAKRUDDIN MAHOMED CHOWDHURY (1911)* I. L. R. 39 Cal 232

5. — Contract executed in exercise of power given by will—*Will found false—Enforcement against executant as heir—Delay in suing, not amounting to waiver or acquiescence, if bar to relief* The widow of the deceased owner jointly with another who as executor had obtained probate of a will alleged to have been left by the deceased executed an agreement for sale of land, the widow purporting thereby to exercise a power given by the will to assent to conveyances executed by the executor. The probate subsequently having been revoked. *Held*, that the contract was specifically enforceable against the widow to the extent of her interest. *Horrocks v Rugby, 9 CA D 180*, relied on. Delay which did not amount to waiver, abandonment or acquiescence and in no way altered the position of the defendant, did not disentitle the plaintiff to sue for specific performance. *Kissen Gopal Salaney v Kali Prasanna Sett, I L. R. 33 Cal 633*, followed; *Moynul Lai v. Chotalai, I L. R. 10 Cal 1061*, referred to. In the special circumstances of the case, specific performance of the contract was refused. *KENDRA NATH SAMANTA & MANU BIRI (1911)* 16 C. W. N. 247

6. — Agreement to renew a lease—*When specifically enforceable against a subsequent lessee for value—Duty of subsequent lessee to enquire of terms of previous lease—Specific Relief Act (I of 1877), s 27* An agreement to renew a lease under certain conditions on the determination of the term of the lease can be specifically enforced against a subsequent lessee for value who has omitted to make an enquiry of the tenant

SPECIFIC PERFORMANCE—contd

could be granted. *Wolverhampton and Walsall Railway Co v L. and N. W. Railway Co, L. R. 16 Eq 433*, per Lord Selborne, referred to *JATINDRA NATH BASU v PETER DEYE DEBI* (1910)

I. L. R. 43 Cal. 990

10. ———— Contract to lend or borrow money—Suit for balance of mortgage money—Damages—Provincial Small Causes Courts Act (IX of 1837), Sch. II cl. 15, 16—Civil Procedure Code (Act V of 1908), s. 113, O. XXI, r. 1 A suit for specific performance of a contract to lend or borrow money is not maintainable. *Ropers v Challis, 27 Bear 170*, *Sichel v Mosenthal, 30 Bear 371*, *Larios v Garety, L. R. 5 P. C. 316*, and *The South African Territories v Warrington, [1898] A. C. 309* followed. Nor would a suit to recover the balance of the mortgage money, on a suit for the rectification of the instrument be cognizable by a Court of Small Causes (Vide cl. 15 and 16 Sch. II, Provincial Small Causes Courts Act, 1837) But a suit for damages for breach of contract is cognizable by a Court of Small Causes, if the amount is within its pecuniary jurisdiction. *SHRIKH GALIM v SADARJAN BINI* (1915)

I. L. R. 43 Cal. 59

11. ———— Contract modified—Specific performance of a contract of sale—S. 27 (6), Specific Relief Act (I of 1877)—Contract varied—Vendors asked to take out letters of administration and leave to sell—Effect of variation—Contingent contract—Order for sale—Title of purchasers under order of Court—Whether such purchasers are affected with notice of previous agreement—Dealings with purdashin ladies—Independent legal advice—Costs—Discretion of the Appeal Court in modifying order for costs made by the Court of first instance Two widows defendants Nos 1 and 2, entered into an agreement on the 23rd January 1910 for sale of certain properties for legal necessity with the plaintiffs at Rs. 8,000 per cottah. The agreement contained the following covenant on the part of the vendors:—"We shall at our own expenses do everything which your attorney shall consider necessary for rectifying and clearing the title deeds." The idea of applying for Letters of Administration was not present in the mind of any of the parties at the time of the agreement. Subsequently in order to obviate any objection of the reversioner on the score of legal necessity the plaintiffs asked the widows to apply for Letters of Administration with leave to sell to the plaintiffs. The widows obtained Letters of Administration and one of them actually obtained leave to sell to the plaintiffs. Subsequently the widows applied and obtained leave for sale to the defendants Nos. 3, 4 and 5 (described as the Nandi defendants) who offered a higher price and the property was conveyed to them. The Nandi defendants had notice of the agreement for sale to the plaintiffs at the time when they took the conveyance. In a suit by the plaintiffs for specific performance of the agreement of sale against all the defendants and in the alternative for damages against defendants Nos. 1 and 2 for breach of contract. Held that the contract as varied by mutual consent became a contingent one, and as the contingency had not happened (i.e., leave of the Court had not been obtained in their favour) the plaintiffs were not entitled to claim performance of the contract. *Naran Patro v Ashok Naran Manna, I. L. R. 12 Cal. 152*, and *Sarb Chandra v Khetra Pal*

SPECIFIC PERFORMANCE—contd

14 C. W. N. 451 s. c. *11 C. L. J. 346*, followed. Held, also, that the plaintiffs were not entitled to claim damages as their action was based on the original contract and not on the contract as modified and as there was no breach of the modified contract. *KALIDAS DASSEE v NOBO KUMARI DASSEE* (1916) . 20 C. W. N. 929

12. ———— Agreement to reduce terms into writing—Contract, if complete before writing—Contract completed subject to insertion of "usual terms and conditions" if specifically enforceable—Vendor, if may waive such terms and enforce others—Earnest money, payment of if conclusively completed contract—Uncertainty—Variance between pleading and proof In a suit for specific performance of a contract for sale and purchase of immovable property where the purchaser agreed to buy the property at a certain price and agreed to certain terms and conditions as he understood them and paid earnest money and the terms of the contract were sought to be proved partly by evidence in writing and partly by oral evidence and it appeared that the parties contemplated a formal written agreement to be approved and afterwards executed embodying the special terms and conditions already supposed to have been agreed upon and the "usual terms and conditions" of sale and purchase and it appeared that there were a number of terms and conditions admittedly not agreed to or discussed between the parties which were afterwards embodied in a draft agreement prepared by the vendor's solicitor and submitted for the approval of the purchaser and which draft agreement the purchaser did not approve. Held that there was no completed contract between the parties capable of being specifically enforced. *PER JENKINS, C. J.*—It being expressly pleaded in the plaint that it was a matter of actual agreement and not merely the expression of a desire that the terms should be embodied in a written agreement there was, in the absence of such a formal contract in writing, no concluded contract between the parties. That where the terms of a contract are sought to be proved by oral evidence the provision for a prospective written agreement cannot be treated as negligible the more so where the supersession is of an oral by a written agreement and not merely of one writing by another. That even in the case of a supersession of a written document by a more formal writing the circumstance that the parties do intend to make a subsequent agreement has been held to be strong evidence that they did not intend the previous negotiation to amount to an agreement. That even if the main terms be substantially agreed upon and to that extent the purchaser may have considered that there was a contract and have used language appropriate to that position nevertheless where it appears that the prospective written agreement contemplated embodying the term agreed upon or supposed to have been agreed upon together with other terms and conditions described as "usual terms and conditions" the contract cannot be specifically enforced for uncertainty. That the mere payment of earnest money did not preclude the purchaser from pleading that there was no concluded contract. *PER WOODHOUSE, J.*—The Court will not enforce specific performance of a contract the terms of which are uncertain. The question whether a contract is uncertain is a

SPECIFIC PERFORMANCE—*contd.*

question of fact which arises on the documents and oral evidence tendered in support of it. An Appeal Court is not bound to accept the first Court's appreciation of the facts of the case. Both the facts and law are open to the Court of Appeal. But appellant should satisfy the Appeal Court that the judgment appealed against is erroneous. The mere reference to a formal agreement will not prevent a binding bargain. The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put into more formal shape does not prevent the existence of a binding contract. The payment of earnest money is itself evidence of a concluded contract. *Per MOOREHEAD, J.*—It is well settled that the fact that the parties intended to embody the terms of the contract in a formal written agreement is strong evidence that the negotiations prior to the drawing of such writing are merely preliminary and not intended or understood to be binding. If it is definitely expressed and understood that there is to be no contract until the formal writing is executed there is plainly no binding agreement formed until this provision is complied with. It is also true that if all terms of the agreement have not been settled and it is understood that these unsettled terms are to be determined by the formal contract, there is no binding obligation until the writing is executed. But if the oral agreement or written memorandum is complete in itself and embodies all the terms to be inserted in the intended formal writing a binding obligation is fixed on the parties unless it is understood and intended that such contract shall not become operative until reduced to writing. The question is merely one of intention. If the written draft is viewed by the parties merely as a convenient memorial of record of their previous contract, its absence does not affect the binding force of the contract, if, however, it is viewed as the consummation of the negotiations, there is no contract until the written draft is finally signed. To determine which view is entertained in any particular case several circumstances may be helpful, as for example whether the contract is of that class which are usually found to be in writing, whether it is of such a nature as to need a formal writing for its full expression, whether it has few or many details, whether the amount involved is large or small, whether it is a common or usual contract, whether the negotiation itself indicates that a written draft is contemplated as a final conclusion of the negotiation. If a written draft is proposed, suggested or referred to during the negotiations it is some evidence that the parties intended it to be the final closing of the contract. The Court should refuse specific performance where there is substantial variance between the pleading and proof. The draft agreement containing terms which were never settled before between the parties, the legitimate inference to be drawn is that the parties intended the written draft to be the consummation of their negotiations which were to be treated as concluded only upon the final execution of the written agreement. Where many terms still remained undetermined it is a sure index that the contract has not yet been concluded. Where there is ambiguity in any of the conditions of sale in restriction of the rights of the purchaser the condition should be construed more strictly against the vendor. *HYAM v. M. E. GUNBAR (1915)* . . . 20 C. W. N. 88

SPECIFIC PERFORMANCE—*contd.*

13. ——— Unregistered agreement to mortgage on which an advance has been paid—*Whether enforceable—Swamithopam, whether lease or mortgage.* The plaintiff sued for specific performance of an agreement in writing but not registered by which the first defendant agreed *inter alia* to execute a deed of swamithopam in respect of the suit lands to be enjoyed by the plaintiff for twenty years for a consideration of Rs. 5,000 which could however be repaid at defendants' option after eight years from its date. The plaintiff having advanced about Rs. 4,000 and not having obtained possession of a mortgage-deed sued for specific performance. The first defendant pleaded that the agreement was one to execute a lease and as such required registration and not being registered, could not form the basis of a suit for specific performance, he further contended that even if the agreement were one to execute a mortgage, no suit for specific performance to enforce an agreement to grant a mortgage was sustainable. *Held*, that the agreement was one to grant a mortgage and as such did not require registration, and that a Court will not specifically enforce an agreement to lend or borrow money whether on security or not, but where money has been advanced either wholly or in part if the debtor is prepared to pay off the advance at once, the Court will not decree specific performance but if the borrower is not prepared to pay off the advance the Court should decree specific performance. *South African Territories v. Wallington (1894) A C 309* referred to. *Akshay v. Curran J. R. 12 Eq. 76*, and *Herman v. Hodges, L. R. 16 Eq. 13*, followed. *MEENAKSHUNAGARA MEDALIAN v. RATHNARANI PILLAI (1918)* . . . L. L. R. 41 Mad. 959

14. ——— Oral agreement to grant a lease—*Time for payment of premium left open—Whether delay a bar in the suit—Time of the commencement of the lease not specified—Whether the agreement is complete—Indian Evidence Act (I of 1872), s. 92, whether a bar to proof of the time of the commencement of the lease—Transfer of Property Act (IV of 1882), s. 110.* The plaintiffs brought a suit for specific performance of an agreement to grant a permanent lease made orally on the 30th December 1904. The period within which the premium was payable was left open. The sum of Rs. 400 was paid on the day following the agreement; but though subsequently the plaintiff tendered the balance the defendant declined to execute the lease. It was contended that the agreement was not complete as the time of the commencement of the lease was not specified and that delay in the payment of the premium was a bar to the suit. *Held*, that in view of s. 110 of the Transfer of Property Act the agreement was complete, although the time of the commencement of the lease was not specified. *Held*, that although delay on the part of a plaintiff in the performance of his part of the contract would be a bar to his claim for specific performance, provided that time was originally of the essence of the contract or had been made so by subsequent notice or that the delay had been so great as to be evidence of abandonment of the contract, the present case was not covered by either of the first two alternatives nor had the delay been so great as to be evidence of abandonment of the contract. The plaintiffs were entitled to succeed on proof that they indicated their willingness to perform the condition precedent within a

SPECIFIC PERFORMANCE—contd

reasonable time. Where there is an oral agreement to grant a lease, s. 12 of the Indian Evidence Act does not stand in the way of proof that there has been an agreement by implication or inferable from the circumstances, as to the time of the commencement of the lease. *The Statute of Frauds* has no application to this country. **KAILASH CHANDRA BHOWMIK v. BEJOY KANTO LAHARI** (1915) 23 C. W. N. 190

15. — Agreement to sell in favour of a member (since deceased) of a joint Hindu family personally—*Death of plaintiff—Applicant by widow to be substituted for her deceased husband—Legal representative.* A deceased Hindu's wife (in the absence of male heirs) represents him in a suit for specific performance of a personal contract made with him, notwithstanding the fact that the deceased was a member of a joint Hindu family. **JAI KALI v. BALDEO SINGH** (1919) L. L. R. 41 All. 515

16. — Claim for possession.—In a suit for specific performance of a contract for the sale of land it is open to the plaintiff to join with his prayer for specific performance a claim for delivery of possession unless the contract expressly disemtitles him to such relief. The cause of action for delivery of possession may arise both upon the contract and the completed conveyance. If the plaintiff in such a suit omitted to ask for delivery of possession a subsequent suit to obtain delivery of possession might be barred under the provisions of O. 11, r. 2, of the Code of Civil Procedure, 1908. But the Court will decree a claim for a conveyance only in cases where it embodies the substantial part of the agreement and where the Court can direct its execution without regard to the question whether or not its provisions can be specifically enforced. **DEOVANDAN PRASAD SINGH v. JANKI SINGH** 5 Pat. L. J. 314

17. — Unregistered Sale-deed, whether can be regarded as an agreement to sell.—*Suit by vendor for specific performance, whether maintainable.* Where a sale-deed, purporting to be a conveyance of some lands, was executed and delivered to the vendee, but was not registered and the omission was not due to act of God or fraud on the part of the executant, it is not open to the vendee to treat the unregistered document as an agreement to sell and to use for specific performance of such agreement. **VENKATRAM v. ARASAPPY** (1933) 1 L. R. 15 Mad. 311, followed. *See also* **RENDERS NATH DAS CHOWDHURY v. GOPAL CHAND R GHOSH** (1910) 12 C. L. J. 464, disapproved from **THAYAMMAL v. LAKSHMINATHAL** (1920) L. L. R. 43 Mad. 822

18. — Agreement by which defendant has benefited. It was not defence to a suit for specific performance of an agreement under which the defendant took benefit to say that the plaintiff had failed to perform an undertaking given by him in reference to the agreement. **RAVI HARASTO KUMARI v. THE MIDNIGHT EXIMINARY CO.** 24 C. W. N. 177

19. — Unregistered "bainapatra" for grant of lease.—*Registration Act.* An unregistered "bainapatra" for grant of a *pattas* lease acknowledged receipt of part of the consideration money and contained a promise "to grant a *pattas* lease again from the date of the "bainapatra" and to Exchange *patas* and *Katulyas* before the 30th

SPECIFIC PERFORMANCE—contd

Aghran." Held, that the "bainapatra" did not affect a present demise and should be regarded as an agreement creating a right to obtain a *pattas* lease on the performance of certain conditions on or before the 30th Aghran. The document was not an agreement to lease and therefore did not require registration and so was admissible in evidence. **HARINATH BANDOPADHYAYA v. PRODMOTHO NATH ROY CHOWDHURY** 25 C. W. N. 551

20. — of agreement to grant a lease. Specific performance of an agreement to grant a lease cannot be decreed unless that agreement either expressly or impliedly fixes the date from which the terms is to run. **SRI MATI GIRIBALLA DAS v. KALIDAS BHUTTA** 25 C. W. N. 320

SPECIFIC RELIEF ACT (I OF 1877).

See INCOME TAX ACT (VII OF 1918), s. 51 L. L. R. 41 Mad. 718

See NUISANCE L. L. R. 40 Bom. 401

Applicability of to *Sonthal Parganas*. The Sonthal Parganas Settlement Regulation, 1872, read with the Sonthal Parganas Act, 1853, merely means that in suits exceeding Rs. 1,000 in value those laws will apply to the Sonthal Parganas which are *proprio vigore* in force in the whole of India. The Specific Relief Act, 1877, is not *proprio vigore* in force in the whole of India and, therefore, it does not apply to the Sonthal Parganas by virtue of s. 2 of the Sonthal Parganas Regulation, 1872. Declaratory reliefs cannot be granted in a suit instituted in a Court in the Sonthal Parganas. **KUMAR SATYA NARANJAN CHAKRA VARTY v. DWARAKA NATH SARDHU** 2 Pat. L. J. 379

Suit to recover possession of land previously dealt with under s. 145, Criminal Procedure Code. *Per RICHARDSON J.*—When a Magistrate's order is attacked in a collateral proceeding as *ultra vires* it should be shown to have been without jurisdiction in the strict sense of the term, and not in the loose sense in which that term is sometimes used in proceedings for the revision of orders under s. 145, Criminal Procedure Code, under the High Court's powers of superintendence under s. 15 of the Charter Act (now s. 107 of the Government of India Act of 1915). When an enquiry has been properly entered upon, it is not every error which makes the result invalid. Before want of jurisdiction can be established in such a case a vice must be clearly established which infects the whole proceeding. **IAK MAHAMED SHAHA v. HEYAT MAHAMED SAHA** (1917) 22 C. W. N. 342

s. 2—
See COURT FEE L. L. R. 39 Calc. 704

s. 3—
See TRANSFER OF PROPERTY ACT (IV OF 1932), s. 40 L. L. R. 40 Bom. 493

ss. 3, 118, (9), 12, 27—
See TRANSFER OF PROPERTY ACT, s. 34 L. L. R. 41 Bom. 438

ss. 8, 8—*Suit for appointment based on title.*—Court not competent in such a suit to grant a decree on the basis merely of previous possession. Where a plaintiff sues for possession on the basis of title and fails to establish his title, he cannot be

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*—§ 8, 9—*contd.*

granted a decree for possession under the first paragraph of s 9 of the Specific Relief Act. *Ram Harakh Rai v Sheodhal Joti*, 1 L R 15 All 334, and *Mousi v Kachia*, All Weekly Notes (1897) 115 overruled. *Ramswami Chellu v Paraman Chetti*, 1 L R 25 Mad 448, followed. *Wajid Ali v Ram Saran*, All Weekly Notes (1891) 30, and *Chuthan Rai v Sheo Ghulam Fai*, All Weekly Notes (1889) 89, referred to. *Lachman v Shambhu Narain* (1910) 1 L R 33 All 174

—§ 9—

See CIVIL PROCEDURE CODE—

s 11. 1 L R 39 All 717
O Ali N. 23 2 Pat. L J 61

See POSSESSORY SUIT

1 L R. 45 Cal 519

1. —Decree against landlord for khas possession—*Order of tenants in execution—Tenant's remedy—Civil Procedure Code (Act XI) of 1852*, s 332. Where in execution of a decree for khas possession obtained against the landlord, the plaintiffs who were tenants were dispossessed. *Held*, that the plaintiffs were not dispossessed otherwise than in due course of law within the meaning of s 9 of the Specific Relief Act. *Kamini Sundari Dasia v Sankar Sunkh* (1909) 14 C W N. 403

2. —*Possessory suits dismissed—Application by plaintiff for revision rejected*. When the plaintiff's suit under s 9 of the Specific Relief Act, 1877, was dismissed, the High Court declined to interfere in revision upon the ground that it was open to the plaintiff to take another remedy and bring a regular suit on title. *Juala v Ganga Prasad*, 1 L R 36 All 331, followed. *Ram Kishen Das v Jai Kishen Das* (1911) 1 L R 33 All 647

3. —*Tenants, dis possession of, if dispossession of landlord—Physical possession, if must be proved*. Tenants settled by the plaintiff being dispossessed by the defendant relinquished the land to the plaintiff. *Held*, that the plaintiff was in the circumstances entitled to sue under s 9, Specific Relief Act. *Bindubashini v Jahnava*, 13 C W N 303, *Jagannatha v Rama*, 1 L R 28 Mad 233, relied on. *Tarini Mohan v Ganga Prasad*, 1 L R 14 Cal 649, *Sonatan Shome v Sheikh Helim*, 6 C W N 616, distinguished. *Norin Das v Kailash Chandra Dey* (1910) 13 C W N 294

4. —*Dispossession in execution of decree obtained against third party, if in due course of law*. Where the burgadars of a tenant were dispossessed from their land in execution of a decree against the tenant to which the burgadars were not parties and which was obtained upon a false admission by the tenant himself. *Held*, that the dispossession was in due course of law within the meaning of s 9 of the Specific Relief Act. *Haran Chandra Pal v Madan Mohan Bantkhyia* (1911) 15 C W N. 956

5. —*Dispossession—Order of tenant, if dispossession of landlord*. The order of a tenant is an order of the landlord for which the landlord can sue under s 9 of the Specific Relief Act. *Bindubashini Chaudhuran v Jahnava*, 13 C W N 303. *Bindubashini Chaudhuran v Jankoli Chaudhuran*, 13 C W N 307n,

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*—§ 9—*contd.*

Jankoli Nath Roy v Dinamoni Chaudhuran, 13 C W N 305, *Shyama Churn v Mahomed Ali*, 13 C W N 335, *Habin Chunder Das v Koylakh Chunder Das*, 12 C L J 453, followed. *Sonatan Shome v Sheikh Helim*, 6 C W N 616, not followed. *Akhil Chandra Dey v Akhil Chandra Biswas* (1911) 15 C W N. 715

6. —*Thrice tenant, ejectment of—Civil Procedure Code (Act V of 1908)*, s 116—*Jurisdiction—Error of law*. Where in a suit, brought within 6 months from the date of dis possession under s 9 of the Specific Relief Act, to recover lands from which the plaintiff was dis possessed by the end 1318, B S, the Munsif found that the plaintiff was in possession of the lands for the year 1318, B S, as *thrice* tenant or tenant-at-will, but holding that the said *thrice* right ceased after 1318 dismissed the plaintiff's suit. *Held*, that the tenant was entitled to a decree for possession of those lands. *Held*, also, that the Munsif's decision was a refusal to exercise jurisdiction vested in him, and the High Court could interfere under s 115 of the Civil Procedure Code. *Ramdayal Shamanta v Upendranath Shamanta* (1912) 17 C W N. 501

7. —*Decree stayed pending suit for confirmation of possession—Once as in suit for ejectment*. Where a decree in a suit under s 9 of the Specific Relief Act is stayed pending a suit by the defendant for declaration of his title and confirmation of possession. *Held*, that the plaintiff in the latter suit must affirmatively prove his right to present possession. *Monohar Pal v Ananta Moter Dass* (1913) 17 C. W. N. 802

8. —*Possessory title—Suit for recovery of possession—Plaintiff in actual possession without title ousted by defendants having no title at all*. *Held*, that the purchasers of a house and site in a village who had actually held possession for some years, but who had otherwise no title, were entitled to succeed in a suit for recovery of possession as against persons who had in fact ousted them but could show no title at all to the possession of the house or site. *Wah Ahmad Khan v Ayudha Kundu*, 1 L R 13 All 537, and *Lachman v Shambhu Narain*, 1 L R 33 All 174, referred to. *Umrao Singh v Ramji Das* (1913) 1 L R 36 All 51

9. —*Adhar, status of—If tenant or labourer—Possession as Adhar, if protected under s 9—Civil Procedure Code (Act V of 1908)* s 115. Very largely an adhar was a tenant and, in the absence of proof that an 'adhar' in that part of the country was a labourer, the decision of the lower Court protecting his possession under s 9 of the Specific Relief Act was not one which the High Court would remove under s 115 of the Civil Procedure Code. *Debn Nath Das Bhatnagi v Ram Sundar Bhatnagi* (1915) 19 C W N 1205

10. —*Possession, if includes joint possession—Suit by co-sharer*. The words of s 9 of the Specific Relief Act refer to exclusive possession and the Court in a suit under that section has no jurisdiction to grant joint possession to the plaintiff. No order under this section can be made in favour of the plaintiff who claims an undivided share in the property from

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s. 9—*contd*

which he and his co-sharers have been ousted
HARI NAMA DASS v SRIKSH NAJU (1912)

19 C. W. N. 120

11 Joint ownership

—Co-owner, dispossessed by other co-owners, if
may sue Where a co-owner in physical posses-
sion of property jointly with other co-owners
is dispossessed by the latter he can institute a suit
for recovery under s. 9 of the Specific Relief Act
Hari Narain Das v Eleman Bibi, 19 C. L. J. 117,
s.c., 19 C. W. N. 120, distinguished ATIMAN BIBI
v SRIKSH REASUT (1915) . 19 C. W. N. 117

12 Suit for recovery
of possession of immovable property—Construction of
plaint—Suit framed as a suit on title, but also refer-
ring to s. 9 of the Specific Relief Act, 1877—Practice
In a suit for recovery of possession of immovable
property from which the plaintiff alleged that his
sub-tenants had been ejected by the defendants
the plaintiff claimed (i) a declaration of his title
to, and possession of, the land in suit, (ii) damages
for dispossession, and (iii) costs. In the body of
the plaint it was mentioned that the suit was
under s. 9 of the Specific Relief Act, 1877, and, there-
fore, the full Court fees had not been paid. At the
hearing, the plaint was amended by striking out
the claim for a declaration of title, but the claim
for damages was retained. Held, on a construction
of the plaint, that the suit was in substance a suit
for possession based on title, and should have been
tried as such, notwithstanding the reference in the
plaint to s. 9 of the Specific Relief Act. NARAI
Ahmed v Abid Ali, 3 A. L. J. 910, referred to
NARAI DAS v HET SINGH (1918)

I. L. R. 40 All. 637

13 Suit, if lies after
property attached under Criminal Procedure Code
(Act V of 1893), s. 146 Where following upon the
dispossession by defendant of the plaintiff, an
order for attachment was made under s. 146,
Criminal Procedure Code, in a proceeding in respect
of the same property under s. 145, Criminal Pro-
cedure Code. Held, that the plaintiff after this
has no right to relief under s. 9 of the Specific
Relief Act. AZIMUDDIN AHMED v ALAUBDIN
BUDUJA (1917) . 22 C. W. N. 931

14 Possessory suit—
Decree given for land and crops thereon—Crops
removed before execution—Subsequent suit for price
of crops—Defendants not competent to raise question
of plaintiff's title to the land The plaintiff brought
a suit under s. 9 of the Specific Relief Act for the
possession of certain land with crops standing
thereon and obtained a decree. Before, however, he
could obtain possession of the land the defend-
ants cut and removed the crops. The plaintiff
then brought the present suit for recovery of the
value of the crops. The defendants denied his
title to the land. Held, that the defendants
could not, by cutting and removing the crops, annul
the effect of the possessory decree, and have the
question of the plaintiff's title to the land decided
in that suit. MUNNA SINGH v ARBAH SINGH
(1918) . I. L. R. 41 All. 108

ss. 9, 42—Temple lands, possession
of—Trustee of temple—Wrongful dismissal and
dispossession by co-trustees—Suit for declaration,
involving dismissal and injunction—Consequen-
tial relief—No claim to recover possession—Suit

SPECIFIC RELIEF ACT (I OF 1877)—*contd*ss. 9, 42—*contd*

so framed not maintainable—Landlord—Possession
by receipt of rent—Dispossession—Interest capable of
delivery and possession When A, the trustee of a
temple who had been ousted from possession by his
co-trustees, sued for a declaration that his dismissal
from the trusteeship was invalid and for an in-
junction restraining his co-trustees and the temple
committee from interfering with the exercise of
his rights as trustee, there being no prayer for
consequential relief in the nature of possession
against his co-trustees. Held, that the suit was
not maintainable. That the suit is brought by a
trustee is no answer to the objection. That
possession should have been sued for and not a
mere declaration. An injunction is a discretionary
relief and cannot be claimed by a plaintiff out
of possession when he does not ask for posses-
sion against defendants who are actually in posses-
sion. KUNJ Bihari v Keshavlal Hirralal, 1 L.
R. 28 Bom. 507, dissented from Jagadindra
Nath Roy v Hemanta Kumar Deb, 1 L. R. 32
Cal. 129, referred to. Held, further, that notwith-
standing the lands belonging to the temple were in
the physical possession of tenants, yet the plaintiff
has a right to receive rents was capable of possession
which if disturbed entitled him to bring a suit for
possession under s. 9, Specific Relief Act. Jagan-
nath Chatterjee v. Rama Payer, 1 L. R. 23 Mad.
238, followed. Abdul Kadir v Mahomed, 1 L.
R. 15 Mad. 18, followed. Narayana v Shanikanni,
1 L. R. 15 Mad. 235, followed. RATHIASABA PATHI
PILLAI v RAMASAMI AIYAR (1910)

I. L. R. 33 Mad. 452

s. 11—

See SPECIFIC MOVABLE PROPERTY

I. L. R. 39 Mad. 1

s. 12—

See TRANSFER OF PROPERTY ACT, s. 54

I. L. R. 41 Bom. 438

Suit for delivery of cattle
—Specific performance of the contract or com-
pensation—Alternative reliefs—Non maintainability
of the suit—Art. 13, second schedule, Provincial
Small Cause Courts Act (IX of 1937)—Substantial
justice—S. 25, Provincial Small Cause Courts Act
The mortgagors entered into a contract with their
mortgagees whereby, in consideration of the latter
making an endorsement on the back of the mortgage-
bond crediting Re. 215 to the mortgagor's account,
the mortgagor agreed to deliver to the mortgagees
certain heads of cattle. The mortgagees per-
formed their part of the contract and then sued the
mortgagors in the Small Cause Court for delivery of
the cattle promised and in the alternative for
damages. The Court having dismissed the suit as
being a suit for specific performance of a contract
and thus beyond its competence as a Small Cause
Court. Held that under s. 12 of the Specific Relief
Act no suit for specific performance would lie as,
unless there was something remarkable about the
cattle, it was obvious that adequate compensation
for the breach of the contract could be given in
money. Substantial justice was done by the High
Court in the exercise of the powers under s. 25,
Provincial Small Cause Courts Act, by directing
that the plaint be amended by striking out the
clause demanding specific performance and the suit
be dealt with solely as a suit for damages occasioned
by a breach of the contract. BHARAT MAHTO v
NISARALI SRIKSH (1916) . 20 C. W. N. 1020

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 12—*contd.*

*Mortgage decree satisfied by judgment debtor—subsequent attachment of decree in execution by another party to the attachment—Objection rejected—Suit by creditor for a declaration that judgment-debtor was his benamidar and that the attachment was invalid—Code of Civil Procedure (1 of 1908) O 112 r 54 and 63. The judgment debtor satisfied a mortgage decree which had been obtained against him. Subsequently, in a money suit against the same judgment debtor, another party attached the decree before judgment. The present plaintiff thereupon objected to the attachment under O 112 r 54 of the Code of Civil Procedure, 1908. The objection was disallowed, and the objector instituted the present suit for a declaration that at the judgment debtor was his benamidar and that he was the real beneficiary entitled to the money deposited in court. He also prayed for a declaration that the attachment was invalid. *Held* that the suit did not stand against the terms of s 42 of the Specific Relief Act, 1877, and the mere fact that the plaintiff did not ask for recovery of the money was no bar to his obtaining the relief sought. Subsequent to the attachment above referred to the decree was also attached by another party in execution of a money decree against the same judgment debtor. That party was made defendant in the present suit. *Held*, that no claim with regard to this second attachment having been filed under r 55 the present suit under r 63 was not maintainable against the second attaching decree holder. **HARI LAL SARTI v THE RANCHI MINISTRIAL OFFICERS URBAN CO-OPERATIVE CREDIT SOCIETY** 3 Pat L J 182*

s 14 to 17—Contract entered into by person on his behalf and on behalf of minors—Form of decree in suit for specific performance of such contract, when contract found not to be binding on minors. Where a contract of sale entered into by a person on his own behalf and on behalf of minors is found not binding on the minors, no decree for specific performance can be passed against the interest of such minors in the properties. Ss 14 to 16 of the Specific Relief Act do not enable such contract to be separated as regards the adult person who entered into the contract; and s 17 of the Act precludes the passing of a decree against the share of such party alone or a decree for the whole against such person. The purchaser in such a case will be entitled, on offering to pay the whole purchase money, to a decree directing the adult party to convey all his interest in the properties. **CHAKRA SUBRAMAN REDDY v VADLAMUDI BHATKACHALAM CHETTY (1900)** 1 L. R. 33 Mad 359

s 15—

See HINDU LAW—ALLEGATION

1 L. R. 38 Mad 1187

*Contract by managing member of joint Hindu family and circumstances not binding on the other members—Right to specific performance—Hindu Law. Where the managing member of a joint Hindu family consisting of himself and his sons, some of whom were minors, entered into a contract to sell family lands to the plaintiff, under such circumstances, that the contract was held not binding on the sons: *Held*, in a suit for specific performance against both the father and the sons composing the joint family,*

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 15—*contd*

that under s 16 of the Specific Relief Act, the plaintiff was not entitled to a decree even as against the father. 8 Mys 134. In a case where a member of an undivided family agrees to sell part of the joint property in which he has only a share, and the circumstance that an undivided father has an interest in every portion of the undivided property does not take the case out of the operation of the section. **Koovari Ramaraju v Isakury Pundarikumar** 1 L. R. 16 Mad 74 and **Srinivasa Reddy v Sivarama Reddy** 1 L. R. 32 Mad 30, not followed. **Poralu Subbaramu Peddi v Vadlamudi Seshachalam Chetty** 1 L. R. 33 Mad 352, **Corrado Vokker v Apudhakaya Iyer** Mad N. V. 57, and **Barrett v Ping** 2 Sm & Giff 43; see, 65 F. F. 291 referred to. **NAGIAN v K. KATARAM SASTHULI (1912)**

1 L. R. 37 Mad 387

ss 15 and 17—

*Sale by managing member—Sale of family property not for necessity—Suit for specific performance—Specific performance of entire contract whether can be granted—Option of purchaser for specific performance as regards share of vendor on date of contract on payment of full consideration—Such share to be specified in decree. The managing member of a joint Hindu family, who, for purposes not binding upon the other co-parents and without their concurrence, agrees to convey a specific item of joint family property, cannot "perform" his contract in its entirety and the case falls within the provisions of s 15 of the Specific Relief Act. The purchaser in such a case cannot enforce specific performance of the entire contract. But Courts will grant specific performance by a conveyance of the share which the vendor had in the property at the date of the contract, if the purchaser elects to pay the entire consideration, and the share should be specified in the decree. **Koovari Ramaraju v Isakury Pundarikumar (1903)** 1 L. R. 16 Mad 74, and **Srinivasa Reddy v Sivarama Reddy (1909)** 1 L. R. 32 Mad 320, disapproved from **Poralu Subbaramu Peddi v Vadlamudi Seshachalam Chetty (1910)** 1 L. R. 31 Mad 359, and **Nagiah v Venkatarama Sasthul (1911)** 1 L. R. 37 Mad 387, approved. **BALDEVANI AITAR v LAKSHMAN AITAR (1911)***

1 L. R. 44 Mad (F.B.), 605

*Contract by one co-owner to sell property belonging to him in common with another—Not enforceable—Delay, effect of. Where one of two undivided brothers of a Hindu family agreed to sell immovable property held by them in common, and a suit was brought for specific performance of the contract by compelling the vendor to execute a deed of sale in respect of the whole of the property agreed to be sold: *Held*, that non-specific performance could be granted as the execution of a sale deed by the defendant would be ineffectual in respect of the moiety not belonging to him. The Court would not lend its sanction to a transaction devoid of legal effect and improper in itself as calculated to throw a cloud on the title of a third person which would give him a cause of action for a declaratory suit. **Poralu Subbaramu Reddy v Vadlamudi Seshachalam Chetty** 1 L. R. 33 Mad 359 referred to. **Koovari Ramaraju v Isakury Pundarikumar** 1 L. R. 16 Mad 74, **Srinivasa Reddy v Sivarama Reddy**, 1 L. R. 32 Mad 320, and **Barrett v Ping**, 2 Sm*

SPECIFIC RELIEF ACT (I OF 1877)—contd

ss. 15 and 17—contd

d. Q 43, sc., 65 E R 291, distinguished S 17 of the Specific Relief Act prohibits the Court from directing specific performance of a part of a contract except in accordance with the preceding sections. Even in a case falling within s 15, the relief by way of a decree for part performance is discretionary and will not be granted where there has been great delay, and a consequent change of circumstances. *GOVINDA NAIDU v APATHANAYA IYER* (1912)

I L R 37 Mad 403

s 18—

See CIVIL PROCEDURE CODE, 1882, s 325A I L R 36 Bom 510

s 21—

See ARBITRATION I L R 48 Cal 1041

See COMPROMISE DECREE

14 C W N. 451

Arbitration—Reference to arbitration pleaded in bar of suit—Effect of reference having become unenforceable before suit, Held, that an agreement to refer to arbitration which has not been acted upon and which has become from lapse of time unenforceable cannot be set up as a bar to a suit respecting matters which had been included in the agreement. Atma Ras v Sheobaran Ras, All Weekly Notes (1882) 58, Tahal v Bisheshar, I L R 8 All 57, and Adhikar v Gursandas Nathu, I L R 11 Bom 199. RAM KUMAR SINGH v JAG MOHAN SINGH (1910)

I L R 33 All 315

Partners, agreement amongst, to refer disputes to arbitration—Withdrawal of one without cause, from arbitration—Suit to recover a share in debt realised by the other partner, if lies. Where a person has agreed with another that all matters in controversy between them should be referred to arbitration, it is not open to that person to renege from the agreement unless for good and sufficient cause. A dispute between partners whose business has come to an end regarding the division of assets, can only be finally settled in a proper suit for dissolution of partnership and for adjustment of accounts, and it is not proper that each of the parties should proceed by separate suits in order to recover from the other any sums due to the partnership business which he alone may have realised. Where on the termination of a partnership business, the partners agreed to refer all matters in dispute between them relating to the partnership to arbitration, and then one of the partners withdrew from the arbitration without sufficient cause, and instituted a suit in the Small Cause Court to recover a half share of a partnership debt realised by the other partner. Held, that the debt in suit being one of the matters which the plaintiff had contracted to refer to arbitration, s 21, Specific Relief Act was a bar to the continuance of the suit. That the suit was not maintainable at all. RAM CHANDRA PAL v KUSHERA LAL PAL (1912)

17 C W N 351

Agreement to arbitrate—Suit, when demand and refusal not proved, if by itself a refusal to arbitrate—Implied refusal. Where two days after concluding an agreement to refer their disputes to arbitration one of the parties instituted a suit and it was urged in defence that

SPECIFIC RELIEF ACT (I OF 1877)—contd

s 21—contd

the suit was barred by s 21 of the Specific Relief Act but there was no allegation in the written statement that the plaintiff refused to perform the contract to refer to arbitration nor was any evidence given to prove such a refusal. *Held, per FLETCHER, J.*—That the filing of the suit was not a refusal within the meaning of s 21 of the Specific Relief Act. *Per SHAMSHUL HUDA, J.*—Neither demand nor refusal need be express and both may be implied. That the institution of the suit in circumstances which showed that plaintiff was determined not to go to arbitration amounted to a refusal to perform the contract to arbitrate. *DIVYABANDHU JANA v DURGA PRASAD JANA (1918)*

22 C W N. 382

ss 21 (b), 54

See TRUST I L R. 41 Cal 19

s 22—

See SPECIFIC PERFORMANCE

I L R 41 Cal 852

*Contract for sale of land in lieu of kushup of departmental enquiry against a public servant, if enforceable—Court of equity, jurisdiction of, to refuse specific performance of contract not valid or void under the Indian Contract Act. In a suit for specific performance of a contract for sale of land, it appeared that in consequence of a charge being laid at the instance of the plaintiffs against one of the defendants who was the record keeper of the Court of the District Judge a departmental enquiry into the matter by a Subordinate Judge was ordered and while this was in progress the two defendants who were father and son were approached by the plaintiffs who promised to kushup on the said enquiry if the defendants would execute a conveyance in their favour in respect of certain land and the result was the contract in suit. Held, that the contract was one of which specific performance ought not to be ordered. That there may be cases which cannot be brought within the four corners of the provisions of the Indian Contract Act as to the invalidity or voidability of agreements but in which nevertheless a Court of equity may properly refuse to exercise its jurisdiction under the Specific Relief Act. *GOBINDA CHANDRA CHAKRABORTY v NANDA KUMAR DAS (1914)**

18 C W N 689

Specific performance, suit for—Sale not completed in time through vendor's non-performance of essential term within time assigned—Vendor, if may sell property to another after expiry of time—Delay—Hardship, brought on by vendor—Subsequent purchaser with notice making improvement, if entitled to compensation. Where a vendor agreed to satisfy the purchaser within a specified time that she had a valid saleable interest in the property, by showing a copy of the order of the Collector about the registration or her name in respect of the property, the will of her mother and other papers relating thereto, but neither the will (which had been filed in Court for probate) nor a certified copy thereof was shown, but the vendor produced a compromise petition between the parties to the probate proceeding. Held, in the circumstances of the case, that it was impossible to hold that the production of the will was a non essential term of the agreement, and non completion of the sale was not due to the default of the purchaser who had refused to

SPECIFIC RELIEF ACT (I OF 1877)—contd**s 22—contd**

accept the compromise petition in lieu of the will or a certified copy thereof. Where property which had been agreed to be sold to plaintiff was sold to defendant on 30th August, the conveyance being registered on the following day, and the plaintiff sued for specific performance on the 6th November on the re-opening of the Civil Courts which was closed for the Pusa holidays from 2nd October to 3rd November: *Held* there was not such a delay in instituting the suit as would justify the Court in refusing specific performance. Specific performance will be refused against a vendor on the ground of hardship as contemplated in s 22 (2) of the Specific Relief Act where the vendor has entered into the contract without full knowledge of the circumstances. Where a transferee of property buys with notice of a prior agreement to sell it to another and makes improvements in the property without inquiry of the latter: *Held* that in a suit by the latter for specific performance he was not entitled to be reimbursed for the costs of the improvements. **HARADHOVE DEBYATH v BHAGABATI DAS** (1914) 19 C W N 89

s 23—

See CONTRACT I L R 42 Bom 344
I L R 38 Mad. 753

s 24—

See SPECIFIC PERFORMANCE.
I L R. 43 Calc 980

s 27—

See CIVIL PROCEDURE CODE (ACT V OF 1908) O I R 3
I L R 40 Mad 365

See HINDU LAW JOINT FAMILY PROPERTY.
I L R 44 Bom 967

See SPECIFIC PERFORMANCE.
I L R 40 Calc 565

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 39 Mad 462

Sale by unregistered deed

—Subsequent sale by registered deed—Suit by first vendee for registration on of deed and for declaration that the subsequent transaction was void. The first defendant sold the property in suit to the plaintiff by an unregistered sale deed and subsequently sold the same property to the second defendant by a registered sale deed. Plaintiff sued both the defendants. The reliefs claimed were (i) that the first defendant should be directed to register the first sale deed and (ii) that the transaction between the first and second defendants should be declared null and void and possession of the property given to the plaintiff. During the pendency of the suit the plaintiff and the first defendant entered into a compromise as a result of which a fresh deed of sale was executed by the first defendant in favour of the plaintiff and registered. The suit was contested by the second defendant and was eventually dismissed by the lower Courts. *Held* that the suit as framed was a suit for specific performance of the contract. *Held* further that the first sale to the plaintiff was a transaction affecting property and that therefore the unregistered sale deed was not admissible in evidence. **MAHURAN v THAG SAN** 1 Pat L J 455

—Transferee for value from lessor with constructive notice of agreement for renewal

SPECIFIC RELIEF ACT (I OF 1877)—contd**s 27—contd**

in favour of lessee—Constructive notice—Possession of tenant notice of covenant—Specific performance. Occupation of property by a tenant ordinarily affects one who would take a transfer of that property with notice of that tenant's rights and if he chooses to make no enquiry of the tenant he cannot claim to be transferee without notice. Where on 11 7 06 during the currency of a jalkar lease for seven years executed by the owners in favour of the defendants on 23 1 01 the plaintiffs took a settlement of the jalkar from the lessor for a term of seven years from 1-5 08 on payment of a sum of Rs 600 and on the expiry of the defendants term sued them for recovery of possession of the jalkar. *Held* that an agreement for renewal of their lease upon certain conditions made between the defendants and their lessors on 1-5-01 was specifically enforceable by them against the plaintiffs who claimed title under the lessors and were affected with notice of the agreement of 1-5-01. That plaintiffs could not consequently recover. **BARHAM BAG v MOHADEB CHANDRA PALLAY** (1913) 18 C W N 341

Sale—Suit for specific

performance of a contract to sell defendants being vendors under a registered sale deed—Priority—Registration Act (XVI of 1908) s 50. The owners of a village which had already been sold at an auction on sale in execution of a decree agreed to sell it to the plaintiff provided that the auction sale should be set aside. The auction sale was set aside; but subsequently the village was sold by means of a registered sale deed to a third party. *Held* on a suit by the plaintiff for specific performance of the contract to sell to him that the defendants vendees registered sale deed did not take priority over the contract in his favour and that it lay on the defendants to rebut the evidence given by the plaintiff to the effect that the defendants at the time of their purchase were aware of the existence of the contract in favour of the plaintiff. **NAUBAT RAI v DHANRAJ SINGH** (1916) I L R 38 All 184

s 28—Agreement of sale—Specific per-

formance—Alternative relief—Civil Procedure Code (Act V of 1908) O VII, r 7. Where in an agreement of sale it was stipulated that if the transaction fell through for default of the vendors (defendants) the vendee (plaintiff) would be free to enforce specific performance at law and would be entitled to be credited with interest on his deposit from the date on which it was made but if it fell through owing to the vendee's default then the latter would be entitled to the refund of the bare deposit without interest, and the vendors would be at liberty to dispose of the property in any other way they might choose, and the Court below refused a decree for specific performance and gave a decree for the refund of the deposit with interest though the plaintiff (vendee) did not ask for any such alternative relief. *Held* that the Court below was in the main right as it did not necessarily follow from the dismissal of a suit for specific performance that an order for the refund of any part payment of the purchase-money should also be denied. **IBRAHIMBAI v FELDER** I L R 21 Bom 327. **Alokeshi Doss v Hara Chand Dasa**, I L R 24 Calc 837. **Amma Bibi v Udu Narayan Misra** I L R 31 All 63, **Hove v Smith** 27 CA D 89 referred to. The vendee could, notwith-

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s. 29—*contd*

standing that his suit for specific performance has been dismissed, and no matter on what ground it failed have brought a suit for the recovery of his deposit. *Paragodan Nair v Perumthoduka Illoil Chala*, 1 L R 27 Mad 330, referred to *Held*, further, that the Subordinate Judge was right in refusing to relegate the parties to fresh litigation as there could have been but one result of another suit on the contract. *Hovey v Smith*, 27 Ch D 89, referred to *RAGHU NATH SAHAJ v CHANDRA PRATAP SINGH* (1912) 17 C W N 100

s. 30—*Specific performance—Award—*

Suit to recover money payable under an award—Limitation Act (IX of 1908) Sch I, Arts 113, 116, 120—Limitation By the terms of an award it was provided, *inter alia*, that the defendants should pay to the plaintiff the sum of Rs 500 on or before the 27th of June 1901 and in default of such payment the plaintiff could recover from the defendants Rs 350 with interest at 12 per cent per annum. *Held*, that a suit to recover on default of payment by the stipulated date, the sum above named with interest was not a suit for specific performance of a contract, and as such governed by Art 113 of the First Schedule to the Indian Limitation Act, 1908, but was governed by either Art 116 or Art 120. *Suiko Bhai v Ram Sukh Das*, 1 L R 5 All 263, *Raghubar Dyal v Bhojan Mohan Lal*, 1 L R 16 All 3, *Shro Narain v Beni Madho*, 1 L R 23 All 285, *Sornavalli Ammal v Muthayya Sastiryal* 1 L R 23 Mad 593, *Talewar Singh v Bahori Singh*, 1 L R 26 All 497 and *Bhagabari Saha Bankya v Behary Lal Basak*, 1 L R 33 Cal 881. *KALDIT DEBE v MAHAUL DEBE* (1911) 1 L R 34 All 43

s. 31—

See EVIDENCE ACT, 1872, s. 92

1 L R 39 Mad 792

In order to justify rectification of a contract or other instrument in writing there must be proof of a common intention different from the expressed intention and a common mistaken supposition that the intention was rightly expressed in the instrument. It matters not by whom the actual error was made. Notice to a purchaser by his title papers in a transaction will not be notice to him in an independent subsequent transaction in which the instruments containing the recitals are not necessary to him. *See BIPIN KRISHNA ROY v PRIYA BRATA BOSH* 26 C W. N 36

ss 34 and 41—*Minors, mortgage in*

*favour of—Whether minor entitled to compensation—Contract Act (XX of 1872), ss 41 and 42—Suit for sale of rayati holding, maintainability of—Res judicata—Dictum in previous suit, effect of A mortgage executed in favour of a minor who has advanced the whole of the loan to secure which the mortgage was executed is not void and can be enforced against the mortgagor. But even assuming it to be void, s. 41 of the Specific Relief Act, 1877, could be applied so as to grant compensation to the minor. *Held* in a suit on a mortgage of a rayati holding in Muzhum, that the plaintiff was entitled to a mortgage decree and that the lower Courts were wrong in holding that the provisions of the Chota Nagpur Tenancy Act 1908, which was not extended to Muzhum until 1909, operated before that date to prevent the plaintiff*

SPECIFIC RELIEF ACT (I OF 1877)—*contd*ss 34 and 41—*contd*

from obtaining anything but a money decree. D, the mortgagee's agent, received from the mortgagor the interest due on the bond for 1912 and refused to deliver to the mortgagee either the bond or the interest received by him. The plaintiff thereupon instituted a suit against D and the mortgagee, claiming from D the interest received by him and delivery of the bond, with an alternative prayer that, if it should be found that D and the mortgagor were colluding, then the whole amount covered by the bond should be adjudged to the plaintiff. The first Court passed a money decree against both defendants. In an appeal by D, the High Court dealt only with the first part of the plaintiff's claim and made a decree for the delivery up of the bond by D and payment by him of the interest received. With reference to the alternative claim, the High Court observed that after obtaining possession of the bond it would be open to the plaintiffs to proceed against the mortgagor for enforcing their security. But in the judgment there was a dictum to the effect that, as the plaintiffs were minors, the mortgage would be void. In a subsequent suit on the bond by the plaintiffs the mortgagor pleaded that the dictum of the High Court operated as *res judicata*. *Held*, that the dictum did not operate as *res judicata*. *MAHARAJ KISHI v BAIKUNTHA KARNABH*

4 Pat L J 652

s. 35—

See LESSOR AND LESSOR.

1 L R 42 Mad 243

s. 38—

See BHAGDARI AND NARWADARI TENURES ACT (BOM V OF 1862) s. 3

1 L R 39 Bom 358

s. 39—

See COMPROMISE

1 Pat L J 48

Court fees—Suit for avoidance of registered deed of gift—Court fees Act (VII of 1870) 7 (4) (c)—Consequential relief In a suit for avoidance of a registered deed of gift the Court is bound, if the suit is decided in plaintiff's favour to send a copy of its decree to the officer in whose office the instrument has been registered. The forwarding of the decree is a consequential relief upon which the plaintiff must pay an *ad valorem* court fee. *MUSHAMMAT NOORUDDIN OJAY v SUIDHAR JHA* 3 Pat L J 194

Evidence Act (I of 1872),

s. 52—Civil Procedure Code (Act V of 1908), s. 106,

O VI, r. 6—*Suit in aid of a sale deed—Specific*

*allegations of coercion made in the plaint—Allegations disbelieved—Different kind of coercion not probable on other circumstances and doubts—Finding not *invidua* allegata et probata—Substantial error in procedure—Ground for setting aside what might otherwise be a conclusion of fact* Plaintiff sued the defendant to set aside a sale deed on the ground of coercion of a particular kind under s. 33 of the Specific Relief Act (I of 1877). Both the lower Courts disbelieved the allegations of coercion made in the plaint but granted relief to the plaintiff on the ground that on a consideration of other circumstances the plaintiff must have been deceitfully decoyed into going quietly and privately to the defendant's *masdar* (open shed) and there through fear of possible violence made to sign the document. On second appeal by the defendant;

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*s. 39—*contd.*

Held, reversing the decree and dismissing the suit that a suspicion of some kind or other undue coercion was not sufficient to support the plea of coercion, the plea being not *secundum allegata et probata*. *Motte Lal Dyrshina v Jaggurnath Garg & W R P C 23 Lahenchun der Singh v Shamacharn Datta, 11 Moo L A 7, and Bala v Gargathar, 1 L R 32 Bom 225, referred to.* Per HAYWARD, J. Where fraud or coercion are alleged detailed particulars must be given in the pleadings and parties must be strictly confined to that state of facts. Where particulars of coercion alleged, are wholly rejected and evidence disbelieved, and a vague and different kind of coercion is held to be more probable on other circumstances and doubt is there is a substantial error in procedure resulting in a finding not *secundum allegata et probata* and not sustainable in law. Per BEAMAN, J.—A plaintiff who comes to Court alleging fraud or coercion in respect of which the law requires him to give particulars and he being disbelieved upon every material one of them cannot be given relief. When a finding is absolutely unsupported by any evidence at all, that is a ground for setting aside what might otherwise be a conclusion of fact. When the Court has found a case required to be made by the plaintiff not proved and has found another case unsupported in its most essential point by any evidence at all, prove, and so substituted the latter for the former, there is a substantial error in procedure under s. 100 of the Civil Procedure Code (Act V of 1908). *Pratishoran Daji v Pandurang Chintanav (1914)* 1 L R 39 Bom 149

*Conveyance executed by accused in consideration of complainant withdrawing prosecution for non compoundable offence—Suit to set aside such sale-deed, if *lex*—Parties in particular to be entitled to declaratory relief—Court's discretion under s. 39.* The rule of law in England with regard to illegal contracts is that a Court of Law will not aid persons in enforcing the performance of an illegal contract or assist them to recover back property which they have given away under such an illegal contract when the persons and parties to the contract are themselves *pari delicto* in procuring this illegality. The Courts of equity in England have always refused to afford equitable relief in enforcing a contract void in law or restoring property which is based on an illegal contract where the illegality is apparent on the face of the document itself. The principle on which Courts of law and equity have refused to restore property given away under an illegal agreement, is equally applicable when the relief prayed for is by way of a declaration, after the party seeking such relief has secured to himself the benefit of the agreement. S. 39 of the Specific Relief Act in allowing relief to be granted in a proper and fit case, even when a contract out of which the right springs is void, leaves it entirely in the discretion of the Court to exercise the jurisdiction so conferred upon it. Where L. B.'s agent, having purchased property, B. alleged that it was purchased by L. as B.'s trustee whilst L. claimed to have purchased it in his own right, and the dispute culminated in civil actions brought by the parties against each other, and in B. instituting criminal proceedings against L. under s. 408-477 of the Indian Penal Code but at the instance of arbi-

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*s. 39—*contd.*

trators appointed by mutual consent, the disputes were settled and B. withdrew the criminal and civil proceedings against L. and in consideration thereof L. *inter alia*, executed a sale-deed of the property purchased by him. *Held*, in a suit by L. to have the conveyance declared void and the sale set aside and cancelled that the whole of the contract was illegal as it was not possible to sever the legal from the illegal part. That there being no evidence that there was any undue influence, fraud or duress or that the plaintiff took a more innocent part in the illegal compromise than the defendant, the Court would not grant relief under s. 39 of the Specific Relief Act. *BYNDESHARI PRASAD v LEKHRAJ SARTI (1916)*

20 C W N 760

Mortgage-deed executed and registered—Suit by mortgagor for cancellation on the sole ground of non payment of consideration—Suit whether maintainable—Contract and executed conveyance distinction between—Mortgage whether void or voidable. Where a mortgage deed has been executed and registered a suit by the mortgagor for the cancellation of the deed, on the mere ground that the consideration for the mortgage has not been paid is not maintainable. When the matter has passed from the stage of contract to that of an executed conveyance mere non payment of consideration will not render the transaction void or voidable within the terms of s. 39 of the Specific Relief Act. *Basa Lingappa v Veerappa & Bom. L. R 39^o, and Pashik Lal v Ram Narain, 1 L R 34 All 273, referred to.* *ABDUL HASHEM SARTI v KHADIR BACHA SARTI (1918)* 1 L R 42 Mad. 20

ss 39, 40, 45—Suit for declaration that an endorsement on a document was fraudulently obtained—Consequential relief not asked for [Held, that a suit for the cancellation of an endorsement fraudulently obtained on a mortgage deed is maintainable, inasmuch as it is a suit of the nature indicated by s. 39 of the Specific Relief Act. The endorsement, fraudulently obtained, is by itself a document and is similar to the several parts of a document indicated in s. 40 of the said Act. To such a suit s. 42 of the Act does not apply.] *RAM CHANDAN v GANGA SARAN (1916)*

1 L R 39 All 103

ss 39, 42—

See CIVIL PROCEDURE CODE 1908, O XLI, s. 22. 1 L R 34 All 140

s. 41—

See s. 31 4 Pat L J 682

Minor—Representation made as major—Estoppel—Sale-deed, suit to set aside—Restoration of consideration money. The plaintiff sued to obtain a declaration that the sale-deed passed by her to her deceased husband's brother was not valid as having been executed during her minority and to recover possession of the property. The defendant contended that the plaintiff was estopped because she represented herself as being a major when she must have known that she was a minor. On these pleadings question having arisen (1) whether the plaintiff was estopped on account of the representation on made by her and (2) whether under s. 41 of the Specific Relief Act, 1877 the Court should have directed the

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s. 41—*contd*

plaintiff to restore the consideration money *Held*, that the plaintiff was not estopped there being evidence that the defendant was not deceived by what she told him, inasmuch as he had made enquiries about plaintiff's age from the plaintiff's father and from other sources and beyond that was himself the brother of her deceased husband and therefore a fair presumption arose that he must have known what the plaintiff's age was, (2) that there was no equity in favour of the defendant to direct the plaintiff to restore the consideration money *GURSHIDDHAWANI v PANAWA* (1919) I. L. R. 44 Bom. 175

s. 42—

See s 12. . . 3 Pat. L. J. 182

See CIVIL PROCEDURE CODE (1908), s. 9

I L. R. 37 All. 313

1 Pat. L. J. 381

O II, R 2. . . 1 L. R. 38 Mad. 1162

O ALL, R 22 . . . I. L. R. 34 All. 140

See COURT FEE I. L. R. 39 Calc. 704

I. L. R. 40 Calc. 245

I L. R. 44 Calc. 352

See DECLARATORY DECREE, SUIT FOR

I L. R. 43 Calc. 894

I. L. R. 45 Calc. 510

See ELECTION . I. L. R. 41 Calc. 384

See HINDU LAW—ADOPTION

2 Pat. L. J. 481

See HINDU LAW—INHERITANCE

I L. R. 43 Mad. 4

See HINDU LAW—WIDOW

I L. R. 41 All. 492

See MADRAS VILLAGE COURT ACT (I OF 1889), s 24 . . . I. L. R. 39 Mad. 808

See MINOR . I. L. R. 35 All. 497

See MUNICIPAL LAW

L. R. 43 I. A. 243

See PENAL ASSESSMENT

I L. R. 37 Mad. 298

See PROFIT A PRENDRE

2 Pat. L. J. 323

See SPECIFIC RELIEF ACT

See USUFRUCTUARY MORTGAGE

3 Pat. L. J. 71

Brother of a lunatic suing in respect of property purchased with income of lunatic's property—

See ADMISSION . I L. R. 1 Lah 137

Illustration (c)—

See DECLARATORY DECREE.

I. L. R. 45 Calc. 510

1. ———— *Mahomedan Law—Waqf*
—Rights of Mahomedans entitled to use such property *in* for a declaration that property is waqf. The plaintiffs, Mahomedan residents in the city of Kanauj, sued for a declaration that a certain *adakh* and the land adjoining it situated in a village in parwana Kanauj was waqf property. *Held*, that as Mahomedans who had a right to use

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*s. 42—*contd*

the *adakh* they were entitled to sue and that no special permission was required to enable them to do so *Zafaryab Ali v Bakhtawar Singh, I L R 5 All 497, and Jawahra v Albar Hussain, I L R 7 All 173, followed Wajid Ali Shah v Dianatullah Beg, I L R 8 All 31, distinguished MUHAMMAD ALAM v AKBAR HUSAIN (1910)*

I. L. R. 32 All. 631

2 ———— *Civil Procedure Code (Act VIII of 1859), s 15—15 and 16 Vic, c 86, s 50—Suit by plaintiff for mere declaration that the minor defendant was not his son—Investigation of claim without delay* A Talukdar plaintiff brought a suit for a declaration that defendant 2, a minor, was not his son and that he was not born to the plaintiff's wife, defendant 1, and for an injunction restraining defendant 1 from proclaiming to the world that defendant 2 was plaintiff's son and from claiming maintenance for him as such son. The defendants contended that the suit was not maintainable under the provisions of the Specific Relief Act (I of 1877) and that it was premature. *Held* that the suit was maintainable, it being within the provisions of s. 42 of the Specific Relief Act (I of 1877). *Held*, further, that in the interests of justice it was of the highest importance that such claims should be investigated and decided without unnecessary delay, and when the controversy had once been brought to trial the decision should ordinarily follow the usual course. *Jool v Ewing, Ir Rep 1 Ch 434, distinguished BAI SHRI VARTUBA v THAKORE AGARSINGHI RAISINGHJI (1910)* . . . I L R 34 Bom. 678

3 ———— *Rent decrees obtained by defendant against plaintiff's tenants if amounts to dispossession—Throwing cloud on title—Declaratory suit, proper remedy* Where the plaintiff sued for declaration of title to certain lands alleging that the same were in possession of his tenants but that the defendant had thrown a cloud of his title by recovering rent decrees against some of the tenants: *Held*, that the plaintiff could not in this suit ask for any further relief than a mere declaration of title, and was proceeding in the right manner in suing for declaration of the title only. *Loke Nath Surma v Kesab Ram Doss, I L R 13 Calc 147, Chinnammal v Varadrayulu, I L R 13 Mad 307, Nirmal Chandra v Mahomed Siddik, I L R 26 Calc 11, relied on. SATISH CHANDRA BHUTTACHARYA v SATYA CHURAN MAJUMDAR (1910)* . . . 14 C. W. N. 678

4 ———— *Suit for declaration of abstract right—Cause of action—Act No VII of 1859 (Succession Certificate Act) s 8* A Hindu widow applied for a succession certificate to enable her to collect the debts of her deceased husband consisting mainly of a sum Rs. 4 000 odd on fixed deposit with a bank. Objections being raised by the next reversioners, an order was passed enabling the applicant only to draw the interest accruing due from time to time on this deposit. The applicant then brought a suit for a declaration that she was entitled to the whole sum of money. *Held*, that the suit was maintainable, the limitation upon her power to get in the money having been imposed at the instance of the reversioners. *KESHO PAM SINGH v RAM KVAR (1910)* I L. R. 32 All. 316

5 ———— *Declaration, when will be given.* In order that a suit can be held not

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*s. 42—*contd.*

maintainable by reason of the proviso to s. 42 of the Specific Relief Act (I of 1877) it must be shown that the defendant was in possession and that as against him the plaintiff could have obtained an order for delivery of possession. *MALAYYA PILLAI v PERUMAL PILLAI* (1913) 1 L R 36 Mad 62

6. ———— *Hindu law*—*Reversioner*—*Suit for declaration of title*—*Cause of action*—*Will made by Hindu widow in possession*—*Limitation* *D*, a separated Hindu and his son *A* died in 1891 on the same day the father dying first *A* & son *S* *M* died a week later leaving his mother *H* and his grandmother *M*. The property was then recorded in the names of *M* and *H* but *M* got possession and in 1908 executed a *will* in favour of her daughter *S*. The reversioners of *D* brought a suit in 1908 for a declaration that the will would have no effect on their reversionary right. *S* set up her right to the property ignoring that of *H*. *Hell*, that even during the lifetime of *H* the plaintiffs were entitled to institute a suit for a declaration only under the provisions of s. 42, Specific Relief Act. *Held*, further that the suit was not barred by limitation. Mutation of names in *M*'s favour was more or less an equivocal act and might possibly have given a cause of action but when in 1908 *M* specifically declared that the heir to the property was *S* and *S* herself asserted her title the plaintiffs acquired a cause of action sufficient to entitle them to sue. *SHEORAJI v RAMJAS PANDY* (1911) 1 L R 33 All 430

7. ———— *Declaratory decree*, when should be made and when refused—*Consequential relief*, injunction of s. 42 of the Specific Act does not sanction every form of declaration but only declaration that the plaintiff is entitled to any legal character or to any right as to any property. Courts in this country should see that plaintiffs which pray for declaratory decrees only, conform to the terms of s. 42, Specific Relief Act. An injunction is a consequential relief. The limit imposed by s. 42 of the Specific Relief Act is on decrees which are merely declaratory and does not expressly extend to decrees in which relief is administered and declarations are embodied as introductory to that relief. For such declarations legislative sanction is not required as they rest on long established practice. But for all that the Court should be circumspect and even chary as to the declarations it makes, it is ordinarily enough that relief should be granted without the declaration. *DROKALI KOER v KEDAR NATH* (1912) 1 L R 30 Cal 704

18 C W N 838

8. ———— *Fabrication of authority to adopt by widow does not justify suit by reversioner for declaring the authority not genuine*. The mere fabrication of an authority to adopt by the widow, will not entitle the reversioner to claim a declaration under s. 42 of the Specific Relief Act that the authority is not genuine. *SREEPADA VENKATARAMAYNA v SREEPADA RAMALAKSHI MAMMA* (1912) 1 L R 35 Mad 592

9. ———— *Joint Hindu family*—*Widow alleged to be in possession of part of the joint property under a family agreement*—*Suit for declaration of rights of other members of the family*. Under a deed of compromise the name of the widow of a member of a joint Hindu family was

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*s. 42—*contd.*

entered in the place of that of her husband and she was put in possession of the property that stood in his name. On an application being made for partition of one of the villages, the widow also applied for partition of the share which stood in her name. The plaintiffs objected on the ground that she was not entitled to partition and they were referred to the Civil Court to have their rights established. They then sued for a declaration that the deceased *d* & *d* while living jointly with themselves that the widow was not in possession as the heir of the deceased and that she was not entitled to obtain partition. s. 42 of the Specific Relief Act was set up in defence. *Held* that inasmuch as the possession of the defendant was clearly admitted and the real dispute between the parties was one of the nature of the possession of the widow, s. 42 of the Specific Relief Act did not bar a suit for declaration of title. *RAM MAHARATH SINGH v DILRAJ KUNWAR* (1913) 1 L R 36 All 126

10. ———— *Suit for declaration of title*—*Waste land*—*Plaintiff out of possession*—*Held*, that the fact that land was waste land and therefore of no immediate practical use was no bar to the application of s. 42 of the Specific Relief Act, where the plaintiff, being admittedly out of possession, claimed only a declaration of his title. *RAMANUJA v DEVARAYALA*, 1 L R 8 Mad 361, distinguished. *INWAR SINGH v NARAY DAT* (1914) 1 L R 36 All 312

11. ———— *Assignee from tenant, if may sue landlord for recognition of his tenancy rights and declaration of incidents of tenancy*—*Landlord and tenant*. The Court has power to pass a declaratory decree in a suit by an assignee of a lease against the lessor to have it declared that the lease is a permanent, heritable and transferable one, that the rent was fixed in perpetuity and that the lessor was bound to recognise the plaintiff as tenant of the leasehold. The law laid down in earlier rulings to the contrary has been modified by s. 42 of the Specific Relief Act. *MONOHAN GHOSH v EQUITABLE COAL COMPANY, LD* (1913) 18 C W N 596

12. ———— *Declaratory suit under, if maintainable where property not in possession of defendants and plaintiff cannot ask for ejectment*. Where the property is not in possession of the defendants and the plaintiff cannot ask for ejectment as against them, a declaratory suit is maintainable under s. 42 of the Specific Relief Act. *Subramanyam v Paramaswaran* 1 L R 11 Mad 116 and *Malayya v Perumal*, 21 Mad L J 1022, followed. *RAMESWAR MONDAL v PROVABATI DEBI* (1914) 19 C W N 313

13. ———— *Suit for declaration of title*—*Property involved in possession of Court of Wards for person entitled thereto*—*Parties to suit*. On the death of a *mahant*, the right of succession to whose *maih* was disputed, the Court of Wards took possession of the *maih* and declined to hand it over until some one should establish his right to the *mahantship*. *Held*, in a suit for a declaration of his title to the *mahantship* brought by a claimant thereto, (i) that the Court of Wards was not a necessary party, and (ii) that this did not offend against the provisions of s. 42 of the Specific Relief Act. *Gowrami Ranchor*

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s. 42—*contd*

Lahji v Sri Girdhari 1 I L R 20 All 120 distinguished. *JAGANNATH GIR v TIRUVA NAYD* (1915). . . . I L R 37 All 185

14 ———— *Declaration suit for—Legal character or right to property, meaning of—Rights under a contract declaration as to, if maintainable—S. 42, not exhaustive—Ordinary rule—Exception—Kuri, subscriber to—Language from subscriber—Right of, if continue payment—Suit for declaration by, if maintainable. S. 42 of the Specific Relief Act does not contemplate a suit for a declaration that a valid personal contract subsists between the plaintiff and the defendant, as it is not a suit for a declaration of title to a legal character on a right to property. S. 42 of the Specific Relief Act is not intended to be exhaustive as regards the circumstances under which declaratory suits can be maintained. *Robert Fisher v The Secretary of State for India*, 1 L R 22 Mad. 270, referred to. *Krislaya v Kanyani*, 1 L R 9 Mad 55, referred to. But a declaratory relief will not be given in respect of rights arising out of a contract which would affect only the pecuniary relationship between the parties to the contract, unless there are exceptional circumstances in a case to take it out of the ordinary rule. Where the plaintiff, who was the purchaser of the rights of the second defendant who was a subscriber to a half ticket in a kurn started by the first defendant as its proprietor, sued the latter for a declaration that he was not a defaulter and was entitled to continue to pay the subscriptions to the kurn: *Held*, that the suit for declaration was not maintainable. *RAMAKRISHNA v NARAYANA* (1914). . . . I L R 39 Mad. 80*

15 ———— *Right to play music in public street—Whether the declaration of right can be claimed as a right—Civil Court. The plaintiffs, trustees of a Hindu temple, brought a suit for a declaration under s. 42 of the Specific Relief Act, 1877, that they were entitled to play music while going in procession past a Mahomedan mosque situated in a public street. *Held*, that the plaintiffs were not entitled to have the right to play music in a public street claimed and declared as a right. *Per HEATON, J.*—The right to use a street as a thoroughfare is a right which a Court might properly declare, but the right to pass along a street playing music is not a right which the Courts ought to recognise in that sense. *VENKATESH APPASWEE v ABDUL KADIR* (1918). . . . I L R. 42 Bom 438*

16 ———— *Declaratory decree—Treasurer in possession of property, which a Hindu widow was entitled—Execution of will by trespasser—Suit by reversionary heirs for declaration of their rights and to set aside will. On the death of the widow of a separated Hindu, in possession as such widow of her husband's property, the daughter of one of her sons, who had both predeceased the husband took possession of the property to the exclusion of her two daughters. While so in possession of the property the son's daughter executed a will bequeathing the property as if it were her own. *Held*, on suit by persons alleging themselves to be the reversionary heirs for a declaration, that the son's daughter had acquired no interest or proprietary right to the property and had no right to make a will in*

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s. 42—*contd*

respect thereof, that no such declaration could be granted. *Umrao KUNWAR v Badri* 1 L R 37 All 422, and *Jaypal KUNWAR v Indar Bahadur Singh*, 1 L R 26 All 1238, referred to. *GANGA v KANHAI LAL* (1918). . . . I L R 41 All 154

17 ———— *Hindu Law—Suit by a Hindu for a declaration that a will alleged to have been executed by another member of the family giving his widow power to adopt is forged—Maintainability of. A member of a Hindu family can maintain a suit under s. 42 of the Specific Relief Act for a declaration that a will alleged to have been executed by another member of the family giving his widow power to adopt is a forgery. *Bobba Padmanabhu v Bobba Buchamma* 35 M L J 143 followed. *Sreepadam Venkatarammanna v Sreepadam Ramalalshamma* 1 L R 35 Mad 592, not followed. *SRATYIA v ANNAPURNAMMA* (1919). . . . I L R. 42 Mad 699*

18 ———— *Suit by a reversioner of Hindu for a declaration that another is not reversioner, maintainability of—Order striking out defendant as party under O I r 10 (2), Civil Procedure Code and dismissing suit—Appeal from order, maintainability of. Though under s. 42 of the Specific Relief Act a Court can, in its discretion, grant relief by way of declaration, it is a settled rule of practice not to grant such relief where the only question for decision is which of two persons (plaintiff or defendant) is the nearest reversioner or whether the defendant is a reversioner at all to the estate of a deceased Hindu. *Savdagar Singh v Parsip Narayan Singh*, 1 L R 45 Cal 510, referred to. An order in a suit striking out from the array of parties a defendant as an unnecessary party and dismissing the suit against him is in effect a decree and is appealable as such. *RAMA RAO v THE RAJA OF PITTAPUR* (1918). . . . I L R 42 Mad. 219*

19 ———— *Person entitled to a legal character, divorced wife of—Mother if can sue for declaration of legitimacy of child. The plaintiff sued her late husband for a declaration under s. 42, Specific Relief Act, for a declaration as to her marriage and the legitimacy of four children. The lower Court found that the plaintiff had been divorced some 20 years ago and refused the declaration about marriage, but decreed it as to the legitimacy of the eldest of the children who it was found, was born shortly after the divorce: *Held*, that the plaintiff who ceased to have the legal character of a wife 20 years ago was not entitled to ask the Court to make a declaration as to her marriage for there was no legal character in having been a wife and then divorced. That the decree of the lower Court as to the legitimacy of one of the children could not stand, for the mother of a child cannot be said to have a legal character as to whether her child, who is not a party to the suit, is or is not legitimate. *LATIPAN MEAV v MOORTI JANAWA* (1918). . . . 23 C W N 171*

20 ———— *Treasurer, suit for declaration by. The essence of s. 42 of the Specific Relief Act, 1877, is a title vesting in the plaintiff. No suit will lie at the instance of a trespasser for a declaration that he is a trespasser. *SESH LAL SINGH v HALDHAR NARAYAN*. . . . 1 Pat. L J 95*

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s 42—*contd*

21 —————Where through clumsy blundering the plaintiffs who have asked for a decree for pre-emption prayed only for a declaration of the right to pre-empt the suit as so framed was not maintainable under s. 42 of the Act but the lower Court was right in permitting the plaintiff in the suit to be amended although a fresh suit on the same cause of action would at the time have been barred by limitation on the plaintiff's object having undoubtedly been to pre-empt the land so that the cause of action was one and the same whether they sued for possession or not
CHAMAN DAS v. AMIR KHAN (1930 P C)

25 C W N 289

22 —————*Suit for declaration of right to a certain share of joint family property maintainability of* A joint Hindu family of which the parties to the suit were members owned undivided shares in several villages in which there were many co-sharers not connected with the family. The plaintiffs severed themselves from the joint family and a dispute arose as to the extent of their share in the family property. Held that under the circumstances the plaintiffs were entitled to a declaration as to the extent of their share in the family property. The provisions of s. 42 of the Specific Relief Act notwithstanding.
ASMAN SINGH v. TULSI SINGH

2 Pat L J 221

23 —————*Temple property—Permanent lease—Invalidity of lease—Suit for declaration by worshippers—Maintainability of suit* Worshippers of a temple can maintain a suit for a declaration on that a permanent lease of temple property granted to the defendants in possession is invalid.
VEERAMACHANENI RAMASWAMY v. SOMA PITCHAYYA (1930) I L R 43 Mad 410

24. —————*Suit for declaration of title to property after it was attached under s 146 Criminal Procedure Code (Act V of 1898)—Effect of Magistrate's attachment on the question of possession—Limitation Act (IX of 1908) s 23 and Arts 120 and 142 period of limitation applicable to the case* Plaintiff was dispossessed from some lands by the defendant in April 1904 and in June 1904 the lands were attached under s 146, Cr P Code owing to disputes between the parties. Plaintiff brought the present suit for recovery of possession in May 1916. The lower Courts held that plaintiff had title but that the suit was barred by limitation. Held that the suit though framed as a suit for possession cannot be treated as such because the possession was not with the defendant but with the Magistrate who was not and could not be a party to the suit. The Act therefore applicable to the suit was Art 120 of the Limitation Act and not Art 142. The position of the Magistrate was that of a stakeholder and during the continuance of the attachment the property was in legal custody which must be held to be for the benefit of the true owner i.e. the plaintiff. And the possession of the Magistrate being in law the possession of the true owner the defendant's possession was determined upon the Magistrate's taking possession under the attachment in other words the plaintiff must be taken to have been restored to possession on constructively on the date of the attachment. He therefore got a fresh starting point for purposes of limitation, and the

SPECIFIC RELIEF ACT (I OF 1877)—*could*s 42—*could*

case can be treated as one of continuing wrong within the meaning of s. 23 of the Limitation Act. The suit was therefore not barred by limitation.
PAYA LAL BISWAS v. PANCHU RAI DAS

28 C W N 432

25 —————*Held that* although the words "legal character" in s. 42 of the Specific Relief Act have been held to be wide enough to include the right of franchise and also a right of being elected as a Municipal Commissioner, it was doubtful whether regard be had to the form of the suit and the declarations asked for in this case the case came within the words of the section.
CHAIRMAN MUNICIPALITY OF KORTUNG v. BISSESWAR GHOSH

28 C W N 91

26 —————*Declaratory suit by a mortgagee for declaration of the right of mortgage* I died leaving a widow and two sons and a will by which he appointed his widow as his executrix. The two sons mortgaged the property to Sand the widow, the executrix sold the property under mortgage to P. S. brought a suit for construction of G's will and for a declaration on that the rights of the sons had not been affected by the will and that the widow had no right of property. Held that the plaintiff must first of all establish his right as mortgagee and until that is done he has no cause of action for maintaining a suit for a declaration of the title of his mortgagors. The plaintiff should not at the appellate stage be allowed to amend the plaint to raise the question of his right as mortgagee as that would involve taking of fresh evidence and a trial de novo.
SRISI CHANDRA CHATTERJEE v. SM GOLAP MONI DAS

25 C W N 552

ss. 42 and 54—

See MAHABRAHMAN

I L R 43 All 159

s 43—

See CIVIL PROCEDURE CODE 1908 s 11

I L R 44 Mad 778

s 45—

See DESIGN I L R 45 Calc 606

See LAND ACQUISITION

I L R 48 Calc 916

See MUNICIPAL CORPORATION

I L R 40 Calc 836

See MUNICIPAL ELECTION

I L R 39 Calc 598 754

I L R 45 Calc 950

I L R 46 Calc 119

See UNIVERSITY LECTURSHIP

I L R 41 Calc 518

— High Courts' power of interference—

See EXCESS PROFITS DUTY ACT (X OF 1919)—

ss 3 15, Sch I

I L R 45 Bom 1064

ss 6 (1) (a) and (b) Sch II, cl. I

I L R 45 Bom 881

1 —————*General principle under-lying interference by High Court—Municipal Act on petition—Jurisdiction and discretion of*

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*s 45—*contd.*

Chief Judge of Small Causes Court—City of Bombay Municipal Act (Bom. Act III of 1888 as amended by Bom. Act V of 1905), ss 33 and 34. A Municipal election petition having been lodged with the Chief Judge of the Small Causes Court, the latter unseated two of the successful candidates and found cause of objection against the candidate in whose favour were recorded "the next highest number of valid votes after those returned as elected." He declined to inquire further into the claims of any other candidate or to declare any other candidate elected as, on his interpretation of s 33 (2) of the Bombay Municipal Act (Bom. Act III of 1888 as amended by Bom. Act V of 1905), he was not able to do so. The two highest of the other unsuccessful candidates thereupon obtained rules against the Chief Judge under s 45 of the Specific Relief Act (I of 1877), to show cause why he should not proceed to declare them elected under s 33 (2) above mentioned. *Held*, that the case fell within the general principle referred to in *Ex parte Milner, (1851) 15 Jur 1037*, that where an inferior tribunal improperly refused to enter upon a complaint, a mandamus would issue. S 33 having been held to empower the Chief Judge to set aside the election of any number of candidates returned as elected, there was nothing repugnant in construing the section as empowering the Chief Judge to fill up any number of vacancies so created from the list of unsuccessful candidates subject to the provisions of the section. It was clearly incumbent on the Chief Judge to deal with the question of filling up both the vacancies. He should accordingly proceed to place the unsuccessful candidates in order of valid votes. The two with the highest number of valid votes against whom no cause of objection was found should be declared to be deemed to be elected. If only one qualified, or none qualified, proceedings for filling the vacancy or vacancies would have to be taken under s 34. An application under s 33 (1) should name the persons whose election is objected to. *In the matter of the SPECIFIC RELIEF ACT, and In the matter of SAKAPALLY MAMDOOJI AND JAFFER JESUD (1910)*

I L R 34 Bom. 659

2.—Where the Magistrate had refused to furnish such copies to a party, the High Court under s 43 of the Specific Relief Act ordered the records of the case to be brought up to High Court and kept with the Registrar, and allowed liberty to the party to take copies. *BEVI MADHUS BANERJEE v. SAILENDRA NATH MUKHERJEE (1911)* 15 C W N 770

3.—*Universities of Madras—Senate and the Syndicate, respective powers of—Regulation 64 of the Madras University Regulations providing for protests to Government when ultra vires—Refusal of Syndicate to send protest to Government—Application for an order against Syndicate—Syndicate, a "public officer" protester, "an injured person" and by law, a "law for the time being" within s 43—Other specific and adequate remedy" in s 43, meaning of—Substance and not form of protest and restriction, to be looked at.* In granting an application for an order under s 43 of the Specific Relief Act filed by a Fellow of the Madras University against the Syndicate thereof for the purpose of compelling the Syndicate to forward to the Government a protest of his under Regulation 64 of the

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*s 45—*contd.*

University Regulations against a resolution of the Senate. *Held*, under the Madras University Act of 1857 and the Indian Universities Act of 1904, that the Senate of the Madras University is the legislative and the Syndicate the executive government of the University. The scheme of the Acts is that general rules (called regulations) framed as to matters within the competence of the University are to be made by the Senate, in some cases with the sanction of the Government and that the Syndicate's powers are purely executive and limited to the application of those rules to the facts and exigencies of particular cases as they arise. No sanction of Government is required for the Syndicate's application of the general rules made by the Senate and the Syndicate is entitled to make its own standing orders, and subject to the Regulations of the University, to regulate its business without the sanction of the Senate. The Syndicate can bring forward regulations for adoption by the Senate. Such being the relative powers of these two bodies, a power given to the University by s 3 of the Universities Act VIII of 1904 to appoint University Professors and Lecturers and a specific power given by s 25 of the Act to the Senate of the University to make regulation subject to the sanction of the Government for the appointment and duties of the University Professors and Lecturers are exercisable only by the Senate and not by the Syndicate. Such a power cannot be included within the administrative or ministerial powers of the Syndicate which it is competent to exercise without the approval of the Senate. A regulation or a proposal brought forward by the Syndicate in respect of such a matter for the approval of the Senate becomes on adoption by the Senate a regulation or a resolution of the Senate itself, and as such liable to be submitted for the approval of the Government. Being entitled to make regulations consistent with the Act, the Senate has power to make a regulation providing for a protest to Government, by a Fellow of the University against any resolution of the Senate in such a matter and if, under such a regulation the Syndicate is liable eventually to submit the protest for the consideration and orders of the Government, the Syndicate has no power or discretion to refuse to send the protest, and the person protesting is on any such refusal entitled to obtain from the High Court an order in the nature of a mandamus compelling the Syndicate to submit the protest to the Government. *Held*, further, that the Syndicate of the Madras University is a statutory body of persons holding a "public office" within the meaning of s 43 of the Specific Relief Act though no emoluments are attached to that office. Where a statute appoints a body of persons to carry out purposes of public benefit the persons constituting such a body *ipso facto* become holders of a "public office." The person protesting is entitled to the relief sought for, as an "injured" person within the meaning of s 43 (a) even though there may be others equally entitled to protest in the same matter. The regulation of the Senate providing for the protest, being made under the powers given by the statute has the force of law and it is "a law for the time being" within s 43 (b). A regulation of the Senate providing for protests to Government in respect of all its resolutions will be *ultra vires* in respect of those which do not under the Act require the sanction for the Government.

SPECIFIC RELIEF ACT (I OF 1877)—*contd*s. 45—*concl'd*

What in fact and substance is a resolution of the Senate amounting to a regulation passed after due notice must be deemed to be so however differently it may have been described. I document which in form and substance is a protest against a resolution is none the less a protest because it contains arguments against the validity of certain incidental matters leading to the passing of the resolution. The word resolution in Regulation 21 means only regulation. *Per KUMARASWAMI SASTRI, J.*—The proper course in applying for a mandamus against a statutory body is to take proceedings against the body as such in its official designation and not against each of the individuals composing the body. The fact that an applicant for a mandamus has other remedies is no bar to its issue unless they amount to other specific and adequate remedy which means equally convenient speedy beneficial and effectual remedy.

Other specific and adequate remedy in s. 45 (d) relate to a *res cogens juris* and not a remedy by the act of party. *In re G. A. NATESAN AND K. R. PANAYATIAN* (1916) 1 L R 40 Mad 125

ss 45 46—

See MANDAMUS 1 L R 33 Cal 533

See PLEADERSHIP EXAMINATION

1 L R 40 Cal 588

The petitioner having obtained a decree in the Court of the Subordinate Judge of Shahabad for recovery of possession against an infant whose estate was with the Court of Wards applied pending defendant's appeal to the High Court for an order under s. 45 of the Specific Relief Act calling upon the Members of the Board to release the estate. *Held* that the failure to impound the infant whose interest would be affected was fatal to the application. In the matter of *ASHO PHOSAB SINGH*

15 C W N 803

ss 52 to 56—

See INJUNCTION 1 L R 47 Cal 733

s 54—

See GAYAWAL 2 Pat L J 705

See MAHA BRAHMANS

1 L R 43 All 159

See TRUST 1 L R 41 Cal 19

ss 54 to 57 (Chap X)—

See FOOTINGS 1 L R 33 Cal 887

ss 54 56 (e)—

See INJUNCTION 1 L R 37 Cal 731

s 55—*Injunction—*but by *Muhammads* to prevent the Hindu defendants from interfering with the calling of the *azan* at a mosque by blowing conches etc.—*Nuisance, explained*. In a village occupied by about 600 Hindus and a little over 100 Muhammedans there are 2 mosques one just outside the abadi unconnected with the present case and one inside the abadi erected about 200 years ago. This had fallen out of repair and was repaired within recent years and was then used as a school and for other semi religious purposes, but more recently was used for prayers. The Hindus objected to the calling out of the *azan*, and when it was called out and at the time of subsequent prayer the Hindus blew conches, beat drums and created noise and disturbance. The Muham

SPECIFIC RELIEF ACT (I OF 1877)—*contd*55—*concl'd*

madans then brought the present suit for an injunction to restrain the Hindus from interfering with the calling out of the *azan* and praying in the mosque. It was found as a fact that the object of the defendants in blowing conches was to stop the calling of the *azan*. *Held* that the Muham madans had an inherent right to call out the *azan* from the mosque. *Held* also, that the noise made by the defendants collectively and continuously at the time of calling out the *azan* for the sole purpose of frustrating the object of the call constituted a nuisance and it was no answer to the suit that the little noise made by each of the defendants personally did not amount to a nuisance. *Lambton v. Mellish* (3 CA 183) referred to also. *Kerr on Injunction* p 156 and 213. *Held* further that plaintiffs were entitled to the injunction prayed for because the nuisance caused by the defendants was not a reasonable exercise of their rights and was an infringement of the rule of give and take live and let live. *Broder v. Seifford* (2 CA D 692) and *Christie v. Davey* (L R 1 CA 316) referred to. *JAWAB SINGH v. MUHAMMAD DIN* 1 L R 1 Lah. 140

s 56 (E)—

See INJUNCTION 1 L R 37 Cal 731

s 58 III (1)—*Suit for a junction, if lies against trespasser*. A plaintiff who is out of possession should not be allowed to sue the defendant who is alleged to be in possession as a trespasser for an injunction. He ought to sue for recovery of the land. *JAWAB LAL BANDHUI v. NANDA LAL CHAUDHURI* (1913)

18 C W N 545

SPECULATIVE PURCHASER

See CERTIFICATE OF SALE

1 L R 37 Cal 107

SPES SUCCESSIONIS

See HINDU LAW—WIDOW

1 L R 38 Bom 224

transfer of—

See KNOJAS 1 L R 38 Bom 449

SPIRITUAL WELFARE

See HINDU LAW—ALLEGATION

1 L R 43 Cal 574

SPIRITUOUS AND FERMENTED LIQUORS

See EXCISEABLE ARTICLES

1 L R 39 Cal 1053

SPY OR DETECTIVE

See ACCOMPLICE 1 L R 38 Cal 56

SRADH

offerings to the dead at—

See HINDU LAW—GIFT

14 C W N 1005

STABLES

See NUISANCE 1 L R 40 Bom 491

STAKEHOLDER

—*Deposit of money—Valid assignment by depositor to his creditor—Neglect of the creditor to recover—Creditor chargeable with the amount*. Where money deposited with a

STAKEHOLDER—contd

stakeholder was validly assigned by the depositor to his creditor in satisfaction of his debt and the creditor being able to recover the amount so assigned neglected to do so he was chargeable with the amount. *GANPATRAO BALKRISHNA BHIDE v THE MAHARAJA MADHARAO SINDE* (1910)

I L R 35 Bom 1

STAMP

See *BUYDELKHAND ALIENATION ACT* (II OF 1903) s 17

I L R 38 All 351

See *CIVIL PROCEDURE CODE* (ACT V OF 1908) —

s 9" I L R 40 Bom 541

ss 107 149 O VII R 11 CL (c)

I L P 38 Bom 41

See *EVIDENCE* I L R 39 All 494See *STAMP ACT* (II OF 1899) —

Agreement of sale executed on an unstamped paper—Secondary evidence not permissible

See *CONTRACT* I L R 45 Bom 1170

on a promissory note executed in Hyderabad—

See *PROMISSORY NOTE*

I L R 42 Bom 522

STAMP ACT (II OF 1899)

s 2 (5). — *Attestation what is—A document written by person other than executant if attested by the writer who did not sign as attesting witness. The attestation referred to in s 2 sub-s (5) cl. (6) of the Indian Stamp Act means attestation on the face of the instrument. BIDRU BANJAN MAJUMDAR v MANGAN SANKAR*

28 C W N 585

s 2 (5) arts 15 and 49 of *Schedule I Court Fees Act* (IV of 1870) *Schedule II art 6—Security bond by receiver bond by himself and his properties—Proper stamp—Whether liable under Stamp Act and Court Fees Act. A security bond in favour of a Court, executed by a receiver binding himself and his properties for the discharge of his duties must be stamped both under the Court Fees Act and under art 40 of Schedule I of the Stamp Act. *Kulwant v Mahabir Prasad* (1839) I L R 11 All 16 (F B) and Referred Case No 12 of 1911 followed. *AMIRTHAMMAL v RAMALINGA GOUDAN* (19 0)*

I L R 42 Mad. (F B), 363

s 2, cl (3) (b), s 35 (a)—*Shakayogi bundi insufficiently stamped admissibility in evidence—Payment of penalty. The plaintiff sued for recovery of money due on five instruments described as bundia. The documents bore an imposed stamp of 4 annas each, were each of them attested by a witness and the money secured thereby was made payable "to the respectable holder. Held that the documents in question were neither bills of exchange nor promissory notes but bonds within the meaning of s 2 cl. (5) (b) of the Indian Stamp Act and were admissible in evidence on payment of duty and penalty under a 35 (a) of the Indian Stamp Act. *KESHARI CHAND SORANA v ASHARAM MAHATO* (1915) 19 C W N 1323*

STAMP ACT (II OF 1899)—contd

s 2 (10) Sch I, Art 5 cl (c)—

See *HIRE PURCHASE AGREEMENT*

I L R 44 Calc 72

s 2 (14), Sch I Art 5—*Instrument—Entry in register as to hiring certain machinery attested by thumb marks of hirers—Memorandum of agreement—Stamp. In a book kept by the owner of certain machinery for the manufacture of sugar which purported to be a register of sums payable with respect to the letting out of wooden machines (charkhi) and rollers for pressing sugar cane and iron pans for boiling sugarcane juice was an entry to the following effect—Harkesh son of Kunwar and two others residents of mauza Saleem purchased a sugarcane pressing machine in consideration of a rent of Rs 15 from the plaintiff through his karinda (named) that they would pay the hire in Chait and in default would pay interest at 2 per cent per mensem. Below this entry were the thumbmarks of the persons who hired the machine. Held that this entry amounted to an instrument as defined in s 2 sub-s (14) of the Indian Stamp Act 1899 and was a memorandum of agreement within the terms of article 5 (b) of the first schedule to that Act. *Mulchand Lal v Kashiuddin Biswas* I L R 36 Calc 111 referred to. *MUTASADDI LAL v HARESH* (1913)*

I L R 36 All 11

s 2 (15) Sch I Art 45—*Final decree effecting partition what is. To make an order chargeable with stamp duty under s 2 (15) of the Stamp Act of 1899 it must effect an actual division of the property. An order declaring the rights of the parties and directing further proceedings for the ascertainment of the specific shares is not such an order. Courts ought not to pass interim orders and direct proceedings in execution for the ascertainment of the specific shares. The final order should be passed after the specific shares have been ascertained. A decree reciting a *raznamah* made by consent of parties allotting specific properties to the several parties and directing other parties to deliver possession on is chargeable with stamp duty under Art. 45 of Sch. I as a final order effecting partition within s 2 (15). Being made by consent of parties it is also an instrument whereby co-owners have agreed to divide property in severalty and falls within the first part of s 2 (15). *THIRUVENKATATHANAR v MUGGIAH* (1911)*

I L R 35 Mad. 26

Stamp—Partition—

*Final order for effecting a partition. Held that the words "final order" in s 2 cl (15) and Art. 45 (a) of Sch I to the Indian Stamp Act, 1899 referred to the final order of the lowest Court of original jurisdiction empowered to give an order for effecting a partition at the time it is passed. *STAMP REFERENCE BY BOARD OF REVENUE* (1914) I L R 36 All 137*

s 2 (16)—

See s. 25

I L R 41 Mad 466

s 2 (17) and Arts 40 and 64—*Mortgage deed—Hypothecation letter of accompanying bill of exchange. Where a document runs as follows—"The executant being desirous of carrying on her deceased husband's business of which she is now the owner declares a trust in favour of the Bank of Madras in respect of machinery plant, fixture and furniture and stock in trade in con*

STAMP ACT (II OF 1899)—*contd*— s 2 (17) and Arts 40 and 64—*contd*

sideration of advances of money to be made by the Bank from time to time not exceeding in all Rs 4 50 000 for the purpose of financing the business. All such advances carry interest at the rate of 6 per cent per annum. The trustee has got full power to use, employ, sell or exchange or otherwise deal with the trust property in the ordinary course of business but should make good the property that may be sold with other goods of a similar nature and value. Any goods so substituted shall be included in the security. The trustee may retain in his hands the sum of Rs 20 000 annually in trust to pay and apply the same in payment of sums advanced by the Bank. *Held* that the document created a trust in express language in respect of the machinery etc. in or upon the business premises of the firm and that the object of the instrument was to give the Bank some rights by way of security and it was a mortgage-deed for the purpose of the Stamp Act. Reference under Stamp Act s 48 I I I 11 Mad 215, referred to. *Semle*. The document is not a letter of hypothecation within the meaning of the exemption in art 40. *Obiter*. A fiscal enactment should be construed strictly and in favour of the subject. THE SECRETARY TO THE COMMISSIONER OF SALT ADKARI AND SEPARATE REVENUE REVENUE BOARD MADRAS v MES OMA (1913) I L R 38 Mad. 646

— s 2 (21) 60, Sch I Art 43 (g)—*Stamp—Power of attorney—Document authorizing holder to appear and do all acts necessary for execution of decree*. *Held* that a document purporting to authorize the person in whose favour it was executed, who was not a certificated mukhtar or pleader, to appear and do all acts necessary for the execution of a decree of a foreign court which had been transferred to a court in the United Provinces for execution required to be stamped as a power of attorney with a one rupee stamp and not as a vakalatnamah or mukhtarnamah. FARUKHANI v SAT PRASAD (1911) I L R 33 All. 487

— s 25 (23)—82, 83 'Sarkhat—Memorandum of account—Receipt—Several items of over Rs 20 each—Each item to be stamped. *Held* that a memorandum of account between debtor and creditor which was left in the possession of the debtor and consisted of items entered from time to time of money advanced and repaid was a document which required a separate receipt stamp in respect of each item of over Rs 20. DUFRENOY v TUSHI RAM (1913) I L R 35 All. 290

— s 2 (23) Sch. I Art 53

See STAMP DUTY

I L R 37 Cal. 629, 634

— s 2 (24) Sch. I Art. 7—*Instrument declaring trust—Fund composed of two parts—Absence of previous disposition in one part—Settlement—Disposition for charity of the other part—Appointment—Stamp duty*. An instrument was prepared for the purpose of declaring trusts of certain funds devoted to charity. The funds amounted to about Rs 3 00 000 and came to the hands of the trustees from two sources. About Rs 1 00 000 was the result of appeals to various persons and the rest was provided by the executors of the will of one A H. The instrument declaring the trusts was engrossed on a stamp paper of Rs 15 and a ques-

STAMP ACT (II OF 1899)—*contd*— s 2 (24) Sch. I, Art 7—*contd*

tion having arisen as to whether the instrument was properly stamped. *Held* that so far as the fund of Rs 1 00 000 was concerned there being no previous disposition in writing of any part of it though some of the contributions were accompanied by letters from the donors expressing their wishes with respect to the funds contributed, the instrument was a settlement according to the definition in s 2 (24) of the Indian Stamp Act (II of 1899) and was chargeable with duty on Rs 1 01 000 at the rate of 8 annas per cent. *Held*, also that so far as the fund of Rs 2 00 000 was concerned the provisions of the will of A H amounted to a disposition for a charitable purpose and the instrument was an appointment chargeable with a duty of Rs 15 under sch. I, Art 7 of the Indian Stamp Act (II of 1899). *In re* ABDULLA HAJI DAWOOD BOWLA ORPHANAGE (1911) I L R 35 Bom. 444

— s 3—

See DUNDLEHARD ALIENATION OF LAND ACT (II OF 1903) s 17

I L R 35 All. 351

— s 4—

1. *Stamp—Settlement of family property effected by two deeds one modifying the other—Full duty paid on the first*. Two brothers having come to an agreement as to the settlement of their joint property embodied this agreement in a deed which was duly stamped according to the value of the property dealt with thereby. Subsequently the parties to this deed executed a second deed of settlement which modified provisions of the first in a certain direction but dealt with no property which was not covered by that deed. Both deeds were contingent on the happening of events which at the time of the execution of the second deed were still future events. *Held*, that the transaction effected by two deeds fell within the purview of s 4 of the Indian Stamp Act 1899 and the full duty having been paid on the first deed the second required a stamp of one rupee only. STAMP REFERENCE BY THE BOARD OF REVENUE (1914) I L R 37 All. 159

2. *Stamp—Settlement—Gift of property made by one deed—Agreement to secure expenses of donor entered into by another*. Two brothers executed deeds each in favour of the other. One was a deed of gift of all the property of the executant and it was stamped to its full value. The other was a deed coming within no known category but is provided for the expenses during the life-time of the executant of the deed of gift and hypothecated certain property to secure the payment thereof only a portion of the property thus hypothecated however was included in the deed of gift. The second document bore a stamp of Rs 10. *Held*, that the two documents were part of the same transaction and amounted to a settlement within the meaning of s 4 of the Stamp Act, and the stamp duty paid was sufficient. STAMP REFERENCE BY THE BOARD OF REVENUE (1915)

I L R 37 All. 264

— s 5—

Stamp duty—Lease—Multifarious document—One lease with several parties concurring to it—Stamp Act (II of 1899).

STAMP ACT (II OF 1899)—*contd*s 5—*contd*

s 5 23 (3), 35, 37 (1) The concurrence of several parties to one and the same lease does not make it a multifarious document within the meaning of s 5 of the Stamp Act. The stamp-duty on such a lease is the same as on a conveyance for a consideration equal to the amount or value of the fine or premium for which the lease is granted. *In re PARAKA COLLIERIES LTD* (1910)

I L R 37 Cal 629

Sale—Mortgage for due performance of covenants—Distinct matters, meaning of—Stamp payable. A sale deed in which the vendor mortgages lands not included in the sale as security for the due performance of his covenants need not be stamped both as a sale and a mortgage. *Govindan Vaidudiri v Moidin* (1918) I L R 41 Mad 469 (F B) overruled. SECRETARY TO THE COMMISSIONER OF SALT ABKARI AND SEPARATE REVENUE MADRAS (REFERRING OFFICER) (1920) I L R 43 Mad. (F B), 365

s 5 6 38, Sch I Arts 5 43—

See STAMP DUTY I L R 39 Cal 668

s 12 Sch I Arts 1 5—*Stamp—Acknowledgment of a debt—Sarkhat—Stipulation for payment of interest—Agreement—Cancellation of adhesive stamp.* In support of a claim to recover money lent, with interest, an acknowledgment or *sarkhat* was produced which was in the following terms:—“*Sarkhat* executed in favour of Sheoraj Ram Teli by Mahadeo Ram; borrowed Rs 200 interest rate Rs 1-8-0 per cent, per mensem date Baisakh Sudi 1st, samwat 1971.” At the top of the document was affixed a one anna stamp on which there was only one horizontal line drawn across it. *Held* that the *sarkhat* was not merely an acknowledgment of a debt but contained a stipulation to pay interest, within the meaning of art 1 of the first schedule to the Indian Stamp Act 1899 and therefore required to be stamped as an agreement under art 5 (c) of the same schedule. *Udit Tyadhai v Bhavans Din* I L R 27 All 84 and *Dumha Kunwar v Mahadeo Prasad* I L R 28 All 436 distinguished. *Laxmidas v Ganesh Raghunath* I L R 5 Bom 373 and *Mulchand Lala v Ashokbhar Bhavani*, I L R 35 Cal 111, referred to. *Held* also, that a stamp may be effectually canceled by merely drawing a line across it. S 12 of the Act does not mean that it is necessary to cancel a stamp in such a manner as to make it physically impossible for any disinterested person to make hereafter a fraudulent use of the stamp. *Mohammad Amir Mirza Leg v Babu Kedar Nath*, 15 Oudh Cases 58 referred to. *MAHADEO KOWI v SHEORAJ RAM TELI* (1916) I L R 41 All 169

s 25—*Morapat—Counterpart of lease—Document giving a charge on improvements for arrears of rent—Stamp duty whether payable both as counterpart and as mortgage.* Where a tenant executed a *morapat* in favour of a landlord agreeing therein that the arrears of rent if any should be a charge on the improvements that might be made by him. *Held* that a *morapat* is the counterpart of a lease or a deed executed by a tenant promising to pay a certain rent and that the document in question must be stamped both as a counterpart and as a mortgage. *GOVINDAN NARAYAN v MORDIN* (1917) I L R 41 Mad. 469

STAMP ACT (II OF 1899)—*contd*s 25—*contd*

s 28 and 35—*Mining lease—claim for royalty in excess of amount covered by stamp, main liability of.* The provisions of s 28 of the Stamp Act, 1899, are governed by s 35 and, therefore, a lessee under a mining lease is entitled upon payment of the penalty under the latter section to recover the royalty provided for in the lease even though the amount claimed is in excess of the amount covered by the stamp used in the lease. *KUMAR BRAJ MOHAN SINGH v LACHMI NARAIN AGARWALA* 5 Pat L J 660

s 27, 64 (a)—*Execution of document—Not containing statement of facts affecting duty—Stamp.* Certain property was sold for Rs 20,000 to one R who paid Rs 1,000 in cash and agreed to give the vendors credit for Rs 19,000 to be drawn against as required. Shortly afterwards the parties agreed to rescind the contract and R sold the property to his vendors, giving them a conveyance in which the consideration was stated to be Rs 1,000 in cash, no mention being made of the extinction of his liability to pay the remaining Rs 19,000. *Held* on these facts that R had committed an offence within the purview of s 64 (a) of the Indian Stamp Act, 1899. *EXPEROR v RAMESHAR DAS* (1910) I L R 32 All 171

s 28 (3)—

See STAMP DUTY I L R 37 Cal 629

s 33 (1)—*Impounding of document—Insufficiently stamped—Conditions necessary for the application of section—Suit for money on hatchia produced in Court in bound volume containing other hatchias—Jurisdiction of Court to impound those other hatchias.* In a suit for recovery of money on a *hatchia* the plaintiff filed along with the plea in the *hatchia* which was in a bound volume which contained a large number of *hatchias* executed by other persons in favour of the plaintiffs. The *hatchia* on which the suit was brought being found to be insufficiently stamped the Munsif examined the other *hatchias* and impounded them under s 33 of the Stamp Act finding them to be insufficiently stamped. *Held* that under s 33 the Munsif had no jurisdiction to impound the *hatchias* other than the one which formed the basis of the suit. Before action can be taken under sub-s 1 of s 33 it must be established that the instrument in question was produced or came before the officer mentioned therein in the performance of his functions and having regard to the stage at which the Munsif took action it could not be said that the *hatchias* were produced or came before the Munsif in the performance of his functions. *RAMJI MOHAN SHARMA v KUNCI KUNAR BISWAS* (1916) 21 C W. N 246

s 35—

See s 5

I L R 37 Cal 629

See s 20.

5 Pat. L J 660

Civil Procedure Code (Act I of 1908) O XXI r 31—*Con rect Act (IX of 1872) s 18 cl (3)—Court-sale—Execution of the judgment—Mortgage had no saleable interest—Failure of consideration—Suit by auction purchaser for possession or return of purchase money—Fiduciary of the judgment-creditor and auction-purchaser—Suit not cognizable by Small Causes Court—Unstamped document regarded as non-existent*

STAMP ACT (II OF 1899)—*contd*s. 35—*contd*

A Court sale purchaser having discovered that the judgment debtors had no saleable interest in the property sold brought a suit against the judgment creditor for recovery of possession of the property, or in the alternative, return of the purchase money on the footing of total failure of consideration. A question having arisen as to whether the suit was maintainable. *Held*, that the suit was maintainable inasmuch as under the Civil Procedure Code (Act V of 1908) there was an implied warranty of some saleable interest when the right, title and interest of the judgment debtor was put up for sale, and the purchaser's right based on such implied warranty to a return under certain conditions of the purchase money which had been received by the judgment creditor was recognized. The relations of the parties, namely, the judgment creditor and the Court sale purchaser were also in the nature of contract. *Held*, further, that such a suit, though the subject matter was less than Rs 500, was not cognizable by a Court of Small Causes, there being a prayer for possession of immovable property. An unstamped document being inadmissible in evidence must be taken as non-existent. *IRSTRONJI ABDESHIR IRANI v VINAYAK GANGADHAR BHAT* (1910) I L R 35 Bom 29

ss 35, 36—Sch I, Art. 40, Exemp. (2)—*Bill of exchange written on several pieces of stamp paper, if properly stamped—Hypothecation, letter of, not stamped but registered, if admissible as evidence—Power of Appellate Court to question admissibility on the ground of insufficiency of stamp—Document not duly stamped, improperly registered, if to be therefore rejected—Registration Act (XVI of 1908), s 57. A document which was in fact a bill of exchange, though it was loosely described as a *Aundi*, was properly stamped under r 6 of the Rules of the Governor General in Council when a portion of it appeared to have been written on each of three sheets of stamp paper of the aggregate value required by law. Where a registering officer having examined a document presented to him for registration came, rightly or wrongly, to the conclusion that, being a letter of hypothecation accompanying a bill of exchange, it was exempt from duty under Art. 40, Exemp (2) of Sch I of the Stamp Act and accordingly certified on the bill of exchange that it was properly stamped and registered the letter of hypothecation without requiring any further duty to be paid in respect of it. *Held*, that an improper registration in view of s 57 of the Registration Act could not possibly affect the validity of the document. That the Court of first instance having admitted the letter of hypothecation in evidence, the High Court was precluded from taking exception to it on the ground of its having been insufficiently stamped by s 36 of the Stamp Act. That it did not lie in the mouth of the representatives of the executant of the letter who was responsible for the proper stamping of the document to plead in a suit to enforce it that the contract was not binding upon him because he had succeeded in defrauding the Revenue authorities. *SARADA NATH BHATTACHARJEE v GOVINDA CHANDRA DAS* (1919) [23 C W. N. 531]*

s. 36—

See SUCCESSION ACT (X OF 1865), s. 190
I L R. 33 Bom. 618

STAMP ACT (II OF 1899)—*contd*s. 36—*contd*

See STAMP DUTY I L R. 39 Calc. 669

Unstamped acknowledgment accepted as evidence by trial Court, if may be rejected on appeal. A statement to the effect as follows. "Rs 2,115—balance due" followed by the date and the debtor's signature is an acknowledgment and should be stamped as such. But under s 36 of the Stamp Act if such a statement, though unstamped, has been admitted in evidence by the Court of first instance, it cannot be rejected by the Appellate Court. *SITARAM v PAMA THOSAD RAM* (1913) 18 C. W. N 897

ss 40, 57—Instrument certified by Collector to have been duly stamped—Reference by Chief Controlling Revenue Authority to High Court questioning correctness of Collector's decision—Jurisdiction. *Held*, that if a Collector has taken action under s 40, sub-s (1) (b) of the Indian Stamp Act, 1899, and having received the deficient duty and the penalty imposed, has certified under sub-s (1) (a) that the instrument before him is duly stamped the effect of sub-s (2) is that the jurisdiction of the Chief Controlling Revenue Authority to refer to the High Court, under s. 57 of the Act, the question whether such instrument is in fact sufficiently stamped or not is ousted. Reference under Stamp Act, s 57, I L R 25 Mad. 752, followed. *STAMP REFERENCE BY BOARD OF REVENUE* (1917) I L R. 40 All 128

s 52—Partisan decree—Court fee stamp erroneously used for non judicial—Valuation of decree by filing of non-judicial stamp on appeal—Civil Procedure Code (Act V of 1908), s 151. The plaintiff in a suit for partition by mistake filed a Court fee instead of a non judicial stamp in order that a decree might be drawn up thereon in accordance with Art. 43 of Sch. I of the Stamp Act, and the mistake was not discovered till after some of the defendants had preferred an appeal against the decree so drawn up and others had filed cross objections, when the plaintiff having applied for execution of the decree, the Subordinate Judge dismissed the application holding that there was no valid decree capable of execution. *Held*, on plaintiff's application in the appeal, that the High Court could, in the exercise of its powers under s 151 of the Civil Procedure Code, direct the plaintiff to file a non judicial stamp of the requisite value in the appeal, so as to validate the decree with retrospective effect from the date when it was drawn up. *Chhayamannasa Bha v Banwar Fakamasa*, I L R 37 Cal. 399 s c 11 C L J 265, referred to. The High Court in such a case cannot direct the refund by the revenue authorities of the value of the Court fee stamp thus erroneously used. S 52 of the Indian Stamp Act does not cover a case in which Court fee stamp has been erroneously used where non judicial stamp ought to have been used under the provisions of the Act. Reference under s 57 of Act II of 1899, I L R 23 All 213 referred to. *SHAIKH RAFIUDDIN v LATIF AHMAD* (1910) 14 C W. N 1101

s 57—

I L R. 37 Calc. 629

See s. 5

See s. 40. I L R. 40 All 182

Reference under Art. 5,
Sch I—Agreement or memorandum of agreement,
meaning of—Proposal or offer in writing—Parol

STAMP ACT (II OF 1899)—*cont'd.*s. 57—*cont'd.*

acceptance—Whether proposal or offer in writing requires to be stamped—Advance of loan or written declaration by a party as to his property—Entry in register of the declaration—Whether stamp necessary, Where it appeared on the evidence as to course of business of a bank, that the bank advanced loans on promissory notes payable on demand or otherwise, but before advancing money, it required the borrower to make a declaration in the confidential register in the form thereto annexed as to the property in his possession and to sign the same. *Held*, that the entry of the declaration in the register was not an agreement or a memorandum of an agreement which required to be stamped under Art. 5 of the sch. I of the Indian Stamp Act (II of 1899). Assuming that on the signing of the declaration there was a "proposal" or an "offer," a written proposal or a written offer does not become subject to stamp duty by reason of subsequent acceptance which is not in writing. *Corlill v The Carbolic Smoke Ball Company*, [1892] 2 Q. D. 484, *Chaplin v Clark*, 4 Ex. Rep. 403 and *Clay v Crofts*, 29 L. J. C. L. 361, followed. *Quare*. Whether the entry in the register amounted to a proposal or offer in writing. SECRETARY TO THE COMMISSIONER OF SALT, ABERDEEN AND SEPARATE REVENUE, v THE SOUTH INDIAN BANK, LD., TIRUNELVELLY (1913)

I. L. R. 33 Mad. 349

—Reference by Board of of Revenue—Document to which reference relates not in existence. *Held*, that ss. 56 and 57 of the Indian Stamp Act empower the High Court to decide questions relating to instrument already in existence and which have been made the subject of action by the Collector acting under ss. 31, 40 and 41 of the Act. They do not empower the Court to give an opinion upon a deed which may or may not come into existence hereafter. STAMP REFERENCE BY THE BOARD OF REVENUE (1914)

I. L. R. 37 All. 125

s. 59—Undivided brothers—Instruments whereby co-owners divide property in severalty—Release—Partition—Stamp Instruments whereby co-owners of any property divide or agree to divide it in severalty are instruments of partition. One of three undivided brothers agreed to take from eldest brother, the manager of the family, as his share in the family property, moveable and immoveable, a certain cash and bonds for debts due to the family, and passed to the eldest brother a document in the form of a release. Subsequently one of the two brothers passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining family property by the latter handing over to the former securities for money. A question having arisen as to whether for the purpose of stamp duty the said two documents were to be treated as releases or instruments of partition. *Held*, that the documents were instruments of partition. *In re GOWD PANDURANG KAMAT* (1910)

I. L. R. 35 Bom. 75

s. 59, Sch. I, Art. 35, cl. (a), sub-cl. (iii)—Lease—Lessee agreeing to pay annual rent plus Government assessment—Whether rent include assessment for purposes of stamp duty. A piece of land was leased for five years whereby the lessee agreed to pay to the lessor Rs. 100 as rent

STAMP ACT (II OF 1899)—*cont'd.*s. 59, Sch. I, Art. 35, cl. (a), Sub-cl. (iii)—*cont'd.*

plus Rs. 16 8 0 on account of Government assessment. The question being referred whether the stamp duty should be levied on Rs. 100 or Rs. 116 8 0, the total amount of rent and Government assessment. *Held*, that the Government assessment did not form part of the profit and therefore the stamp duty was leviable only on Rs. 100 the annual rent, under Sch. I, Art. 35, cl. (a), sub-cl. (iii) of Stamp Act. GANGABAI NARAYANDAS TELI, *In re* (1915)

I. L. R. 39 Bom. 434

s. 60—

See s. 2. I. L. R. 33 All. 467

In order to determine whether a document is attested by a witness within the meaning of the Stamp Act it is permissible to look only at the document itself. Other evidence can not be referred to. *MD. SADIQ v. AMIYA NATH DUTT*.

2 Pat. L. J. 686

s. 61 (1); Sch. I, Arts. 15, 35 (a),

(1)—

See STAMP DUTY I. L. R. 46 Calc. 804

s. 62 (b), (c)—Proposal for loan in prescribed form of Bank and approval thereof by Manager if constitutes an agreement which should bear eight annas stamp—Intent to defraud Government. A certain local Bank received an application for a loan of Rs. 50 in its prescribed form. This application contained in the usual column of the form a sort of guarantee of payment by person other than the applicant recommending the granting of the loan on a bond and the Manager of the Bank approved the proposal or the loan and recommended it at a certain rate of interest as to which the Applicant and the guarantor were silent. Both the Manager and the Secretary of the Bank were prosecuted and the Manager was convicted under s. 62 (b) and the Secretary under s. 68 (c) of the Stamp Act. *Held*, that the statements in the proposal made by the Applicant himself and by the Manager did not represent a completed agreement, more particularly with regard to the rate of interest. At most they represented merely negotiations intended to lead up to the execution of a bond and the payment thereon of the amount of the loan, and the conviction of the Manager under s. 62 (b) of the Stamp Act could not be maintained. That the conviction of the Secretary under s. 68 (c) was also not sustainable as no intention to defraud Government was made out. RAJESHWAR BAGCHI v. KING EMPEROR (1917)

21 C. W. N. 758

Stamp—Award—

Unstamped award signed by parties to submission—Party signing "otherwise than as a witness". Where certain parties to an arbitration, who had signed the submission to arbitration, also signed the award, not as witnesses, but under the heading "signature of the heirs," and the award was not stamped: *Held*, that such parties did not fall within the purview of s. 62 cl. (1) (b), of the Indian Stamp Act, 1899, as persons "executing or signing otherwise than as witnesses." *EMPEROR v. BHAU PAL SARAN* (1910)

1. L. R. 32 All. 198

STAMP ACT (II OF 1899)—*contd.*

ss. 62 and 63—

See s 2 (23) . I. L. R. 35 All. 290

s. 62; Sch. I, Art 5—*Stamp—Petition to Court intimating compromise of suit—Agreement* The parties to a suit came to terms out of Court, and presented a joint petition to the Court stating the terms of compromise arrived at and asking that a consent decree might be given in accordance therewith. *Held*, that such petition was to be stamped merely as a petition to the Court and did not require to be engrossed on a general stamp. *EMPEROR v. RAM SARAN LAL* (1917) I. L. R. 40 All. 19

s. 62 (b) and Sch. I, Art 35—*Agreement to lease—no rent reserved—whether stamp necessary* An agreement for a lease where by no rent is reserved and no premium is paid or money advanced, is not included in the scheme of the Stamp Act, 1899 and does not require a stamp. *SUNDER KIER v. KING EMPEROR* I Pat. L. J. 366

s. 64—

See s 27 I. L. R. 32 All. 171

ss. 64 (c), 68—

See STAMP DUTY L. R. 44 Calc. 321

s. 65—*Receipt—Money remitted by postal money order and receipt signed on post office form—Further receipt not exigible from payee* Where money is remitted by postal money order and the payee has signed the receipt in duplicate on the post office form, he cannot legally be compelled to give a further receipt to the payer and his refusal to do so will not render him liable under s. 65 of the Indian Stamp Act, 1899. *EMPEROR v. BALMAKAUND* (1911) I. L. R. 34 All. 192

Sch. I, Art 1—

See ACKNOWLEDGMENT

I. L. R. 39 Calc. 789

Sch. I, Arts. 1 and 5—

See s 12 I. L. R. 41 All. 169

Sch. I, Art 5—

See s 57 I. L. R. 38 Mad. 349

See s. 62 . I. L. R. 40 All. 19

See HIRE PURCHASE AGREEMENT

I. L. R. 44 Calc. 72

—*Agreement to hire with option of purchase, stamp duty on* An instrument was executed between the Linotype and Machinery, Ltd., and the Windsor Press whereby a machine was hired by the latter for a period on condition that the hirer would pay a fixed amount on execution of the deed and another fixed amount by equal monthly instalment with interest and that on payment of the full sum with interest the machine would become the property of the hirer but that until such payment was made the machinery would continue to be on hire. *Held* (on a reference by the Board of Revenue under s. 57 of the Stamp Act), that the document in question was an agreement within the meaning of Art 5, cl. (c) of Sch. I to the Indian Stamp Act and was therefore liable to a stamp duty of eight annas. *In the matter of LINOTYPE AND MACHINERY, LTD* (1916) . . . 20 C. W. N. 1252

STAMP ACT (II OF 1899)—*contd.*

Sch. I, Arts. 5 and 43.

See STAMP DUTY I. L. R. 39 Calc. 669

—*Submission to arbitration, stamp upon* Where certain contract notes, in addition to the intimation by the broker of the purchase or sale of the goods, contained submissions in writing by the buyer and seller to refer disputes to arbitration signed by the brokers as the authorised agent of the parties, and, being stamped with a one anna stamp according to a practice recognised by the Court for a long series of years, was held by the Trial Judge to be inadmissible in evidence on the ground that the submission to arbitration was chargeable with an eight-anna stamp under Sch. I, Art 3 of the Indian Stamp Act as an agreement not otherwise provided for, the Court of Appeal held that the Court was not prepared to question the practice on the materials before it and that the submission should be treated as duly stamped. *In the matter of s. 11, and s. (2) of the Indian Arbitration Act of 1886, and in the matter of a Reference to Arbitration BAINATH v. AHMED MUSAJI SALEJI* (1912) 17 C. W. N. 395

Sch. I, Art. 7—

See s 2 (24) I. L. R. 35 Bom. 443

Sch. I, Art 15

See CIVIL PROCEDURE CODE (Act XIV of

1882), s 209 I. L. R. 37 Mad. 17

See STAMP DUTY I. L. R. 46 Calc. 804

—Sch. I, Art 22, *Registration Act (III of 1877), s. 17, cl. (c)—Trusts Act (II of 1882) s. 5—“Composition deed”—Compounding of debts due—Transfer of immovable property—Registration not necessary* With the consent of creditors to the extent of Rs. 1,22,000 out of the total number of creditors claiming Rs. 1,61,800 of the family firm represented by one B, the latter executed a deed making over all the specified assets of the family to certain nominated trustees. The creditors coming in (by a particular day) under the deed agreed that after all the goods and the properties had been made over to the trustees no other claim whatever with regard to the amounts due to them should remain outstanding against B and the minor members of the family, but the whole claim should be understood to be written off against them, and B and the minors were to make use of the deed as a release passed on their behalf. The deed also provided that the trustees were to manage the properties for the benefit of the creditors interested and the monies realized from time to time were to be distributed among such creditors in proportion to their claims. The properties comprised in the deed, moveable as well as immovable, were transferred to the trustees in due course. The deed was unregistered. Subsequently in a suit brought by the trustees to recover possession of a house comprised in the deed, a question having arisen whether the deed was a composition deed. *Held*, that the definition of the term “composition deed” as given in Art 22, Sch. I of the Stamp Act (II of 1899), meant the same thing as the term “composition deed” in s. 17 of the Registration Act (III of 1877) that the terms so defined covered three classes of instruments: (i) an assignment for the benefit of creditors; (ii) an agreement whereby payment of a composition or dividend was secured to the creditors; and (iii) an inspectorship deed for

STAMP ACT (II OF 1899)—*concl'd.*Sch I, Art. 22—*cont'd*

the purpose of working the debtor's business for the benefit of his creditors, that the inclusion of the term "composition deed" in s 17 of the Registration Act (III of 1877) showed that it was intended to apply to a transfer of immovable property and not to a mere agreement to take fractional payment of money in settlement of claims, that the test of a "composition deed" was that there ought to be a compounding of debts due and that such a deed fell under cl (c) of s 17 of the Registration Act (III of 1877) and did not require registration under that Act nor under the provisions of s 5 of the Trusts Act (II of 1882) *Held*, accordingly, that the deed in question was a composition deed within the meaning of s 17, cl 2, of the Registration Act (III of 1877), and did not require registration *CHANDRASHANKAR v BAI MAGAN* (1914)

I. L. R. 33 Bom. 578

Sch. I, Art. 35—

See s 59 I. L. R. 39 Bom. 434

See s 62 I. Pat. L. J. 386

See STAMP DUTY I. L. R. 48 Calc. 804

Amaldustak, whether it requires stamp—Conviction under s 62 (b), if maintainable—Schedule of Stamp Act if exhaustive The schedule attached to the Stamp Act must be treated as exhaustive An agreement for a lease whereby no rent is reserved and no premium paid or money advanced is not included in the schedule and does not require a stamp *Held*, on a construction of *amaldustak* which was for a term of seven years but wherein no rent was fixed, that the document did not require stamp and so the conviction of exccutant of the document under s 62 (b) of the Stamp Act was set aside *SUNDER KUEH v KING EMPEROR* (1916)

20 C. W. N. 823

Sch. I, Art. 40—

See s. 2 (17) I. L. R. 33 Mad. 646

See s 35 23 C. W. N. 534

Sch I, Art. 45—

See s 2 (15) I. L. R. 36 All. 137

I. L. R. 35 Mad 28

Sch I, Art. 48—

See POWER OF ATTORNEY.

I. L. R. 33 Mad. 134

See s. 2 (21) I. L. R. 33 All. 487

Sch I, Art. 53—

See STAMP DUTY

I. L. R. 37 Calc. 629, 634

Sch. I, Art. 55—Stamp—Release Partitioned deed Two persons, each of whom claimed the sole right to the property of a deceased relation, arrived at a compromise of their respective claims and gave effect thereto by means of two deeds of even date, by which deeds each relinquished in favour of the other his (or her) claim to a portion of the estate of the deceased *Held*, that these deeds were releases, assessable to stamp duty under Art 55 of the first schedule to the Indian Stamp Act, 1899 *Ekwal S Gowde v Jagannath S. Gowde*, I. L. R. 9 Bom. 417, and *Reference under Stamp Act, s. 46, I. L. R. 13 Mad 233*, referred to. *Reference under Stamp Act, s. 46, I. L. R. 12 Mad 198*, distinguished *JIBAN KUTWAR v GORIND DAS* (1915)

I. L. R. 33 All. 56

STAMP-DUTY.

See ACKNOWLEDGMENT

I. L. R. 39 Calc. 789

See ARBITRATION I. L. R. 40 Calc. 219

See HIRE PURCHASE AGREEMENT

I. L. R. 44 Calc. 72

See POWER OF ATTORNEY.

I. L. R. 33 All. 487

See STAMP ACT, 1899

See STAMP ACT (II OF 1899), s 62 (1) (b)

I. L. R. 32 All. 198

— ON a pauper plaint—

See CIVIL PROCEDURE CODE (1908), O

XXIII, RE 10, 11

I. L. R. 38 All. 469

1. — Acknowledgment—Money received by servant of a firm and handed over to fellow-servant—Consideration—Acknowledgment of receipt by fellow-servant of a sum larger than Rs 20, if liable to stamp-duty—Stamp Act (II of 1899), s 2 (23), Sch I, Art 53 Where a sum exceeding Rs 20 was received by an assistant in a mercantile firm from the cashier of the firm as advance made on the firm's behalf, and to be expended on the firm's behalf, and previous to disbursement of the sum in question a pay order was made out by the Accounts Department of the firm and was sent to the cashier who had paid the sum to the assistant and the assistant at the same time acknowledged receipt by signing his name or initials on the pay order *Held*, that the acknowledgment did not require a receipt stamp by reason of the assistant's signature on the pay order *Attorney General v Carillon Bank* [1899] 2 Q. B. 158, distinguished *In re BURN & Co* (1910) I. L. R. 37 Calc. 634

2. — Lease—Multifarious Document—

One lease with several parties concurring to it—Stamp Act (II of 1899), ss 5, 23 (3), 35, 57 (1). The concurrence of several parties to one and the same lease does not make it a multifarious document with the meaning of s. 5 of the Stamp Act The stamp duty on such a lease is the same as on a conveyance for a consideration equal to the amount or value of the fine or premium for which the lease is granted *In re PARASEA COLLIERIES, LTD.* (1910) I. L. R. 37 Calc. 629

3. — Bought and sold notes—Stamp Act (II of 1899), ss 5, 6 and 36, Sch I, Arts 5 and 43—Arbitration—Admission, by arbitrators, of document not duly stamped, effect of—Bengal Chamber of Commerce, arbitration by—Rules relating to—Umpire, omission to nominate, effect of—Disclosure of names of arbitrators if contemplated by the rules—Reference, provision for appearance of parties on A contract for or relating to the sale of goods comprised in bought and sold notes, which contain a provision to refer disputes to arbitration, is chargeable with a stamp duty of two annas on each broker's note under Art 43 of the Stamp Act, and not with a duty of eight annas as an agreement *Kyd v Mahomed*, I. L. R. 15 Mad 150, followed If a document, which is not duly stamped, were admitted in evidence by arbitrators on a reference, the provisions of s. 36 of the Stamp Act would prevent such admission being called into question at any stage of the same suit or proceeding except as provided in s. 61, and an application to the award of the arbitrators would be a "stage

STAMP DUTY—*contd*

of the same proceeding" The arbitration rules of the Bengal Chamber of Commerce, grammatically speaking require an umpire to be nominated before the arbitrators enter upon the reference but the omission to so nominate an umpire would not be a ground for setting aside or varying the award having regard to the provisions of rule VI (c) The arbitration rules of the Bengal Chamber of Commerce (rule A) contemplate that the names of the arbitrators shall not be disclosed to the parties *Chooni Lall v Madhoram*, 1 L R 36 Calc 333 13 C W N 29 and *Hurdwary Mill v Ahmed Musaji Selaji*, 13 C W N 63 dissented from Rule VI (g) provides that the parties shall not without the express permission of the arbitrators, be entitled to appear The parties have no right to appear, or even to ask for such permission *BOMBAY COMPANY, LTD v THE NATIONAL JUTE MILLS CO LTD* (1912) 1 L R 39 Calc 669

4. ———— **Offences, regarding—***Mere fact of putting a stamp not of proper value, whether an offence—Stamp Act (II of 1899) ss 64, cl (c), 65—Intention to defraud* In construing cl (c) of s 64 of the Indian Stamp Act, the words 'any other act' must be taken to mean an act of a like nature to those which are specified in cl (a) and (b), and the mere fact that a person puts a stamp on a document which he knows to be not of proper value would not come within cl (c) of s 64, unless there is an intention to defraud the Government *Queen Empress v Somasundaram Chetti*, 1 L P 23 Mad 155, referred to *CHHAKMAL CHOOPRA v EMPEROR* (1918) 1 L R 44 Calc 321

5. ———— **Lease—Monthly tenancy—Stamp Act (II of 1899), s 61 (1) and Sch 1, Arts 15, 35 (a) (1)** By a letter the defendant agreed to pay Rs 60 per month as rent of certain premises and to pay the said rent at Rs 2 per day to the plaintiff *Held*, that the tenancy was a monthly tenancy and came within Art. 35, cl. (a) sub-cl (1) of the first Schedule of the Indian Stamp Act, and the proper stamp-duty was the same duty as for a bond referred to in Art 15, viz., eight annas *ASHOLIA v IBRAHIM ISHAK, In re* (1919) 1 L R 46 Calc 804

STANDARD OF PROOF.

See **CONTENT OF COURT** 1

1 L R 45 Calc 169
See **LIMITATION** 1 L R 40 Calc 898

———— **Civil and criminal trials—Presumption—English rules** On the question of the standard of proof there is but one rule of evidence which in India applies to both civil and criminal trials and that is contained in the definition of "proved" and "disproved" in s 3 of the Evidence Act The test in each case is, would a prudent man after considering the matters before him (which vary with each case) deem the fact in issue proved or disproved? The Court can never be bound by any rule but that which, coming from itself, dictates a conscientious and prudent exercise of its judgment. There is a presumption against crime and misconduct and the more heinous and improbable a crime is, the greater is the force of the evidence required to overcome such presumption. The English rule in these matters does not, as such, apply in India *Jarat Kumar Das v Bhanuwar Dutt*, 1 L R 39 Calc. 215 explained *WESTON AND OTHERS v PEARY MOHAN DASS* (1912) 1 L R 40 Calc. 898

STANDARD RENT.

———— **Additional charge for supplying light—**

See **RENT (WAR RESTRICTION NO 2) ACT** (BOM ACT VII OF 1918), s 7 (1)
1 L R. 45 Bom. 188

STANDING COMMITTEE.

See **MADRAS CITY MUNICIPAL ACT** (III OF 1904) 1 L R. 38 Mad. 41

STANI.

See **LIMITATION ACT** (IX OF 1908) SEC 1. ART 124 1 L R 41 Mad. 4

———— **Kathavan, becoming a—**

See **MALABAR TARIKAT**
1 L R. 39 Mad 918

STAPLE FOOD, PRICE OF

———— **how ascertained—**

See **LANDLORD AND TENANT**
1 L R 37 Calc. 742

STARE DECISIS.

———— **Principle of —**

See **BOMBAY LAND REVENUE CODE**, 1879 s 216
1 L R. 45 Bom. 1260

See **OCCUPANCY HOLDING**
1 L R 48 Calc 184
24 C W. N. 818

STATEMENT

———— **from a complainant, not a confession—**

See **CRIMINAL PROCEDURE CODE** (ACT V OF 1898), s 164
1 L R 39 Mad 977

STATEMENT IN WRITING BY ACCUSED

———— **admissibility of—**

See **CONFESSION** 1 L R. 27 Calc 725

STATEMENT ON INFORMATION AND BELIEF

See **CONTENT OF COURT**
1 L R. 41 Calc. 173

See **POLICE DIARIES AND REPORTS**

STATUS OF TENANT.

See **BENGAL TENANCY ACT**, ss 5, 103B
1 L R 45 Calc 805

STATUTE LAW IN ENGLAND

———— **apportionment under—**

See **LEASON AND LESSEE**
1 L R. 38 Mad 86

STATUTES

———— **II Geo. IV and I WILL IV, c. 68—**
See **COMMON CARRIERS**

1 L R. 38 Calc 28
13 C. W. N. 226

———— **5 & 6 Geo V, cap. LXI—**

———— **s 107—**

See **CIVIL PROCEDURE CODE** (1908), s. 115.
1 L R 39 ALL 254
See **LEGAL PRACTITIONERS ACT** (XVIII OF 1879), s 36 1 L R 40 ALL 183

STATUTES—*contd*

11 & 12 Vict., c 21—

See INDIAN INSOLVENCY ACT

21 & 22 Vict., c 106, ss 39, 40,

41, 42

See EXECUTION OF DECREE

I L R 38 Calc 754

15 C W N 475

24 & 25 Vict., c 104—

See LAND ACQUISITION ACT s 11

I L R 38 Calc 230

15 C W N 87

Power of Crown to appoint a sixth Puisne Judge—*Criminal Procedure Code* s 417—Appeal from acquittal—*Procedure Held*, on a construction of ss 1 and 2 of Letters Patent of the High Court for the North Western Provinces that it was competent to the Crown to appoint by means of its Letters Patent a sixth Puisne Judge to the said High Court. Held also following the decision of *Queen Empress v Prag Das* I L R 20 All 459 that in the Code of Criminal Procedure there is no apparent distinction between the right of appeal against an acquittal and the right of appeal against a conviction. *Queen Empress v Robinson* I L R 16 All 912 referred to. *EMPEROR v GHURE* (1914) I L R 36 All 168

44 & 45 Vict., c LVIII, s 138—

See CIVIL PROCEDURE CODE 1908 s 60

I L R 33 All 529

58 & 59 Vict., c V, s 4—

See CIVIL PROCEDURE CODE 1908

s 60

I L R 33 All 529

STATUTE CONSTRUCTION OF

See BOMBAY CITY MUNICIPAL ACT (BOMBAY ACT III OF 1888) s 305

I L R 34 Bom 593

See CIVIL PROCEDURE CODE 1908 s 48

I L R 32 All 499

See CIVIL PROCEDURE CODE (ACT V OF 1908 O XXI) s 93

I L R 40 Mad 1009

See CONSTRUCTION OF STATUTES

See INTERPRETATION OF STATUTES

See LIMITATION ACT 1908, ART 134

I L R 36 Bom 146

See MADRAS HEREDITARY VILLAGE OFFICERS ACT (III OF 1895)

I L R 37 Mad 548

See SALE

I L R 43 Calc 790

Contradictory Sections—

See BENGAL TENANCY ACT, s 18

25 C W N 9

Represents previous Statute—

See BENGAL TENANCY ACT ss 52

25 C W N 230

1. ———— *Not declaratory but amending*—No retrospect or operation. Statutes which are properly of a declaratory character have a retrospective effect. But the nature of the statute must be determined from its provisions and the mere fact that the expression 'it is de-

STATUTE, CONSTRUCTION OF—*contd*

clared has been used, is by no means conclusive as to the true character of the legislation. *JOTI RAM KHAN v JOTAKI NATH GHOSE* (1914)

20 C W N 258

2. ———— *Bombay Land Revenue Code (Bom Act V of 1879), s 48*. The Bombay Land Revenue Code (Bom Act V of 1879) is a taxing enactment and must be construed strictly in favour of the subject. *SECRETARY OF STATE v LALDAS* (1909) I L R 34 Bom 239

3. ———— *Civil Procedure Code* (Act XIV of 1882), s 237A—*Civil Procedure Code (Act V of 1908) repealing s 257A*—Effect of the repeal on s 13 cl (c) of the *Dekkan Agriculturists' Relief Act (XVII of 1879)* s 13 cl (c) of the *Dekkan Agriculturists' Relief Act (XVII of 1879)* not having been expressly repealed is not affected by the repeal of s 257A of the *Civil Procedure Code 1882* by the *Civil Procedure Code of 1908*. *TRIDHAK KASHIRAM v ARAJI* (1911)

I L R 35 Bom 307

4. ———— *Statute—On construction*. Where a statute creates a right not existing at common law and prescribes a particular remedy for its enforcement then that remedy alone must be followed. *CHUNILAL VIRCHAND v AHMEDABAD MUNICIPALITY* (1911)

I L R 36 Bom 47

5. ———— Where a later Act of Legislature does not purport to affect or supersede an earlier Act the Court will endeavour to read the two enactments together and to avoid conflict if possible. *RANGACHARYA v DASACHARYA* (1912) I L R 37 Bom 231

6. ———— *Change in language if necessarily imports a change of law*. A change in the wording of a section of an enactment does not necessarily involve a change in the law. *SECRETARY OF STATE FOR INDIA v PURNENDU NARAIN ROY* (1912) 17 C W N 1151

7. ———— The express words of an Indian Statute are not to be overridden by reference to equitable principles which may have been adopted in the English Courts. *KURRI PEARREDDI v KURRI BAPUREDDI*, I L R 29 Mad 336 followed. *THANGOWDA v BEVERGOWDA* (1915) I L R 39 Bom 472

8. ———— Whether a statute codifies or amends the law if its provisions are expressed in clear and unambiguous terms resort should not be had to the pre-existing law although such reference may be useful and legitimate where the provisions are of doubtful import or are couched in language which had previously acquired a technical meaning. *NILMASI KAR v RAJA SATI PRASAD GARGA BANADUR* 6 Pat L J 230

STATUTORY OBLIGATION

See MADRAS LOCAL BOARD ACT 1884

S 95 I. L. R. 42 Mad. 331

breach of—

See CONTRIBUTORY NEGLIGENCE.

I L R 34 Bom 427

I L R 37 Bom 575

STATUTORY PRESUMPTION

See OCCUPANCY HOLDING

I L R 46 Calc 160

STATUTORY RIGHT

See **BENGOAL TENANCY**

I L R 48 Calc 473

STAY OF CRIMINAL PROCEEDINGS

Stay of criminal proceedings pending appeal in matter of which they are—Application for succession certificate—Allegation of fraud—Expiry under s 476 Criminal Procedure Code (Act V of 1908)—Order for process on undress ss 193 and 200 Indian Penal Code (Act XLV of 1860)—Appeal pending in High Court—Stay of criminal proceedings—In the course of a proceeding upon an application for revocation of the grant of a succession certificate the District Judge found that the applicant for the certificate was not as he alleged related to the deceased in any way and ordered his prosecution under ss 193 and 200 Indian Penal Code. D then filed an appeal to the High Court and asked for stay of criminal proceedings pending the hearing of the appeal. Held that to make a declaration in the rule for stay of proceedings as to the correctness or otherwise of the order of the District Judge would be to pre-judge an issue which is likely to come before the Bench who will hear the appeal. The proceedings against the appellant under ss 193 and 200 Indian Penal Code were stayed pending the hearing of the appeal. DEBI MANTO v KING EMPEROR (1916) 20 C W N 1116

STAY OF EXECUTION

See **APPEAL** I L R 41 Calc 169See **ARBITRATION ACT** s 2

I L R 45 Bom. 1

See **CIVIL PROCEDURE CODE 1908** s 47

O XLII R 5

See **CHOTA NAAGPUR TENANCY ACT 1908**

s. 215 4 Pat L J 371

See **COMPANIES ACT (VIII of 1913)** s. 207

I L R 33 All 407

See **COURT FEES ACT 180** s. 10

4 Pat L J 417

See **EXECUTION OF DECREE**

I L R 38 Calc 754

I L R 35 All 119

See **HIGH COURT JURISDICTION OF**

I L R 40 Calc 955

See **PRIVY COUNCIL, PRACTICE OF**

I L R 42 Calc 739

Order not appealable

See **CIVIL PROCEDURE CODE (Act V of 1908)** s 47 I L R 45 Bom 241

Pending appeal—

See **CIVIL PROCEDURE CODE 1908**

O XLII s 5

I L R 2 Lab 61

See **PRIVY COUNCIL, PRACTICE OF**

I L R 33 Calc 335

Refused by single Judge whether

open to appeal under Letters Patent.—

See **LETTERS PATENT APPEAL**

I L R 1 Lab 348

Code of Civil Procedure

(Act V of 1908) O XLV s 14—Court—Appeal

to Privy Council from Decree of High Court—Stay

STAY OF EXECUTION—contd

of execution pending disposal of appeal whether Subordinate Court may grant A Subordinate Court has no power to stay the execution of a decree passed by the High Court pending the disposal of an appeal to the Privy Council. The "Court" referred to in the first paragraph of O XLV s 13 of the Code of Civil Procedure 1908 is the High Court. RAM BANAHUR v THAKUR SRI SAI PADMA KRISHN CHANDERJI 3 Pat L J 40

Practice—High Court Original Side—Judge sitting in Chambers—Court which passed the decree—Delay—Civil Procedure Code (Act V of 1908) O XLV s 6 An application for stay of execution on the Original Side of the High Court pending an intended appeal must ordinarily be made to the Judge who tried the case and must be made without unreasonable delay. CHATURBUSTI CHANDANMALL v HASPRO DAS DAHA (1911) I L R 48 Calc 786

STAY OF PROCEEDINGS

See **ARBITRATION**

I L R 47 Calc 611 and 1020

See **CIVIL PROCEDURE CODE (Act V of 1908)** O XLIII s 3 Sch. II cls. 110

I L R 35 Bom 637

See **PECKHAM SCIT AGUINCY**

15 C W N 54

See **STAY OF SUIT**

I L R 43 Calc 144

—against an insolvent—

See **PRESIDENCY TOWN INSOLVENCY ACT**

(III of 1909) s 18 (3).

I L R 41 Bom. 312

—appeal of preliminary decree—

See **CIVIL PROCEDURE CODE 1908—**

O XLV s 13 I L R 42 All 170

STAY OF SUIT

See **ARBITRATION** I L R 47 Calc 648See **CIVIL PROCEDURE CODE 1908—**See **HIGH COURT'S ACT (24 and 25 VICT**

c 104) ss 29 and 33

I L R 39 Bom 604

See **STAY OF PROCEEDINGS.**

Reference to arbitration—Arbitra-

tor unwilling to act—

See **CIVIL PROCEDURE CODE (Act V of 1908)** O XLII s. 3 sch. II cls. 18

AND 22 I L R 45 Bom 1181

Submission by three persons to

refer—Suit filed by one—

See **ARBITRATION ACT (IX of 1899)** ss

s 8 s 9 15 and 19

I L R 45 Bom. 1

Jurisdiction—Civil

Procedure Code (Act V of 1908) s 10—Stay of pro-

ceedings in one of two suits in respect of same sub-

ject matter in different Courts A who carried on

business at Karachi and employed B as his com-

missioner at Calcutta instituted on 16th Feb-

ruary 1915 in the Court of the Judicial Commis-

sioner of Sind at Karachi, a suit against B for an

account and the recovery of whatever sum should

be found due on the taking of such account. On

STAY OF SUIT—contd.

10th March 1915, B instituted in the High Court at Calcutta the present suit against A for the recovery of Rs. 26,655 or in the alternative an account. Thereupon, A applied to have the present suit stayed pending the determination for his suit in the Karachi Court:—*Held*, that the only question that required consideration was whether the Karachi Court has jurisdiction to grant the reliefs claimed. The plaint in the Karachi suit sets out allegations that clearly gave jurisdiction to that Court to try the case. The present suit, must, therefore, be stayed till the determination of the suit at Karachi. *PADANSEE NARAINJEE v LAKHAMSEE RAISEE* (1915)

I L. R. 43 Calc. 144

STEAMSHIP COMPANY.See *CARRIERS* . I. L. R. 40 Calc. 718See *RAILWAY COMPANY*.

I. L. R. 47 Calc. 6

STEP-BROTHER.See *HINDU LAW—SUCCESSION*

I. L. R. 37 Calc. 863

STEP-IN-AID OF EXECUTION.See *CIVIL PROCEDURE CODE, 1882*, s. 245—
14 C. W. N. 481See *EXECUTION OF DECREE*

4 Pat. L. J. 35

See *LIMITATION ACT, 1877*, SCH. II, ART. 179 . . . I. L. R. 34 Bom. 68
14 C. W. N. 486See *LIMITATION ACT (IX OF 1908)—*s. 19 SCH. I, ART. 182, CL. 5
I. L. R. 38 Bom. 47

SCH. I, ART. 179 I. L. R. 38 Mad. 695

SCH. I, ART. 182

Proof of service of affidavit—Code of Civil Procedure (Act V of 1908) O XXI, r. 21. The filing of an affidavit in proof of service of a notice of attachment under O XXI, r. 21 of the Code of Civil Procedure, 1908, is a step in aid of execution. *THAKUR SINGH v SHRO BHAIJAN SINGH* . . . 4 Pat. L. J. 521

STEP IN THE PROCEEDINGS.See *ARBITRATION* . I. L. R. 47 Calc. 611**STEP-MOTHER.**See *HINDU LAW—SUCCESSION.*

I. L. R. 37 Calc. 214

I. L. R. 37 Mad. 286

STEP-SISTER & SON.See *HINDU LAW—SUCCESSION*

16 C. W. N. 1094

STILL-HEAD DUTY.See *ADMINISTRATION*

I. L. R. 45 Calc. 653

STIPEND.See *DEKKAN AGRICULTURISTS' RELIEF ACT, s. 2* . . . I. L. R. 36 Bom. 199**STOCK EXCHANGE.**

Member—Expulsion, validity of—Interference by the Court. The rules

STOCK EXCHANGE—contd.

applicable to cases of expulsion of a member of the Stock Exchange are based on the principle that the committee empowered to expel a member must make a fair enquiry into the truth of the alleged facts, after giving notice to the member concerned that his conduct is about to be enquired into and giving him an opportunity of stating his case to them. *Labouchere v Earl of Warwick* 13 Ch. D. 316, *Russell v Russell*, 14 Ch. D. 471, *Darlings v Antrobus*, 17 Ch. D. 615, and *Cassell v Ingles*, [1916] 2 Ch. 211 referred to. In order to determine whether a tribunal, in the exercise of quasi-judicial powers, has given a decision which cannot be successfully challenged, the Court has to investigate whether they have observed the rules of natural justice and also the particular statutory or other rules, if any, prescribed for their guidance. *Andrews v Mitchell* [1905] A. C. 78, referred to. The rules of natural justice demand that a man is not to be removed from office or membership or otherwise dealt with to his disadvantage without having a fair and sufficient notice of what is alleged against him and an opportunity of making his defence, and that the decision whatever it is must be arrived at in good faith with a view to the common interest of the society or institution concerned. If these conditions are satisfied, a Court of Justice will not interfere with the decision. A broker and member of the Calcutta Stock Exchange Association failed to deliver certain shares within a specified time to the purchaser thereof. The Committee of the Association, to whom the conduct of the broker was reported, decided, after hearing both parties, at a meeting held for the purpose of dealing with the case, that the broker should deliver to the purchasers the shares within a period of time specified by the committee. Upon the broker failing to deliver the said shares, the committee to whom the matter was again reported, further decided that the membership of the broker had ceased and he was warned not to enter the rooms of the Association. *Held*, that the action of the committee could not be impugned on the ground that the committee really made a new contract between the parties and that the broker was expelled from the Association, not because of his failure to carry out the original contract but because of his failure to carry out the order of the committee. *MAHOMED KALIMUDDIN v A. B. STEWART* (1920) . . . I. L. R. 47 Calc. 623

STOLEN PROPERTY.See *CRIMINAL PROCEDURE CODE*, s. 520

I. L. R. 35 Bom. 253

See *SEARCH WITHOUT WARRANT*

I. L. R. 38 Calc. 304

STOPPAGE IN TRANSITSee *CONTRACT* . I. L. R. 46 Calc. 831See *CONTRACT ACT (IX OF 1872)—*

s. 4, 61, 103 . I. L. R. 38 Bom. 235

s. 103 . . . I. L. R. 40 Bom. 630

Ultimate destination of goods—Duration of transit—Pledge of bill of lading—Measure of damages—Sale of Goods Act (36 and 57 Vic, c. 71), ss. 45 and 47. The plaintiffs, a Bombay firm, imported hardware goods from M & Co. of Manchester for sale on commission, the business being carried on and financed in the following

STOPPAGE IN TRANSIT—*cond*

manner M & Co., on shipping the goods, handed over the complete shipping documents to B, and received from him an advance of 60 per cent of the invoice price. B then handed over the shipping documents to the National Bank of India in Laghail and himself received a similar advance by drawing on a credit opened with the Bank by the plaintiffs. The Bank then forwarded the shipping documents to India, where they were handed over to the plaintiffs in exchange for a trust receipt, the plaintiffs becoming responsible to the Bank for any short fall in the advances made to B. On 12th February 1907 M & Co. contracted to purchase from L & Co. 250 boxes of tin plates, delivery to be F O B. Newport in four or five weeks after date. On 26th February M & Co. wrote to L & Co. enclosing instructions and marks for shipment of the 250 boxes to Bombay, and on 2nd March requested them to forward the goods to W & Co. at Newport in time for shipment in S S "Clan Macleod" for Bombay. On 21st March L & Co. enclosed to M & Co. an invoice for 200 boxes and on 27th March another invoice for the remaining 50 boxes, the material part of the invoice in each case being "No claim concerning these goods can be recognized unless made within fifteen days from delivery to Messrs W & Co., Newport, for shipment on your account." The 250 boxes were put on board the steamer by W & Co. as the agents of L & Co., but in obtaining a bill of lading for 500 boxes (including the 250 in question) W & Co. acted as the agents of M & Co. The steamer left Newport on 4th April. Following the usual course of business as above described M & Co. handed over to B the shipping documents relating to the 500 boxes and obtained an advance of £235 5 2 (being 65 per cent of the invoice value). B, on the 6th April, obtained a similar advance from the Bank. On the same day M & Co. suspended payment, and on 9th April L & Co. as unpaid vendors of 250 boxes notified the steamship owners, the first defendants, to stop these goods in transit. The S S "Clan Macleod" arrived in Bombay on 13th May and the bill of lading which had been duly handed over by the Bank to the plaintiff on 29th April, was in due course presented by the latter. They were informed, however, of the stop put on the 250 boxes and were offered a delivery order for the remaining 250 alone. This they declined, refusing to accept anything but the full payment of the advance or the full amount of the goods. On 29th June the plaintiffs repaid the Bank the amount of the advance, and the trust receipt of 29th April was duly cancelled. On the plaintiffs subsequently suing the steamship owners and their agents for damages, *Held*, that the transit did not cease at Newport, and L & Co. were entitled to stop the goods after they had started for Bombay. *Ex parte* *Golding Davis & Co.*, 13 CA D 628, followed. *Held*, further, that the plaintiffs were after 29th June—on which date they had fulfilled their obligations to the Bank,—pledgees for value of the bill of lading if indeed they did not occupy that position from 29th April, being transferees of the Bank's rights in respect of the advance as against the defendants. *Held*, further, that the plaintiffs were entitled to join both defendants in the suit. The utmost benefit which the defendants were entitled to obtain from the position of L & Co. as sureties (as to the plaintiffs for the advance made by the latter to M & Co.) was the right to the security of the 250 boxes which they were willing

STOPPAGE IN TRANSIT—*cond*

from the outset should be received by the plaintiffs. The plaintiffs by refusing to take delivery of the 250 boxes had omitted to do an act which their duty to the surety required them to do, and to the extent to which that omission had resulted in loss, the surety was discharged. *In re West in Bank*, 5 B & Ad 817, discussed. *BAFJI SONABET v THE CLAY LINE STEAMERS, LIMITED* (1910)

I. L. R. 34 Bom 640

STRAITS SETTLEMENTS BANKRUPTCY ORDINANCE

See BANKRUPTCY I. L. R. 40 Mad 591

STRAITS SETTLEMENTS ORDINANCE (III OF 1893)

See EVIDENCE L. R. 43 I. A 256

STRAITS SETTLEMENTS ORDINANCE (VI OF 1896)

ss 17, 22—

See LIMITATION L. R. 43 I. A. 113

STRAITS SETTLEMENTS ORDINANCE (XXI OF 1907)

ss 133, 136—

See LIMITATION L. R. 43 I. A. 113

STRANGER

purchase by—

See COURT SALE I. L. R. 36 Mad 194

See PATRY SALE I. L. R. 47 Calc 337

STREET.

See BOMBAY MUNICIPAL ACT—

ss. 296, 297 I. L. F. 36 Bom. 405

I. L. R. 42 Bom. 462

ss 297, 301 I. L. R. 43 Bom 181

See HIGHWAY

See LAND ACQUISITION

I. L. R. 47 Calc. 500, 504

right of municipality to—

See MUNICIPAL COUNCIL.

I. L. R. 38 Mad. 6

vesting of—

See MUNICIPALITY I. L. R. 44 Calc. 669

STRIDHAN

See DAUGHTERS I. L. R. 34 Bom 510

See HINDU LAW—HUSBAND AND WIFE
I. L. R. 39 Mad. 1036See HINDU LAW—INHERITANCE
I. L. R. 34 ALL 234
I. L. R. 36 Mad 116

See HINDU LAW—STRIDHAN

See HINDU LAW—SUCCESSION

I. L. R. 34 Bom 335.

15 C. W. N. 283, 1036

I. L. R. 37 Calc. 863

I. L. R. 23 Calc. 493

I. L. R. 39 Calc. 319

non-technical—

See HINDU LAW—STRIDHAN

I. L. R. 41 Bom. 618

STRIDHAN—contd

Widow—Succession—
Escheat On the failure of her husband's heirs, the Stridhan of a widow would go to her blood relations in preference to the Crown. **GANPAT RAMA v SECRETARY OF STATE FOR INDIA (1920)**
 I. L. R. 45 Bom. 1106

Preferential heir—Husband's younger brother or son adopted by father after mother's death and after marrying a second wife. **GUNAMANT DAS v DEVI PROSANGA ROY (1919)**
 23 C. W. N. 1038

STRUCTURE (TEMPORARY).

See **EASEMENT**. I. L. R. 37 Mad. 527

STUDENT.

disqualified for cheating at examination—

See **UNIVERSITY ACT, 1904**
 I. L. R. 2 Lah. 197

SUB-DIVISIONAL MAGISTRATE.

powers of—

See **CRIMINAL PROCEDURE CODE**, ss 106 and 32. I. L. R. 37 All. 230

subordination of—

See **MAGISTRATE, JURISDICTION OF**
 I. L. R. 39 Calc. 1041

SUB-LEASE.

See **BUSTEE LAND** I. L. R. 41 Calc. 164

See **NOTICE TO QUIT**
 I. L. R. 48 Calc. 768

by a fazendar—

See **FAZENDARI TENURE**
 I. L. R. 39 Bom. 316

Permanent lease by a raiyat not holding at a fixed rate—Ejectment—Estoppel—Bengal Tenancy Act (VIII of 1885), ss 49 (b), 85 Where a lease, purporting to be of a permanent character, is granted on the face of the document, by a raiyat (not being a raiyat holding at fixed rate) to an under raiyat, the lease is not operative as a permanent lease between the raiyat and the under raiyat. Such a lease is terminable in the manner provided by s. 49 (b) of the Bengal Tenancy Act. Where a lease, purporting to be of permanent character, is granted by a person, who, on the face of the document, professes to have a higher status than that of a raiyat (for example that of a tenure holder or a raiyat holding at a fixed rate), the grantee, when his title as a permanent lessee is challenged by his grantor, may invoke the aid of the doctrine of estoppel and plead that the grantor cannot be permitted to prove the falsity of the recitals in the document (on the faith of which he took the lease) so as to enable him to derogate from his grant. **Damodar Bakhtacharjee v Nilmadhab Saha, I. L. R. 44 Calc. 771**, referred to **CHANDRA KANTA NATH v AMJAD ALI HAJI (1920)**
 I. L. R. 48 Calc. 783

SUBMISSION.

See **ARBITRATION**.
 I. L. R. 47 Calc. 1020

See **ARBITRATION ACT 1899**
 s. 4. I. L. R. 42 All. 525

SUBMISSION—contd

by three persons to refer dispute to three arbitrators—

See **ARBITRATION ACT (IX OF 1899)**
 ss. 2, 5, 8, 9, 15 and 19
 I. L. R. 45 Bom. 1

SUB-MORTGAGE.

See **AGRA TENANCY ACT (II OF 1901)**, s. 20
 I. L. R. 35 All. 405

See **TRANSFER OF PROPERTY ACT (IV OF 1882)**, s. 90
 I. L. R. 34 All. 63

by sureties—

See **MORTGAGE** I. L. R. 45 Calc. 702

suit by Sub-mortgagee—

See **MORTGAGE** I. L. R. 47 Calc. 770

Sub mortgage by deposit by mortgagee of mortgage deed—Discharge of mortgage by mortgagor—Indemnity, deed of, by mortgagee to mortgagor—Preliminary decree on sub mortgage, appealed to Privy Council—Appeal dismissed for non prosecution—Application for order absolute when barred—Limitation Act (XV of 1877), Sch II, Art 179—Payment of decree more than three years after, if covered by deed of indemnity The mortgagee of certain properties after having created an equitable sub mortgage by depositing the mortgage deeds with a firm S. K. C. accepted payment of his mortgage dues and by a deed, dated 23rd April 1904, released the mortgaged properties from all claims under the mortgage and covenanted to indemnify the mortgagor from all losses, damages, actions, claims, etc., in respect of the mortgage deeds or any money owing or due thereunder or otherwise howsoever or for any act done by him the mortgagee in respect of the mortgage deeds. The firm of S. K. C. recovered a preliminary mortgage decree *inter alia* against the mortgagor on their sub mortgage on 26th August 1905, against which the mortgagor appealed to the Privy Council. But before the appeal was ready for hearing, the mortgagor on 2nd February 1910 made payments to an assignee of the decree, who having acknowledged satisfaction, the appeal to the Privy Council was not further prosecuted and the appeal was dismissed for want of prosecution on 16th April 1910. The mortgagor on 9th September 1912 sued the mortgagee to recover the amount paid to the assignee of the decree on the basis of the deed of Indemnity. Held, that the decree of 26th August 1905 became unenforceable under Art 179 of Sch II of the Limitation Act of 1877 by proceedings commenced after 26th August 1909, and time did not run either from the date when the appeal to the Privy Council was dismissed for default or from the expiry of the six months given for redemption in the decree of 26th August 1905, but from 26th August 1905 the date of the decree. That the payment of the decree on 2nd February 1910 was voluntary in the sense that the mortgagor could not have been compelled by any proceeding founded upon the decree to make the payment. That in view of the wide terms of the deed of indemnity, the fact that the payment was voluntary did not preclude the mortgagor from demanding payment from the mortgagee of the amount which they paid to the decree-holder in order to

SUB MORTGAGE—*contd*

been created by the mortgages depositing the title deeds with the firm of *K. C. SACHINDRA NATH ROY & MAHARAJ BANADUR SINGH (P.C.)*
28 C W N 839

SUBSEQUENTLY ACQUIRED PROPERTY

See UNDISCHARGED BANKRUPT

I L R 47 Calc 861

SUB TENANCY

annulment of—

See NOTICE TO QUIT

I L R 48 Calc 768

SUB TENANT

claim by—

See POSSESSION I L R 47 Calc 907

SUBORDINATE COURT

See LEGAL PRACTITIONERS ACT (XVIII of 189) & 14 I L R 39 Mad. 1045

jurisdiction of—

See CONTRACT ACT (IX of 1872) ss 69 AND "O" I L R 39 Mad. 795

SUBORDINATE JUDGE

See MADRAS CIVIL COURTS ACT (III of 1873) & 17

I L R 38 Mad. 531

See SANCTION FOR PROSECUTION

I L R 39 Calc 774

jurisdiction of—

See WAKF I L R 43 Calc 487

SUBORDINATE OFFICERS

acts of, how far binding on Government—

See MADRAS IRRIGATION CESS ACT (VII of 1863) & 1 I L R 38 Mad 997

SUBROGATION

See COMMON CARRIER LIABILITIES OF

I L R 28 Calc 28

See CONTRACT ACT (IX of 1872) & 70

I L R 40 Bom 646

See LIMITATION ACT (IX of 1908) SCH

I, Art 120 I L R 45 Bom 597

See MORTGAGE—REDEMPTION

I L R 38 Mad 426

See MORTGAGE—SUBROGATION

See TRANSFER OF PROPERTY ACT & 60

13 C W N 261

Pr or mortgage—

Fraudulent suppression of by vendor If A purchases a property subject to three successive charges X, Y and Z with full knowledge of the existence and retains a portion of the purchase-money in his hands with a view to satisfy the mortgages Y and Z but subsequently discharges the security Z he cannot on satisfaction of the mortgage X use it as a shield against the mortgage Y. *Biswanath Prasad v. Lal Sarnan Singh* 6 C L J 134 and *Horn v. Vogel* 69 Missouri 499 followed. But where the purchaser found on enquiry that there were only two subsisting charges Y and Z to be satisfied but discovered

SUBROGATION—*contd*

after his purchase that there was a *pr or* charge X which was falsely described as satisfied in the mortgage instrument of Y (in a suit upon bond X) *Held* that from whatever point of view the case may be considered the purchaser was entitled to priority in respect of the payment made by him to satisfy the first mortgage X. *Mohesh Lal v. Mohant Bawan Das* 1 I R 9 Calc 261 L R 10 I A 60 followed. *Held* also, that the purchaser was not entitled to priority on the basis of the payment made by him to satisfy the second mortgage 1. *HAR SHYAM CHOWDHURY v. SHYAM LAL SAHU* (1915) I L R 43 Calc 69

SUBSEQUENT MORTGAGE

See MORTGAGE I L R 28 Calc 69

SUBSEQUENT PROSECUTION AFTER ACQUITTAL

See ACQUITTAL I L R 37 Calc 601

SUB-SOIL RIGHTS

See LEASE CONSTRUCTION OF

I L R 45 Calc 87

SUBSTANTIAL LOSS

See SALE FOR ARREARS OF REVENUE

I L R 37 Calc 407

SUBSTANTIAL QUESTION OF LAW

See CIVIL PROCEDURE CODE 1908—

s. 100

I L R 42 ALL 178

s. 110

I L R 43 ALL 313

SUBSTITUTED SERVICE.

See SUMMONS, SERVICE OF

I L R 43 Calc. 447

Civil Procedure Code (Act V of 1908) O V, r 17 O IX r 13—Ex parte decree— *Orig nal Court jurisdiction on of to set aside an ex parte decree while an appeal is pending—*

See the meaning of— *Limitation Act (XV of 1877) Sch II Art 164 and Act IX of 1908 Sch I Art 64—* *Knowledge of the decree* The term residence is not identical with ownership. In O V r 9 and 17 of the Code of Civil Procedure 1908 it means the place where a person eats, drinks and sleeps or where his family or servants eat, drink and sleep. Under O V r 17 a substituted service can be justified only when it is shown that proper efforts were made to find the defendant. Where a defendant was not found in his ancestral family house and there was no one present upon whom a summons could be served (a fact he was working in a different district and living there for some years) a substituted service by affixing a copy of the summons at the outer door of the family house was not justified under the law. An Original Court can entertain an application to set aside an ex parte decree though an appeal by the contesting defendants is pending in the Appellate Court. *Sarat Chandra Dhal v. Damodar Manna* 12 O W N 885 followed. The period of limitation under Art 164 of Sch I of the Limitation Act (IX of 1908) runs from the date when the defendant has knowledge of the particular decree which is sought to be set aside. *KUMUD NATH ROY CHOWDHURY v. JOTINDRA NATH CHOWDHURY* (1911) I L R 28 Calc 394

SUBSTITUTION

See COURT FEE STAMPS.

I L R 47 Calc. 71

See PARTIES . I L R 45 Calc. 882

See APPEAL TO PRIVY COUNCIL.

I L R 38 Mad. 409

See CIVIL PROCEDURE CODE 1908 O XXI,
R. 16 6 Pat L J. 358

O XXI, r. 4 . I L R. 39 All 551

See SPECIFIC PERFORMANCE

5 Pat L J 314

— **Of Parties—Execution of decree—**
Claim against deceased debtor decreed against alleged adopted son represented by deceased's widow as guardian—Adoption set aside before execution—Execution if may be had against widow A who had a claim against B, on B's death sued C, an infant alleged to be the adopted son of B & his widow D being appointed guardian ad litem of C, and obtained a decree. Before execution was taken out it was declared in a separate suit that C had not been validly adopted. A then applied for substitution of D in the place of C and for execution against D. Held, that D was not bound by the decree and it was not competent to execute the decree against D. **ASHI BHUSAN DAS v. PELAHAM MONDOL** (1913) . . . 18 C W N 173

— **Patna High Court Rules, Chapter VI, r. 5—partition suit against benamidar—appeal against preliminary decree, whether beneficiaries entitled to prefer. An ex parte preliminary decree having been obtained in a partition suit the defendant, during the proceedings taken by the plaintiff to obtain a final decree filed a petition stating that he was only a benamidar for certain beneficial owners. The names of the alleged beneficial owners were substituted for the name of the benamidar and the latter presented a memorandum of appeal against the preliminary decree. The plaintiff objected on the ground that the alleged beneficiaries were not parties to the decree and that the benamidar was not a trustee within the meaning of Chapter VI, r. 5 of the Patna High Court Rules. Held that the benamidar had not been sued in his capacity of trustee within the meaning of r. 5, and that therefore the alleged beneficial owners were not entitled to prefer the appeal. **GOBIND RAM v. BADEI NARAIN****

5 Pat L J 258

— **Of heirs—Application for, after preliminary decree in mortgage suit made after 6 months of mortgagor's death—Civil Procedure Code (Act I of 1908), Or. XVII, r. 4 death of sole Defendant after passing of preliminary decree in a mortgage suit—Application for Substitution of Heirs—Appeal from order dismissing application for substitut on made after 6 months of the Defendant's death, whether to be treated as an appeal from an order or from a decree—Second appeal, if yes—Or. XXII r. 12, application for substitution after the passing of the preliminary decree, it belongs to the category of "proceedings in execution of a decree." B obtained a preliminary decree in a mortgage suit against T, and applied subsequently, more than six months after the death of T, for order absolute and for substitution of the heirs of T, which having been refused, an appeal was preferred. The appeal was dismissed and a second appeal was preferred to the High Court. Held, that the appeal to the lower Appellate Court was not an appeal from**

SUBSTITUTION—*contd*

an order. The order against which the appeal was preferred was an order rejecting the application to make the mortgage decree absolute. That order had the effect of finally dismissing the mortgage suit and was a decree, and hence a second appeal lay to the High Court. *Held further*, that the suit had abated as the application for bringing the heirs of the deceased defendant on the record had not been made within six months from the date of his death. **Mohar Bibi v. Yakub Ali**, 11 C W N 156 (1906) and **Amuddin v. Bohra Bhim Sen**, I L R 40 All 293 (1918) referred to. An application following on a preliminary decree for sale is not an application for execution. Until the final decree is passed the proceedings following the preliminary decree in a mortgage suit must be looked on as a proceeding in a pending suit. **Amlook Chand Parrel v. Sarat Chunder Mukherji**, I L R 38 Calc. 913 (1911) and **Munna Lal Parrel v. Sarat Chunder Mukherjee**, I L R 42 Calc. 776 s. c. 19 C W N 561 (P C) (1914), followed. **BRUTNATH JANA v. TARA CHAND JANA** . . . 25 C. W. N. 595

— **Of Property—Right of purchaser in court auction to substituted properties—Transfer of Property Act (IV of 1882), ss. 2 (d), 8, 26, 44 and 52—Contract to the contrary in s. 36 of the Transfer of Property Act. After a decree for sale on a mortgage, the mortgagor who was in possession gave a lease of his properties to the first defendant for one year from July 1907 till July 1908 with a covenant for payment of the rent on 10th January 1908. In ignorance of this lease and the reservation of a rent the mortgage properties and the crops were brought to sale in November 1907 and plaintiff purchased the lands together with the crops thereon and the sale was confirmed in December 1907. The crops were harvested in January 1908 by the lessee. In a suit by the purchaser for the rent of the whole year from the mortgagor and his lessee. Held (a) that the purchase of the right title and interest of the mortgagor to the lands and of the standing crops thereon entitled the purchaser to receive the whole rent reserved which was the thing substituted by the mortgagor for the crops, (b) that ss. 8 and 36 of the Transfer of Property Act (IV of 1882) were inapplicable as the purchase was in Court auction (c) that a stipulation to pay rent of a year's lease at particular date is a contract to the contrary within the meaning of s. 36 of the Transfer of Property Act (IV of 1882), which enacts that the right to rent as between the transferor and the transferee ordinarily accrues from day to day, and (d) that the creation of a lease for one year after a suit and decree on mortgage is not affected by the doctrine of *lis pendens* enunciated in s. 52 of the Transfer of Property Act (IV of 1882) as such a lease is an ordinary incident of the *lis pendens* enjoyment of a mortgagor allowed to remain in possession. **SUBBARAO v. SETHUPATHARAJU** (1914) . . . I L R 39 Mad 283**

SUCCESSION

See AGRA TENANCY ACT (II of 1901)—

R. 22

I L R 22 All 314

I L R 34 All 419, 638

I L R 37 All 65

I L R 38 All 187, 325

I L R 41 All 629

SUCCESSION—*concl'd*

an abjuration of Hinduism for all purposes—
Different sections of the Brahma Community—
Practice A Hindu by becoming a Brahma
does not necessarily cease to be a Hindu. Some
thing further than the mere becoming a Brahma
is necessary for a man to cut himself off from
Hinduism. A declaration under the Special
Marriage Act, 1872, cannot be taken as an abjura-
tion for all purposes of Hinduism but is merely
a statement for the purposes of the Act itself
large the goods of JAYENDRA NATH ROY

28 C. W. N. 800

SUCCESSION ACT (X OF 1865).

See WILL

I L R. 35 All 211

Legacy given of a spec-
ified uncertain event shall happen, no time being men-
tioned in the will for occurrence of that event—Con-
struction of wills made in India by natives of India
A testator made certain legacies in his will in favour
of his son N and directed that in the event of N
dying after the death of the testator without marry-
ing or if married, without lineal heir, his share
should revert equally to his surviving sisters or
their heirs. The testator died and N claimed to be
entitled to the legacies absolutely. *Held*, that the
restriction sought to be placed on N's inheritance
by the said provision of the will was nugatory, and
that N took an absolute interest in all property be-
queathed to him under the will. In constructing
a will made in India by a native of India, it must be
kept in mind that such a will cannot be construed by
reference to cases on wills contained in the English
Law Reports. *Nordenfalk Nath Sircar v Kamal*
Basni Das, 1 L R 23 Cal 563, 1 L R 23 I A
18, 26, referred to. *Nowroji Pundraj (Sirdar) v*
Petryalai (1912). I L R. 37 Bom 644

§ 2—*Indian Succession Act (X of*
1865), as 2, 331—Hindu, meaning of—Hindu con-
vert to Christianity, the law applicable to estate of,
and—Pleadings—Adverse possession not set up
in plaint if may be relied on. Where a Hindu was
converted to Christianity and died as a Christian
the law applicable to his estate is that laid down
by the Indian Succession Act. Under s 2, the
Act is of universal application and a party who
claims to be exempt from its operation must show
that he is specifically exempted. *Degree v Pacotti*,
1 L R 19 Bom 783, *De Souza v Secretary of State*,
12 B L R 423, followed. To come under the
exception in s 331 it is not enough to show that the
deceased was born a Hindu, but that at the date
when the question in issue arises he professes any
faith of Brahminical religion or of the religion of
the Puranas. *Degree v Pacotti*, 1 L R 19 Bom
783, *Jogendra Chandra Bose v Bhagwan Coomari*, 1
Punjab Law Report 251, *Bhagwan Koor v J C*
Bose, 1 L R 31 Cal 11, *Abraham v Abraham*,
9 Moo I A. 199, *In re Fathier*, 7 Mad H C. R
121, *Ponnamma v Dorasami*, 1 L R 2 Mad 209
Administrator General v Anandachari, 1 L R
9 Mad 488, *Tellis v Sallanika*, 1 L R 10 Mad 69,
Bu Baij v Das Santok 1 L R 20 Bom 53,
Hastings v Gonzalez, 1 L R 23 Bom 539 referred
to. *Francis Choral v Cabri Choral*, 1 L R 31
Bom 25, *Edith Mulery v George Alfred*, 52 P W.
R 1907, distinguished. *NEREN BALA DEBI v SITI*
KANTA BASERTEE (1910). 15 C. W. N. 158

§ 2 and 331—*Hindu convert to*
Christianity—Law governing succession—Absence
of power to elect—Pardamishin—Undue influence.

SUCCESSION ACT (X OF 1865)—*concl'd*.

Succession to the estate of a Hindu convert to
Christianity who dies a Christian and intestate is
governed by the Indian Succession Act (X of 1865)
since the passing of that Act a person ceasing to
be a Hindu cannot elect to continue to be governed
by Hindu Law in matters of succession. *Abraham*
v Abraham, 9 Moo, 1 A. 195, distinguished.
Deed executed by a *parda nishin* lady relinquishing,
substantially without consideration, her right of
succession to a share in the estate of a deceased
person in favour of one who, or whose representa-
tive, had submitted the prepared document to her
and obtained her signature, held to be invalid.
In such circumstances the *onus* on those relying
on the deed is to prove by the strongest and most
satisfactory evidence that the transaction was a
real and *bona fide* one, and fully understood by
the executant. *Sajjad Hussain v Wazir Ali Khan*,
1 L R, 31 All, 455, 1 L R, 33 I A, 156, applied.
Judgment of the High Court reversed. *KAMAWATI*
v DIONWAI SINGH I L R. 43 All 525

§ 3—

See HINDU LAW—WILL—

I. L. R. 2 Lah. 175

See WILL

I. L. R. 38 Cal. 327

§ 7, 9, 10—*Domicile—Domicile of*
origin—Domicile of choice—Domicile of origin ac-
quired from parents at birth—Domicile of choice ac-
quired from residence and intention that residence
should be permanent—Change of residence per se for
an indefinite period does not effect domicile of choice—
Domicile of choice discarded by intention to abandon
accompanied by actual abandonment—Declarations
of a party abandoning domicile, how far relevant—
Domicile of origin reviving proprio vigore on aban-
donment of domicile of choice—Onus of proof. One
P. P. a Native Christian was born in Goa of
parents domiciled in Goa in Portuguese Territory.
In 1858 at the age of fourteen, he came out to
Bombay and lived there uninterruptedly, with the
exception of brief visits to Goa, till his death in
June 1915, when he was seventy one years old.
In 1871, he married his first wife, the mother of
the defendants Nos. 1 to 3 and on her death in
1901 married the plaintiff in 1903. During the
whole of his mature life in Bombay he carried on a
flourishing coach building business, providing him-
self with a house near his factory. From his
conduct and declarations from time to time it
appeared that he had settled in Bombay meaning
it to be his fixed habitation. It also appeared that
sometime after 1913, and shortly before his death he
formed an intention of returning to Goa and end
his days there. On the 26th July 1909, he made a
will in Bombay whereby he gave a legacy of Rs 7 a
month to the plaintiff, if she chose to live separate
from the defendant No. 1, a legacy of Rs. 500 to
the defendant No. 3, and the coach building factory
to the defendant No. 4, the minor son of defendant
No. 1. He appointed defendant No. 1, the sole
executor and residuary legatee. The entire move-
able property belonging to him in his own right
was valued by the plaintiff for Rs. 71,000, and by
the defendant No. 1 for Rs. 19,000. The plaintiff
disputed the will of her husband and contended
that the deceased had Portuguese domicile at the
time of his marriage with her in 1903, as well as
at his death and that under the Portuguese law
she was entitled to a moiety of the estate left by the
deceased. The defendant No. 3 who supported the
plaintiff contended that in 1871, when the deceased

SUCCESSION ACT (X OF 1865)—*contd*— ss. 7, 9, 10—*contd.*

married his mother the deceased had a Portuguese domicile, and that he too became entitled to a share in the estate of the deceased under the Portuguese law. *Held*, (i) that at any time between 1865 when the deceased had attained majority and 1913, the deceased had acquired a domicile of choice in Bombay in substitution for the domicile of his origin in Goa, (ii) that in spite of the intention of the deceased to return to the domicile of his origin, the domicile of choice continued in law to exist at his death, as the intention was not accompanied by the actual abandonment of the domicile of choice, (iii) that the making of the will and all other matters governed by the Indian law of succession must be determined as though the deceased had all along, from the year 1865 to the time of his death, been a British subject domiciled in Bombay, (iv) that the claim put forward by the plaintiff or the defendant No. 3 was not maintainable as the devolution of the estate of the deceased was not governed by the law of Portugal. The domicile of origin is that which a person acquires at his birth from his parents and follows the domicile of his parents. It is not necessarily in itself local, that is to say, merely the place of birth. The domicile of origin once ascertained in law clings and adheres to the person until he chooses to divest himself of it by substituting a domicile of choice for the domicile of origin. The domicile of choice is acquired by a combination of fact with intention. The fact is residence and the intention is that the residence should be permanent. The domicile of choice can be discarded as easily as it can be acquired by a fact and an intention, namely, the fact of abandoning the residence accompanied by the intention that that abandonment shall be final, and that upon any such mere abandonment of one domicile of choice without the acquisition of another, the domicile of origin revives *proprio vigore* and without the need of any further act or intention on the part of the person. The law leans very strongly in favour of the retention of the domicile of origin. Where there are no declarations of intention either way, the Courts would be slow to infer from the mere fact of residence however protracted that residence may be, the intention requisite to complete the substitution of domicile of choice for that of origin. The onus being upon the person alleging that a man has acquired a domicile of choice, he must prove to the Court that that man had that intention. A man having acquired a domicile of choice may after many years decide to abandon his domicile of choice and again accept his domicile of origin. But if with that intention clear in his mind he should fail actually to abandon his domicile of choice and die before thus far giving effect to his intention the result would be that the domicile of choice would persist and the distribution of his estate would be governed by it. The law of domicile in the Courts of England from the case of *Druce v. Druce*, 2 Bos. & P. 229, footnote, to that of *Huntly v. Gaskill*, [1896] A. C. 56, considered *SANTOS v. PINTO* (1916). I. L. R. 41 Bom. 687.

— ss. 48, 49, 50—

See PROBATE. I. L. R. 39 Calc. 249

— s. 50—

Will signed by some other person in the presence and by the direction of the

SUCCESSION ACT (X OF 1865)—*contd*— s. 50—*contd*

testator Probate granted of a will signed by some other person than the testator in his presence and by his direction. *Per* MACLEOD, C. J. :—"It does not matter whether there are other words written by that person so long as those words do not destroy the effect of the signature, so as to make it appear that the name of the person signing is not to be taken as a signature intended to give effect to the writing as a will." *TRENES v. FRANCIS MISQUITA* (1920).

I. L. R. 45 Bom. 989

Attestation, if must be as to same fact, e.g., execution or acknowledgment—Execution—Guiding the hand of executant in fixing mark It is not necessary that each of the attesting witnesses to a will should prove the same facts. One witness who saw the testator sign the will and another before whom the execution of the will was only acknowledged by the testator may both be good attesting witnesses to the same will. Where, on the evidence, it appeared that a will had been drawn up in accordance with the wishes of the testatrix as expressed during her lifetime before reliable witnesses, that it was read over to her when she was in possession of her senses, and then being asked by one S, whether he would sign the will for her, nodded her assent, whereupon S guided her finger to make the mark and then put down the testatrix's name under the mark by his own pen. *Held*, that the will was executed by the testatrix as required by s. 50 of the Succession Act. That as the execution of the will was complete the moment the mark was made, S became an attesting witness when he wrote his own name after the testatrix. *MUKTANATH ROY CHOWDHURY v. JITENDRA NATH ROY CHOWDHURY* (1915). 19 C. W. N. 1295.

— Execution of will, what

is proper—Attestation—Indian mode of signature—Presence of the witnesses at the same time and attestation of identical state of things, if necessary. S. 50 of the Indian Succession Act differing from s. 9 of the English Act expressly provides that it is not necessary for both attesting witnesses to be present at the same time. The English system of executing the document at the foot does not usually obtain amongst Indians. Their custom is to execute the document at the top. Ordinarily the signature of the executant appears at the top right hand corner and when he executes the document himself and not by an attorney, he is accustomed to write "by my own pen." Where in a will written on four sheets of papers the signature of the executant appeared at the top left-hand corner of the first page as being made by his own pen, but his signature only on the next two pages, and his signature with date on the last page, and the signatures of all four attesting witnesses appeared alongside the signature of the executant on the first page and on each of the other three pages appeared the signatures of two of these four persons: *Held*, that the operative signature was the one on the first page and as on the evidence it appeared that at least two of the witnesses whose names appeared on that page subscribed their names *animo attestandi*, the will was properly executed as required by s. 50 of the Succession Act. Where the testator after having executed

SUCCESSION ACT (X OF 1865)—*contd.*s. 50—*contd.*

the will in the presence of one attesting witness took it successively to the houses of two other attesting witnesses who on his acknowledgment of his signature attested the document *Held*, that there was valid attestation by all three witnesses within s. 50 of the Succession Act *SARITHI THAKURIAN v F A SAVI* (1915)

19 C. W. N. 1297

Will of a marksman—

Mark not affixed by the testator himself but by another not a due execution—Absence of two attesting witnesses besides the person affixing the mark, not a due attestation Where with a view to execute a will the testator, who was a marksman, touched the pen and gave it to another who affixed to the will a mark and wrote against it the testator's name and added beneath it his own name as the person who affixed the mark, and the will did not contain attestations of two other persons besides that of the person so affixing the mark *Held*, that the will was invalid as not complying with the provisions of s. 50 of the Indian Succession Act As a marked will it was invalid, as the mark was not affixed by the testator himself, as required by the section Considered as a signed will as it might be, it was equally invalid as the testator's signature was put by another and there were not two other attestors besides the one so signing *RADHAKRISHNA v SUBRAYA* (1916) . . . I. L. R. 40 Mad. 550

s. 57—

See HINDU LAW—WILL.

I L. R. 38 Mad. 369

Will, revocation of—

Tearing When a testator sent for his will, wrote the word "cancelled" thereon and signed in and according to his attorney's direction tore it partially *Held*, that this showed the intention of the testator to revoke the will and the partial tearing constituted a sufficient revocation of the will within the meaning of s. 57 of the Indian Succession Act *Elms v Elms, 1 Sw. & Tr 155*, distinguished. *Babb v Thomas, 2 W Bl. 1043*, referred to. *JOHN LAL DEY v DHIRENDRA NATH DEY* (1915) . . . 20 C. W. N. 304

ss 62, 67, 68, 69—

See WILL . . . I. L. R. 40 Bom 1

ss 82, 187—*Will—Request to widow, how to be construed—*S. 187 of the Succession Act does not debar a defendant from relying on a will in respect of which no Probate or Letters of Administration have been taken out, as he is not seeking to establish a right as executor or legatee. In a case to which the Hindu Wills Act applied, a testator made a bequest to his widow in the following terms:—'I give all the remaining properties of every sort which fell to my share to my wife Andala. Therefore, the aforesaid Andala herself should enjoy all the remaining property a'.—*Held*, on the construction of the will, that the widow took only a limited estate. The operation of the ordinary rule of Hindu Law that a bequest to a wife, without words creating an absolute estate, conferred only a limited interest, was excluded by s. 82 of the Succession Act. The fact that the donee was a widow, the absence of words of inheritance, and of words conferring powers of alienation were not sufficient to show that she took only a restricted

SUCCESSION ACT (X OF 1865)—*contd.*ss 82, 187—*contd.*

ed interest. These circumstances however, coupled with the recital in the will that she should "enjoy" the estate, indicated the intention of the testator that she should have no powers of alienation. *CABALAPATHI CHUNNA CHUNJAH v COTA NAMMALWARAH* (1909) . . . I L. R. 33 Mad. 91

s. 84—

See WILL . . . I L. R. 35 All. 211

ss 83, 98, 100 to 102—

See HINDU LAW—WILL—

I. L. R. 38 Calc. 189

s. 91—

See INDIAN SUCCESSION ACT (X OF 1865) s 187 . . . I. L. R. 38 Mad. 474

ss. 98, 100 to 102—

See HINDU LAW—WILL—

I. L. R. 38 Calc. 189

s 99—

See HINDU LAW—WILL.

I. L. R. 29 Calc. 87

s 101—

See HINDU LAW—WILL 23 C. W. N. 526

ss. 101, 102, 111 and 126—

See HINDU LAW—WILL.

I. L. R. 44 Mad. 446

ss 101, 107—

See WILL . . . I L. R. 46 Calc. 485

ss 105, 159—

See WILL . . . I L. R. 40 Calc. 192

s 107, Part XV—

See HINDU LAW—WILL.

I L. R. 41 Calc. 642

ss 107, 111—

See HINDU LAW—WILL.

I. L. R. 43 Calc. 432

s. 111—

*See HINDU LAW—SINDHAN 23 C. W. N. 1038**See HINDU LAW—WILL.*

I L. R. 2 Lah. 175

I. L. R. 40 Calc. 274

See WILL . . . I. L. R. 39 Bom. 296

I. L. R. 38 Calc. 327

I. L. R. 44 Calc. 181

s. 118—

See WILL . . . I. L. R. 40 Calc. 192

I. L. R. 45 Bom. 1038

ss 130, 131—

See s. 160 . . . 24 C. W. N. 592

s. 159—

See WILL . . . I. L. R. 40 Calc. 192

ss. 160, 130-134—*Grant of an annual sum payable out of profits of specified property, whether annuity—Grant made of part of property allotted to legatee—Interest on arrears of unpaid legacy chargeable against colegate. The aggregation of any particular property out of which the amount is made payable by the Will is a common but not the only mode of indicating an intention*

SUCCESSION ACT (X OF 1885)—*contd.*— s 160, 130-134—*contd.*

to make an annuity perpetual. The Will may indicate an intention in other ways that the sum payable is really not an annuity or at any rate is intended to be perpetual. Where the Will made a sum payable to one of the sons of the testator out of the profits of immovable property allotted to another with a view to equalising their shares. *Held*—That the amount was not intended to be an annuity and was not limited to the life of the legatees but formed part of the properties allotted to him and was absolute and perpetual. Where on the death of the legatee the payment of the amount was stopped in a suit by his heirs for recovery of arrears thereon, interest at 12 per cent was properly awarded by the Court. s 130 to 131 of the Succession Act, which relate to interest on annuities or legacies payable by the executor not applying to the case. *PAYOHU GOPAL MUKERJEE v. KALIDAS MUKERJEE* 21 C. W. N. 592

— s 164—

See DOCTRINE OF SATISFACTION

I L. R. 37 Bom. 211

— s 187—

See s. 82

I L. R. 33 Mad. 91

See MAHOMEDAN LAW—WILL

I L. R. 37 Cal. 839

See WILL

I L. R. 38 Cal. 327

1 ——— *Hindu Wills Act (XXI*

*of 1870) s 2 and 5—Indian Succession Act (X of 1885) s 187—Administrator General's Act (II of 1874) s. 36—Will made in Bombay—Property worth less than Rs 1000—Probate—Administrator General's certificate. A will made in Bombay is subject to the provisions of the Hindu Wills Act (XXI of 1870) and a person claiming as a legatee under the will is not entitled to sue without taking out probate as he would be bound by s 187 of the Indian Succession Act (X of 1885) which is incorporated in the Hindu Wills Act (XXI of 1870). The provision of the Administrator General's Act (II of 1874) is not affected by the incorporation in the Hindu Wills Act (XXI of 1870) of s 187 of the Indian Succession Act (X of 1885). *NARAYAN SHRIDHAR v. PANDURANG BAPUJI* (1910)*

I L. R. 34 Bom. 506

2 ——— *Scope of—Es-*

*tablishment without probate of legatee's right—s 91—Legacy, vesting of—Executor's assent—Acceptance by legatee, necessity of—Disclaimer by legatee. Where on appeal in a partition suit it was contended by the first defendant that the first plaintiff had no title to sue in ejectment as under a will of her mother which was not proved up to the date of the trial, such property vested in the second and third plaintiffs: *Held*, that s 187 not only affects the establishment of the right to a legacy by legatee himself or some person claiming under him, but also debars a person who desires to establish the legatee's right merely as a *ius tertii* for the purpose of his defence. The estate vested in a legatee under s 91 of the Act is not full or absolute, but it refers only to an interest in the legacy and not the legacy itself. Until the executor has given his assent to the legacy, the legatee has only an inchoate right to it. *Backman v. Backman*, 1 L. P. 6 All. 553, and *Dox v. Guy* 3, East 100, s c, 102 E. R.*

SUCCESSION ACT (X OF 1885)—*contd.*— s 187—*contd.*

513, followed. A legacy vested in the legatee under s 91 of the Act is divested by his disclaimer. The rule of English law that no legacy can vest in the legatee against his will may legitimately be adopted in deciding questions under the Indian law. *In re Hotley Frele v. Calorady* 32 CA 423, referred to. *LAKSHMANNA v. PATNAMMA* (1913) I L. R. 38 Mad. 474

3 ——— *Conditional order*

*of Judge for grant of Probate—Non issue of Probate owing to non payment of Court fees—Heir of legatee, same as legatee—Probate or Letters of Administration alone evidence of right under s 187. A Hindu executing a will in the town of Madras made a bequest in favour of his son. After the death of the father, the son died leaving his mother the plaintiff, as his heir. On the application of the executor (defendant) for a Probate the fiat of the Judge was obtained but there was no actual order for the issue of the Probate and the Probate was not issued owing to the failure of the executor to pay the requisite court fees for the same. In a suit by the testator's widow as mother of his deceased son for an order of the Court directing the defendant to apply for probate of the will and for of the estate: *Held* (a) for the purpose of s 187 of the Indian Succession Act which governed the case, the plaintiff, though only an heir of a legatee was in the position of a legatee, (b) that the fiat of the Judge for grant of Probate was only conditional and was not equivalent to an actual grant of the Probate within the meaning of s 187 (c) that in the absence of a grant of Probate or Letters of Administration which was the only proof of right allowed by the section the plaintiff was debarred from claiming any rights flowing from the will and (d) that the mere production, proof and exhibition of the will as an ordinary exhibit in the case, were not equivalent to proof of the right by the product on of the Probate or the Letters of Administration as required by the section. *Lakshmanamma v. Ratnamma* I L. P. 38 Mad. 474, followed. *Mungunram Marwari v. Gursahai Aand* I L. R. 17 Cal. 317 distinguished. *ALAMELAKMAL v. SRIYAPRAKASARAYA MUDALIAR* (1915) I L. R. 35 Mad. 933*

— s 190

See RECEIVER

I L. R. 37 Cal. 754

*Letters of administration obtained by plaintiff after suit filed but before hearing and decree—Transfer of Property Act (II of 1889) s. 130—Order to banker to pay money held to the credit of customer, effect of when acted on—Stamp Act (II of 1899) s. 36—Resulting trust. One W had a deposit of Rs. 10,500 in a bank under a deposit receipt which fell due on the 7th of August 1912. W had a grand nephew H, to whom he wished to transfer the money, meaning that H should have the benefit of the money, but not intending that he should be able to make away with the money in W's life-time or to draw the interest without making due provision for W's maintenance. On the 8th of August 1912, W handed to H his deposit receipt duly endorsed and a letter to the following effect:—I hereby state that I have found my Bank Receipt. Herewith I am forwarding the same for the interest now due. I want it to be handed over to my nephew. I also wish you to hand over the amount of Rs. 10,500 which is a fixed deposit to my nephew, *Wilmot Charles**

SUCCESSION ACT (X OF 1865)—*contd*s. 190—*contd*

Harrison, to his account" *H* took these documents to the bank and asked for and obtained a new deposit receipt for Rs 10,000, the balance of Rs. 500 in cash and Rs 420 in cash by way of interest. On the 18th of October 1912, *W* died. On the 5th of August 1913, *G*, a grand niece of *W*, filed a suit against *H* as administratrix of the estate of *W*, claiming that the sum deposited with the bank, in the plaintiff stated to be Rs 10,000, formed part of the estate of *W* and that the plaintiff, as administratrix of his estate, was entitled to the same. At the date of the filing of the suit *G* had not obtained Letters of Administration to *W*'s estate but did obtain them before the hearing of the suit. *Held*, that the plaintiff was defective in that it did not show that the plaintiff had obtained Letters of Administration and should on that account have been rejected on presentation, but that as the plaintiff had obtained Letters of Administration before the hearing and the hearing had been allowed to proceed, a decree passed in favour of the plaintiff was not contrary to s. 190 of the Indian Succession Act. *Held*, further, that where money mentioned in a deposit receipt was immediately payable and the receipt was presented duly endorsed together with an order to pay a given individual, that individual became the owner of the money upon payment by the banker or upon his promise to hold the money at the disposal of the payee, that an order on a banker to pay money which he held to the credit of a customer was not an assignment of a debt, but an authority to deliver property, which, if acted on, was equivalent to delivery by the customer, and that the letter of the 8th of August 1912 was such an order and had been acted on and though had an objection been taken at the hearing before the lower Court it might have been rejected for want of a stamp that such an objection could not be taken on appeal, the latter being on record. *Held*, further, that the intention of the donor, *W*, to benefit negatived the idea of any resulting trust in his favour. *SETHNA v HENRICOWAY* (1914) I. L. R. 38 Bom. 618

ss. 190, 191 and 239—Act VII of 1901—Grant of letters does not vest property of deceased in the administrator as from the date of death—Heirs of intestate Native Christian entitled to deal with their shares until grant of letters. The effect of s. 191 of the Indian Succession Act is not to vest the property of the deceased in the administrator as from the date of death. Subsequent to the passing of Act VII of 1901, which made ss. 190 and 239 of the Succession Act inapplicable to Native Christians, the heirs of intestate Native Christians have the power to deal with their shares in the property of the deceased until the grant of administration and their transactions in respect of such shares will not be made invalid by the subsequent grant. The property of the deceased vests in the administrator only at the time of the grant, though for certain purposes the grant may relate back to the death of the deceased. *ANTONY CATE GOSWOLVES v MARIS BOOPALRAYAN* (1910)

I. L. R. 34 Mad. 385

s. 191—

See SETTLEMENT BY A HINDU WOMAN BY TRUSTS. I. L. R. 40 Bom. 341

s. 244—Civil Procedure Code, 1908,

s. 2—Will—Probate—Application for probate dismissed—"Decree"—"Order"—"Appel"*Held*,SUCCESSION ACT (X OF 1865)—*concld*s. 244—*contd*.

that the order of the District Judge granting or refusing probate of a will on an application made under the provisions of s. 244 of the Indian Succession Act, 1865, is a 'decree' within the meaning of s. 2 of the Code of Civil Procedure, 1908, and appealable as such. *Held*, also, that the court fee payable on such an appeal is Rs 10 under Art 17, Cl (vi) of the second schedule to the Court Fees Act, 1870. *Umrao Chand v Bindroban Chand*, I. L. R. 17 All. 475, *Ecof Hashim Dooply v Fatima Bibi*, I. L. R. 24 Calc. 30 and *Sheikh Azim v Chandra Nath Namdas & Co W A 748*, *MOUNT STEPHENS v GARNETT ORME* (1913)

I. L. R. 35 All 448

—s. 250—Probate and Administration Act (V of 1881), s. 81—Will—Probate—Caveator—Interest possessed by the caveator. The provisions of s. 81 of the Probate and Administration Act, 1881 (which correspond with those of s. 250 of the Indian Succession Act, 1865), enact that the interest which entitles a person to put in a caveat must be an interest in the estate of the deceased person, that is, there should be no dispute whatever as to the title of the deceased to the estate, but that the person who wishes to come in as the caveator must show some interest in the estate derived from the deceased by inheritance or otherwise. *Abhiram Dass v Gopal Dass*, I. L. R. 17 Calc. 48 followed. *PIROJSHAH BHAIJI v PESTONJI MEHWANI* (1910)

I. L. R. 34 Bom. 439

—ss. 264B and 239—Administrators—Directions—District Court cannot but High Court can give directions. A District Court has no power to give directions to an administrator in regard to the estate, when Letters of Administration have already been granted. The power vests in the High Court by virtue of s. 264B of the Indian Succession Act (X of 1865). *WIKRON v WIKRON* (1919)

I. L. R. 44 Bom. 682

ss. 311, 312—

See WILL. I. L. R. 43 Calc. 201

s. 331—

See s. 2. I. L. R. 43 All 825

See SUCCESSION

26 C. W. N. 800

s. 332—Aboriginal rules in Chota Nagpur—Inheritance—Law applicable—Special notification under s. 332 issued at the appellate stage, whether has retrospective effect. Notification, dated 2nd May 1913, issued by the Government of India under s. 332 of the Indian Succession Act at the appellate stage of a case did not apply where there had already been a decision of a competent court regarding the rights of parties. In the case of codified law the ordinary practice of the legislature is to make special provision when it thinks fit to do so for the saving of custom usage and ordinary rights. There is no authority that, after customary law has been stereotyped in the form of a statute which contains no provision saving custom, it is open to a Court to give effect to custom, much less to a custom inconsistent with the statute. As the Indian Succession Act contains no clause saving custom, the Courts are not competent to accept custom as a reason for deviating from the provisions of the Act. *TESI CHARY v LAKA ORAON* (1916)

20 C. W. N. 1082

1 Pat. L. J. 225

SUCCESSION CERTIFICATE

See LIMITATION ACT (IX OF 1908),
SCH I ART 62 I L R 37 All 434

See RECEIVER I L R 37 Cal 754

See SUCCESSION CERTIFICATE ACT (VII OF 1889)

— assignee suing on an assignment
by heir of debt due to deceased—

See SUCCESSION CERTIFICATE ACT 1889,
ss 4 AND 6 I L R 42 All 549

— certificate granted *ex parte* with-
out service of notice on opposite party—

See SUCCESSION CERTIFICATE ACT 1889
s 19 I L R. 42 All 512

1 — Assignee of deceased a represent-
ative, whether certificate may be granted to—
A succession certificate may be granted to the
assignee of the representative of a deceased
person RAMCHARITR SAHU v RAM NARAYAN
SAHU 2 Pat L J 350

2. — Possession of property by Re-
ceiver without Succession Certificate—Succession
Certificate Act (VII of 1889), ss 4, 8, cl (c)—Indian
Securities Act (XIII of 1886) s 3, sub-s (2), s 6
sub s (1) In the absence of any provision in the
Hindu Wills Act (XXI of 1870) and in the Probate
and Administration Act (V of 1881) 'that no right
to the property of an intestate can be established
unless administration had been previously granted
by a competent Court, the Receiver appointed by
Court is competent to take possession of the secu-
rities and moneys without a certificate under s 4
of the Succession Certificate Act but regard being
had to the provisions of the Indian Securities Act,
1886, and s 3 sub-s (2) s 6 sub-s (1) cl (f)
and s 8, cl (c) of the Succession Certificate Act
(VII of 1889), a Succession Certificate would be
needed if a suit was brought to establish a title
to such funds by right of inheritance HARISHAR
MUKHERJI v HARENDRA NATH MUKHERJI (1910)

I L R. 37 Cal 754

3 — Mitakhsa a Low-Impartible
Estate—Arrears of rent converted to a bond—
Debt due to last holder of impartible estate if effects
of the deceased 'in the hands of the successor—Suc-
cession Certificate Act (VII of 1889), s 4 Wherein
lieu of arrears of rent a bond was given to the
holder of an impartible estate *Held*, that the
debt due is not in the hands of the successor to the
estate a part of the effects of the deceased within
the meaning of s 4 of the Succession Certificate
Act but is in its nature, a family debt accruing to
him by right of survivorship. Jagmohandas
Kdaghaj v Allu Maria Duskul, I L R 18 Bom.
335, Beejraj v Bhyroperawad, I L R 23 Cal 912,
Bhosa Chand Dudhura Bahadur v Chattrapat Sing,
1 C W N 32 Kalama Hatcher v The Rajah of
Shivagunga 9 Moo I A 539 2 W R P C 31,
Siree Rajah Yanumula Venkayamah v Siree Rajah
Yanumula Boochia Yankondora 13 Moo. I A 333,
referred to GUR PERASH SINGH v DHANI RAI
(1910) I L R. 38 Cal 162

4 — Debt — Succession Certificate
Act (VII of 1889) s 4—'Debt' meaning
of—Part of debt, if certificate can be granted in
respect of—Appeal A certificate under the Suc-
cession Certificate Act can be granted in respect

SUCCESSION CERTIFICATE—contd

of a part only of a debt due to the deceased. The
word 'debt' is a comprehensive term, which
should receive a liberal construction *Re Chaw-
sham Das*, (1893) All W N 84, and *Mohamed
Abdul Hossain v Sarayan*, 16 C W N 231,
approved and followed. *Albar Khan v Bil-
kisara Begam*, (1901) All W N 125, considered.
Bibee Boodhun v Jan Khan, 13 W R 265, *Muham-
med Ali Khan v Paltan Bibi*, I L R 19 All
129, *Dumaila Begam v Tawussul Hussain*, I L R
32 All 335, and *Ghafur Khan v Kalandari Begam*,
I L R 33 All 327, not followed. ANNAPURNA
DASEN v NALINI MOHAN DAS (1914)

I L R. 42 Cal. 10

5 — Sui damnum for
non-production of the certificate—Certificate, if may
be filed in Appellate Court See MOORADSHAH ROY
CROWDERY v MOHINI MOHAN KAR (1915)

19 C. W. N. 794

6 — Certificate refused
—Matters to be proved to entitle applicant to a cer-
tificate A Government promissory note payable
to one Madho Sahai was assigned by a registered
deed by the legal representative of Mahdho Sahai
to one Radhika Prasad. Upon the assignee
applying for a certificate of succession in respect
of this note, it was refused on this ground that it
was not established that the assignor had himself
a good and subsisting title to the note *Held*,
that whether the assignor of the applicant had a
valid title or not or whether the assignment con-
veyed any title to the applicant, or whether the
debt secured by the promissory note was recover-
able or not, were not matters which the court had
to determine upon an application for a certificate
The only question which the court had to decide
was whether the applicant was the representative
of the person to whom the debt was alleged to
have been due RADHIKA PRASAD BAPUDI v
SECRETARY OF STATE FOR INDIA (1916)

I L R. 38 All 438

SUCCESSION CERTIFICATE ACT (VII OF 1889)

See SUCCESSION CERTIFICATE.

See LIMITATION ACT (IX OF 1908), SCH I,
ART 182, cl. (5)

I L R. 37 Bom 559

— Preference as regards
the granting of a certificate—Childless widowed
daughter—Sons of a deceased daughter The parties
were governed by the Hindu law of the Dayabhaga
School and the question was whether preference
was to be given as regards the granting of a
certificate for the collection of certain debts due
to the father to a widowed childless daughter or
to the sons of a deceased daughter *Held* that
the latter were to be preferred According to the
Dayabhaga a widowed childless daughter would be
no heir to her father *Sreemutty Bimola v Dangoo
Kansaree* 19 W R C R, 189, not followed
Benode Koomaree Dabee v Purdhan Gopal Sahoe
2 W R C R 175 *Radha Kishen Manghee v
Rajah Ram Mundal* 6 W R C R, 147,
and *Mokunda Lal Chakravarti v Monmohini
Dey* 19 C W N, 412, referred to SRINATH
PRAWALA DEVI v CHANDRA SREEKHAR CHATTERJEE
I L R. 43 All. 450

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*contd*

Certificate of succession

Joint certificate not illegal if granted with the consent of the grantees *Held*, that the grant of a joint certificate under the provisions of the Succession Certificate Act, 1889, is not illegal, provided that the persons to whom such certificate is granted all consent to its being granted in this form *RAM RAJ v BAL NATH* (1913) **I L R 35 All 470**

A Succession certificate can be granted to a minor *KRISHNAMA CHARLU v VENKAMMAH*

I L R 36 Mad. 215

Necessity of a certificate in case of a son belonging to a Mitakshara family—Limitation Act (IX of 1908) sec 22—Addition of Plaintiffs after period of limitation, if a sufficient ground for throwing out the suit as barred without any finding as to whether the added Plaintiffs were necessary parties In the case of a family governed by the Mitakshara law a son can maintain a suit for debts owing to his late father without a succession certificate under Act VII of 1889. A finding that some of the plaintiffs were made parties after the period of son can maintain a suit for debts owing to his limitation is not sufficient to hold the suit barred. There may be circumstances in which addition of parties subsequently brought on the record may not be essential and therefore there should be a finding as to whether the added parties are necessary *SITAL PROSHAD PODDAR v KAIFUT SHEIKH* **26 C W. N 488**

ss 2, 4—Certificate not to be given for collection of part only of a debt—Debt in part irrecoverable—Mahomedan law—Dower *Held*, that no certificate could be granted to one of the heirs of a Mahomedan lady, who had died leaving her dower debt unrealized for collection merely of a part of the dower debt of the deceased. *Muhammad Ali Khan v Pullan Bibi* **I L R 19 All 129**, and *Dismillah Begum v Tawarai Hussain* **I L R 32 All 335**, followed. *Shah Des v Dew Prasad* **I L R 16 All 21**, and *Akbar Khan v, Biksara Begum*, *All Weekly Notes* (1901) 115, referred to. *GHAJUR KHAN v KALANDARI BEGAM* (1910) **I L R 33 All 327**

s 4—

See SUCCESSION CERTIFICATE.

I L R 33 Calc 182
I L R 42 Calc 10

1.—When certificate not necessary—*Right to institute suits although no certificate has been obtained* S 4 of the Succession Certificate Act 1889, is no bar to the institution of suits for arrears of rent due to a deceased person although the plaintiff has not obtained a succession certificate and has omitted to file probate papers. But in such a suit no decree can be passed until the succession certificate has been obtained or the probate papers filed. The Court should give the plaintiff time to do this *ALICE THORP v SHEIKH SAMATULLAH* **3 Pat L J 160**

2.—*Act No IX of 1908 (Indian Limitation Act) s 18—Suits against person wrongfully collecting debt due to estate of*

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*contd*

s 4—*contd*

deceased person—No succession certificate necessary—Fraudulent concealment—Limitation No succession certificate is necessary where what the plaintiff is claiming is not a debt due to a deceased person, but money which having been due to the deceased, has been wrongfully appropriated after his death by a third party. A mortgage was executed on the 18th of November 1891, in favour of S A and H. H died in 1892 and on the 30th of July 1910 S, and A brought a suit for sale. To this suit they impleaded as defendant H, a widow G, and an alleged adopted son B. They afterwards applied to be made plaintiffs and this was done. This suit was dismissed on the 23rd of November 1911, upon the ground that the whole of the mortgage debt had already been paid to S. With three years of the dismissal of that suit G, sued S to recover from him one half of the mortgage money paid to him as being the share due to the estate of her husband. *Held* that s 13 of the Indian Limitation Act, 1908, applied and the suit was within time. The defendant had not only concealed from the plaintiff the fact of his having collected the mortgage debt, but had brought the suit of 1910 which must have been false to his knowledge, to cover his tracks. *SAHIB RAM v MURAMMAT GOVINDI* **I L R 43 All 400**

3.—*Muhammadan law—Dower—Husband and wife both dead—Claim by heir of wife against heir of husband for proportionate share of dower debt due by defendant* No succession certificate is necessary where the suit is by one of the heirs of the wife to recover from one of the heirs of the husband the proportionate share of the wife's dower the liability to pay which had devolved upon the defendant according to her share by inheritance in the property of the husband. *Ghajur Khan v Kalandari Begam* **I L R 33 All 327**, distinguished. *SHADI JAN v WARIS ALI* **I L R 43 All 498**

4.—*Reversionary heirs—If may apply for succession on Hindu widow's death—Debts accrued due during widow's life time—Government promissory notes of which certificate had been taken out by the widow—Certificate if necessary* The right of the reversionary heirs of a deceased Hindu to take out succession certificate in respect of debts due to the estate of the deceased is not affected by the interposition of the estate of the widow and the Court cannot reject an application for succession certificate by such heirs merely on the ground of the deceased having died long ago. A sum of money awarded in a case under the Land Acquisition Act after the death of the owner and kept in deposit under s 32 of the Act, arrears of rent for non agricultural lands belonging to the estate, and a Government promissory note standing in the name of the widow as the certificated holder of her husband's estate were all debts for which it was necessary for the reversionary heirs to take out succession certificate. *Bancharam Mondkar v Adyanath Bhattacharye*, **13 C B N 965 s.c.** **I L R 36 Cal. 936**, distinguished. *ANIRAS CHANDRA PAUL v PROSODH CHANDRA PAUL* (1911) **15 C. W. N 1018**

5.—*Deferred Dower—suit by one of several heirs for a portion of her share—Certificate*

SUCCESSION CERTIFICATE ACT (VII OF 1889)—contd

s 4—contd

for a portion, if may be granted—Heirs' claims of joint or several—Severance of debt Where one of several heirs of a deceased Mahomedan lady sued her husband for a portion of the share of the deferred dower due by the defendant to the deceased, relinquishing the balance Held, that an application by the plaintiff for succession certificate in respect of the amount claimed by her in the suit was properly granted S 4 of the Succession Certificate Act does not require that the certificate should cover the whole of the debt, if the heirs do not see to realise the whole *Ghaffar Khan v Kalandari Begum, I L R 33 All 327* dissented from In respect of deferred dower, each of the heirs of the deceased has a distinct right enforceable by himself though all may jointly sue and it is open to each to relinquish a portion of the claim The defendant husband being moreover one of the heirs, the debt, assuming it to be joint, is severed, and a certificate cannot in consequence be granted for the whole debt *ABDUL HOSSEIN v SARIFAN (1911)* 16 C W N 231

8 — Assignment—Succession certificate—Assignment of debt covered by certificate—Certificate also made over to assignee—Rights of assignee The widow of a separated Hindu obtained a certificate of succession for the collection of a debt due to her deceased husband. She assigned the debt and also handed over the succession certificate to the assignee Held, that the assignee were competent to sue and get a decree for the debt The widow could undoubtedly assign the debt, and it was not necessary, even if it were possible, for the assignee to obtain cancellation of the certificate granted to the widow and the issue of a fresh certificate in their favour *Karuppanami v Pichay, I L R 16 Mad 419*, distinguished. *Allohdad Khan v Sant Ram, I L R 35 All 74* not followed, *Durga Kunwar v Matu Mal, I L R 35 All 311*, referred to. *RAO LAL v ANNU LAL (1913)* 1 L R 36 All 21

7. — Joint interest—Application for certificate—Applicant assigning himself to be joint with deceased and entitled to his estate by survivorship Where an applicant for a succession certificate stated in his application that he was a member of a joint Hindu family with the deceased to whose estate he had succeeded by survivorship Held, that a succession certificate was unnecessary and the application must fail. *MATHURA PRASAD v DURGAWATI (1914)* 1 L R 36 All 589

8. — Debt, part of certificate in respect of, if may be granted—Multiplicity of debts A certificate under Act VII of 1889 (Succession Certificate Act) can be granted in respect of a portion of a debt The principle of law, which prohibits a multiplicity of suits, is in no way affected by the grant of certificates in respect of fractional shares of a debt. *Dibee Boodhun v Jan Khan, 13 W R 265*, *Muhammad Ali Khan v. Putan Bidi, I L R 19 All 129*, *Bismilla Begum v Tawakul Hussain I L R 32 All 335* *Ghaffar Khan v Kalandari Begum, I L R 33 All 327* *Albair Khan v Bilkisara Begum All W. N. for 1901 125*, In the matter of the petition of *Ghanabham Das. All W. N. for 1923, 84*, *Mohammed Abdul Hossein v Sarifan, 16 C. N. 231*, referred to. *ANANTYK V DABBY V. NALIST MOHAN DAS (1914)*

18 C W. N. 836

SUCCESSION CERTIFICATE ACT (VII OF 1889)—contd

s 4—contd

9 — Letters of administration—Assignment of debt by holder of letters of administration—Debt covered by certificate—Rights of assignee A decree for possession of certain property and for mesne profits was passed in favour of A and his wife The wife died after the date of the decree A obtained letters of administration in respect of the estate of his wife and then transferred his own rights under the decree, as also those of his wife to H H applied for execution of the decree The judgment-debtors objected, *inter alia*, that the decree could not be executed without letters of administration or a succession certificate being obtained by transferee Held, that H could execute the decree without taking out fresh letters of administration. *PER WAZIR I* A person claiming as assignee of a debt which was due to the estate of a deceased person is not claiming "the effect of the deceased" from the date of assignment the debt due to the deceased ceases to be part of the deceased's effect The claim contemplated by sub-a, (1) of s. 4 of the Succession Certificate Act is a claim made by a person in the capacity of and as personal representative of a deceased person *GOSWAMI SRI RAMAN LAL V HARI DAS (1916)*

1 L R. 38 All 474

10 — Preference as regards the granting of a certificate—Childless widowed daughter—Sons of a deceased daughter. The parties were governed by the Hindu Law of the Dayabhaga School, and the question was to be given as regards the granting of a certificate for the collection of certain debts due to the father, to a widowed childless daughter for the sons of a deceased daughter Held that the latter were to be preferred According to the Dayabhaga a widowed childless daughter would be no heir to her father *SRINATH PRANTHA DEVI v CHANDRA SHEKHAR CHATTERJEE*

1 L R. 43 All 450

11. — Certificate not to be granted for collection of part only of a debt—Debt in part irrecoverable or extinguished—Mahomedan Law—Dower On the death of a Mahomedan lady to whom her dower was due the heirs were her husband, her brother, and three daughters The brother applied for a succession certificate in respect only of the share of the dower debt to which he was entitled as an heir On the objection being raised by the daughters that a certificate could not be granted for part only of the debt, the District Judge finding that a portion of the debt was satisfied by reason of the husband inheriting it as an heir and that the recovery of one of the daughter's shares was time barred gave the applicant a certificate in respect of the remainder Held that, on the reasoning upon which the Full Bench decision in *Ghaffar Khan v Kalandari Begum, I L R. 33 All. 327* was founded, it was not competent to the District Judge to grant a certificate except for the whole of the dower debt *Mohamed Abdul Hossein v Sarifan 16 C W N 123*, and *strictly Annapurna, Dassy v Nalini Mohon Das*, dissented from *SUGHRA BEGAM v MUHAMMAD MIR KHAN*

1 L R. 43 All 341

SUCCESSION CERTIFICATE ACT (VII OF 1889)—contd

s 4 and 6—Assignment by heir of a debt due to a deceased person—Suit by assignee to recover debt.—Certificate necessary before assignee can obtain a decree. If the heir of the deceased person to whom at his death money was due, assigns the debt to a third person, the assignee cannot realize the debt without obtaining a succession certificate under Act No VII of 1889. A debt due to a deceased person does not cease to be part of the effects of the deceased by reason of such assignment. *Goswami Sri Kaman Lalji v Hari Das I L R, 38 All, 474*, not followed. *Allah Dad Khan v Sant Ram, I L R, 35 All 74*, Rang Lal v Annu Lal, *I L R 36 All, 21*, and *Kadiska Prasad Bapud v The Secretary of State for India in Council, I L R, 38 All, 438*, referred to. *Karuppaasami v Pichu, I L R, 15 Mad, 419* and *Vancharam Pranjivan v Das Mohali, I L R, 38 Bom, 316*, followed. *GULSHAN ALI v ZAKIR ALI*. *I L R 42 All 549*

s 4, 7.—Certificate not to be given for collection of part only of a debt.—*Mahomedan Law—Dower.* Held, that no certificate could be granted to one of the heirs of a Mahomedan lady, who had died leaving a dower debt un realized, for collection merely of a part of the dower debt of the deceased. *Muhammad Ali Khan v Pullan Bibi I L R 19 All 129*, followed. *Akbar Khan v Bilkisra Begam, All W N (1911) 125*, referred to. *BISMILLA BEGAM v TAWASSUL HUSAIN (1910)*. *I L R 32 All 335*

s 4, 8, cl (c)—

See SUCCESSION CERTIFICATE—

I L R 37 Calo 754

s 4, 16.—Succession certificate.—Holder of certificate not entitled to transfer his rights thereunder. Held, that the rights conferred by the grant of a succession certificate under the Succession Certificate Act, 1889, are personal to the grantee and cannot be assigned. *ALLAH DAD KHAN v SANT RAM (1912)*. *I L R 35 All 74*

s 4 (1), 18.—Assignment of a debt.—Certificate obtained by assignor after assignment.—Suit by assignee without a certificate in his own name.—Decree, whether can be passed. An assignee of a debt from a person to whom succession certificate was granted subsequent to the assignment is entitled to a decree for the debt without obtaining a succession certificate in his own name. *Raman Lalji v Hari Das, 14 A L J 677* followed. *Allah Dad Khan v Sant Ram, I L R 35 All 74* dissented from. *ARUNACHALAM v MATHU (1918)*. *I L R 42 Mad. 130*

s 7, 9.—Certificate of succession.—Security.—Application by widow of separated Hindu. Where, under s 9 of the Succession Certificate Act, 1889 the requiring of security is optional, security should not be taken from the widow of a separated Hindu asking for a certificate to enable her to collect debts due to her husband, in the absence of special circumstances rendering the taking of security necessary. *NARAIN DEVI v PARMESHWARI (1917)*. *I L R 40 All. 81*

s 8—

See SPOUSAL RELIEF ACT (I OF 1877),
s 42. *I L R 32 All. 318*

SUCCESSION CERTIFICATE ACT (VII OF 1889)—contd

s. 9—

1.—Certificate in favour of Hindu widow to realize interests only.—Certificate ultra vires. Held that where a certificate was granted to a Hindu widow for collection of debts due to her late husband, it was not competent to the Court, in lieu of requiring security from the grantee to give a certificate for realization of interests only without disturbing capital. *Shib Devi v Ajudhia Prasad F A J O, No 108 of 1910*, decided on the 13th of February 1911, referred to. *Jai Devi v BAWWARI LAL (1913)*. *I L R 35 All 249*

2.—Certificate to a minor can be granted.—S 9, no bar. A succession certificate can be granted to a minor. *PERCURIAM* s 9 of the Succession Certificate Act (VII of 1889) presents no difficulty to the grant in such a case. *Kali Coomer Chatterjee v Tara Prossunno Mookerjee, 5 C L R 517* and *Ram Kwar v Sardar Singh I L R 20 All 352*, followed. *Ex parte Mahadeo Gangadhar, I L R 28 Bom 344*, and *Gulabchand v Moti, I L R 25 Bom 523* considered. *KRISHNANA CHARL v VENKATMAH (1913)*. *I L R 36 Mad. 214*

s 9, 25, 26.—Civil Procedure Code (Act V of 1908), s 96.—Succession Certificate.—Condition of Security.—Appel. An order granting a succession certificate accompanied by a condition that security should be given, is appealable. An order directing that a certificate should not be granted unless security is furnished, is not appealable. *Bai Devkore v Lalchand Jwandas, I L R 19 Bom 790*, explained. *Bai Nandkore v Shri MAGANTAL VARAJBHUKHANDAS (1911)*. *I L R 36 Bom 272*

s 16 and 17—

See PRESIDENCY BANKS ACT (XI OF 1876),
s 23. *I L R 45 Bom. 138*

s 16 18.—Certificate of succession.—Suit to set aside certificate and decree passed in favour of the holder. A succession certificate granted under the provisions of the Succession Certificate Act 1889 is conclusive as against the debtor under s 16 of the Act, and it can be revoked by the District Judge only under s 18 of the Act. No suit will lie to have a succession certificate and a decree obtained by the holder thereof set aside on the mere ground that the certificate was obtained by the use of false evidence. *RUPAN BIRI v BHAGETU LAL (1914)*. *I L R 26 All 423*

s 18—

See s 4. *I L R 42 Mad. 130*

s 18 and 19.—Certificate of succession granted to one creditor for the whole of a debt due to himself and others.—Decree obtained by certificate holder for his share only of the debt.—Remedy open to the other creditors in respect of their proportionate share. Upon the death of a Mahomedan lady her claim for dower devolved upon (1) her husband to the extent of one-fourth, (2) her brother to the extent of one-fourth and (3) her daughter to the extent of one-half. The brother applied for a certificate of succession in respect of the whole of the dower debt, and this was granted to him. At the time of this application the daughter was a minor, and

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s. 18—*contd*

notice of the application was served for her on her father, notwithstanding that he was the person who himself was liable for the payment of the dower debt. On obtaining the certificate, the brother sued for and obtained a decree for his one-quarter share. Thereupon the daughter applied to the court asking either that the certificate granted in favour of the brother should be revoked and a fresh certificate made out in her name, or, in the alternative that her name should be associated with that of the brother in the same certificate to the extent of the half share claimed by her. The court rejected this application *in toto* *Held*, on appeal from this order, (1) that the appeal lay, the order being in effect one refusing to grant a certificate to the applicant and (2) that in the circumstances of the case the proper order to pass was one revoking the certificate already granted to the extent of one-half and granting a certificate for one half of the dower debt in favour of the applicant. *Ghafer Khan v. Kalandari Begum* I L. J. 33 All. 327, discussed BHARATUN NISA BIRI v. MASOM ALI I L. R. 42 All. 347

s. 18, 27—*Certificate granted by specially empowered Subordinate Judge, if may be revoked by District Judge other wise than in appeal—Reg. 1 of 1799, Jurisdiction under, nature of.* The fact that no appeal has been preferred against an order of a Subordinate Judge (who has been invested with the powers of a District Court under the Succession Certificate Act) granting a certificate is no bar to its revocation at any time when the circumstances enumerated in s. 18 of the Act are proved. The revocation must in such a case be ordinarily made by the Subordinate Judge when he is still exercising that jurisdiction in the district. The District Judge has in such circumstances no jurisdiction to make the revocation except where the case having been instituted and being pending before the Subordinate Judge has been withdrawn by the District Judge. The jurisdiction of the District Judge under Reg. 1 of 1799 is more administrative than judicial. He can act thereunder only when there is no claimant, and acting under that Regulation, he is bound to respect the order granting a certificate until the same was revoked by a competent authority. *Sekaria Bewa v. Secretary of State for India* (1914)

19 C. W. N. 551

s. 19—*Certificate granted ex parte without notice having been served on the opposite party—Remedy available to the opposite party—Appeal—Proof of service of notice.* The widow of a Hindu applied for a succession certificate for the collection of certain debts due to her deceased husband. She named, amongst others, as a party likely to be interested in the proceedings one Radhe Lal, a brother of the deceased. Attempts were made to serve notice of the application on Radhe Lal but apparently without success, and ultimately the application was heard *ex parte* and a certificate granted to the widow. Radhe Lal then appeared and filed an appeal against the grant alleging that he had in fact received no notice of the application and that he had a good objection to the granting of a certificate to the widow inasmuch as the deceased and himself were members of a joint Hindu family. *Held*

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s. 19—*contd*

that the appellant was entitled to come to court by way of appeal and was not bound to file an application to revoke the certificate. *Held*, also that the fact that a registered notice is returned endorsed "refused" is not by itself evidence that it was tendered to the person to whom it was addressed. *INDO V. RADHE LAL*

I L. R. 42 All. 512

s. 10, 25—*Munsif invested with functions of District Court—Appeal—Jurisdiction.* *Held* that an appeal from an order of a Munsif invested under s. 25 of the Succession Certificate Act 1889 with the functions of a District Court lies to the District Judge and cannot be transferred for disposal to any other Court such as the Subordinate Judge or Judge of the Small Cause Court not empowered under s. 56. *HIRAY BIRI v. HIRAY BIRI* (1911)

I L. R. 34 All. 149

s. 25 and 25—

Sec. 9 I L. R. 36 Bom. 272

SUCCESSION (PROPERTY PROTECTION) ACT (XIX OF 1841)

See CURATOR s. ACT, 1841

See RECEIVER I L. R. 37 Calc. 754

SUCCESSION DUTY

See PROBATE I L. R. 43 Calc. 625

SUCCESSIVE ADOPTION

See HINDU LAW—ADOPTION

I L. R. 39 Calc. 582

SUCCESSOR

—final order by—

See COURT "MEANING OF" I L. R. 37 Calc. 642

SUDDER DEWANY ADALAT

See CONTEMPT OF COURT

I L. R. 41 Calc. 173

SUDDER NIZAMUT ADALAT.

See CONTEMPT OF COURT

I L. R. 41 Calc. 173

SUDRAS.

See HINDU LAW—INHERITANCE

I L. R. 34 Bom. 321, 553

I L. R. 40 Calc. 545

See YATI I L. R. 40 Mad. 846

—illegitimate sons of—

See HINDU LAW—INHERITANCE

I L. R. 40 Bom. 389

See HINDU LAW—SUCCESSION

I L. R. 39 Mad. 136

I L. R. 44 Bom. 185

—Leva Kumbis of Chaugdev in the East Khandesh District—

See HINDU LAW—SUCCESSION

I L. R. 44 Bom. 166

SUFFICIENT CAUSE

- For allowing appeal out of time
 See LIMITATION L R 44 IA 218
 See LIMITATION ACT (IX OF 1908) SCH I
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SUICIDE

- abetment of—
 See PENAL CODE (ACT XLV OF 1860)
 s 306 I L R 36 All 26
 — by prisoner on bail—
 See BAIL BOND 18 C W N 550
 See CRIMINAL PROCEDURE CODE (ACT V
 OF 1898) s 514 (5)
 I L R 37 Mad 153

SUIT

- See ABATEMENT OF SUIT
 See BENGAL TENANCY ACT s 188
 I L R 38 Calc 270
 See FRAUD I L R 37 All 535
 See GUARDIANS AND WARDS ACT (VIII
 OF 1890) SS 12^o 24^o
 I L R. 37 All 516
 See INDEMNITY BOND
 I L R 41 All 395
 See NOTICE I L R 48 Calc 45
 See PARTITION I L R 45 Calc. 873
 See PRE EMPTION I L R 37 All 529
 See RECEIVER I L R 46 Calc 352
 See RES JUDICATA I L R 37 All 485
 See REVIEW APPLICATION FOR
 I L R 40 Calc 541
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 MENT
 — abatement of—
 See CIVIL PROCEDURE CODE (1908)
 O XVII R. 4 I L R 41 All 283
 See MADRAS CIVIL COURTS ACT s. 16
 I L R 33 Mad 342
 See PRINCIPAL AND AGENT
 I L R 33 Mad. 162
 — above Rs 5000—
 See JURISDICTION I L R 43 Calc. 828
 — Arrears claimed paid subsequent
 to suit to co-Lessor
 See AGRA TENANCY ACT 1901 s 198
 I L R. 3 All 448
 — by heir for recovery of her share—
 See LIMITATION ACT (IX OF 1908)
 SCH I ART C I L R 37 All 434
 — by a Hindu widow competency of
 transferee to continue—
 See LIMITATION ACT (IX OF 1908)
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 I L R. 39 Mad 981

SUIT—contd

- by minor for possession—
 See MINOR I L R 39 All 154
 — by reversioner—
 See HINDU LAW—WILL
 I L R 37 All 422
 — by reversioner to set aside adop-
 tion—
 See ADOPTION I L R 37 All 496
 — by zemindar to recover haqq, cess,
 etc—
 See PROVINCIAL SMALL CAUSE COURTS
 ACT 1887 SCH II ART 13.
 I L R 40 All 663
 — Against Railway Company for loss
 or damage to goods—
 See LIMITATION ACT 1908 ART 31
 I L R 42 All 390
 See RAILWAY COMPANY
 I L R 42 All 655
 — by Rent free grantee to recover
 possession—
 See JURISDICTION OF CIVIL AND REVENUE
 COURTS I L R 42 All 412
 — dismissal of for Plaintiff's non
 appearance—Inherent power of Court to res-
 torer—
 See CIVIL PROCEDURE ACT 1908—
 O IX R. 8 I L R 44 Bom 82
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 — dismissal of—
 See CIVIL PROCEDURE CODE (1908)—
 O V R. 3 O IX R 12
 I L R 39 All 476
 O IX, R. 2 I L R 38 All 357
 O IX RR 3 AND 6
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 O IX RR. 8 AND 9 s 171
 I L R 34 All 426
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 I L R 35 All 331
 O XI R. 21 I L R. 38 All 5
 O XVII R. 3 O IX R. 4
 I L R 34 All 123
 — for account—
 See LIMITATION ACT (IX OF 1908) SCH I
 ART 116 I L R 39 All 355
 — for dissolution of partnership—
 See CIVIL PROCEDURE CODE (1908) O
 XVII R 4 I L R. 39 All 531
 — for joint possession—
 See LIMITATION ACT (IX OF 1908) SCH. I
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 — for judicial separation—
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- for declaration of title—
See SPECIFIC RELIEF ACT (I OF 1877)
 s 42 I L R. 37 All 185
- for ejectment—
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 ss 58 177 (c) I L R. 38 All 465
- for money had and received—
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 I L R. 38 All 676
- *See* PROVINCIAL INSOLVENCY ACT (VI OF 1907) s 16 (7) I L R. 41 Mad. 823
- for possession and mesne profits—
See LIMITATION ACT 1903 SCH ART 109
 I L R. 39 All 200
- for possession of land—
See LIMITATION ACT (IX OF 1908) s 28
 ART 47 I L R. 38 Mad 432
- for profits—
See CIVIL PROCEDURE CODE (1908)
 XXXVI NR 9 16 17 18
 I L R. 39 All 694
See LAMBARDAR AND CO SHAKAR
 I L R. 41 All 316
- for redemption of mortgage—
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- for refund of purchase money—
See CIVIL PROCEDURE CODE (1908) O
 XXI NR 9^a 93
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- for rent under registered agree-
 ment—
See LIMITATION I L R. 38 Mad. 101
- for damages for ejectment—
See LANDLORD AND TENANT
 25 C W N 930
- for Male oust prosecution—
See MALICIOUS PROSECUTION
- for money paid by mistake under
 coercion—
See CONTRACT ACT 1872 s 79
 I L R. 43 All 272
- for money due under an award—
See PROVINCIAL SMALL CAUSES ACT
 1887 SCH II ART 24
 I L R. 42 All. 169
- for profits—
See AGRA TENANCY ACT 1901 s 161
 I L R. 42 All 414
 I L R. 43 All 29 177
- for possession—
See CIVIL PROCEDURE CODE 1908
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- for refund of price on account of
 short delivery—
See CIVIL PROCEDURE CODE (1908) s 70
 I L R. 42 All 430
- for return of moveable property
 deposited for safe custody—
See LIMITATION ACT 1903 SCH I ART 49
 I L R. 42 All. 45
- for a sum payable periodically—
See COURT FEES ACT 1870 s 7 (ii)
 SCH II ART 17 (i)
 I L R. 42 All 353
- in forma pauperis—
See PAUPER SUIT I L R. 46 Calc 651
- institution of in wrong Court—
See LIMITATION I L R. 47 Calc 300
- maintainability of—
See CIVIL PROCEDURE CODE (1908) s 9.
 I L R. 37 All 313
- on a foreign judgment—
See CIVIL PROCEDURE CODE (1908)
 s 13 I L R. 41 All 521
- on lost bond—
See MORTGAGE I L R. 37 All 423
- place to last in law—
See CIVIL PROCEDURE CODE (1908) s 20
 I L R. 39 All 368
- subject matter of—
See CIVIL PROCEDURE CODE (ACT V OF
 1908) O XXXIII NR 1 2 AND 5.
 I L R. 34 Bom 638
- to enforce payment of money
 charged upon immoveable property—
See LIMITATION ACT (IX OF 1908) SCH
 I ART 13^a I L R. 37 All 400
- to recover money deposited with
 Bank—
See LIMITATION ACT (IX OF 1908) SCH
 I ART 60 I L R. 37 All 252
- to recover property bailed—
See LIMITATION ACT (IX OF 1908) SCH
 I ARTS 49 60 AND 145
 I L R. 41 All 643
- to obtain refund of octroi duty—
See U P MUNICIPALITIES ACT 1916
 s. 376 I L R. 42 All 207
- to recover revenue paid on an order
 revised on appeal—
See LIMITATION ACT 1908 S II 1 ART
 61 I L R. 42 All 61
- to enforce an award—
See CIVIL PROCEDURE CODE (1908) s
 89 AND 104 (1) (f) SCH II PARAS
 20 AND 21 I L R. 43 All 108

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to establish right of worship and procession in street—

See CIVIL PROCEDURE CODE 1908 s 9
I L R. 44 Bom 410

to set aside adoption—

See ADOPTION I L R. 37 Cal. 660

to set aside decree against minor—

See MINOR I L R. 38 All. 452

to set aside a decree on the ground of fraud—

See CIVIL PROCEDURE CODE (1908) s 20 (c) I L R. 39 All. 607

transfer of—

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I L R. 41 All. 351

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I L R. 38 All. 425

valuation of—

See BENGAL, N W P AND ASSAM CIVIL COURTS ACT (XII OF 1887) s 21
I L R. 32 All. 222

See CIVIL PROCEDURE CODE (1908)—

O XXI R 63 I L R. 38 All. 72
R 66 I L R. 40 All. 505

See CIVIL PROCEDURE CODE 1908 s 115
I L R. 39 All. 723

withdrawal of—

See CIVIL PROCEDURE CODE 1908—

O LXIII R 1 I L R. 37 All. 328
I L R. 42 Bom. 155

R 1 s 115 I L R. 40 All. 612

See PARTITION I L R. 37 All. 155

1 *Bengal Tenancy Act (VIII of 1885) ss 30 (b) 37 105 107, 109—*
Whether an application under s 105 of the Act a suit—Withdrawal of an application under that section effect of—Subsequent suit for enhancement of rent under s 30 (b) whether maintainable. An application under s 105 of the Bengal Tenancy Act cannot be regarded as a suit. *Upadhyaya Thakur v Persadh Singh I L R. 33 Cal. 723* referred to. Therefore although an application under s 105 of the Bengal Tenancy Act was previously withdrawn without liberty to make a fresh application, a subsequent suit for enhancement of rent under s 30 (b) of the Act is maintainable. The provisions of s 37 or 109 of the Act are not applicable to such a case. *Choudhury v Talwar Sivan (1912) I L R. 40 Cal. 423*

2 *Limitation—Bengal Tenancy Act (VIII of 1885) ss 104H sub s (c) 181 185—Limitation Act (IX of 1908) ss 23 15 applicability of—Civil Procedure Code (Act V of 1908) s 89 A instituted a suit under s 104H of the Bengal Tenancy Act against the Secretary of State for India in Council on the 10th December 1910 in respect of a village the Record of Rights of which was finally published on the 2nd June 1910 A took exception to the latter Prior to the institution of the suit A served a notice on the defendant as required by s 80 of the Civil Procedure Code. Held that the suit was barred by limitation. Held, also that s 15 sub-s*

SUIT—contd.

(2) of the Limitation Act which was made applicable to suits appeals and applications mentioned in Sch III annexed to the Bengal Tenancy Act by virtue of s 185 sub s (2) could not possibly apply to suits instituted under s 104H which were not mentioned in Sch III. On a plain reading of the provisions of s 185 of the Bengal Tenancy Act along with s 15 sub s (2) of the Limitation Act the latter could not be applied to extend the period of six months provided for the institution of suits under s 104H of the Bengal Tenancy Act. *Radha shyam Kar v Dinabandhu Biswas 18 C W N 31 18 C L J 633 Sharoop Dass Mondal v Jogeesur Roy Chowdhry I L R. 26 Cal. 564 Dulhan Mathura Das Koer v Bannidhar Singh 16 C W N 904 Srinivasa Ayyangar v The Secretary of State for India I L R. 38 Mad. 92 referred to Dropadi v Hira Lal I L R. 34 All. 496 distinguished.* SECRETARY OF STATE FOR INDIA v GANGADHAR NANDA (1917)
I L R. 45 Cal. 934

SUIT FOR CANCELLATION OF DOCUMENT

Sale-deed—Alleged illegality of transaction—Sale by one deed of fixed rate and occupancy holdings. The plaintiff by one and the same sale-deed purported to transfer (i) a fixed rate holding and (ii) part of an occupancy holding. Held that he was not entitled to a decree setting aside the sale-deed merely because part of the property covered by it was by law not transferable. *BAJEANGI LAL v GHURA RAI (1916) I L R. 38 All. 232*

SUIT FOR DECLARATION OF RIGHT

See HIGHWAY I L R. 43 All. 692

SUIT FOR LAND

See POSSESSION

See SCIT

See JURISDICTION I L R. 42 Cal. 942

See JURISDICTION OF HIGH COURT

I L R. 39 Cal. 739

recovery of possession and mesne profits—Litigation prolonged by defendant in prosecution appeal and mesne profits swelling to amount exceeding pecuniary jurisdiction of Original Court and re-filing of plaint in another Court—Proceedings in latter Court if continuation of original suit—Limitation. Where a person sues for recovery of possession he can in the same suit recover mesne profits which have accrued before the suit and those accruing pending the litigation. The fact that owing to the prosecution on appeal in higher Courts by the Defendant the mesne profits swell up to an amount beyond the limits of the pecuniary jurisdiction of the Court which tried the suit originally thereby necessitating the transfer of the proceedings in the suit to a Court of higher jurisdiction does not amount to an interruption so as to make the subsequent proceeding in the higher Court a different suit. *BAI KUNTHA NATH KUNDU v MOHANANAND BORAT MODUK 21 C. W N 312*

SUIT FOR PROFIT

See AGRA TENANCY ACT 1901

s 201

I L R. 43 All. 697

s 164

I L R. 43 All. 29 177

SUIT FOR RENT

See AGRA TENANCY ACT, 1901, s 198
I L R. 43 AL 448

Rent reserved.—Company's Sica rupees, ambiguity of expression—Sika or Sica Rupee and Company's Rupee, meaning and history of, and difference between. In a *kabuliyat*, dated the 8th July, 1850 the annual rent reserved was stated to be Company's sica rupees 96. *Held* that the expression 'Company's sica rupees' mentioned in that document meant rupees in current coin and not sica rupee. *PER CURIAM*. The course of conduct, the date of the document, the stamp duty and the reference to current coin in the sentence referring to the Stamp Act lead us to the conclusion that in this case the rent annually payable is not the equivalent of 96 sica rupees but is 96 rupees in current coin. *Ram Saran Singh v Gyan Singh*, 6 C L J 637, *Ram Ahluwam Singh v Kumor Rao*, 6 C L J 667, *Pameevar Koor v Goberdhan Lal*, 7 C L J 202, *Mr. Taparash Hossain v Gopa Arayan*, 7 C L J 251, and *Raja Kamalevarari Perashad Singh v Ramhari Singh*, 19 C L J 318, referred to. *MAHARAJ BAHADUR SINGH v JADAB CHANDRA GHOSH HAZRA* (1918)

I L R 46 Cal 347

Suit for rent.—Claim for abatement of rent on the ground of eviction from a portion of the land by a person not having a title paramount.—Eviction by title paramount mean- ing of.—Physical dispossession, if necessary to amount to eviction.—Suit by stranger against tenant and allotment by latter to former in respect of a portion of the tenure under Court's decree.—Onus to prove eviction by title paramount if on landlord. An execution purchaser of some decretal lands obtained delivery of khas possession of the lands through Court and let out a portion thereof to B. Subsequently the Government settled with a third party some lands including a portion of the lands let out by the said execution purchaser. The Government lessee on the strength of the settlement sued B alone for recovery of the said lands and got a decree which provided that being a *bona fide* tenant B should not be ejected but should pay rent to the Government lessee in respect of the lands of which he was in possession. Subsequently the aforesaid execution purchaser brought a suit for rent against B who claimed proportionate abatement of rent in respect of the said portion. *Held*, that in order to be entitled to proportionate abatement of rent, forcible expulsion is not necessary, nor is it necessary that the tenant should actually go out of possession and if upon a claim being made by a person with a title paramount he consents by an allotment to such person to change the title under which he holds or enters into a new arrangement for holding under him, that will be equivalent to an eviction, and a fresh taking. But an eviction, whether actual or constructive, must be by a party with a title paramount. The Government lessee had no doubt obtained a decree against B, but that was not sufficient to show that he had a title superior to that of the execution purchaser. Nor was the onus to prove that the Government lessee had no title shifted on the execution purchaser in consequence of such a decree. *BANKU BERNANI GHOSH v MADAN MOHON ROY*

25 C W. N 143

SUIT IN FORMA PAUPERIS

See PAUPER SUIT

SUIT TO SET ASIDE A DECREE

Fraud.—Personal service.—conduct of Plaintiff. The mere fact that personal service of a summons has not been effected on a defendant will not render the proceedings against him absolutely abortive. But where the non service is due to the fraudulent conduct of the plaintiff in the suit and others acting with him and a decree is thereby obtained such decree may be set aside as fraudulent. *TIKA RAM v DAULAT RAM*
I L R 32 AL 145

Fraud.—What constitutes fraud.—Transfer of Property Act (IV of 1882), s 90.—Application for a decree under s 90 without informing Court of previous refusal to grant such a decree. Certain mortgagees instituted a suit for sale on a mortgage and also asked in their plaint for a personal decree against the mortgagors under s 90 of the Transfer of Property Act 1882. The Court in that suit granted the plaintiffs decree for sale but refused them the decree asked for under s 90. Some years afterwards the plaintiffs again applied for a decree under s 90. Notice of this application was duly served upon all the judgment-debtors. They did not appear, and the Court granted a decree, but limited it to the assets of the deceased mortgagor. The judgment-debtors then filed a suit to have this decree set aside on the ground of fraud, the fraud alleged being mainly that the decree holders had not brought to the notice of the Court the fact that they had once before applied for and been refused a decree under s 90. *Held*, that the neglect to inform the Court of the fact that there had been a previous attempt at another stage of the litigation to get a personal decree even assuming that the neglect was wilful could not amount to fraud which would entitle the plaintiffs to set aside the decree which was obtained by the defendants under s 90 of the Transfer of Property Act. *RAM RATAN LAL v DHURI BEGAM* (1915)

I L R 38 AL 7

SUITS VALUATION ACT (VII OF 1887)–

See MADRAS CIVIL COURTS ACT (III OF 1873), ss 12, 13

I L R 39 Mad 447

s 3–

See MADRAS CIVIL COURTS ACT, 1873

s 14

I L R 41 Mad 721

s 4–

See COURT FEES ACT (VII OF 1870), Sec II, Art 17

I L R 39 Mad 602

s 8–

See JURISDICTION SUIT

I L R 44 Cal 890

See COURT FEE

I L R 40 Cal 245, 615

See COURT FEES ACT, 1870, s 7

I L R 44 Bom 331

I L R 45 Bom 567

See JURISDICTION

I L R 38 Mad 795

15 C W N 523

I L R 34 Bom 267

See JURISDICTION OF CIVIL COURTS.

SUITS VALUATION ACT (VII OF 1887)—

contd

s 8—contd

- See LIMITATION ACT, SCH I, ART 152
I L R 43 Bom 378
See SECOND APPEAL 15 C W. N 454
See VALUATION OF SUIT
I L R. 43 Bom 507

Court Fees Act (VII of 1870) s 7 sub s X cl (c)—Suits Valuation Act (VII of 1887) s 8—Court fees payable in suit for specific performance of contract of lease
A suit for specific performance of a contract to grant a lease was valued at Rs 1,200 for determining jurisdiction of the Court and at Rs 32 for purpose of payment of Court fees, this being the amount of rent annually payable under the contract of tenancy sought to be enforced. A second appeal arising out of the suit was filed in the High Court and valued at Rs 32 only. On a reference under sec 5 of the Court Fees Act *Held*, that the court fees paid were sufficient. The value for the payment of Court fees was correctly assessed at Rs 32 under sec 7 of the Court Fees Act and the value for the purpose of jurisdiction was consequently only Rs 32 under sec 8 of the Suits Valuation Act. The right construction of sec 8 of the Suits Valuation Act is that the valuation for the purpose of jurisdiction should in the cases mentioned there follow and be the same as valuation for Court fees. The procedure to be adopted in cases of this character is to value the suit first for payment of Court fees in accordance with the rule embodied in sec 7, sub sec (X) cl (c) of the Court Fees Act and then to adopt the value so determined for the computation of Court fees as the value for purposes of jurisdiction. SAILENDRA NATH MITRA v RAM CHANDRA PAL
25 C W N 768

s 11—

- See BENGAL, AGRA AND ASSAM CIVIL COURTS ACT, 1887 4 Pat L J 447
See CIVIL PROCEDURE CODE, 1908 s 104
O XLIII, E 10 (a)
I L R 36 All 58
See RESTITUTION OF CONJUGAL RIGHTS
I L R 34 Bom. 236
See VALUATION OF SUIT
5 Pat L J 397

SUMMARY CESS

- See LIMITATION ACT, 1877, SCH II, ART 144
I L R 36 Bom 174

SUMMARY DISMISSAL

- See CIVIL PROCEDURE CODE, 1908, O XII, E 11
I L R 36 Bom 116

SUMMARY EVICTION

- See LAND REVENUE CODE (BOM ACT V OF 1879) s. 79A
I L R 35 Bom 72

SUMMARY JURISDICTION

- See COMPANIES ACT (VI OF 1882), s. 72
I L R 35 All 173

SUMMARY PROCEDURE

- See CRIMINAL PROCEDURE, ss 200 to 265

On negotiable instruments—

- See CIVIL PROCEDURE CODE (1908)
O XXXVII

See ATTORNEY AND CLIENT

- I L R 46 Calc 249

SUMMARY PROCEEDINGS

- See CONTEMPT OF COURT
I L R 41 Calc 173
See PROFESSIONAL MISCONDUCT
I L R 41 Calc 113

SUMMARY RELIEF

- See COMPANY I L R 47 Calc 901

SUMMARY SETTLEMENT

- See INAM LANDS I L R 38 Bom 2,2
See KADIM INAMDAR
I L R 42 Bom 112

Inam Dharmadaya—Sanads—
Bombay—

- See BOMBAY REVENUE JURISDICTION ACT (X OF 1876), s. 12
I L R 45 Bom 463

SUMMARY SETTLEMENT ACT (BOM ACT VII OF 1863)

- See REGULATION XVI OF 1824
I L R 38 Bom 272

Land granted to a mosque—At summary settlement land continued to the mosque on payment of annual quit rent—Alienation of land by mutawals of the mosque—Full assessment cannot be demanded by Government from the alienee. At the time of the summary settlement held in 1879, the land in dispute which had been granted to a mosque was continued on payment to Government of an annual quit rent under the Sanad which ran as follows — By Act VII of 1863 of the Bombay Legislative Council is hereby declared that the said land subject to the payment to Government of an annual quit rent of Rs 1780 seventeen and annas eight only, shall be continued forever by the British Government as the endowment property of the Jumma Masjid without increase of the said quit rent, but on the condition that managers thereof shall continue loyal and faithful subjects of the British Government. Nearly sixty years before suit the then manager of the mosque alienated (it was assumed that the alienation was unlawful) the land to a stranger. From 1912 onwards the Government levied full assessment on the land in the hands of the alienee. A suit having been brought to recover the extra assessment so levied *Held* by SHAR and HAYWARD JJ (HEATON, J. dissenting), that the provisions of the Summary Settlement Act, 1863, and the terms of the Sanad pointed to the conclusion that the condition that the land must continue to be the property of the mosque in order that the holder for the time being may have the benefit of the exemption from settlement allowed by the Sanad could not be implied and that the Government did not get any right

SUMMARY SETTLEMENT ACT (BOM. ACT VII OF 1863)—*contd*

under the Sanad to levy the full assessment even when the property ceased to be the endowment property otherwise than by a lawful alienation
SHANKARLAL TATIDAS : THE SECRETARY OF STATE FOR INDIA (1918) I L R 43 Bom. 583

SUMMARY TRIAL.

See WORKMAN'S BREACH OF CONTRACT ACT, 1859, s 2 I L R 43 All. 281

outside British India—

See EUROPEAN BRITISH SUBJECT
 I L R 39 Mad. 942

1 *Recording of evidence in non-appealable cases—Destruction by Magistrate of his notes of the evidence—Criminal Procedure Code (Act I of 1898), ss 263 and 355*
ss 263 and 355 of the Criminal Procedure Code must be read together. If the Magistrate is unable at the commencement of the trial, to determine whether the proper sentence to be passed should be an appealable one or not, he must make a memorandum of the substance of the evidence of each witness as his examination proceeds. But if he can, at this stage determine that the sentence will be, in any event non-appealable he need not record the evidence. If, however, he actually does so, the notes of the evidence form part of the record of the case and cannot be destroyed by him. Where the Magistrate had destroyed such record, the High Court was unable to form an opinion on the propriety of the conviction and set it aside.
Jayshil Prasad Lal v Emperor, 21 Cr L J 229, approved SATISH CHANDRA MITRA v MAN MATHA NATH MITRA (1920)
 I L R 48 Cal. 280

2 *Charge, if should be drawn up in* Although in a summary trial the Magistrate need not frame a formal charge still he must specify the offence charged in such a way as will give sufficient notice to the accused
JHARU SUZUKI v KING EMPEROR (1912)
 16 C W N 696

3 *Warrant Case—Omission to examine the accused—Charge—Accusation of house breaking by night to commit theft—Fitting of different talent—Necessity of charge specifying the same—Criminal Procedure Code (Act I of 1898) ss 263, 342*
S 263 of the Criminal Procedure Code is governed by s 342 and there must, therefore be an examination of the accused in all warrant cases; the words "if any" in cl. (v) of the former section, not being applicable to such cases. Where the case against the accused is one of theft or house breaking to commit theft and the Magistrate finds that it has broken down but that there is another object apparent on the evidence it is his duty to give the accused notice of that by drawing up a charge clearly stating what it is that he is accused of doing.
MAHAMED HOSSEIN v EMPEROR (1914)
 I L R. 41 Cal. 743

SUMMONS

See CIVIL PROCEDURE CODE, 1908—

O Y R 15 . I L R 35 All. 556
 I L R 33 All. 649

SUMMONS—*contd*

See PEVAL CODE (ACT XLV OF 1860), s 173 I L R 40 All. 577

See THIRD PARTY NOTICE
 I L R. 45 Bom. 111

non-service of—

See RIGHT OF SUTY
 I L R 37 Cal. 197

service of—

See FRAUD I L R 32 All. 145

See PRACTICE I L R 35 Bom. 213

to accused to produce document or thing

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 94 I L R 37 Mad. 112

Service of summons—

Indian Marine Service—Civil Procedure Code (Act V of 1898), O V, rr 15, 17 and 27—Ex parte decree—Officer or mechanic in the employ of the Indian Marine Under the Civil Procedure Code an officer or mechanic in the employ of the Indian Marine is subject to exactly the same rules as any other person as regards service of summons. They come within the operation of rules 15 and 17 of O V of the Code of Civil Procedure
ISTU MEAR MISTRY v DARBURGH BRITAN (1914)
 I L R 42 Cal. 67

SUMMONS CASE

Magistrate bound to examine accused before convicting him—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 342 I L R. 45 Bom. 672

proceeds (has) of warrant case—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 256
 I L R. 39 Mad. 503

SUMMONS, SERVICE OF

Substituted service—

"Due and reasonable diligence"—Practice—Appeal from order refusing to set aside ex parte decree—Civil Procedure Code (Act V of 1898), O V, rr 12, 17, O IX, r 13—Costs For substituted service of summons to be effective it is essential that the requirements of the rules of the Code should be strictly observed. Knowledge of the institution of the suit, derived by the defendant *alunde* is not sufficient in the absence of proper service of the summons. Where the serving officer on three separate occasions went to the place of business of the defendant a firm under the erroneous belief that it was his ordinary place of residence and asked for the defendant and, on not finding him posted a copy of the writ of summons on the outer door of the premises. *Held*, that this was not sufficient service. Proper enquiries and real and substantial effort should be made to find out when and where the defendant is likely to be found.
Cohen v Nursing Dress Auddy, 1 L R 19 Cal. 201, followed KASIM ENBARAH SALEH v JOHURMULL KHEMKA (1913)
 I L R 43 Cal. 417

Under the Civil Procedure Code an officer or mechanic in the employ

SUMMONS, SERVICE OF—contd

of the Indian Marine is subject to the same rules as regards service of summons. They come within ss 15 and 17 of O. V. Intu MEATH

MISTRY v DARBUSKH BHUIYAN

I. L. R. 42 Calc. 67

SUMMONS TO PRODUCE DOCUMENTS.

Books of a firm—Materials on which such order may be made—Complaint and subsequent application for summons and examinations of complainant thereon—Practicity of service—Directions to Magistrate to decide what books were necessary for the purpose of the enquiry—Directions as to mode of inspection—Criminal Procedure Code (Act V of 1898), s. 94. Where a complaint was made against a certain person before the Chief Presidency Magistrate, who examined the complainant and directed a local investigation and an application was made thereafter by the complainant for summons under s. 94 of the Criminal Procedure Code and granted after his further examination thereon—*Held*, that there were sufficient materials on which an order under s. 94 could properly be made, and that it was so made. Where in obedience to a previous order of the High Court the Magistrate's head clerk delivered certain books to M, who gave a receipt for them as the agent of the petitioner, but the latter further appointed Q, without the knowledge of the Magistrate, to take them over immediately from M—*Held*, that the summons under s. 94 was properly served on M, and even if it was not so that the High Court would not order the return of the books to the petitioner, but would direct the issue of an amended summons to be served on him. The High Court directed the Magistrate to inquire and determine, in the presence of the petitioner, how many and which of the books were necessary for the purposes of the complaint before him, taking into consideration any undertaking given by the petitioner for production of the books as required but which he now ordered to be returned. The Magistrate was further directed to give definite instructions as to when and where and by which officer the inspection was to be held. The inspection was also directed to be made in the presence of the petitioner. T. R. PRATT v LAFERON (1920)

I. L. R. 47 Calc. 647

SUNDARBANS.

See **BENGAL TENANCY**

I. L. R. 48 Calc. 473

Lease from Government, of lands in—Permanent tenure granted by lease—Condition that rent will not abate in case of diluvion, if valid—Onus of proof—Reg. III of 1828, s. 73. Where tenants took a permanent lease of lands in the Sundarbans stipulating that "we shall not object to the payment of rent on the ground of drought, inundation, death, desertion, overflow of salt water, diluviation by river, etc."—*Held*, that it was for the tenants if they impeached this stipulation as being inconsistent with the provisions of s. 52 of the Bengal Tenancy Act to establish that the tenure was not situated in a permanent settled area. R. 13 of Reg. III of 1924 does not ignore or invalidate any permanent settlements made by Government before 1924.

SUNDARBANS—contd

It also authorises similar settlements subsequently made by Government. It is, therefore, erroneous to hold that there could not be a permanent tenure in the Sundarbans. That the stipulation barred not only a plea of reduction of rent in defence, but also a suit for abatement of rent. KHETTRAMANT DAS v JIBAN KRISHNA KUNDU (1914). 19 C. W. N. 546

SUNNIS.

See **MAHOMEDAN LAW—DIVORCE.**

I. L. R. 30 All. 458

See **MAHOMEDAN LAW—DOWER.**

I. L. R. 41 All. 562

See **MAHOMEDAN LAW—GIFT.**

I. L. R. 34 All. 478

SUPERFLUOUS MATTER.

See **COSTS** . I. L. R. 47 Calc. 415

SUPERINTENDENCE.

See **CROSS EXAMINATION**

5 Pat. L. J. 545

See **DEFENCE OF INDIA ACT, 1915**

3 Pat. L. J. 581

See **DISMISSAL FOR DEFAULT**

4 Pat. L. J. 277

See **JURISDICTION** . 4 Pat. L. J. 154

See **RECEIVER** . 4 Pat. L. J. 20

———— High Court Powers of—

See **GOVERNMENT OF INDIA ACT, 1915,**

s. 107 1 Pat. L. J. 36, 465 and 576

———— Interlocutory order—Interference with—

See **CIVIL PROCEDURE CODE, 1908, s. 32.**

5 Pat. L. J. 550

SUPERINTENDENT.

See **TRUST** . I. L. R. 41 Calc. 19

SUPERSTITIOUS BELIEF.

See **PENAL CODE** s. 301

25 C. W. N. 676

SUPPLEMENTARY AFFIDAVIT

See **CONTENT OF COURT**

I. L. R. 41 Calc. 173

SUPPORT.

———— right of, for a building—

See **EASEMENT** . I. L. R. 37 Mad. 527

SUPREME COURT.

See **CONTENT OF COURT.**

I. L. R. 41 Calc. 173

SURAT DISTRICT

See DEBARKH ALLOWANCE
1 L. R. 45 Bom 948

SURETY

See CIVIL PROCEDURE CODE 1908
ss 55 AND 145 5 Pat L. J. 417

O XXXVIII n. 5 ss 115 145
1 L. R. 41 Bom 402

See CONTRACT ACT 1872—
ss 120, 140. 1 L. R. 42 All. 70

ss to 178 147
See CRIMINAL PROCEDURE CODE (1 OF
1898) s. 122 14 C. W. N. 709

See EXECUTION OF DECREES
2 Pat L. J. 197

See FITNESS OF SURETY GROUNDS OF
1 L. R. 44 Calc 737

See HINDU LAW (MITAKSHARA)
3 Pat L. J. 396

See MORTGAGE 1 L. R. 45 Calc 702

See PROMISSORY NOTE.
1 L. R. 39 Mad. 680

— attachment of property —

See CIVIL PROCEDURE CODE (ACT V OF
1908) s. 145 O XXXII n. 6
1 L. R. 41 Mad. 40

— discharge of —

See CONTRACT ACT (1A OF 1872) ss
134 137 1 L. R. 39 Bom. 52

See EXECUTION OF DECREES
1 L. R. 41 Calc 50

— fitness of —

See CRIMINAL PROCEDURE CODE ss
110 121
25 C. W. N. 140

See SECURITY FOR GOOD BEHAVIOUR.
1 L. R. 37 Calc. 91, 446

— for insolvent's debt whether
"creditor" —

See PROVINCIAL INSOLVENCY ACT (III OF
1907) s. 37 1 L. R. 40 Mad. 783

— liability of —

See HINDU LAW SURETY
1 L. R. 38 Mad. 1120

See CRIMINAL PROCEDURE CODE, 1898
s. 514 1 L. R. 2 Lah 204

See PRINCIPAL AND SURETY
1 L. R. 44 Calc 978

— rights of, against principal debtor —

See NEGOTIABLE INSTRUMENTS ACT
(XXVI OF 1881) ss 30 47 59 74 84
1 L. R. 39 Mad. 965

SURETY—contd

— application to enforce liability
against —

See CIVIL PROCEDURE CODE, 1908 s. 145
1 L. R. 44 Bom 34

— security for good behaviour—order
rejecting sureties—

See CRIMINAL PROCEDURE CODE ss.
110 AND 122 1 L. R. 44 Bom 385

— Written agreement by surety that
he would not claim his legal rights—

See CONTRACT ACT (1A OF 1872) s. 133.
1 L. R. 45 Bom. 157

1 — Surety to Administration
Bond—Right of surety to apply for cancellation of
bond on administration being completed. A surety
to an administration bond cannot when the
administration is complete and the bond becomes
void and ineffective apply to the Court to have
the bond vacated and to be discharged from his
suretyship. There is nothing in the Indian Suc-
cession Act or in the Rules of Practice to authorise
such an application. In the matter of ARTHUR
GERALD VENTON HENDRY (1900).
1 L. R. 33 Mad. 372

2 — Father's liability as surety—
Hindu Law—Whether son is liable to pay debt
incurred by father as surety. Under the Hindu
Law a son is liable for a debt incurred by his father
as a surety. *Tukarambhat v. Gangaram Mulchand
Gujar* 1 L. P. 23 Bom. 451 and *Maharaja of
Benares v. Ramkumar Misr* 1 L. R. 26 All. 611
referred to. *PABU LAL NANDAI v. SINGHESWAR
PAI* (1912)
1 L. R. 39 Calc. 843

3 — Promissory note executed by
agent after settlement of accounts—Representatives
in interests of and surety for deceased
agent by principal—Surety if entitled to go behind
promissory note and have account taken in his pre-
sence—Set off if can be pleaded—Interest when
to run from. The plaintiff sued for the recovery
of money due on a promissory note executed by
the deceased agent S in the favour after settle-
ment of accounts for the sum due to them. The
defendants, who were the brothers of S, were sued
both in their character as representatives in
interests of S and as sureties for him under a surety
bond executed by them in favour of the plaintiff S.
The defendants disputed the amount due and
claimed as set-off the amount payable by the
plaintiff to their brother on account of salary.
The Court after taking accounts made a decree
in favour of the plaintiff S for a smaller sum than that
mentioned in the promissory note. Held that
the principle that as between a principal and an
agent artificial accounts will not be re-opened
unless fraud or undue influence is established
is limited in its application only as between a
principal and an agent and as the defendants
were sued not only as representatives in interest
of the deceased agent but also as sureties they were
entitled to go behind the promissory note and to
have the accounts examined in their presence.
The defendants were also competent to plead a
set-off. S. 111 of the Civil Procedure Code (Act
XIV of 1874) does not take away from parties
any right to set off whether legal or equitable
which they would have independently of that Code.

SURETY—contd

and such right exists not only in cases of mutual debts and credits but also when cross demands arise out of the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant should be driven to a cross suit. *Held*, further, that the plaintiffs were entitled to interest by way of damages from the date of the institution of the suit, and not merely from the date of the decree of the Court of first instance. **KALAYUND SINGH v GIR PRASAD DAS (1913) 17 C W N 1080**

4. — **Surety-bond for judgment-debtor's appearance in Court—Death of judgment debtor before time of appearance—Liability of surety** Where the decree holder applied to enforce the condition of an undertaking given as surety that the judgment debtor would apply in insolvency within a specified time and that he would appear in Court whenever he was required to do so, and the judgment-debtor died before the time of appearance had arrived. *Held*, that the decree holder lost his remedy against the surety. The event which occurred was not in contemplation of either party and therefore put an end to the obligation that there was under the contract. **NABIN CHANDRA HAZARI v MRITUNJOY BARBIEK (1913) 17 C W N 1241**

5. — **Fitness—Grounds of rejection of sureties—Reasonableness of grounds—Pecuniary fitness—Want of control over principal—Criminal Procedure Code (Act V of 1893) s 122** The grounds on which a Magistrate has power to refuse to accept a security, under s. 122 of the Criminal Procedure Code, must be such as are valid and reasonable in the circumstances of each case as it arises. *In re Soobodithree* 22 W R Cr 37, followed. *Ram Farahad v King Emperor* 6 C W N 593 and *Adam Sherik v Emperor* 1 L J 35 Calc 400 commented on. *Jalil v Emperor*, 13 C W N 80. *Jafar Ali Panjwala v Emperor*, 1 L R 37 Calc. 416 referred to. Where the Magistrate found that the sureties, who were the brothers of a person bound down under s. 110 of the Code, were pecuniarily fit but that the latter was a notorious dacoit and that there was a consensus of opinion in the neighbourhood that they would not be able to keep him in control. *Held* that the ground of the rejection was not unreasonable in the circumstances. **EMPEROR v ASIRADDI MANDAL (1914) 1 L R 41 Calc 764**

6. — **Surety for an administrator of estate II, may be discharged or substituted—Surety creating charge on his immovable property—Release of charge—Surety bond, discharge of and substitution—Administration account if may be examined by Court** Letters of Administration were granted to the estate of the deceased A Hindu governed by the "Dayabhaga" law to R one of his first cousins who for purposes of such administration was also appointed guardian of deceased's infant son, and R's two brothers stood sureties for the administrator. The estate being a very large one the Court required the sureties to charge their immovable properties in the surety bond besides making them personally liable. The infant having died without issue and intestate his paternal grandmother succeeded to the estate as his heir. R thereupon applied to Court stating that he had tendered an account of the estate as

SURETY—contd

administered by him to the lady and that she had the same examined by her constituted attorneys and that they were satisfied with the account and that the residue of the estate had been made over to her and prayed that the sureties be discharged and the charge on their immovable property be also discharged. The Court ordered that on the lady's constituted attorneys filing a verified certificate together with the account or abstract thereof stating that they had examined and found it correct, and on the administrator filing the receipts for the debts paid to the satisfaction of the Registrar the surety bond creating a charge on the immovable properties of the sureties would be discharged conditional upon the sureties executing a fresh security bond making themselves personally liable for the administration of the estate by the petitioner. *Pai Narain Mukerjee v Ful Kumari Devi*, 1 L R 29 Calc 63, referred to. The account of the administrator need not be investigated by the Court there being no procedure or practice for doing so. **KAVAI LAL KHAN In the goods of (1913) 18 C W N 320**

7. — **Rejection of—only on Police report—without judicial enquiry into their fitness—Inquiry to be held by the Magistrate passing the order for security—Criminal Procedure Code (Act V of 1893) ss 118 122** Sureties tendered by a party bound down under s. 118 of the Criminal Procedure Code should not be rejected on a police report as to their fitness but only after a judicial inquiry under s. 122 and by the Magistrate who has passed the order for security. **KABAR ALI MAHOMED v EMPEROR (1914) 1 L R 42 Calc. 706**

8. — **Bail-bond—Forfeiture on failure of accused to appear—Suit by surety against third person upon promise to indemnify—Contract, legality of** A bail bond having been forfeited owing to the failure of the accused to appear the surety sued a third person who had agreed to indemnify the surety for recovery of the amount forfeited. *Held* that the contract to indemnify was illegal and could not be enforced. **PRASAD KUMAR CHUCKERBUTTY v PROKARN CH DUTY (1914) 18 C W N 329**

9. — **Duty of Magistrate to enquire into fitness of each surety on evidence taken by him—Delegation of enquiry to the police or others—Rejection of sureties on a police report—Ground of rejection—Want of control—Criminal Procedure Code (Act V of 1893) s 122** Under s. 122 of the Criminal Procedure Code a Magistrate must personally hold a separate inquiry as to the fitness of each surety and decide the matter on evidence taken for the purpose and he cannot delegate to a police officer or other person the function entrusted by law to him alone. *Sureek Chandra Das v Emperor* 3 C L J 515. *In re Abdul Kham*, 10 C W N 1027, *Akbar Ali Mahomed v Emperor*, 1 L R 42 Calc 706, and *Kaifu Mir v Emperor*, 1 L R 37 Calc 91, followed. *Queen Empress v Irtifa Pal Singh*, (1853) All W N 151, *Emperor v Tola*, 1 L J 25 All 272, *Emperor v Gulam Mustafa* 1 L R 26 All 311, *Emperor v Lalchand*, 1 L R 27 All 293. *Pharwan Singh v King Emperor*, 12 All. L J 1001. *King Emperor v Farmanjhar*, 1 Cr L J 423. *Kamchand Singh v King Emperor*, 4 Cr L J 248. *Jai Chaud v Emperor*, 13 Cr L J 427. *King Emperor v Kaifu*

SURETY—contd

Kham (1906) Punj Rec 18 Emperor v Mahro 10 Cr L J 225 Emperor v Kunal, 10 Cr L J 237 Emperor v Iltahad no 12 Cr L J 410 Emperor v Haja Usman 11 Cr L J 497 Piru Abdulla v Emperor 15 Cr L J 378 Muhammad Ibrahim v Emperor 16 Cr L J 100 approved Want of sufficient control over the person bound down is not a valid ground for the rejection of a surety *Kala Mirza v Emperor 1 L R 37 Calc 91 Siva Natha v Emperor 16 Bom. L R 138 Queen Empress v Raim Baksh, 1 L R 29 All 206 and Sheikh Fakir v Emperor 12 All. L J 785 referred to RAYAN KHAN v EMEROR (1916) 1 L R 43 Calc 1024*

10(a) ————— Money paid by for non production of judgment debtor — *f to be certified as a decree—Judgment debtor arrested in execution of money decree and released on furnishing a cash bond—Money paid by surety for non production of judgment debtor will not be certified against decree* A judgment debtor arrested and imprisoned in execution of a money decree was released on furnishing a surety for a sum of Rs 500 the surety undertaking to produce the judgment debtor in Court the event of his not applying to be adjudicated insolvent within a month. The judgment debtor failed to apply for adjudication as an insolvent and the surety to produce him. *Held* that the payment of Rs 500 made by the surety was to be certified against the decree and it was not to be made available to the decree holder over and above his decretal amount. *Koylash (Khandal) v Chit to phal 1 L R 15 Calc 171 1937 referred to SURENDRA NATH GUPTA v KESTIALAL GOSWAMI 25 C W N 38*

10 ————— Grounds of fitness—Pecuniary sufficiency—Inability of control—Discretionary power of the Court on the facts of each case—Propriety of the order—Criminal Procedure Code (Act V of 1898) s 120 The question as to the fitness of a surety is one of discretion in each case and the High Court has only to consider whether the order of the Magistrate is reasonable and proper in the circumstances of the particular case. *Jalil v Emperor 13 C W N 80 Jafar Ali Panjalia v Emperor 1 L R 37 Calc. 449 and Emperor v Auruddin Mandal, 1 L R 41 Calc. 764 approved Ram Parshad v King Emperor 6 C W N 893 Adam Sheikh v Emperor 1 L R 35 Calc 400 and Rayan Khan v Emperor 1 L R 43 Calc 1024 not followed ABDEL KARIM v EMEROR (1916) 1 L R 44 Calc 737*

SURETY BOND

See DECREE 1 L R 36 Bom. 42

See SURETY

— forfeiture of —

See CRIMINAL PROCEDURE CODE, ss. 514 516 14 C W N 239

— *Excluded in favour of Court* *f prevents annihilation of hypothecated property—Surety bond how enforceable—Transfer of Property Act (IV of 1882) ss 67 68—At annihilation for consideration on by vendor known to be indebted if had as being in fraud of creditors—Participation in suit on necessary The execution of a security bond in favour of a Court has not the effect of*

SURETY BOND—contd

availing all subsequent alienations. The execution of the bond has a right to transfer the property hypothecated in the surety bond subject to the lien created by him in favour of the Court. When property is given in security and the security is sought to be enforced that should be done by bringing a suit under s 67 of the Transfer of Property Act and it makes no difference whether the security bond is in favour of a Court or a party to a suit. The mere fact that a purchase of property which has the effect of defeating or delaying the vendor's creditors was for good consideration is not enough to protect the purchaser. It must also be shown that he acted in good faith. But the mere fact of the indebtedness of the vendor or knowledge on the part of the purchaser that the sale may defeat or delay the creditors is not sufficient to negate the bona fides of the purchaser. If there was good consideration and the intent on the part with the whole interest is proved and it is not shown that the transfer was a mere cloak for retaining a benefit to the vendor it is valid against the creditors. But if the object of the transfer is to defeat or delay his creditors and that object is known to the transferee and he aids and assists in its execution then the transfer is not a good faith. *KAMINI KRISHN ROY v HIRA LAL LAL CHOWDHURY (1919) 23 C W N 789*

SURETY FOR GOOD BEHAVIOUR

— *Pecuniary qualification but not power of control—Grounds of rejection—Criminal Procedure Code (Act V of 1898) s 120* In determining the fitness of a surety under s 120 of the Criminal Procedure Code the first matter to be inquired into is his ability to pay the amount of the bond in case of default by the principal but there may be other matters also to be considered as grounds of objection which must be dealt with in each case as it arises. Where a surety is competent in a pecuniary sense the fact that he is not in a position to exercise control over the person bound down, so as to ensure his good behaviour in future is not a sufficient ground for his rejection. *Ram Parshad v King Emperor 6 C W N 593 Adam Sheikh v Emperor 1 L R 35 Calc 400 and Jalil v Emperor 13 C W N 80 referred to JAFAR ALI PANJALIA v EMEROR (1910) 1 L R 37 Calc 446*

SURVEY SETTLEMENT

See LAND REVENUE CODE (Bom. Act V of 1879) ss 3 CL (20) AND S. 217 1 L R 43 Bom 77

SURFACE WATER

See PRESCRIPTION 14 C W N 825

SURPLUS COLLECTIONS

— suit for —

See MORTGAGE 1 L R 33 All 244

SURPLUS SALE PROCEEDS

See ARREARS OF REVENUE 1 L R 47 Calc 331
See LIMITATION ACT 1908 s 31 1 L R 44 Mad. 823

SURPRISE

doctrine of—

See RIGHT OF REPLY.

I. L. R. 43 Calc. 426

SURRENDER.*See* CENTRAL PROVINCES TENANCY ACT
1898, s 35 . . . 3 Pat. L. J. 88*See* EXTRADITION I. L. R. 47 Calc. 37*See* HINDU LAW—WIDOW.

I. L. R. 48 Calc. 100

I. L. R. 39 Mad 1035

See RAYATI HOLDINGS

I. L. R. 47 Calc. 129

Occupancy tenancy,
transfer of part of—Subsequent surrender of whole
or part of tenancy An occupancy raiyat, who
has transferred part of his non transferable holding,
is not competent to surrender to his landlord the
portion so transferred, either by surrender of that
portion alone or by surrender of the whole inclusive
of such portion SYED MOHSEN UDDIN v BRAGO
BAY CHANDRA SUTRADHAR (1920)

I. L. R. 48 Calc 605

SURRENDER OR ABANDONMENT.

of holding—

See MADRAS ESTATES LAND ACT (I of
1908), s 80, ETC

I. L. R. 38 Mad. 608

SURVEY ACT.*See* BENGAL SURVEY ACT*See* BOMBAY SURVEY AND SETTLEMENT
ACT*See* MADRAS SURVEY AND BOUNDARIES
ACT**SURVEY MAP.***See* FOOTINGS I. L. R. 38 Calc. 687*See* WASTE LANDS ACT

L. R. 43 I A 203

SURVEY SETTLEMENT.*See* BOMBAY LAND REVENUE CODE (Bom.
ACT V of 1879), ss 3 (11) AND 217

I. L. R. 24 Bom. 686

Growth of sandalwood trees on
occupancy lands subsequent to—*See* FOREST ACT (VII OF 1878), s 75
CL. (c), r. 2 . . . I. L. R. 45 Bom 110right of Inamdar to enhance assess-
ment at end of period of settlement—*See* BOMBAY LAND REVENUE ACT, 1879
s 217 . . . I. L. R. 44 Bom. 110

I. L. R. 45 Bom. 61

SURVIVING MEMBER OF COMMITTEE.

suit by—

See RELIGIOUS ENDOWMENT

I. L. R. 39 Calc 364

SURVIVORSHIP.*See* CIVIL PROCEDURE CODE, O.
XXXVIII, r. 5

I. L. R. 38 Bom. 105

See HINDU LAW—PARTITION

I. L. R. 37 Calc 703

See MARUMAKATAYAM LAW.

I. L. R. 34 Mad. 387

SUSPENSE ACCOUNT.*See* INSOLVENCY I. L. R. 34 Mad 125**SUSPENSION.***See* LEGAL PRACTITIONER

13 C W. N 521

See LEGAL PRACTITIONERS ACT, s 14

13 C. W. N. 415

15 C W N 269

of Business—

See COMPANY I. L. R. 47 Calc. 654

of period—

See LIMITATION I. L. R. 48 Calc. 65**SUSPENSION OF RENT.***See* LANDLORD AND TENANT

14 C W. N. 446

SUSPENDED POLICE OFFICER.*See* WRONGFUL CONFINEMENT

I. L. R. 47 Calc. 318

SUSPICION.*See* FALSE INFORMATION

I. L. R. 48 Calc 427

SYMBOLICAL POSSESSION.*See* LIMITATION I. L. R. 36 Bom. 373*See* POSSESSION I. L. R. 43 Bom. 559*See* RIOTING I. L. R. 39 Calc. 696

Effect as between parties
—Presumption of continuance of possession, if con-
clusive Delivery of symbolical possession is con-
clusive evidence, as between the parties, that
possession was delivered but is not in the least
conclusive evidence that the possession so delivered
continued There may be a presumption that such
possession would continue until the contrary was
proved, but that is all Where it was found that
the plaintiff to whom symbolical possession was
delivered never got actual possession, the finding
can only mean that the possession delivered did
not continue at all, so that Art 142, and not Art
144, of the Limitation Act applied to the case.
Where it appeared that the plaintiff had recovered
rent decrees from raiyats within 12 years of the
suit and the decrees were not open to question as
collusive and fraudulent, the plaintiff's possession
of the lands held by the raiyats through them
within the statutory period of limitation was
established. DRONADAN PERSAD v LUTI HANAI
SIRON (1914) . . . 18 C. W. N. 240

SYNDICATE AND SENATE.

respective powers of—

See SPECIFIC RELIEF ACT (I of 1877)

s. 43 . . . I. L. R. 40 Mad. 125

T

TACKING OF POSSESSION.

Adverse possession—

See EVIDENCE ACT, 1872, s 107.

I. L. R. 37 Mad. 440

One trespasser cannot tack his wrongful possession to that of another—

See LIMITATION ACT (IX OF 1908), ARTS. 142 AND 144 I. L. R. 45 Bom. 570

TAGAVI ADVANCE.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XYII OF 1879)

I. L. R. 40 Bom. 483

TALABI BRAHMOTTAR

See GRANT I. L. R. 44 Calc 585

TALAB-I-ISHHAD.

See MAHOMEDAN LAW—PRE EMPTION

I. L. R. 41 Bom. 636

TALAB-I-MAWASIBAT.

See MAHOMEDAN LAW—PRE EMPTION

I. L. R. 41 Bom. 636

See PRE EMPTION I. L. R. 34 All. 1

TALAK.

See ITIMAK I. L. R. 47 Calc 979

See PARTITION I. L. R. 46 Calc. 236

See PUTVI REGULATION

delegation of—

See MAHOMEDAN LAW—DIVORCE.

I. L. R. 46 Calc. 141

power of—

See MAHOMEDAN LAW—DIVORCE.

I. L. R. 46 Calc. 141

TALAKNAMA.

See MAHOMEDAN LAW—DIVORCE

I. L. R. 44 Bom. 44

TALUKDAR

See BOMBAY COURT OF WARDS (BOM ACT VI OF 1883), s 31

I. L. R. 44 Bom. 832

See GUJARAT TALUKDARS ACT (BOM. ACT VI OF 1888), s 29E

I. L. R. 43 Bom. 44

See LAND REVENUE CODE (BOM. ACT V OF 1879), ss 144, 160

I. L. R. 43 Bom. 6

See OUDH ESTATES ACT (I OF 1869)

I. L. R. 33 All. 344

ss. 8, 10 I. L. R. 38 All. 552

ss. 8 AND 22, SUB S (II).

I. L. R. 32 All. 599

See TALUKDARS (GUJARATH) ACT

mortgage by—

See BROACH AND KAIRA INCUMBERED ESTATES ACT (XXI OF 1881), s 28

I. L. R. 41 Bom. 546

TALUKDAR—contd.

transfer by—

See OUDH ESTATES ACT, 1869, ss. 2 AND 16 I. L. R. 42 All. 422

1. ——— Rights of Talukdar—*Payment by relatives of talukdar holding sub proprietary rights on his estates—Rules framed by British Indian Association of Oudh for maintenance of such relatives—Basis of calculation of such payments in second and third generations—Jurisdiction of Rent Court* The question between the parties to this appeal was as to the true construction of certain rules framed in 1867 by the British Indian Association of Oudh, and agreed to by the talukdars, making provision, *inter alia*, for maintenance for the relatives of the latter holding sub-proprietary rights on their estates The portion of the rules applicable was as follows —This class will remain in possession of what they actually had at annexation "rent free" during their lifetime, but subject to the payment in the second generation of 25 per cent to the talukdar, and in the third 50 per cent, and will not have transferable rights If such persons pay the Government revenue plus 10 per cent to the talukdar they will have heritable rights in addition *Held* (affirming the decision of the Court of the Judicial Commissioner) that the bulk sum on which the percentages were to be calculated was the "assumed rental" which formed the basis for the ascertainment of the Government revenue payable by the Talukdar (the Government revenue being half the "assumed rental") This construction had the advantage of giving a fixed basis for calculation, which was greatly in the interests of the talukdars with reference to the charges on the property, and enabled all parties concerned to understand, year after year, and to forecast, their exact financial position Payments of 25 and 50 per cent respectively on the "gross rental" demandable in each particular year, together with 10 per cent in the sense of the rules (as contended for by the appellant, the talukdar), besides being made on a varying basis, might exceed not only the Government revenue but the entire receipt of rental actually obtained for particular years, reducing greatly the rights of the relatives in possession as sub proprietors and rendering precarious their provision for maintenance A construction which would bring about such results was not warranted on a sound reading of the terms of the maintenance provisions The additional sum of 10 per cent payable to the talukdar (at any rate by the third generation) for the provision for maintenance of a heritable character might, under the circumstances that the payments to the talukdar might not be regular, and that in any view the talukdar's responsibility to the Government for the revenue was full and direct whether he received such payments or not be considered as a reasonable commission or insurance, and had accordingly been sanctioned in the rules under construction as well as by the rules regarding sub settlement and other subordinate rights of property in Oudh scheduled in Act XXVI of 1868 The Court of Wards, who represented the appellant during his minority, made, on account of maintenance, certain payments to the respondent to which the appellant objected The Court of the Judicial Commissioner declined to open up that matter in the present suit, holding that "it is not within the province of a Rent Court to determine whether the maintenance was or was not payable;" and their Lordships of the Judicial

TALUKDAR—contd.

Committee were of opinion that that was a right decision *NAWAB ALI KHAN v. WAZIR ALI* (1903)
I. L. R. 32 ALL. 92

2 ———— **Settlement of Oudh—Talukdar settled with on terms as to which no evidence could be given—Second summary settlement—Villages included in talukdar's estate and not recovered by payment of money due on account of them—Trustee or lien holder—Redemption barred by Act No. I of 1869, s. 6—Adverse possession.** This affair related to certain villages in Oudh which belonged prior to the annexation of that Province to the widow of the predecessor in title of the appellants, and were under some arrangement of the exact nature of which there was no evidence, included in the estate of the ancestor of the respondent a talukdar, in whose possession they were found at the settlement in 1859. The widow at that time applied as owner for the settlement of the villages. Her claim was resisted by the agent of the talukdar on the ground that he was entitled to possession until sums paid by him on account of the villages were paid off, and the settlement was made in accordance with possession, the widow being directed by the settlement officer to proceed by separate application to get the villages released by payment of the money due by her, but she took no steps to get the property released, and when in 1867 she applied for regular settlement of the villages her claim was dismissed on 31st October 1868, on the ground that they were included in the sanad granted by Government to the talukdar. In a suit brought in 1903 by representatives of the widow for possession of a share of the property on the ground that the settlement proceedings in 1859 constituted the talukdar either a mortgagee or a trustee on behalf of the widow it was admitted that the claim for redemption was barred by s. 6 of Act No. I of 1869. *Held* (upholding the decision of the Court of the Judicial Commissioner) that there was no warrant for the contention that the correlative obligation that lay on the talukdar to release the villages on payment of the money due on account of them created a trust or constituted him a trustee for the widow, who took no steps to comply with the directions of the settlement officer, and allowed the talukdar to remain in possession and set up a distinctly adverse title in 1867, when she applied for regular settlement. *Hassan Jafar v. Muhammad Asker* I. L. R. 26 Cal. 879. L. R. 26 I. A. 229, distinguished. From the date of the dismissal of her application in 1868 possession was adverse to her, and the suit, not having been brought until 1903, was clearly barred by lapse of time. *Muhammad Baksh v. Muhammad Baksh Ali Khan* (1910). I. L. R. 33 ALL. 125

3 ———— **Will of Talukdar—Oudh Estates Act (I of 1879)—Sanad executed by talukdar through the medium of family friends—Whether document was testamentary or non testamentary—Registration of document—Indian Registration Act, 1877, ss. 17 and 49—Instrument affecting immovable property—Ground not specially taken in argument in courts below—Costs.** A talukdar in 1902, in compliance with the directions issued by the Government, made a declaration that, "I wish to file this application, that after my death Umrao Singh the eldest son (sic) my estate should continue in my family undivided in accordance with the custom of the rajpoots, and that the younger brothers

TALUKDAR—contd.

shall be entitled to get maintenance from the gaddis-shahs." *Held* (affirming the decision of the Courts in India), that it was a valid testamentary disposition by the talukdar of his estate in favour of his eldest son. The same talukdar, having three sons, with one of whom he was on bad terms, executed in 1884 the following document, which he called a sanad—"For Prithpal Singh, who is my son, I fix Rs 300 annually, so that he may maintain himself. Besides this whatever I may give I will give equally to the three sons except provisions which they may take from my godown (*kothar*). The marriage and ganna expenses of the sons and daughters shall be borne by me. After me the three sons are to divide the property, moveable and immoveable. This has been settled through the mediation of Thakur Joto Singh of Bihat and Thakur Ratan Singh of Rojah. *Held* (reversing the decision of the Judicial Commissioner's Court), that it was a non testamentary instrument. It was a family arrangement arrived at by the mediation or arbitration of two gentlemen, friends of the family and interested in its honour and it was plainly intended to be operative immediately and to be final and irrevocable. *Held* also that it required to be registered under s. 17 of the Registration Act (III of 1877) in order to make it effective as regards immoveable property, and, being unregistered, was, so far, void. On an objection that it was not open to the appellants to contend that the document was not a will the fact that they had throughout the proceedings in the Courts below, taken conflicting views as to the nature of the document was held not to preclude their Lordships from considering and determining the real question in the case and that they were bound to give effect to the real character of the document. Neither party had pursued a consistent course in the matter. Their Lordships permitted the appellants therefore, to raise that contention but in allowing the appeal on that ground they did so without costs to the appellants on this appeal or in the Courts below. *UMRAO SINGH v. LACHMAN SINGH* (1911)

I. L. R. 33 ALL. 344

TALUQA

See HINDU LAW—INHERITANCE

I. L. R. 40 ALL. 470

See OUDH ESTATES ACT, 1869, s. 14

I. L. R. 43 ALL. 245

See TALUK

TALUKDARI PROPERTY

See COMPROMISE I. L. R. 47 Cal. 932

• See OUDH ESTATE ACT 1869 s. 14

I. L. R. 43 ALL. 245

— Incumbrance by Talukdar and his

son—

See GUJARAT TALUKDARI ACT (DOM ACT VI OF 1898) s. 31

I. L. R. 44 DOM. 832

Construction—"Successors." *Primogeniture sanad—* Construction—"Successors." A sanad granted in 1862 to a Muhammadan lady conferred a talukdari estate in Oudh upon her and her heirs for ever subject to the payment of revenue; it provided "in the event of your dying intestate or any of

TALUQDARI PROPERTY—contd.

your successors dying intestate, the estate shall descend to the nearest male heir according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate." The *sanad* further made it a condition that the grantee should promote the agricultural prosperity of the estate and maintain all subordinate rights, and concluded, "as long as the above obligations are observed by you and your heirs in good faith, so long will the British Government maintain you and your heirs as proprietors." Held that the word "successors" in the *sanad* meant those designated parties who would succeed under the *sanad* upon an intestacy, and that the estate having passed by demise out of the line of succession designated, its further devolution was according to Muhammadan law. *GHULAM ABBAS KHAN v AMAT UL FATIMA* J L R. 43 ALL 297

TALUQDARI SETTLEMENT OFFICER

See GUJARAT TALUQDARI ACT (BOM ACT VI OF 1888 AS AMENDED BY BOM ACT II OF 1905), ss 29 29B (1), (2), (3) AND 29F I L R 38 Bom. 604

TALUQDARI VILLAGE.

Power of district Magistrate to appoint inferior village police—

See BOMBAY VILLAGE POLICE ACT VIII OF 1867, s 9 I L R 44 Bom. 377

TANK.

See ESTOFFEL I L R. 39 Calc 439

TANKHAS

Tankhas granted by the Maharaja of Burdwan are heritable allowances in the nature of property and therefore assignable. *LALA MUKTI PROKASH NAYDE v SRIMATI ISWARI DEVI DEBI* . . . 24 C. W. N 938

TARWAD.

See MALABAR LAW I L R 36 Mad. 581 I L R 39 Mad. 317

Presumption as to ownership of property acquired in the name of junior member of tarwad—Presumption of fact and not of law. No presumption of law can be raised as to whether properties acquired in the name of a junior member of a tarwad belong to him or to his tarwad. Any presumption to be raised is one of fact. *GOVINDA PATILKAR v NANI* (1913) I L R 36 Mad. 304

TAULIATNAMA.

testamentary character of—

See MAHOMEDAN LAW—WAKF I L R. 46 Calc. 13

TAX.

See ADEN SETTLEMENT REGULATION (VII OF 1900), s 13 I L R. 40 Bom. 446

See ASSESSMENT I L R 42 Bom. 682

See CANTONMENTS ACT, 1880, s 22 I L R. 38 Bom. 293

TAX—contd

See COSTS . I L R. 39 Bom. 353 I L R. 40 Bom. 538

to recover money levied as—

See LIMITATION ACT, 1877, SCH II, ARTS 2, 61, 62, 120 I L R. 32 ALL 491

TAXATION OF COSTS.

See BOMBAY REGULATION II OF 1827, s 62. I L R. 37 Bom. 303

See COSTS . I L R. 40 Bom. 588 I L R. 45 Bom. 1234

Power of High Court to give direction as to how costs should be taxed—

See BOMBAY REVENUE JURISDICTION ACT (X OF 1870), s 12 I L R. 45 Bom. 1177

TAXING JUDGE.

reference by—

See COURT FEES ACT (VII OF 1870), ss. 5 AND 7 I L R. 23 ALL 20

TAXING OFFICER.

See APPEAL, VALUATION OF I L R. 37 Calc. 914

See COURT FEES . 3 Pat L J. 443

See COURT FEES ACT (VII OF 1870), ss. 5 AND 12 . I L R. 32 ALL 59

TEA.

Tea or tea dust, whether an article of food or drink, Calcutta Municipal Act (Beng III of 1899), s 495 Tea or tea dust is an article "of human food or drink" within the meaning of s 495 of the Calcutta Municipal Act (Beng III of 1899) *Hinde v Almond*, 52 J P 151, explained and distinguished. Definition of "food" in the Sale of Food and Drugs Act (38 & 39 Vic, c 63), s 2 as amended by 62 & 63, Vic, c 51, s 28, adopted *CORPORATION OF CALCUTTA v PAGLI* (1919) I L R 47 Calc. 53

TEA GARDEN.

See INCOME TAX I L R. 48 Calc. 161

TEISHKHANA PAPER.

Evidence—Official record—Road cess returns—Bengal Cess Act (IX of 1850), s 95—Road-cess return filed by a co-sharer landlord, and assessment made on the basis of it—Whether such return is admissible in evidence against the other co-sharers. Teishkhana paper is a register kept for the information of the Collector, but it is in no sense an official record; therefore, before a teishkhana paper could be used in evidence, it must be proved that it had been kept in due course by the registered patwari. *Bairnath Singh v, Sulhu Mahon*, I L R 18 Calc 534, and *Samar Dasgupta v Juggal Kishore Singh* I L R 23 Calc 366, distinguished. Persons interested to the extent of a one fourth share of the superior interest filed a road cess return under the provisions of the Bengal Cess Act, and they stated therein, as they were bound to do under the law, the names of the tenants in occupation of specific lands. The statement which they made was against their interest. No similar return was filed by the

TEISHKHANA PAPER—contd

persons who represented the remaining three fourths share of the superior interest, and the Revenue authorities assessed the road cess, as they were entitled to do, upon the return filed by the one fourth shareholders *Held*, that the return filed by the one fourth shareholders is admissible in evidence as against the remaining shareholders of the superior interest *Nusseerun v Gourie Sunkur Singh*, 22 W R 192, distinguished S 95 of the Bengal Cess Act (IX of 1880) is not exhaustive. It was intended to restrict the operation of s 21 of the Evidence Act, and a road cess return may be admissible in evidence as against persons other than the one who has made the return *CHALHO SINGH v JHARO SINGH* (1911)

I L R 39 Calc 995

"TEJI MANDI" TRANSACTIONS

See *WAGERING* I L R. 37 Bom 264

TELEGRAM FROM COUNSEL

See *BAIL*. I L R 38 Calc. 293

TEMPLE

See *IDOL* I L R 36 Bom 135

See *OFFERINGS TO A TEMPLE*

See *RELIGIOUS ENDOWMENTS ACT* (XX of 1863), s 3 I L R 38 Mad 1176

See *TEMPLE COMMITTEE*

See *TRUSTEES OF A TEMPLE*

— dispute concerning—

See *OFFERINGS TO DEITY*

I L R 38 Calc 387

— Election of Mahant—

See *HINDU LAW—ENDOWMENT*

I L R 37 All 298

— Manager of—right to remove idol—

See *HINDU LAW—RELIGIOUS OFFICE*

I L R 44 Bom 466

— right to worship in and to carry procession into street—

See *CIVIL PROCEDURE CODE*, 1908, s 9

I L R 44 Bom 410

— right to perform festival in a—

See *HINDU LAW—CUSTOM*

I L R 40 Mad 1108

— right of management of—

See *PARTITION*. I L R 39 All 651

— Suit by pujaris against guravs to recover offerings made at—

See *CIVIL PROCEDURE CODE* (Act V of 1908) s 9 and 92

I L R 45 Bom 683

TEMPLE COMMITTEE.

See *CIVIL PROCEDURE CODE* (Act V of 1908) s 92 I L R 40 Mad. 212

See *RELIGIOUS ENDOWMENTS ACT* (XX of 1863), s 10 I L R 38 Mad. 594

— powers of—

See *RELIGIOUS ENDOWMENTS ACT* (XX of 1863), s 3 I L R 38 Mad 1176

I L R. 39 Mad. 700

TEMPLE COMMITTEE—contd.

— VACANCY IN—

See *RELIGIOUS ENDOWMENTS ACT* (XX of 1863), s 10 I L R 40 Mad. 793

TEMPLE PROPERTY.

See *CIVIL PROCEDURE CODE* (Act V of 1908) s 92 I L R 42 Bom 742

TEMPORARY INJUNCTION

See *CIVIL PROCEDURE CODE*, 1908, O XXXIX

See *INJUNCTION* 19 C W N 442

— Conditions of grant of temporary injunction—Co owners—Build up by co owner—Undue advantage—Review by High Court—*Charter Act* (24 & 25 Vict. c 104) s 15 Where plaintiffs who were joint owners with defendants in respect of the property in suit sued them for declaration of title thereto and applied for an injunction to restrain the defendants from building on the land and the lower Appellate Court set aside the temporary injunction granted by the Court of first instance *Held*, that sold occupation by one co sharer did not necessarily constitute ouster of the other co owners. But a co-owner who was, with the tacit or express consent of his co sharer, in sole occupation of a portion of joint property, was not entitled to change the nature of that possession or to use the property in a mode different from that in which it had previously been used *Durgendra Narain Poy v Purnendu Narain Roy*, 13 C L J 189 followed *Held*, further, that in granting an interim injunction what the Court had to determine was whether there was a fair and substantial question to be decided as to what the rights of the parties were *Moran v River Steam Navigation Co*, 14 B L R 352, followed. The real point was not how these questions ought to be decided at the hearing of the cause, but whether the nature and difficulty of the questions was such that it was proper that the injunction should be granted until the time for deciding them should arrive *Walker v Jones*, L P P C 60 followed *Held* also, that under circumstances like these the matter for consideration at that stage was where did the balance of convenience lie, was it desirable that the status quo should be maintained or was it right that defendants should be allowed to continue to alter the character of the land *Jones v Pacey Builders and Produce Company Ltd.*, [1911] 1 A D 455, *Aynsley v Glover*, L R 13 Eq 544, *Currier's Company v Corbett* 2 Dyer & Sm. 355, *Mason v Pender*, 27 CA D 43, referred to. *Held* further, that in a case of this description (where a substantial portion of the building had been erected after the defendants had become aware of the institution of the suit and of the application for temporary injunction) the Court would if necessary, proceed not only to grant a temporary injunction restraining the further erection of the building but also to direct that the building already erected be taken down *Daniel v Ferguson*, [1891] 2 CA 27, *Van der Vort v Horsley* [1895] 2 CA 714, referred to. *Held*, that the High Court was competent to interfere under s 15 of the Charter Act (24 & 25 Vict. c 104) in view of the conduct of the defendants which amounted to a defiance of the authority of the Court *Iran v. SHAMBER KARNAN* (1913) I. L. R. 41 Calc. 426

TEMPORARY INJUNCTION—*contd.*

2. ————— Temporary injunction, subsequently dissolved—Order to be obeyed while it lasts—Order binding on party though it prohibits receiving payment from Government and Government authorised to pay by statute—Order operates in personam—Government's duty to ascertain and obey law—Question of construction, question for Courts Where in a suit for dissolution of partnership and accounts a Receiver of the partnership assets was appointed and a temporary injunction was granted restraining the defendants, *inter alia* from receiving certain payments from Government and the Government which was no party to the suit made payments to one of the defendants in alleged exercise of power reserved to it by statute and subsequently the injunction was dissolved the plaintiff's case having failed *Held*, that an injunction although subsequently discharged because the plaintiff's case failed, must be obeyed while it lasts That although the injunction could not bind the Government not to pay or make the Government responsible for that obedience to the law which the Court was entitled to expect, the man who received its breach of the order was guilty of a contempt in no way cured by the payment by Government The non-existence of any right to bring the Crown into Court such as exists in England by petition of right, and in many of the Colonies by the appointment of an officer to sue and be sued on behalf of the Crown, does not give the Crown immunity from all law, or authorise the interference by the Crown with private rights at its own mere will There is a well established practice in England in certain cases where no petition of right will lie, under which the Crown can be sued by the Attorney General *Dyson v Attorney General*, [1911] 1 K R 410, and *Burgess v Attorney General*, [1912] 1 Ch 175, referred to Is it the duty of the Crown and of every branch of the Executive to abide by and obey the law If there is any difficulty in ascertaining it, the Courts are open to the Crown to sue and it is the duty of the Executive in cases of doubt to ascertain the law in order to obey it, not to disregard it The Government in this case having made its payment with notice of the Court's order: *Held*, that although with regard to the payments made under statutory powers, the action of the Executive might be justifiable the question whether any particular sum mentioned in the contract in suit was payable as for "labour and supply" (so as to be within the Government's power to pay under the statute) was a question of construction and therefore of law for the Courts That the proper course in the present case for the Executive would have been either to apply to the Court to determine the question of construction of the contract and to pay accordingly or to pay the whole amount over to the Receiver and to obtain an order from the Court on the Receiver to pay the sums properly payable according to the true construction of the contract *EASTERN TRUST COMPANY v MACKENZIE MANN & Co., Ltd* (1915) . . . 20 C W. N. 457

3. ————— When may it be granted—Balance of convenience to be considered—"Irreparable injury"—"Claim of right" Upon an application for *interim* injunction, it is sufficient if the plaintiff makes out a *prima facie* case in support of the title asserted by him Where a plaintiff, who is out of possession, claims posses-

TEMPORARY INJUNCTION—*contd.*

sion, the Court will not grant injunction against a defendant in possession under a claim of right unless the threatened injury would be irreparable It is only in cases where property which it is essential should be kept in its existing condition during the pendency of the suit, is in danger of being wasted, damaged or alienated, that the Court ought to interfere The plaintiff must show that the interference of the Court is necessary to protect him from irreparable or at least serious injury before the legal right can be established at the trial By the term "irreparable injury," however, it is not meant that there must be no physical possibility of repairing the injury or all that is meant is that the injury would be a material one, and one not adequately reparable by damages Money compensation may not be an appropriate and adequate remedy in every case of injury relating to immovable property, and the question of "irreparable injury" depends upon the circumstances of each case *Lundee v Bettle, L. J. 33 Ch 451, Krishna Prasad Singh v Srinivas Prasad Singh, I L J 33 Cal 791, The Mogul Steamship Co v M Grier & Co., 15 Q B D 476, Hilton v The Earl of Granville, 1 Cr & 1A 253, Bodlam v Jhansal Singh, 1 C B 429, Krich v Burrell, L. R. 7 Ch D 551, Hemanta Kumar Poy v Barenagore Jute Factory Co., 19 C B N 412, and Jural v Shamsur Rahman, I L R 41 Cal 426 referred to BENG. DECLOS & Co v SATISH CHANDRA CHATTERJEE (1919) . . . 1 L R 46 Cal 1001*

TENANCY.

See PENT I L R. 41 Cal 347

See SALE I L R. 45 Cal. 294

determination of—

See LANDLORD AND TENANT
I L R 38 Mad. 710

division of—

See LANDLORD AND TENANT
14 C W. N. 335

From year to year—Determination of annual tenancy—Notice to quit Ordinarily, unless there is an express agreement for the expiry of a tenancy on a certain day, a tenancy from year to year is only determined by a notice to quit *BITARAM BUKARI v SADRU* (1913)

I L R 38 Bom 240

Tenancy created by lease—Fruit of person not party to contract holding under lease to show that purpose of tenancy was different *Held*, per D. R. CHATTERJEE, J.—That although where it is shown by a lease unambiguous in its terms that the land was originally acquired by the tenant for cultivating it by himself or by hired servants or by members of his family the character of the tenancy is not altered by the mere fact that the land was subsequently let out to tenants and although in such a case the land may as between the lessor and the lessee be taken to have been acquired for the purpose as stated in the lease itself, it is certainly open to a person who is no party to the contract to show that the real purpose for which the land was acquired by the lessee was other than what was stated in the lease *RAJAKI KANTHA MUKHERJEE v WEST ALL* (1916) . . . 21 C. W. N. 183

TENANCY AT WILL.

See LANDLORD AND TENANT

I L. R. 36 Mad. 557

Yearly rent reserved—
Lease, whether by registered instrument only—
Transfer of Property Act (IV of 1882) s. 107
Section 107 of the Transfer of Property Act does not lay down that a lease of immovable property can be made only by a registered instrument but it can be made only by a registered instrument in three cases, viz (i) a lease from year to year (ii) a lease for any term exceeding one year and (iii) a lease reserving a yearly rent. The fact that the rent is reserved at so much a year does not conclusively show that the tenancy is from year to year. The terms of a tenancy which does not come within s. 107 of the Transfer of Property Act can be proved by oral evidence. *Lala Surabhi Narain Lal v Catherine Sophia* 1 C W N 248. *Fazil Sheikh v Kerumuddin Sheikh* 6 C W N 268. *Sita Nath Pal v Kartick Gharam* 8 C W N 434 and *Tenataris Zamindar v Raghava* 1 L R 3 Mad 157 referred to. *SARAT CHANDRA DUTT v JADAB CHANDRA GOSWAMI* (1916)

I L. R. 44 Calc 214

TENANCY BY SUFFERANCE

See GRANT

I L. R. 37 Calc 674

TENANCY IN COMMON

See JOINT ESTATE.

I L. R. 43 Calc 103

See TENANT IN COMMON

See WILL

I L. R. 43 All. 600

A tenant in common is entitled to sue for his share of the property demised when a forfeiture has been incurred under the terms of the lease. Forfeiture cannot ordinarily be relieved against in the case of a mining lease. *SYED AHMAD SAHIB SHUTTANI v MAGNETITE SYNDICATE LIMITED* 1 L. R. 39 Mad 1049

TENANT

See BOMBAY CITY MUNICIPAL ACT ss 379 379A

I L. R. 36 Bom 81

See LIMITATION ACT (IX of 1908) s. 8

SCH I ART 47 I. L. R. 38 Mad. 432

See MADRAS ESTATES LAND ACT (I of 1908) s. 8 EXCEPT

I L. R. 38 Mad. 843

See MADRAS RENT RECOVERY ACT

I L. R. 34 Mad. 179

See TRANSFER OF PROPERTY ACT 1882 ss 105 to 117

holding over suit to eject—

See JURISDICTION

I L. R. 38 Mad. 795

interested in subject of dispute—

See DISPUTE CONCERNING LAND

I L. R. 37 Calc 285

liability of—

See DRAINS

I L. R. 33 Calc. 268

TENANT—contd

liability of, to pay compensation for loss of crops—

See MADRAS ESTATES LAND ACT (MAD ACT I OF 1908) ss. 4 27 73 AND 143

I L. R. 40 Mad 640

right of—

See IRRIGATION CHANNEL.

I L. R. 40 Mad. 640

See MALABAR TENANTS IMPROVEMENTS ACT (MADRAS I OF 1900) ss 3 6

I L. R. 38 Mad. 954

status of—

See BENGAL TENANCY ACT 1885 ss 5, 103B

I L. R. 45 Calc 805

suit to recover immovable property from—

See COURT FEES ACT (VII OF 1870) s. 7, CL (5) SUB-CL. (2) (cc)

I L. R. 39 Mad. 873

Suit for ejectment of non-occupancy tenant—

See AGRA TENANCY ACT 1901 ss 10 AND 58

I L. R. 42 All. 38

surrender by, of waste lands—

See MADRAS ESTATES LAND ACT (I OF 1908) s. 8

I L. R. 38 Mad. 891

status of—Consolidation of raiyats

holdings if makes it a tenure—Permanency claimed by tenant—Onus to explain a denial of rent extends thereto—Habit on land of tenancy if raises presumption of permanency—Landlord's abstention from enhancing rent or making land khas if ground for inferring permanent grant—Abstention explained—Tikka tenant in 24 Pergannas meaning of—Marfaldars rent receipts grant of if recognition of tenant—Transferability—Onus in case of agricultural and homestead lands respectively—Decree for rent plus drainage charges if rent decree—Bengal Tenancy Act (VIII of 1885) s. 1 (5) and Bengal Drainage Act (VI B C of 1880) s. 42 (a)—Decree holder expressing intent on to buy tenure at rent-sale at a given price and buying it at said price without fraud if makes sale a private sale—Bengal Tenancy Act (VIII of 1885) s. 167—Adverse possession commencing before creation of tenure if incumbrance—Adverse possession commencing after if incumbrance and must be annulled—Incumbrance created by sub tenant if to be annulled—Arrest of adverse possession on rent sale. The mere fact of consolidation of a number of separate raiyats holdings cannot alter the nature of the tenancies and convert them into a tenure unless the landlord and the tenant agreed at the time that the holdings should thenceforth be a tenure. It is for the tenant defendant who asks the Court to presume that the tenancy is permanent to explain apparent variations in the rent since the date of the permanent settlement, not merely by showing that there was variation in the area but also by showing that the additional rent was assessed at some rates of rent fixed according to the class and quality of the land. The existence of habits on lands the subject of a tenancy does not raise any presumption of permanency. The mere fact that rent has not been changed for a long time by itself is not sufficient to show that the original contract was for

TENANT—contd

payment of rent by the tenant at a fixed rent is over. In this case the fact that the landlord did not for a long period make any attempt to enhance the rents of the holdings or turn them into shares was held to be sufficiently explained by the fact that the yield of the land to the tenant was until recently quite small. The word *tenancy* as used in relation to the tenancies in dispute though they are situated in the "4 Per gannas" means interests which are not permanent. Where rent receipts asked for in the name of the purchaser of a holding were expressly refused by the landlord who granted receipts in the name of the old tenant the purchaser being described merely as *marfadar*. Held that there was no recognition on the part of the purchaser as a tenant. It is for the tenant defendant who claims his holding of agricultural land to be transferable to prove it. There is no onus of proving non-transferability of the tenure upon the landlord. In the absence of a custom to the contrary the incident of non-transferability is common to tenancies from year to year of homestead lands created before the passing of the Transfer of Property Act s 108 cl (j) of the Act not being applicable to them. Where a decree for rent included certain drainage charges it was a rent decree within the meaning of Ch XIV of the Bengal Tenancy Act drainage charges payable under s 42 (a) of the Bengal Drainage Act being money recoverable as rent as defined in s 1 cl (5) of the Bengal Tenancy Act. Where before the sale of a holding in execution of a rent decree the judgment debtor being anxious to procure good prices for the holding at the sale approached the decree holder and the latter expressed his intention to bid up to a certain amount and at the sale the property was knocked down to the decree-holder for that amount. Held that in the absence of fraud, this circumstance would not deprive the purchaser of the benefit attaching to a sale under the Bengal Tenancy Act or render it a private sale. *Quare*. Whether the purchaser of a plot is bound to annul encumbrances created not by the *putnadar* but by the *darputnadar*. *Quare*. Whether the person who may have acquired a statutory title by adverse possession for 12 years against the *putnadar* does not stand in the same position as an unrecorded co-sharer of the *putnadar* and whether such right does not pass at the rent sale without the necessity of annulling it as an encumbrance under s 107 of the Bengal Tenancy Act. *MAHMOOTH NATH MITTER v ANATH BANDHU PAL* (1918) 23 C W N 201

TENANT IN-COMMON

- See CIVIL PROCEDURE CODE 188⁷ ss. 13
46⁷ I L R 26 Bom 53
See HINDU LAW—JOINT FAMILY
I L R. 38 Mad. 684
See MORTGAGE I L R 47 Cal 175
I L R 35 Bom 371
L R. 46 I A 2²

See PARTIES JOINER OF
I L R. 42 Bom 87

See POSSESSION I L R 37 All 203

See TENANCY IN COMMON

TENANT IN COMMON—contd

Hindu Law—Mitakshara—Daughters inhering property from their father—Shares separate and absolute. When the property so inherited is not physically divided, it is held by the daughters as tenants in common and not as joint tenants and there is no survivorship between them. *VITHAYPA v SAVITRI* (1910) I L R 34 Bom. 510

Co-lessees—Lease by Mahomedan co-lessees—Mining lease—Forfeiture clauses—Lease determined by one lessor—Suited by one tenant in common in settlement maintainable if of—Suit for whole or for share, or a rateable part of—Penal provisions strict construction of—Effect against forfeiture—Covenants in a mining lease except on to rule—English and American law rules of. A tenant in common is entitled to sue for his share of the property demised where a forfeiture has been incurred under the terms of the lease. *Sri Rajah Simhadra Appa Rao v Prathipati Ramaya* I L R 29 Mad 29 *Koragala v Narayana* 25 Mad L J 315 and *Eshwara Per Mahomed v Cursey* 31 Bombay Decree I I P 31 Bom 641 followed. *Gopal Ram Mohani v Dhakshar Perahad Narai* 5 Nigh I L R 35 Cal. 807 dissented from. Though the aim of law generally is in favour of giving relief against forfeiture in the case of leases in the case of mining leases a proviso for re-entry should be strictly construed and forfeiture cannot ordinarily be recovered against English and American law considered. *Dor v Church Wardens of Rye* 4 Q B 19 and *Doe d Lyod v Ingly* 15 M d W 465 153 E R 953 followed. *E. Lambhat v Vannayak Ganpat Rao* I L R 35 Bom 239 referred to. *STEED AHMAD v MAGNISTE SYNDICATE LTD* (1916) I L R 29 Mad. 1649

TENDER

- See CONTRACT ACT 187⁷ s 38
See INTEREST I L R 34 Mad. 320
See JURISDICTION OF CIVIL COURTS
I L R 34 Bom. 13
See MORTGAGE I L R 42 All 420
See TRANSFER OF PROPERTY ACT 1882
s 60 I L R. 43 All 95 & 638
s. 84 I L R 33 Mad 100
I L R 36 All 139

— by debtor—

See LIMITATION I L R 38 Mad 374
— essentials of a valid—

See MADRAS ESTATES LAND ACT (I of 1908) ss. 54 AND 78 CL (2)
I L R. 38 Mad. 629

— methods of—

See MADRAS ESTATES LAND ACT (I of 1908) ss. 54 AND 78, CL (2)
I L R. 38 Mad. 629

TENEMENTS

— severance of—

See EASEMENT I L R 38 Mad 149

TENURE

- See BOMBAY CITY LAND REVENUE ACT
(BOM II of 18 6) ss. 30 35, 39 40
I L R 39 Bom 664
See JAIGIR I L R 42 Cal 305

TENURE—contd.

1. ————— whether permanent or temporary—Tenancy held by original grantee or his successor in interest for 70 years under four doul kabulyats for terms—"Sarasari" whether applies to rent only or tenure itself—Fact or law, question of—Construction. In a suit by the landlord, under s. 106, Bengal Tenancy Act, for correction of an entry that the tenancy of the defendants was a permanent tenure, for doul kabulyats were relied upon to prove the contract of tenancy, bearing dates 1250, 1277, 1285 and 1295 B. S. All these were for terms of years, and they did not contain the words "from generation to generation." But the successive settlements were either with the original tenant or his heir, the oral evidence being to the effect that the dead man's heir was recognised as having a moral claim to succeed to his rights. All the kabulyats bound the tenant to keep the trees intact and restrained him from making transfer of the land, the last three adding that he must not partition the land, and providing for the landlord's right of re-entry in the event of the tenant not entering into a fresh arrangement. They also spoke of the tenancy as *sarasari* (temporary). The lower Appellate Court upon these materials held that the tenure was considered by the landlord to be heritable, that it was permanent but not transferable and that the rent was liable to enhancement. *Held*, on second appeal, that the question whether the tenure was permanent or not was not merely one of fact. That at any rate it depended to a large extent on the construction of the kabulyats, "the question, for instance, whether the word "*sarasari*" referred to the variability of the rent or the nature of the tenancy being one of construction. That the tenure was neither permanent nor heritable. *Per WALMSLEY, J.*—The tenant who claims a hereditary right under a document which does not contain the words "from generation to generation" has a heavy onus to discharge. That the temporary character of the tenancy was not limited only to the amount of rent. That repeated renewals of an agreement do not change its character and regard should be had to the later rather than the earlier kabulyats, and the fact that during a period of 70 years only four kabulyats were passed and the settlement made again and again with the same man or his successor in interest did not alter the nature of the agreement. *PROBYOT KUMAR TAGORE v SARAT CHANDRA DAS* (1917) 21 C. W. N. 809

2. ————— Decree for rent of a tenure against the recorded tenants who are some of the several tenants of the tenure, effect of—Unrecorded tenant not a party, if bound by rent sale. Where a landlord obtained a decree for arrears of rent of a tenure against all the tenants who were the recorded tenants except one who after acquiring title by purchase never got his name registered in the landlord's *shrestha*. *Held*, that the entire tenure, and not merely the interest of the recorded tenants, passed by the sale in execution of such a decree and it was not open to the unrecorded tenant, though he was not a party to the rent suit, to sue for a declaration of his right on the ground that his share in the tenure did not pass by the sale. *PROFULLA KUMAR SEN v SALINULLA BANADUR* (1918) 23 C. W. N. 590

3. ————— Uniform payment of rent for less than 20 years before final

TENURE—contd.

publication of record of rights but for an aggregate period of over 20 years—Presumption of permanency if arises under Bengal Tenancy Act (VIII of 1885) ss. 35, 50, 115—Natural presumption—Court when may refuse to enhance rent as inequitable. Where it appeared that a raiyat had been holding land as tenant on payment of a uniform rent for over 20 years before the institution of the suit, but that there having been a record of rights in respect of the holding, the period during which before the final publication of the record of rights the rent had been so paid fell short of 20 years. *Held*, that the presumption of fixity of tenure under s. 20 of the Bengal Tenancy Act did not arise. Where a tenancy appeared to have been created only 40 years ago. *Held*, that uniform payment of rent during this period did not raise a natural presumption that the tenancy was a permanent one. *GURI CHANDAN NANDI v SARAB ALI* (1919) 23 C. W. N. 1041

TENURE-HOLDERS

———— liability of—

See REVENUE SALE.

I. L. R. 37 Calc. 559

TERMINATION OF SERVICE.

See SCHOOL-MASTER.

I. L. R. 44 Calc. 917

TERRITORIAL JURISDICTION.

See DIVORCE.

I. L. R. 40 Calc. 215

TESTAMENTARY AND INTESTATE JURISDICTION.

See PROBATE.

I. L. R. 37 Calc. 387

TESTAMENTARY CAPACITY.

See PROBATE.

I. L. R. 39 Calc. 245

See WILL.

I. L. R. 47 Calc. 1043

TESTATOR.

———— capacity of, to execute will—

See WILL.

I. L. R. 38 Calc. 355

———— domiciled abroad—

See LIMITATION.

L. R. 43 I. A. 113

20 C. W. N. 833

———— money belonging to, but not known to him—

See WILL.

I. L. R. 38 Mad. 109

THAK MAPS.

———— Evidentiary value of—

See PUBLIC NAVIGABLE RIVER.

24 C. W. N. 639

See REVENUE SALE LAW, s. 37.

15 C. W. N. 706

See LAKHNERAJ LANDS.

I. L. R. 45 Calc. 574

———— Jungle lands, possession of, presumption as to—Ex parte entry in thakbust records without enquiry, value of. Certain plots of land were entered in the thakbust maps as belonging to a certain Pergunnah in which the plaintiff claimed them to be, and no question of the de-

THAK MAPS—contd.

markation of boundary of these lands was raised in any of the many disputes which arose between the parties during the survey proceedings. It was further found that the title to those lands was with the plaintiffs: *Held*, that, having regard to the nature of the property which was jungle land, possession must be presumed to have been all along with the plaintiffs. A mouzah appertaining to Pergunnah Pukkuria had not been separately measured or *thaled* in the course of the survey proceedings. On a statement being called for from the person in possession of the mouzah for its non appearance on the *thak* map, his agent appeared and stated that the mouzah was wholly covered with jungle, that it being situated by the side of Garhgajali which was defendant's property had been measured along with it and that 10 gundas share of Garhgajali should be taken for that mouzah. Proceeding on these allegations the Deputy Collector made an entry to that effect. A petition made by the defendants Nukhtoor denying the allegations of the plaintiffs' agent was rejected as the matter had been disposed of. With the help of this disputed entry the Subordinate Judge proceeded to mark off a certain area as belonging to the plaintiff as part of the said mouzah. The High Court set aside that decision. *Held*, that as the decision of the Subordinate Judge was based on the entry made *ex parte* and without enquiry and on an allegation of the zemindar's agent which was immediately contradicted the decision of the High Court was correct. **JAGA DINDRA NATH ROY v. HEMANTA KUMARI DEBI** (1911) 15 C W N 887

Value of, as evidence of title and possession. *Thak* and survey maps may be presumed to have correctly delineated the boundaries of villages and thus to furnish valuable evidence of possession at the time they were made and consequently also of title. But such presumption falls where the maps were promptly challenged and found inaccurate. **MOHENDRA NATH BISWAS v. SHAMSUNNESSA KHATUN** (1914) 19 C W N 1280

Thakbust maps, value of, as evidence—Condition of land how far affects value of thak maps—Map prepared by Government on behalf of private proprietor, how proved—What circumstances must be established before using such map against a party—Indian Evidence Act (I of 1872), ss 74, 83, 90—Applicability to private maps made at the instance of Collector—Ss 12, 13—Admissibility to prove ascertainment of title. S 90 of the Indian Evidence Act only shows that a document was prepared at the time at which it purports to have been made by the officer whose signature it bears, but it does not establish the accuracy of the document. The question whether a map is a public document within the meaning of s 74 of the Evidence Act is *prima facie* a question of fact and the fact that a map was treated as a public document in a previous suit to which the plaintiff was not a party would not make it binding as such on the plaintiff. A map prepared at the instance of the Collector when in charge of a private estate is a private document and s 83 of the Evidence Act has an application to such map. So before such a map can be used against a party not only must its accuracy be strictly proved, but other circumstances which may affect

THAK MAPS—contd.

its evidentiary value such as the purpose for which the map was prepared, must be duly considered; for a map prepared for one purpose cannot be used for a totally different purpose, and in considering the value of such maps the Courts must consider how far the boundaries now in dispute had been in contemplation when the map was prepared. Such a map, unless proved to have been prepared with the assent or at any rate the knowledge of a party, is of very little value as evidence against such party, and in the absence of signature of the parties on the map the mere recital on the map that other persons had notice of the proceedings would not be conclusive. Although the evidentiary value of a *thak* map would be affected by the condition of the lands at the time of the survey, the map cannot be ignored merely on a general allegation that the lands were jungle at the time without considering whether it was still capable of being surveyed. Possession of jungle lands is *prima facie* with the person whose title is established. **PRITA NATH MAJUMDAR v. MAHENDRA KUMAR MITRA** (1911) 16 C W N 317

Value of, as evidence—Thak maps of 1852, if to be presumed as unreliable. *Thak* maps have always been considered by Courts as good evidence, and although the value of a *Thak* map depends upon its accuracy there is no presumption that *Thak* maps must be inaccurate. Opinion of Captain Hurst in his "Notes on the old Revenue Surveys" and **JAGA DINDRA NATH ROY v. Secretary of State for India** L R 30 I A 44 s c I L R 30 Cal 291, 7 C W N 193 referred to. **KRISHNA KALYANI DAS v. R. BRAUFFELD** (1915) 20 C W N 1028

If evidence of conditions at Permanent Settlement—Second appeal—Chitta of lands escheated to Government, if public document. It cannot be laid down broadly that a *thakbust* map prepared in 1865 is no evidence of the state of things at the Permanent Settlement. Where in deciding whether certain lands in dispute were included within one estate or another at the time of the Permanent Settlement the lower Appellate Court relied on the *thakbust* map. *Held* that the finding could not be questioned in second appeal. A *chitta* prepared by Government of lands which had escheated to it stands on the same footing as a *chitta* prepared in respect of lands in which Government is interested as a proprietor. Such a *chitta* is not a public document. **FATEL RAHIM v. NABENDRA KRISHNA ROY** (1912) 17 C W N 151

THAK SURVEY.

Decision of Survey authorities arrived at in the presence of parties concerned, value of, as evidence when acquiesced in by parties and made basis of important transactions—Such decision, if estoppel. Where the question whether certain lands were included within a *mahal* was in 1849, in the course of a *Thak* survey, determined by the Survey authorities in a proceeding in which opportunity had been given to all parties interested of making their claims, raising their objections and producing their evidence, *Held*, that though the parties were not estopped by the decisions arrived at, these were obviously of high authority and when acquiesced in by all the parties interested for a length of time and

THAK SURVEY—contd.

made the basis of important transactions should not be disturbed unless upon the clearest proof that they were erroneous. *SURJA KANTA ACHARYA v. SARAT CHANDRA ROY CHOWDHURY* (1914)

18 C. W. N. 1281

THEATRES

See **BYE LAWS** L. L. R. 47 Calc 547

THEATRICAL PERFORMANCE.

*Keeping open a theatre after prescribed hour—Joint proprietors, liability of—Penalty for offence or on offender—Calcutta Municipal Act (Beng 111 of 1899), ss 559 (52), 561—Bye laws 83 and 85—Validity of bye law 55—Bye law 85 framed under s 559 (52) of the Calcutta Municipal Act (Beng 111 of 1899) is not ultra vires by reason of s. 561 thereof, and each of the joint proprietors of a theatre is liable to a fine to the extent of Rs 20 for keeping it open after 1 A.M., in contravention of bye law 83. *Amrita Lal Bose v Corporation of Calcutta*, 21 C. W. N. 1009, overruled *Peg v Shouder Ghenar*, 7 Bom H C R 39, distinguished *Rex v Clark*, 2 Conv 610 *Queen v Littlechild*, L R 6 Q B 293, referred to. *Per MOOKERJEE, J*—As a general principle of criminal law, all who participate in the commission of an offence are severally responsible, as though the offence had been committed by each of them acting alone consequently each must be separately punished. *AMRITA LAL BOSE v CORPORATION OF CALCUTTA* (1917)*

I. L. R. 44 Calc 1025

THEFT.

See **AGRA TENANCY ACT** (II of 1901), s. 124 . . . I. L. R. 38 All. 40

See **AUTREFOIS ACQUIT**

I. L. R. 45 Calc 727

See **CRIMINAL PROCEDURE CODE** (ACT V of 1898), ss. 397-423

I. L. R. 37 Bom. 178

See **CONVICTION** 3 Pat. L. J. 354

See **LURKING HOUSE TRESPASS**

I. L. R. 44 Calc 358

See **PENAL CODE**, ss 378 to 382

1. ——— **Penal Code, s 379**
—*Theft—Claim of title by the accused—Conviction for theft illegal unless the Court finds the claim to be a pretence.* In a case of alleged theft of fish from a tank which the accused claimed to have been in their possession and not in the complainant's: *Held*, that if the accused asserts a claim to the thing alleged to have been stolen by him, he should not be convicted unless the Court is in a position to say that the claim is a mere pretence. *DURENDRA MOHAN GOSSAIN v EMPEROR* (1909)

14 C. W. N. 408

2. ——— **Penal Code, s 379**
—*Dishonest intention—Retaining passenger's umbrella to make him pay fare.* The accused, an employee under a Steamer Company, whose business it was to check the tickets of passengers, asked to see the complainant's tickets but the complainant not having got one, the accused took possession of his umbrella as security that he might be compelled to pay his fare: *Held*, that there being no suggestion that the accused intended either to get any wrongful gain to himself by compelling payment of the fare or to cause any wrongful loss to the com-

THEFT—contd

plainant who was bound to pay his fare, a conviction for theft was wrong. *MATABBAR SZEIKH v EMPEROR* (1910)

14 C. W. N. 936

3. ——— *Theft of fish in irrigation tank—Fish, offence of theft of—Depend upon power of fish to leave the tank.* Although the capture of fish in an ordinary irrigation tank will not of itself amount to theft, yet if the water in the tank become so low as to permit the fish leaving the tank, the offence may be committed. *Subba Reddy v Munsoor Ali Sahab*, I L R 21 Mad. 81, explained *Re SUBBAN SERVAL* (1913)

I. L. R. 38 Mad. 472

4. ——— **Penal Code (Act XLV of 1860), s 370—Custom, plea of—Conviction under s 379 unsustainable without the finding that the accused had no right to the subject matter of the theft.** Where the accused is charged with theft or of causing wrongful gain or wrongful loss without a clear finding that he had no right to the subject matter of the theft. *HARENDRA NARAYAN DAS v RAMJAN KHAN* (1913)

I. L. R. 41 Calc 433

5. ——— **Dishonest intent—Bond fide claim of right to property, or mere pretence—Proper question for consideration by the Criminal Courts—Criminal trespass—Evidence of complainant's possession, illicitory—Penal Code (Act XLV of 1860), ss 379, 417.** The removal of property in the assertion of a bond fide claim of right, though unfounded in law and fact, does not constitute theft. But a mere colourable pretence to obtain or keep possession of property does not avail as a defence. Whether the claim is bond fide or not must be determined upon all the circumstances of the case, and a Court ought not to convict unless it holds that the claim is a mere pretence. *Rex v Hall* 3 C & P 409, *Reg v Wade*, 11 Cox 549, *Rex v Jenner*, 7 L J M C. (O S) 79, *Reg v Leppard*, 4 F & F 51, *Nassib Choudhry v Annoo Choudhry* 15 W R Cr 47, *Runnoo Singh v Kali Churn Musser*, 16 W R Cr 18, *Mahomed Jan v Khadi Shekh*, 16 W R Cr 75, *Khetter Nath Dut v Indro Jahia* 16 W R Cr 78, *Empress v Budh Singh*, I L R 2 All. 101, *In re Madhab Hari*, I L R 15 Calc 390n, *Pandita v Rahimulla Akund*, I L R 27 Calc 561, *Emperor v Sabalsang*, 4 Bom. L. R. 930, *Algarasaurus Teron v Emperor*, I L R 28 Mad 304, *Hari Bhuvamal Emperor*, 9 C W N 274, followed. *Held* upon the facts, that even if the accused had failed to establish his title and possession to the land, it was a case of a bond fide dispute, and that the conviction of theft was bad. *ARFAN ALI v EMPEROR* (1916)

I. L. R. 44 Calc. 66

THEKADAR.

See **ODIA PENT ACT** (XXII of 1886), s 3 (10) AND CH VIIA

I. L. R. 40 All. 541

See **USEFRUCTUARY MORTGAGE**

I. L. R. 40 All. 429

THIRD JUDGE.

— duty of—

See **PRINTING PRESS, OFFICIAL OF.**
I. L. R. 39 Calc 202

THIRD PARTY.

— appearance of—

See COSTS

I L R. 48 Calc 352

Practice—Third party procedure—Directions, refusal to give—Discretion. The general principle on which a Court will issue third party directions is—(i) That there must be a clear case of contributions or indemnity from the third party (ii) that all the disputes arising out of a transaction as between the plaintiff and the defendant and between the defendant and a third party can be tried and settled in one suit and (iii) that in cases of contract and sub contract it must appear that the contract between the plaintiff and the defendant has been imported into the contract between the defendant and the third party. Under the rules now in force the third party cannot be cited so as to be bound by the trial of one particular question which is identical as between the plaintiff and the defendant and as between the defendant and the third party. *Bazler v France* (No 2) [1893] I Q B 591 followed *W & A GRAHAM & Co, v CHUNILAL HARILAL & Co* (1909)

I L R 34 Bom 423

THIRD PARTY NOTICE

See LETTERS PATENT 1865, CL 15

I L R. 45 Bom 428

High Court Rules, Original Side, Chapter VIII, Rules 127 to 133—Defendant claiming to be indemnified by third party—Third party rendering out of the Original Jurisdiction of the High Court—Notice served on third party by registered post—Chamber Judge issuing a summons for directions after the issue of third party notice—Summons made absolute and order for directions given—Leave of the Court not obtained—Letters Patent cl. 12—Res judicata—Civil Procedure Code (Act V of 1908) s 11 Ex II—Practice and procedure. In a suit filed by the plaintiffs for recovering money due in respect of certain cotton contracts the defendant pleaded that he was entitled to be indemnified by one K. E. S. against the claim made by the plaintiffs. The defendant thereupon obtained an order from the Chamber Judge for the issue of third party notice to be served on K. E. S. by registered post to his address at Peshawar. Subsequently, a Chamber Summons was issued for an order for third party directions. K. E. S. put in an affidavit stating that the High Court had no jurisdiction to try the question between him and the defendant. The Chamber Judge made the summons absolute and ordered that the third party should file his written statement and the question of liability of the third party to indemnify the defendant should be tried at the trial of the action but subsequent thereto. The third party thereafter put in a written statement contending *inter alia*, that the High Court had no jurisdiction as between him and the defendant inasmuch as the whole cause of action had arisen outside its jurisdiction and that if part of the cause of action be held to have arisen within its jurisdiction leave to sue under cl 12 of the Letters Patent had not been obtained. The trial Court held that it must be assumed from the order made on the summons for directions that the Chamber Judge decided the point of jurisdiction against the third party and that the question was therefore *res judicata*. On merits the Court passed a decree against the third party, holding

THIRD PARTY NOTICE—contd.

that the defendant was entitled to succeed on the contract of indemnity. The third party appealed.—*Held*, reversing the decree of the trial Court, (1) that the question of jurisdiction was not *res judicata* inasmuch as the Chamber Judge never in fact decided that the Court had jurisdiction to deal with the third party and that accordingly the question remained to be decided at the hearing of the action, (2) that the effect of the order on the summons for directions was that the third party came into the suit as if he was an added party defendant and that it was open to him at the trial to raise any issues which an added defendant was entitled to raise one of which being whether leave ought not to have been given under cl. 12 of the Letters Patent as he was residing outside the jurisdiction; (3) that it could not be assumed that leave under cl. 12 of the Letters Patent was given merely because the order for the issue of third party notice directed that the notice should be served by registered post to the address of the third party at Peshawar, (4) that it must be proved that an application was made to the Judge under cl. 12 of the Letters Patent and that if the Judge made the order it should appear clearly on the face of it that he was giving leave under cl. 12 of the Letters Patent. *Per MACLEOD C J*.—When a defendant asks the Court to issue a third party notice in a case in which leave has to be obtained under cl. 12 of the Letters Patent, then an application should be made to the Judge for such leave to be endorsed on the notice in the same way as it is endorsed in a plaint. *KARIN ELABI SMITH v SHEK ARMED* (1920) I L R 45 Bom 24

THREATENING LETTER TO COURT

See UNPROFESSIONAL CONDUCT

I L R. 43 Calc 685

THUMB IMPRESSIONS

— evidentiary value of—

See SECURITY FOR GOOD BEHAVIOUR.

I L R. 43 Calc. 1128

Evidence—Taking of thumb impression out of Court without objection made—Admissibility of such impression in a subsequent trial for giving false evidence—Evidence Act (I of 1872) s 132, and proviso—Penal Code (Act XLV of 1860) s 193. Where a Magistrate, believing that the complainant had given false evidence in the course of a trial, by denying the fact of a previous conviction, had his thumb impression taken out of Court, for the purpose of identification in a future prosecution under s 193 of the Penal Code and there was nothing to show that the latter had objected to the taking of it.—*Held*, that the thumb-impression was admissible in a subsequent trial for giving false evidence and that the proviso to s 132 of the Evidence Act was not applicable inasmuch as (i) the taking of such an impression was not equivalent to asking a question and receiving an answer, (ii) no objection was made to the taking of it, and (iii) it was not taken in the course of a trial. *Queen v Gopal Dass, I L R 3 Mad 277, and Mohar Sheikh v Queen Empress I L R 21 Calc. 392, referred to. TUKOO MIA v EMPEROR* (1911)

I L R. 39 Calc. 345

TIGGA TENANT

See TENANT . 23 C W. N 201

TIDAL RIVER

See FISHERY [I L P 42 Calc 489

TIM'BEP

— appropriation of by tenant'—²⁰

See CUSTOM 19 C W N 1188

— compensation for a land acquisition.
How divisible and whether it comprises
bamboos—

See LAND ACQUISITION ACT 1894
6 Pat L J 127

TIMF

See ARBITRATION I L R 46 Calc 1059

— computation of—

See LEAVE TO APPEAL TO PRIVY COUNCIL
I L R 42 Calc 35

— essence of contract—

See CONTRACT (IX of 1872) s 55
I L R 38 Bom 77

— extension of for paying mortgage

amount
See CIVIL PROCEDURE CODE (ACT V OF
1908) O XXXIV BR 3 S
I L R 39 Mad 882

— when of the essence of a contract—

See CONTRACT ACT (IX of 1872) s 55
I L R 40 Bom 239

TIME-BARRED DEBT

See CONTRACT ACT (IX of 1872) ss 126
128 I L R 42 Bom 444

See HINDU LAW—JOINT FAMILY
I L R 41 Bom 347

TITLE

See BOMBAY CITY IMPROVEMENT ACT,
1898 I L R 36 Bom 203

See CHAUKIDARI CHAKARAN LANDS
I L R 41 Calc 841

See FRAUD I L R 37 Bom 217

See GUJARAT TALUKDARS ACT (BOM ACT
VI of 1888) s 31

I L R 37 Bom 380

See INSTRUMENT OF TITLE
I L R 40 Bom 630

See LAND ACQUISITION
20 C W N 1028

See LANDLORD AND TENANT
I L R 45 Calc 756

See LIMITATION I L R 37 Bom 231

See MADRAS LAND ENCROACHMENTS ACT
(III of 1905) I L R 38 Mad 674

See PROVINCIAL SMALL CAUSES COURTS
ACT (IX of 1887) ss 15 23
I L R 37 Bom 575

See PUBLIC DRAFT
I L R 44 Calc 689

See REVIEW I L R 40 Calc 140

TITLE—contd

See SMALL CAUSE COURT
16 C W N 283

See TRADE MARK I L R 42 Calc 262

— covenant for—

See SALE DEED I L R 38 Mad. 1171

— evidence of—

See REGISTRATION ACT (XVI of 1888)
s 49 I L R 33 All 728

— impeachment of—
See KNOTI SETTLEMENT ACT (BOM ACT I
OF 1880) ss 9 10
I L R 38 Bom 769

— priority of—

See COMPANY I L R 36 Bom 334

— proof of—

See CRIMINAL PROCEDURE CODE s 145
I L R 34 Mad 138

See FISHERY I L R 42 Calc 489

See VENDOR AND PURCHASER
I L R 41 Bom 300

— question of—

See LIMITATION ACT (XV of 1877) ss. 5
AND 7 I L R 34 Bom 589

See PUBLIC NUISANCE
I L R 42 Calc 158

— suit for—

See EVIDENCE ACT (I OF 1877) s 42
I L R 41 All 154

See LIMITATION ACT (IX of 1808)
SCH I ART 120 I L R. 41 All 569

See SPECIFIC RELIEF ACT (I of 1880)
s 42 I L R 36 All 312

— to Subsequently Acquired Pro-
perty—

See UNDISCHARGED BANKRUPT
I L R 47 Calc 981

1 ——— Priority of Title—Mortgagor
and Mortgagee—Deposit of Title Deeds—Right to
decree for Foreclosure—Equity of Redemption—Sale
of right title and interest of Mortgagor at Court
sale on execution of decree. This was a case of con-
tested title to two plots of land near Moulinein.
The title of the plaintiff (appellant) was that by
deed of 26th July 1890 (Ex B) the property was
mortgaged to a firm who by deed of transfer,
dated 8th November 1894 (Ex A) assigned the
mortgage debt and transferred the security for it
to one A B and he in October 1895 deposited the
title deeds with the plaintiff by way of equitable
mortgage. In 1901 the plaintiff enforced the mort-
gage by suit against A B and on 31st December of
that year obtained a decree for sale in default of
payment in pursuance of which the right title
and interest of A B in the property comprised in
the above title deeds were sold by auction and the
plaintiff who had by leave of the Court become the
purchaser a certificate to that effect under the seal
and seal of the Court being endorsed on Ex A.
The other title was set up by a person who was not
one of the original defendants (the mortgagors of
1890), but a person added as a party defendant by
convent subsequently to the filing of the suit. He
stated that after the assignment to A B of the

TITLE—contd

mortgage debt, the original mortgage was satisfied by the mortgagors making over the mortgaged property to A R, who by deed dated 14th March, 1893 mortgage it to the defendant, and he brought a suit on the mortgage and on 21st July, 1902, obtained a decree for payment in six months or in foreclosure, and on default being made became as a late owner of the property. The District Judge found (issue 2) that the mortgaged property was not made over to A R in satisfaction of the mortgage debt and so holding thought it unnecessary to decide issue 3, 'Did A R mortgage the property to the defendant?' and issue 4, 'Did the property, by virtue of the decree of 21st July 1902, become the absolute property of the defendant?' He held that the plaintiff had acquired the rights of the original mortgagor in the property under Ex B, and gave him a mortgage decree with interest. On appeal, the Chief Court reversed that decision substantially on the ground that A R had no interest in the property at the date of the sale to the plaintiff. It was pointed out, *inter alia*, on appeal to the Judicial Committee that the mortgage of 14th March 1893 was a usufructuary mortgage on which the defendant had no legal right to a decree for foreclosure, that that mortgage, by reason of the defendant being himself only a mortgagor, the equity of redemption being outstanding in the original mortgagors, was beyond the power of the defendant to grant and was therefore void, that the plaintiff was not a party to the decree of 21st July, 1902 and therefore could not be affected by it; and that, notwithstanding the alleged mortgage of 1893, the title deeds remained in the possession of A R. Their Lordships were of opinion that the decision of the Chief Court was untenable, and finding that it was impossible to pronounce a final judgment without serious risk of doing injustice to one or other of the two parties principally concerned, allowed the appeal, set aside the decrees of the lower Courts, and remanded the suit to the District Judge for finding on issues 3 and 4 with an inquiry as to the priority between the plaintiff and the defendant, and for retrial. MAUNG THA HATIN v MAUNG MYA SU (1909) 1 L. R. 37 Cal 239

2 — Title suit for—Partition—Jurisdiction of Civil Court—Permanent tenure—Estates Partition Act (Beng VIII of 1876), ss 7, 111, 149. The plaintiffs and the defendants were co-owners of a certain taluk. In the course of proceedings under the Estates Partition Act (Beng VIII of 1876), the plaintiff raised a claim to a *miras* or permanent tenure, in respect of certain lands comprised in the said taluk. The Revenue Officer held in favour of the defendants that the plaintiff's title to the *miras* was not established. Thereupon, the plaintiff sought relief in the Civil Court asking that his title to the *miras* be declared. The contention raised on behalf of the defendants appellants was that the order of the Revenue Officer was made under s 111 of the said Act, and that the suit was not maintainable by reason of s 149 of the same Act. *Held*, that s 111 of the Act provided for cases of permanent intermediate tenures, and prescribed the mode in which partition was to take place when the fact of such permanent tenure was established, and had no application to the present case, and that a suit for declaration of title to the permanent tenure was maintainable, the object of s 149 being not to exclude the jurisdiction of the Civil Court in matters which involved a question

TITLE—contd

of title *Andau Ashore Chowdhry v Datta Thakurain*, 1 L. R. 36 Cal 726, referred to *Held*, further, that if in the course of a partition proceeding under Bengal Act VIII of 1876, any question arose as to the extent or otherwise of the tenure, the tenure-holder not being a party to the proceedings, he was not affected in any manner by the decision which might be arrived at by the revenue authorities for the purpose of partition between the proprietors. It would be unreasonable to hold that a party who appeared before the revenue authorities in his character as a proprietor should be finally concluded by a decision upon a question of title, which would not have been binding upon him, if he had been a stranger to the proceedings. Where the tenant based his title to the permanent tenure on the existence of the tenure for 75 years and more, prior to the institution of his suit for declaration of his title, and on his purchase and possession from the date of his purchase up to the date of the partition proceedings under the Estates Partition Act. *Held*, that under the circumstances the tenancy was a permanent one. *Miratan Mandal v Jnanu Khan*, 1 L. R. 32 Cal 51. *Yaba Kumari Devi v Behari Lal Sen* 1 L. R. 34 Cal 592 referred to *Abdul Wahed Khan v Shaluka Bibi*, 1 L. R. 21 Cal 196, distinguished. The only effect of such a decree is to decide that the tenure is permanent, and the question as to whether the rent is or is not fixed in perpetuity is left open for decision in a suit properly framed for the purpose. JAYAKI NATH CHOWDHRY v KALI NARAIN ROY CHOWDHRY (1910)

1 L. R. 37 Cal 662

3 — suit for declaration of—Transfer of estate made to plaintiff by widow of Oudh Taluqdar in possession as heir of her husband —Transfer made with consent of all the then existing next reversioners—Refusal of revenue authorities to record name of plaintiff as proprietor—Title set up by defendant under alleged will of deceased Taluqdar which was found by first Court not to have been executed—Transfer found to be valid—Appeal by defendant and admission by him during hearing of appeal of his want of title—Practice—Failure to maintain appeal. This appeal arose out of a suit which related to the transfer to the plaintiff of an impartible estate called Mahawan by the widow of an Oudh Taluqdar in possession of his estate for a Hindu widow's interest under the Mitakshara law. The transfer was made with the consent of the only next reversioners in existence at the date of the execution of the deed of transfer who both attested it. The defendant set up a title under an alleged will of the deceased Taluqdar. In a suit brought for a declaration of the plaintiff's title to the estate in consequence of the refusal of the Revenue authorities to have his name recorded as proprietor, the Subordinate Judge held that the defendant had no title as the deceased husband had never executed the alleged will and that the transfer to the plaintiff was valid. On the hearing of an appeal to the Judicial Commissioner's Court by the defendant, he admitted the correctness of the first court's decision as to his want of title. *Held*, that the Court of the Judicial Commissioner was wrong in then allowing the appeal and dismissing the suit on the ground that the widow had no power to transfer the estate. The defendant having no title had no interest which enabled him to support the appeal which should

TITLE—contd

have been dismissed on his admission. CHANDRAN BAKSH SINGH v. INDAR BIKRAM SINGH (1916) . . . I L R 35 All 440

4 ————— Estoppel—Grantor and Grantee—Bengal Tenancy Act (VIII of 1885), s 83, sub-s (1), construction of—Conveyance of the section, effect of—Estoppel, its application. The title of a grantee who can fall back upon prior possession as tenant or otherwise, cannot be defeated by mere proof of conveyance of a 85 of the Bengal Tenancy Act and as between grantor and grantee, the rule of estoppel applies when the elements essential to attract its operation are proved to exist. The creation of complete relation of landlord and tenant in law estops the tenant from denying the validity of the title which he has admitted to exist in the landlord. The estoppel arises not by reason of some fact agreed or assumed to be true, but as the legal effect of carrying the contract into execution, of the tenant taking possession of the property from the hand of the lessor. *Bhaganda Beua v. Himmat Baidyalar* followed, 21 C L J 103. It is no more open to the defendant than to the plaintiff to prove facts contrary to the allegations which formed the basis of the contract, after the contract has been carried into execution and the contracting parties have enjoyed benefits thereunder. *Madan v. Jakt*, 6 C W N 377, *Gopal Mondal v. Eshun Chunder Banerjee*, I L R 29 Calc 148, *Tamraddi v. Asgar Houdadar*, I L R 36 Calc 256, *Janaki Nath v. Prabhakar*, 22 C L J 99, *Lani v. Muhammed*, 20 C W N 943, *Gonesh v. Thakur*, 21 C L J 539, referred to. *BAMANDAS BHATTACHARYA v. NILMAHADAB SAKA* (1916)

I L R 41 Calc 771

5 ————— Benami purchase—Purchase giving right to get a title but not giving actual title—Transfer by true owner—Action of father making transfer creating estoppel binding son—Conduct causing change of position in transferee—Onus of proof on person asserting minority of transferor. The plaintiff (respondent) purchased the village of Badam in the zamindari of the late Raja of Deo, from R, a dancing girl, the natural daughter of the Raja, who was the father of the defendant (appellant). In 1899 the Raja's estate being heavily involved in debt, the provisions of the Chota Nagpur Encumbered Estates Act (VI of 1876 as amended by V of 1894) were extended to Deo by a special Act and a manager was appointed who, acting under the powers given him by the Act, sold the village by public auction and it was purchased by K who, afterwards appeared, was a benami for the Raja who provided the purchase money. No conveyance of the village was ever made by the manager to K. When the management came to an end in 1896, and the estate was restored to the Raja he caused L the son of K (who had died) to execute a conveyance of Badam in favour of P in order to benefit her and if her mother, L merely acting on the command of the Raja. R being then a minor put in through M a petition for registration and mutation of names, and the Raja himself assisted her, asking that her petition might be granted, and her name be inserted on the register, and stating that he had no objection whatever to that being done, and R's name was accordingly entered on the register as proprietor of the village. In October 1895 the Raja died and, his son being a minor, the estate

TITLE—contd

came under the Court of Wards whose manager in 1899 summarily ejected R who was in possession, and conveyed the village to the surviving widow of the deceased Raja as being *gur* property and descendible from Rani to Rani. An application by her for mutation of names was opposed by R and rejected. The Rani thereupon filed a suit against R and the appellant basing her case on the allegation that K was benami for her. But the Subordinate Judge held that he was a benami of the late Raja, and dismissed the suit, a decision which was affirmed by the District Judge. In 1903 R executed the conveyance in favour of the plaintiff who brought the present suit against R and the appellant for declaration of title and for possession. The defence was a denial of R's title to convey, and a denial of her power to do so as being a minor. The Subordinate Judge upheld both defences and dismissed the suit. The High Court reversed that decision and gave the plaintiff a decree. *Held* (affirming that decision), that the onus of proving R's minority was on the appellant and he had not established his assertion. *Held*, also, that the sale by auction, though it gave A a right to get a title, did not give him an actual title. Both Courts found that A had failed to prove he was a true purchaser for value. When, therefore, L executed the conveyance in favour of R the late Raja was the true owner. K was a trustee for him, and the trusteeship was all that L succeeded to. The late Raja too was proprietor of the estate of which Badam was a part, so that if by renunciation or limitation the right of K to get a conveyance became extinct, the full right and title were in the late Raja, and not only did he cause L to execute the conveyance but he actually assisted R to get registration of her name as owner. By so doing he caused her to change her position, for by such registration she became bound to the Government for all the liabilities attaching to the registered holders of immovable property. If the late Raja had lived and attempted to regain the property, that conduct would have estopped him from doing so. The appellant was his son, and succeeded by gratuitous title, and he could not, therefore, do what his father would have been unable to do. *RAJA OF DEO v. ABDULLAH* (1918) . . . I L R 45 Calc 909

6 ————— Possession, inference from as regards title. Where plaintiff proves that he is in possession for a number of years and has been paying rent to the admitted landlord, the legal inference is that the plaintiff is in possession by virtue of a title derived from the landlord although the plaintiff may have failed to prove the specific title on which he bases his claim. The plaintiff is entitled in such a case to a decree as against a defendant who has no title to possession. *ADHAR CHANDRA PAL v. DIBAKAR BHUTAN* (1913) . . . I L R 41 Calc 331

7 ————— Suit for declaration of title—Benami—Purchase at an execution sale—Assignee of purchaser—Civil Procedure Code (Act V of 1908) ss 60, 317. In a suit for declaration of title against a purchaser at an execution sale and his assignee, where the sale took place and was confirmed before 1st January 1902, but the sale certificate was issued later: *Held*, that the suit against the assignee was good and the provision of s 317 of the Civil Procedure Code (Act XIV of 1892), and not of s 65 of the Civil

TORT—contd

v The Bristol Water Works Company I H & N 369, referred to RAM CHANDRA v JOTI PARASAD (1910) I L R 33 All 287

2 ———— **Overflow of water into plaintiff's land—from tank—Belonging to stranger caused by defendant lowering level of his own land to make it cultivable—Plaintiff's right to injunction and damages** Where the defendants with a view to make their land cultivable lowered its level with the consequence that water in a tank belonging to a third party passed to that land and subsequently overflowed into lands belonging to the plaintiff. *Held*, that no right of the plaintiff had been infringed by the act, and the plaintiff was not entitled to a mandatory injunction to compel the defendant to raise an embankment in order to prevent this overflow or to damages for harm caused by such overflow. *Rylands v Fletcher, L T 3 H L 330, distinguished. Smith v Kenrick, 7 C B 515, Nield v London and N W Ry Co, L R 10 Ex 4, referred to* Where the owner of land without wilfulness or negligence uses his land in the ordinary manner though mischief thereby accrues to his neighbour he is not liable for damages but if with a view to use the land in an unusual manner he brings upon the land water, which would not naturally have come upon it he will be liable for damages for the escape of the water into the land of his neighbour. *Hodgson v Major, etc of York, 28 L T 836 Chasemore v Richards, 7 H L Cas 349, relied on KENARAM ARHULI c SRISTIDHAR CHATTERJEE (1912) 16 C W N 575*

3 ———— **Negligence of servants of the Public Works Department—Suit against the Secretary of State for India in Council for damages if maintainable—Stacking of gravel on a military road—Making and maintenance of roads—Governmental or Sovereign function—nature of—Non-liability of East India Company and Secretary of State for acts done in exercise of Sovereign powers—Exceptions—English and American Law** Plaintiff sued the Secretary of State for India in Council for damages in respect of injuries sustained by him in a carriage accident which was alleged to have been due to the negligent stacking of gravel on a road which was stated in the plaint to be a military road maintained by the Public Works Department of the Government. The defendant pleaded a general denial of liability. *Held*, that the plaintiff had in law no cause of action against the Secretary of State for India in Council. *Per WATKINS, C J*—In respect of acts done by the East India Company in the exercise of its sovereign powers it could not have been made liable for the negligence of its servants in the course of their employment. The provision and maintenance of roads especially a military road, is one of the functions of Government carried on in the exercise of its sovereign powers and is not an undertaking which might have been carried on by private persons. The liability of the Secretary of State for India in Council is similar to that of the East India Company. *P & O Co v Secretary of State for India 5 Bom. H C R App 1, followed, Secretary of State for India v Momen 40 I A 48 referred to; and Vijaya Raghava v Secretary of State for India, I L R 7 Mad 466, doubted. Per SESHAGIRI AYYAR, J*—The analogy of the Crown in England has no application to the Secretary of State for India in Council. The principle that the Crown can be sued only for remedies

TORT—contd

contemplated by the Petition of Right is confined in its operation to the United Kingdom and a general liability for torts is dependent upon the law of the particular dominion wherein the action is instituted. Under 21 and 22 Vict., cap 106 the Secretary of State for India in Council is under the same liability as the East India Company was subject to. The East India Company had two distinctive functions which are even to day exercised by the Government of India, namely (i) the exercise of sovereign rights, and (ii) the carrying on of transactions which could have been carried on by private individuals or trading corporations. In the former case, the East India Company was generally exempt from liability. The distinction between sovereign power and powers exercisable by private individuals is that in the former case no question of consideration comes in whereas the essence of the latter is that some profit is secured or some special injury is inflicted in the exercise of the individual rights. The making and maintenance of roads is a Government or sovereign function. English and American Law on subject considered. *THE SECRETARY OF STATE v COCKCRAFT (1914) I L R 39 Mad 351*

4 ———— **Defamation—Suit for damages—Defamatory statement made and published outside British India—Defendant resident in British India—Suit in British India if maintainable—Order of excommunication from caste passed by Raja of Cochin—Communication of it to the Karasta of a Temple in British India—Transmission by Karasta to Pattamalas—Publication, meaning of—Justification** A Court in British India has jurisdiction to entertain a suit for damages for a personal tort committed by a person beyond the limits of British India if he resides within the local limits of its jurisdiction at the time of the suit. This rule is in accordance with the principles of Private International Law recognized in England and the Code of Civil Procedure (Act V of 1908) indicates that the same rule is to be followed by the Courts in British India. When the cause of action alleged in a plaint is a personal tort committed outside the local limits of the jurisdiction of the Courts of British India, unless the act is wrongful according to the law both of British India and of the place where the act is committed, the suit will not be sustainable. *The Al Mozam, (1876) P D 107 The Halley, L R 2 P C 107, Phillips v Eyre, L R 6 Q B 7, and Carr v Francis Davies & Co, [1902] A C 176 followed.* Publication in regard to libel and slander does not require communication to more persons than one; there need not be anything like publication in the common acceptance of the term. *King v Burdett, 4 B & Ald 35 and Fullman v Hill and Co, [1891] 1 Q P 524 referred to* Where a subordinate officer received from his superior in the course of his official duty a copy of an order alleged to contain defamatory statements regarding the plaintiff, and transmitted the same in his turn (as he was bound to do) to his official subordinate. *Held*, that he was not liable in damages for defamation against the plaintiff, as his action was justified in law. *GOVINDAN NAIR v ARCHANA MENON (1915) I L R 39 Mad. 433*

5 ———— **Negligence—Non-capitalist liability of—Repair of road—Independent contractor—Heaping of gravel on road without**

TORT—contd.

Right—Injury to plaintiff—Damages—Statutory bodies liability of—District Municipalities Act (I of 1951), ss 172 and 173—Madras Motor Vehicles Act (I of 1931)—Absence of licence, effect of. The plaintiff sued the Municipality of Vizagapatam to recover compensation for injuries sustained by him owing to the negligent stacking of gravel in a municipal road which was being repaired by a contractor employed by the municipality. The defendant pleaded non liability under the general law and also on the ground that it had employed an independent contractor for the repair of the road. *Held* that the municipality was liable to pay damages to the plaintiff for the injuries sustained by him. *Per SESHAGIRI AYYAR, J.*—In laying and maintaining a road municipalities in this country are not exercising purely sovereign functions and consequently they are liable for misfeasance. *The Secretary of State v Cockcroft, 1 I R 39 Mad 351*, distinguished. The absence of a provision for payment of damages in the District Municipalities Act which directs the application of the Municipal fund in a particular manner does not affect the right of a person against whom a wrong has been committed by the statutory body to recover compensation for such injury. The fact that the plaintiff did not obtain a licence under the Madras Motor Vehicles Act at the time of the accident did not disentitle him to damages. Although an employer is not ordinarily liable for illegality or neglect on the part of a contractor employed by him, there are certain recognised exceptions to the rule, namely—(i) Where the employer is aware that the doing of a contract work involved a public danger, he ought to see that the contractor so discharges his duty as to avoid such a danger; *The Corporation of the Town of Glasgow v. Anderson, 1 I R 19 Cal 415*, referred to. (ii) Where statutory bodies are entrusted with the performance of a public duty, their liability can be shifted to a contractor. *Hanokar v. The District Council, [1938] 1 Q B 331*, referred to. *Per Napier, J.*—(i) A statutory body like a municipal council cannot be said to be either the servant or the agent of the Crown unless it is so constituted by the provisions of the Act. (ii) With regard to statutory bodies, the liability does not depend on their levying tolls or taxes on account of the work undertaken by them. (iii) S. 177 of the District Municipalities Act does not control the provisions of s. 173 of the same Act. (iv) Where a statutory authority has power to do something to a road which will make it dangerous while it is being done it is liable for any negligence in the doing of that which has to be done, whether the action be that of its own servant or of an independent contractor. **MUNICIPAL COUNCIL OF VIZAGAPATAM v. KORTA (1917)** . . . I. L. R. 41 Mad. 338

6. ———— Trespass—Trees overhanging one's land—Right to cut off overhanging branches—Injunction to remove overhanging branches in absence of damage. A person is entitled to cut off those portions of the trees which overhang his land. He can obtain an injunction to remove the overhanging portion though he may not be able to prove any damage. **VISHNU JAGANNATH v. VASUDEO RAGHUNATH (1918)** . . . I. L. R. 43 Bom. 164

7. ———— Wrongful assault—Master and servant—Liability of a Railway Company for wrongful assaults committed by its servants—

TORT—contd.

The Railway Company not liable for acts of the servants which the Company itself is not authorised to do—The Indian Railways Act (IX of 1926), ss 104, 121, 123, 131, 132—Arrest of a passenger for pulling the communication chain not authorised by the Indian Railways Act. The plaintiff and his wife were third class passengers in one of the defendant Company's trains. The plaintiff's compartment which was intended to hold ten passengers became greatly overcrowded at a particular station to the inconvenience and discomfort of the occupants numbering about twenty five. After ineffectual efforts to obtain assistance from the guard and the station master at the station the plaintiff stopped the train by pulling the communication chain, being afraid that he would be molested by other passengers in the compartment. No step was taken to relieve the overcrowdedness of the compartment and the train was re-started. When the train had gone some little distance further on its journey, the plaintiff again stopped it by pulling the communication chain. Thereupon the driver and the guard got down from the train; and the driver pulling the plaintiff out of the compartment cuffed and slapped him, the guard assisting in the assault. The plaintiff was arrested by the driver and the guard at a subsequent station where he was handed over to a station master and after his statement was recorded by the police he was released and allowed to travel to his destination. The plaintiff sued the defendant Company in the sum of Rs. 3,000 as damages for the wilful assault committed by the engine driver and the guard. The plaintiff complained that the assault was aggravated having taken place in a public place in the presence of his wife and other passengers in the train in consequence whereof he had to suffer a good deal of public humiliation and mental agony. *Held*, (i) that inasmuch as the assault was an incident of the arrest and the defendant Company had no authority under s. 104 of the Indian Railways Act to arrest the plaintiff for pulling the communication chain, the defendant Company was not liable for assaults committed by its servants; (ii) that the special provision of s. 108 of the Indian Railways Act, which expressly provided for a particular kind of obstruction could not be controlled by the more general language of the wider ss. 121 and 123 of the Act. **FULLON v. LONDON AND SOUTH WESTERN RAILWAY CO., 1 R 2 Q B 531**, followed. **Bayly v. Manchester, Sheffield and Lincolnshire Railway Co., 1 R 7 C P 415** and **Goff v. The Great Northern Railway Co., 30 L J Q B 148**, distinguished. **Barker v. Edger, [1898] A C 743**, referred to. The master is liable where the servant, acting in a matter which is within the scope of his authority, that is, within the course of his employment, commits a wrong by exceeding the authority vested in him. The act itself which constitutes the wrong may be, and usually is, in excess of the servant's authority, but if in thus transgressing his authority the servant is doing in the master's interests one of the class of acts which the master has employed him to do, then the master is liable. **GRISHANKAR DAYASHANKAR v. R. JL and C I RAILWAY CO (1917)** . . . I. L. R. 43 Bom. 103

7 a. ———— Damage to the property of another caused by the cutting of a bund—An order to save the lost farmer's land from ruin da-

TORT—contd.

tion Where there is a natural outlet for a natural stream, no one has power for the safety of his own property, to divert or to interfere with its flow, and if he does so, he is ordinarily liable to pay damages to any one who is injured by his act. The right of a person to protect his land from extraordinary floods extends to the doing of anything which is reasonably necessary to save his property, but he cannot actively adopt such a course as might have the effect of diverting the mischief from his own land to the land of another person, which would otherwise have been protected. Defendant through fear lest, in a season of heavy rainfall, the normal outlets to a certain tank on which his land abutted would be insufficient to carry off the surplus water and with the object of saving his own land from possible inundation, cut a bund to the maintenance of which the plaintiff had a prescriptive right and thereby caused certain lands belonging to the plaintiff to be flooded and the crops thereon destroyed. *Held* that the plaintiff had a good cause of action in damages against the defendant. *Whalley v Lancashire and Yorkshire Railway*, 13 Q B D, 131, and *Ram Lal Singh v Lall Dary Mahlon* 1 L R 3 Cal 776, referred to. *SAMI ULLAH v MARIND LAL*

I L R 43 All 688

8 ———— *Defamation—Bond fide suspicion by defendant of poisoning—Communication by defendant to his subordinates for inquiry—Privilege, absolute or qualified—Absence of actual malice—Liability of defendant* Where the defendant, who was the general manager of the estates of the plaintiff a firm under a bond fide impression that he had been poisoned at the instigation of the plaintiff, expressed his suspicion to two of his subordinates with a view to their making inquiries into the matter. *Held* that the communication was privileged and, there being no proof of actual malice, the defendant was not liable for defamation in a suit for damages for defamation. *Togood v Spyring*, 10 C M & P 181, followed. Statements made to protect the interest of the speaker, and statements made to protect a common interest form distinct heads of privilege. *LEALIZ ROODERS v HAJEK FAKIR MAHOMED SAIT* (1918)

I L R 42 Mad 132

9 ———— *Legal Act cannot be contribution as between joint tort-feasors False defence whether is a tort* An act which is not legally wrongful cannot be treated as a tort. Although the rule of non-contribution between joint tort-feasors exists in India it ought only to apply in cases where the parties are wrong doers in the sense that they know or ought to have known that they were doing an illegal or wrongful act. The only cases in which it will be enforced are those in which liability arises out of a joint wrong or where the equities of the case demand that the plaintiff shall not recover, as where the party sued was merely a formal defendant in the previous suit and not personally interested in the suit. In appropriate cases the liability may be apportioned in unequal shares. There is nothing wrong in a defendant putting the plaintiff to proof of the facts necessary to prove his claim by denying in the written statement the existence of such facts, even if such facts are capable of proof to the knowledge of the defendant and the defendant's motive in denying them is malicious. There is a

TORT—contd.

right of contribution between joint defendants in respect to the costs awarded against them and paid by one of them in such a case. *MAHABIR PRASAD v DARBHANGI THAKUR* 4 Fat L J 456

TOUT

See LEGAL PRACTITIONERS ACT, s 26
15 C W N 1009
I L R 40 All 153

TOWN NUISANCES

See MADRAS TOWN NUISANCES ACT 1889

TRADE.

See HINDU LAW—JOINT FAMILY
I L R 37 Bom 340
See HINDU LAW—MIXOR
I L R 34 Bom 72
——— when carried on so as to be a

Nuisance—

See CRIMINAL PROCEDURE CODE, 1898,
s 133
I L R 1 Lah 163

TRADE LICENSE.

See LICENSE I L R 47 Cal 509

TRADE-MARK

See COUNTERFEITING TRADE MARK
See INJUNCTION 24 C W N 135
——— meaning of—
See PEVAL CODE, s 478

19 C. W N 957

1 ———— *Infringement of Trade-mark—Essentials necessary to maintain action for* It is a settled law that a dealer in, or a manufacturer of, a particular article who adopts a name for that article whether the name be a purely fancy name or a descriptive name cannot restrain another dealer from using the same name simply upon and the ground that the article so named has acquired a reputation, even though it may be that the public have grown accustomed to buy the article in question only relying on the name and without examining the quality of the article. For a trader to be entitled to restrain another from using a particular name with reference to a commodity is not shown that the public have grown to associate that particular name with himself as the manufacturer of, or dealer in the article. *Jarosc v Chakrabarti* 1 L R 24 Cal 361, referred to. *MAHOMED FAKIR v RAJAGOPAL PILLAI* (1909)

I L R 33 Mad. 402

2 ———— *Infringement of Trade-mark—Registration, effect of—Vendor's mark—Passing off action—Injunction, grant of* An action for the infringement of a trade-mark is maintainable, even though the plaintiff be not the manufacturer or selector of the goods, but merely a vendor of them. There is no system of registration of trade marks in India which gives a statutory title. In a suit for the infringement of a trade-mark the plaintiff claimed the right to be the exclusive owner of a flower of a particular design, but the evidence was directed to establish that his goods were recognised by the general custom of a flower (flower mark) —

TRADE-MARK—contd

Held that in the circumstances of the case, an association had been established between the plaintiff's particular design and the goods sold thereunder and inasmuch as the defendant had adopted the plaintiff's trade mark for his own purposes, the plaintiff was entitled to an injunction. Although no specific objection was taken on appeal to the form of the injunction ordered in the Court of first instance which proceeded on the erroneous assumption that the goods sold by the plaintiff were prepared by him, a variation should be introduced into the terms of the injunction so as to fit with the facts actually established. *JAWALA PRASAD v. MURVA LAL SNOWDARE* (1909)

I L R 37 Cal 204

3 ——— **Assignment—Trade name—Goodwill—Infringement.** Where a cigarette manufacturer, carrying on only one business and being the proprietor of several trade marks which he used indiscriminately purported to assign to another cigarette manufacturer "all that the trade mark, name and label known as the 'Sri Durga' trade mark used upon packets of cigarettes sold and known as 'Sri Durga' cigarettes and the goodwill of his business so far as the same relates thereto, and continued dealing in his cigarettes under the other mark. —*Held* that the assignment was void and unoperative. For the assignment of a trade mark to be operative in law, it is not sufficient that an assignment of goodwill should accompany or follow the transfer of the trade mark so as literally to comply with the rule that a trade mark cannot be transferred in gross, but the trade mark must continue to be a representation of the truth as warranting the origin of the goods to which it is attached within the limits of deviation sanctioned by the usage of trade and commerce. *Leather Cloth Company v. American Leather Cloth Company* 11 H L 523 *Hall v. Barron*, 4 De G J & S 159 *Singer Manufacturing Company v. Wilson* L R 2 Ch D 434, *Singer Manufacturing Company v. Loog* L R 8 A C 15 *Pinto v. Badman*, 8 R, P C 191, and *Edwards v. Dennis*, L P Ch D 454 referred to. *BRITISH AMERICAN TOBACCO CO., Ltd v. MAHMOOD BURN* (1910)

2 11 L R 38 Cal 110

4 ——— **Imitation—Abandonment—Infringement—Defendants improperly representing that their business to be business carried on by plaintiffs—Injunction—Raising of issues—Practice—Procedure.** The plaintiff had since the year 1887 been importing into and selling in India watches manufactured at the St. Imier Factory in Switzerland. These watches bore the name "Berna" on the dial. In 1907 the plaintiffs complained of the watches supplied by the St. Imier Factory and began to import watches largely from other manufacturers while they ceased giving orders to the St. Imier Factory. In the year 1908 the St. Imier Factory was purchased by the defendants and at the time of purchase the defendants asked the plaintiffs whether the defendants could positively count upon the plaintiffs to be their regular customers for the articles previously taken from the St. Imier Factory. The plaintiffs replied that they were willing in principle to reserve a part of their orders for the defendants, but that it would first be necessary for the latter to give an idea of what they were going to manufacture and the improvements they were going to make in the quality of the watches.

TRADE-MARK—contd

In one of their catalogues printed in 1907 the plaintiffs announced—We take this opportunity of informing our customers that the name 'Berna' will be changed to 'Service' as soon as our present stock of these watches is sold out. The trade mark will in other respects remain unaltered. The alteration of the name is done to secure a trade mark which cannot be imitated in India or elsewhere. On the 6th of November 1908 the defendants opened a place of business in Bombay and issued a circular, dated February 1909 in which on behalf of the defendant Company, they referred to the plaintiffs as the defendants' agents who had sold 800,000 watches made at the St. Imier Factory in past years and proclaimed that Berna Company's watches would no longer be sold by their former sole agents importers (meaning the plaintiffs) as the defendants had decided to get rid of any middlemen and to deal directly themselves. The plaintiffs thereupon filed a suit on the 2nd April 1909 against the defendants to restrain them from using and imitating various trade symbols alleged to belong to the plaintiffs and from representing that the defendants' business was the business carried on by the plaintiffs. *Held*, that the plaintiffs for the last three years both in their dealings with the supplying factory and with their customers evinced very clearly and consistently the intention to abandon the name 'Berna' as a quality mark for their watches, and it followed that they could no longer claim any exclusive title to the use of that name either alone or in a trade mark. *Held* further, that the plaintiffs were entitled to an injunction restraining the defendants their servants, agents, travellers and representatives respectively from in any manner representing that the defendant Company had been or were carrying on the business carried on by the plaintiffs or were the successors in business of the plaintiffs. *Per Curiam*—The importer who by advertising and pushing the sale of goods under a particular mark secures a wide popularity for the mark in relation to the goods sold by him is entitled to the protection of the Court for that mark in the country of importation even against the producer of the goods. *Damodar Ruttonjee v. Hormazy Adarji (unreported)* Appeal No. 342 of 1935 and *Lavigne v. Hooper*, 1 L R 8 Mad 119, referred to. The fact that the user of a word or mark always uses it in conjunction with his own name is not conclusive to show that the word or mark cannot be claimed as a trade mark or that the user has waived his rights in it as a trade mark. The question of abandonment is one of intention to be inferred from the facts of the case: *Mousson & Co v. Böhme*, 1 L R 26 Ch D 395 and *Lavigne v. Hooper* 1 L R 8 Mad 149, followed. The practice of raising a number of issues which do not state the main questions in the suit but only various subsidiary matters of fact upon which there is not agreement between the parties is very embarrassing. Issues should be confined to questions of law arising on the pleadings and such questions of fact as it would be necessary for the judge to frame for decision by the jury in a jury trial at nisi prius in England. *WEST END WATCH COMPANY v. BERNA WATCH COMPANY* (1910) 1 L R 35 Eom 425

5 ——— **Using a false trade-mark—Possession of instruments for counterfeiting a trade mark—Selling umbrellas with counterfeit trade**

TRADE-MARK—*contd*

mark—False name, use of, by rival manufacturer—Using a false trade description—Penal Code (Act XLV of 1860), ss 482, 485 and 486—Merchant Marks Act (IV of 1889), ss 6 and 7 A trade mark must be some visible and concrete device or design affixed to goods to indicate that they are the manufacture of the person whose property the trade mark is. It must consist of a name impressed in some distinctive way. There is a distinction between a trade mark and a trade-name: *Singer Manufacturing Co v Loog* I R 8 A C 10, referred to. Where a tradesman alleged in his complaint to the Magistrate that his trade mark consisted of a particular device with the name 'Butto Kristo Pal' or 'Sri Butto Kristo Pal' said to be that of his son, but at the trial claimed only the name as the trade mark while one of the partners disclaimed the device except the name, and the former's son claimed the name as representing his own trade mark in a separate business, and the rest of the prosecution evidence did not establish the possession or use of any such trade mark. *Held* that the complainant had not proved that he had a trade mark for the infringement of which a rival trader using a similar device with the same name could be convicted under ss 482, 485 or 486 of the Penal Code, and that the case was of a civil nature. When a manufacturer has no exclusive right to manufacture a certain article or even articles of a particular brand all that he can claim is that no other manufacturer should so mark such articles as to pass them off as the former's when they are not. *See* 618. The mere use of a trade name may fall under s 5 of the Merchant Marks Act (IV of 1889) and be punishable under s 6 or s 7 as a false trade description. *ANATH NATH DEY v EUGENIA* (1912) I L R 42 Cal 281.

6 ———— *Licensee's Estoppel—Evidence Act (I of 1872) s 117—Licensee's right to question Licensor's title—Public Policy—Assignment of trade marks—Not merely standard or quality of manufacture—Assignment of trade mark—Incoming Partner, liability of, for obligations of firm—Costs* Two partners of a trade mark is estopped as against his licensor from questioning the latter's title to the trade mark. The fact that the licensee has repudiated his contract with his licensor cannot give him the right to question the licensor's title, for the latter's concurrence is necessary to rescind the contract. *Johnstone v Milling*, 16 Q B D 469, referred to. Where jute trade marks bearing the name of the original proprietor of those marks, have come by usage of trade to indicate, not the skill in selecting jute of the original proprietor so as to make those marks personal to him but merely a certain standard kind quality, or mode of manufacture of goods irrespective of the person in whose hands the business might be, the assignment of such marks is not a fraud on the public or against public policy. A licensee for four out of seven trade-marks the remaining three having been abandoned is valid. *British American Tobacco Co, Ltd v Mahboob Buleh* I L R 39 Cal 110, distinguished. As the right to a trade-mark might be acquired so it might be abandoned and no length of time is required for acquiring the right, or apart from statutory law, to constitute an abandonment. *Inverry v Hooper* I I R 8 Mad 119, approved. An agreement by an incoming partner to make himself liable to credi-

TRADE-MARK—*contd*

tors of the firm before he joined it, may be established by indirect evidence, and the Courts lean in favour of such an agreement and are ready to infer it from slight circumstances. *Ex parte Jackson*, 1 Ves Jun 131, *Ex parte Peile* 6 L J 20 Jun 602, and *Relle and the Bank of Australia v Flower Saling & Co*, L R 1 P C 27, approved. *JAGANNATH & Co v CRESSWELL AND OTHERS* (1913) I L R 40 Cal 814.

7. ———— *Title—Assignment—Trade mark in selection of natural products as indicating quality—Goodwill—License to use trade marks—Action for royalty—Estoppel—Licensee estopped from questioning validity of license—Evidence Act (I of 1872) s 117—Damages, action for* In India the law of trade marks is not governed by statute there being no statutory system of registration. Rights and liabilities in connection with trade marks are determined by reference to the principles of the common law of England. *British American Tobacco Co, Ltd v Mahboob Buleh* I L R 38 Cal 110 referred to. A trade mark cannot be transferred or descend in gross, but only together with the goodwill of the business to which it relates. A trade mark represents the origin of the goods to which it is attached or their trade association; the truth of the representation is essential. By usage, successors in business may use their predecessors' trade marks where the representation still continues to be substantially true. A selector of natural products like jute may have a trade mark in connection with such selection as indicating good quality. *Major Brothers v Franklin & Son* [1908] I K B 712 followed. Meaning of 'good will' explained. *Inland Revenue Commissioners v Muller & Co's Margarine, Ltd*, [1901] A C 217, referred to. In a suit for royalty, brought by the licensors of certain jute trade marks against the licensees, the defence taken was that the plaintiffs had no title to the marks in question and that the license was void. *Held*, that by virtue of s 117 of the Evidence Act the licensees were estopped from questioning their licensors' title or the validity of the license. At any rate s 117 cast on the defendants the burden of proving that the goodwill of the business had not passed to the plaintiffs to support the transfer of the trade marks and the defendants having failed to do so the plaintiffs were entitled to the royalty claimed. Claim to damages by the licensors for depreciation in the value of the trade marks due to the default of the licensees, refused on the facts of the case. The Decision of *IMAM J in Jagannath & Co v Cresswell* I L R 40 Cal 814, affirmed. *HANMAN v JAGANNATH & Co* (1914) I L R 42 Cal 262.

8 ———— *Infringement—Action for—Id verisimile and circular—Cause of action—Jurisdiction of Court where advertisement is published* A trader is not entitled to pass off his goods as goods of another trader by selling them under a name which is likely to deceive purchasers (whether immediately or ultimately) into the belief that they are buying goods of another trader. The defendant a resident of Cava, published advertisements and distributed handbills at Muttra in the Agra Judgeship advertising his medicine known as Aali 'Sudha Sindhu'. The plaintiff alleged that 'Sudha Sindhu' was his

TRADE-MARK—contd

registered trade mark and he brought this suit for an injunction and for damages in the Court of the Subordinate Judge of Muttra held that a trade mark could be infringed by means of advertisement and as the cause of action arose partly at Muttra, the courts there had jurisdiction to entertain the suit. *Jay v Lallu L R 40 Ch D 619, Bourne v Swan and Edgar, limited, L R 1 Ch 211, Frank Reddaway v George Hanham [1896] A C 199, referred to KHESTRIA PAL SHARMA v PANCHAM BINGH VARMA (1915)*

I L R 37 All 446

TRADE-NAME

See INJUNCTION

24 C. W. N. 155

See TRADE MARK I L R 38 Calc. 110

I L R 40 Calc 281

Similarity of names of Insurance Companies—Oriental—Word known in business—Intention to deceive—Injury to plaintiff—Injunction—Provident Insurance Society—Provident Insurance Societies Act (V of 1912), ss 5 and 6—Indian Life Assurance Companies Act (VI of 1912)—User. On an application by the plaintiff company, an old large and well known Insurance Company registered in Bombay, and having a branch office in Calcutta, for a temporary injunction to restrain the defendant company, which was incorporated in Calcutta in November 1912 with a small share capital, but with the widest powers of doing life and other insurance business though its present rules limited its life insurance business to the issue of policies for sums not exceeding Rs 500 from using or carrying on business under the name it had adopted—*Hell*, that, inasmuch as the term 'Oriental' had become identified with the plaintiff company, an injunction should issue restraining the defendant company from using the term 'Oriental' in its name as such user would be likely to deceive the public, and the defendant company would be a source of danger to and would be liable to cause damage to, the plaintiff company. *Merchant Banking Company of London v Merchants Joint Stock Bank, L R 9 Ch D 569, Accident Insurance Company Ltd v Accident, Disease and General Insurance Corporation, Ltd, 51 L J Ch 104 and Guardian Fire and Life Assurance Company v Guardian and General Insurance Company Ltd, 39 L J Ch 251, referred to.* The circumstance that the field of operation of the defendant company was in the Orient, did not entitle it to the use of the term 'Oriental'. *Hendricks v Montague L R 17 Ch D 638 followed.* *Rugby Portland Cement Co, Ltd, v Rugby and Acobold Portland Cement Co, Ltd, 8 R P C 241 (C A) 2 R P C 46, distinguished.* *Smile An Insurance Company, incorporated under the Indian Companies Act, is not a Provident Insurance Society within the scope of the Provident Insurance Societies Act of 1912.* *ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE CO, LD v ORIENTAL ASSURANCE CO, LD (1913)*

I L R 40 Calc 570

Manufacturers of cloth affixing numbers on pieces sold—Cloth known by the numbers affixed as being of a particular manufacture—Numbers, not quality marks—Agents and middlemen ordering out goods by numbers alone—Use of numbers protected, when they are part

TRADE-NAME—contd

cular marks of a manufacturer's goods—Numbers, when a trade name—Cases of actual deception not necessary. The plaintiffs were manufacturers of cloth on a large scale at their Mills in Nagpore, Central Provinces. In the year 1904 they commenced to manufacture a certain quality of black twill and to distinguish this particular cloth from all other cloths of their manufacture stamped on each piece of cloth the No 2051 and immediately below that number stamped each piece with the No 10 which denoted the colour and shade of the cloth. There was also on each piece of cloth a woven device of a serpent surrounded by a scroll containing the name of the Empress Mill. This twill had acquired a great reputation in the Indian markets and particularly in Sindh, the North West Frontier Provinces, and the Punjab, where the plaintiffs had got their selling agents at Amritsar, Peshawar and Karachi. The dealers in these towns and other smaller towns would apply to the selling agents for the plaintiffs' cloth and the cloth would be distributed by these dealers to smaller dealers in smaller towns and villages and so on until it ultimately found its way to the consumer. In or about July 1913 the defendants began to manufacture black twill cloth and on every piece of such twill put on the No 2051 with the No 10 below in the same position as No. 10 stamped on the plaintiffs' cloth. In addition the defendants annexed a label thereto representing an image of the Sun known as the 'Sooorj Chap' or Sun label and also a white ticket bearing the defendant company's name and other particulars in English, Gujarathi and Urdu languages. The plaintiffs alleged that by the year 1913 their No. 2051 had become identified with their goods and any black twill cloth stamped with the No 2051 would be ordinarily taken by purchasers as being the well known No 2051 cloth of the plaintiffs and would be very likely passed off by rival companies as being the plaintiffs' goods. The plaintiffs contended that they were entitled solely to the use of the No. 2051 on their black twill and the use of that number by the defendants on a similar twill constituted an infringement of their rights. The plaintiffs accordingly sought to restrain the defendants by injunction from selling their black twill cloth with the No 2051 stamped on it and for an account of the profits made by the defendants by the sale of their black twill with the No 2051 stamped on it. The defendants pleaded that the No 2051 was merely a quality mark descriptive of goods and was so adopted by several dealers in black twill. They further relied on the fact that they had taken particular care to distinguish their goods from those of the plaintiffs by using different labels and devices. The trial Court decreed the plaintiffs' claim for injunction and account. On appeal by the defendants, *Ald* (1) that the plaintiffs having established that the particular No 2051 was an invariable indication of the cloth being of their manufacture, they were entitled to claim an exclusive right to the use of that number in connection with the black twill which they put on the market. *Barlow v Goendram, 1 L R 24 Calc 364, distinguished.* *Walkerpoole v Currie, L R 5 H L 508, and Birmingham Vinegar Brewery Company v Powell [1897] A C 710, followed.* (2) that it was not necessary for the plaintiffs to prove cases of actual deception if the defendants had put into the hands of middlemen a means whereby ultimate purchasers were likely to be

TRADE-NAME—*corcll*

defendants Singer Manufacturing Company v Leong, 18 CA D 335, 412, and Leter v Goodwin, 36 CA D 1, followed MADHAVJI DHARMSEY MANUFACTURING CO v THE CENTRAL INDIA SPINNING, WEAVING AND MANUFACTURING CO (1916) . I L R 41 Bom. 49

TRADE-USAGE

See JUTE . I L R 44 Calc 98

TRADING LICENSES

— *granted to hostile firms—*

*See CONTRACT WITH ALIEN ENEMY
I L R 41 Bom 390*

TRADING WITH THE ENEMY

*See BILL OF EXCHANGE
I L R 41 Bom. 566
I L R 46 Calc. 184*

See CONTRACT WITH ENEMY

See CONTRACT ACT (IX OF 1872), ss 58 (2), 65 I L R 40 Bom 570

*See SALE OF GOODS
I L R 40 Bom 11*

*Acts done and directions given before date of the Ordinance, relevancy of—Subsequent ratification—“Trading”, meaning of—Directions to an agent to take delivery of goods lying in London, and to sell to German firm against payment—Supply of goods to agent and sale by him to German firm—“Destined” meaning of—Legal and actual destination—Goods shipped to enemy country before the war but taken up by English firm in London—Exportation of goods to accused’s agent in Italy refused by such firm because of Royal Proclamation—Abetment of supply to, or of trading by the agent—Power of Appellate Court to alter conviction of principal offence to one of abetment—Discretion of Court—Commercial intercourse with Enemies Ordinance (VI of 1914), s 3—Trading with the Enemy Proclamation No 2, cl 5 (7) (9)—Fogal Proclamation of 15th October 1914—Criminal Procedure Code (Act V of 1898), s 423 Where a case of mica was shipped by the accused to a German firm before the war but arrived in London after its outbreak and was taken up by an English firm, whereupon he wrote, before the date of the Ordinance VI of 1914, viz., 14th October 1914, to a Bank in London, to make over the case to the English firm, and also to the latter to take it up and send the same to his agent at Genoa on application by such agent which, however, the English firm refused to do by reason of the prohibition of the export of mica to Italy by Royal Proclamation, and further wrote to the agent to apply to the English firm for the mica, and to deliver it to a German purchaser against payment, and where, after the date of the Ordinance, the accused again wrote to his agent informing him of his aforesaid letters and instructions to the Bank and the English firm, and directing the agent to apply for the case of mica to the latter and to deliver it to the German purchaser against payment, which directions were not in fact carried out on account of the refusal by the English firm to export the mica to Italy—*Held*, that, as the Ordinance was not retrospective, the only acts and directions which the Court could take into consideration, to establish the offence of trading with the enemy,*

TRADING WITH THE ENEMY—*contd*

*were such as were done or given after the date of its enactment, unless the previous acts and directions were ratified thereby Quare Whether mica directions to an agent to apply for goods in the possession of a third person, and to deliver the same to an enemy against payment amount to trading within the meaning of the Trading with the Enemy Proclamation No 2, cl 5 (7) The word “destined” when used with the term “trading” in the same sub-clause means “intended for” and not “on the way to” Legal destination must not be confused with actual destination The Court must determine whether the goods were actually destined for an enemy and with reference only to acts done and directions given after the date of the Ordinance VI of 1914 If the English firm had really purchased the goods outright they were not in existence, so far as any disposition of them by the accused was concerned after the date they were taken up and paid for and could not be destined for an enemy But assuming that the said firm had merely taken over the goods on behalf of the accused and subject to his further instructions, a direction to the agent to apply for and deliver them to a German purchaser against payment was insufficient to give the goods an enemy destination in fact, as such direction had no operation on receipt thereof by reason of the refusal of the English firm to export the goods to the agent at Genoa *Held*, also, that as the point was not free from doubt the accused was entitled to the benefit of it It is not a universal rule that in no case can an Appellate Court convict an accused of abetment when he is charged only with the principal offence But it is discretionary with the Appellate Court to allow such fresh charge being tried on appeal The Court refused under the circumstances of the case to alter the conviction to one of abetment of supply to or of trading by the agent Where the agent of the accused sold and delivered some cases of mica, and handed over the shipping documents for certain other cases lying in London, to a German firm or its agent in Genoa—*Held per BEACHCROFT and GREAVES, JJ*, that the accused was guilty of the offence of supplying goods to the enemy within cl 5 (7) of the Trading with the Enemy Ordinance No 2 INDAR CHAND : EMPEROR (1916)*

I L R 42 Calc 1094

Attempting to trade with enemy—Commercial intercourse with Enemies Ordinance (VI of 1914), s 3 “Obtaining” in ss 5 (7) and 5 (9) of the Royal Proclamation, meaning of—Penal statutes, generally not retrospective The accused a trader in Madras dealing in tobacco, cabled on 28th July 1914, to one Ruppell, a German residing in Germany for certain bales of tobacco In compliance with this order Ruppell sent to certain agents of the accused at Amsterdam some bales of tobacco about the end of September 1914, and these agents again shipped them on 7th October 1914 to Messrs Lancelot and Dent, the agents of the accused in London Having received the same before the 14th October 1914, the London agents reshipped them to the accused who received the same in Madras between the 21st and 26th November 1914 War was declared between England and Germany on 4th August 1914 A Royal Proclamation prohibiting trade with the enemy was made on 2nd September 1914 and an Ordinance

TRADING WITH THE ENEMY—*contd.*

(Commercial Intercourse with Enemies Ordinance VI of 1914) to the same effect was passed on 14th October 1914, and it came into force on that day. On these facts, the accused was charged and convicted by a Magistrate of the offence of trading with the enemy under s. 3 of the Commercial Intercourse with Enemies Ordinance VI of 1914 on the ground that he obtained in Madras between 21st and 26th November 1914, goods from an enemy and from an enemy country. He was also convicted by the Magistrate of the offence of attempting to trade with the enemy under the same section, writing two letters on 26th November 1914, one to a neutral subject in Holland and another to an enemy in Germany, requesting them to secure for him his merchandise in Germany. Held on the second charge, that the accused was guilty of attempt to trade, even if the goods in the enemy's country became his own before the outbreak of the war or even if there were no goods of his share at the time he wrote the letters. *Reg v J. G. S. I J (N S) M C 116*, and *Reg v Oppenheimer and Colbeck*, [1915] 2 K B 735 followed. Held on the first charge that the conviction could not be sustained, as the charge was not proved as laid. *Per WALLIS, G J.*—The charge of trading is bad for two reasons—(1) the ordinance, or proceeding was before the 14th of October 1914, the date when the Ordinance came into force, and (2) even this proceeding was in London by the accused's agents, an offence which Courts in India have no jurisdiction to try. *Semble*. Trading with the enemy is a Common Law offence in England if not in India also. The Royal Proclamation and the Ordinance have no retrospective effect. The words "obtaining goods" in their ordinary meaning include "procuring or ordering goods" as well as "taking delivery of them on arrival." *Per Courts Trotter, J.*—The offence committed, if any, was one of obtaining goods by way of transmission under the latter part of s. 5 (f) of the Royal Proclamation an offence with which the accused was not charged. *Semble*. Trading with the enemy is a Common Law offence both in England and in India. *Obiter*. A person may be guilty of illegally obtaining goods twice, once through his agents and thereafter by himself. It is no defence to the charge of obtaining goods under the Ordinance that some acts constituting the offence took place before the date of the Ordinance. *Reg v Griffiths*, [1891] 2 Q B 145, referred to. The charge of trading having failed, their Lordships refused in the circumstances of the case to amend the charge into one of obtaining goods by way of transmission under the latter portion of s. 5 (f) of the Royal Proclamation. *PROPER v KING EMPEROR* (1916)

I L R 40 Mad 31

TRADING WITH THE ENEMY PROCLAMATION NO 2— *cls* (1) (2) —*See* TRADING WITH THE ENEMY

I L R 42 Cal 1081

TRAFFICKING IN OFFICES*See* CONTRACT I L R 43 Cal 115**TRANSFER.***See* CHAUKIDARI CHAKARAN LANDS.

I L R 45 Cal 705

TRANSFER—*contd.**See* DEKKAN AGRICULTURISTS' RELIEF ACT, 19th s 10 L

I L R. 45 Bom. 87

See FRAUDULENT TRANSFER*See* HINDU LAW—WIDOW

16 C W. N 106

See ITAM I L R. 47 Cal. 979*See* MAHOMEDAN LAW ENDOWMENTS.

I L R. 47 Cal 886

See OCCUPANCY HOLDING

14 C. W. N. 63

See PRG EXEMPTION I L R 38 All 301*See* TRANSFER OF HOLDING*See* TRANSFER OF SHARES*See* TRUSTS ACT, s 5

I L R 38 Bom. 328

— by father, effect of—

See TITLE, PROOF OF

I L R. 45 Cal 303

— by lessee—

See LESSON AND LESSPE.

I L R 37 Cal 633

— by mortgagee—

See MORTGAGE BY MINOR.

I L R. 38 Mad. 1071

— effect of—

See CHAUKIDARI CHAKARAN LANDS.

I L R 45 Cal. 515

— fraudulent—

See PROVINCIAL INSOLVENCY ACT, 1907,

s 39 . 2 Pat L J 101

See TRANSFER OF PROPERTY ACT, 1882,

s 53 . 2 Pat. L J. 546

— of application—

See CIVIL PROCEDURE CODE, 1908, s. 24.

I L R. 34 Bom. 411

See SANCTION FOR PROSECUTION

I L R. 40 Cal. 37

— of decree—

See EXECUTION OF DECREE.

5 Pat L J 639

I L R 37 Cal. 574

See HIGH COURT RULES AND ORDERS,

s 161 . I L R 39 Mad 485

See SPECIFIC PERFORMANCE.

I L R. 43 Cal 990

— of Civil Case—

See CIVIL PROCEDURE CODE, 1908, ss

22 to 24

— to High Court—

See APPEAL.

I L R. 47 Cal. 1104

— of Criminal Case—

See CRIMINAL PROCEDURE CODE, ss

526 to 529

— of EXTRADITION

I L R. 48 Cal. 51

See JURISDICTION OF HIGH COURT

I L R. 44 Cal. 595

TRANSFER—contd

of Criminal Case—contd

See PEVAL CODE, s 228

I L R 38 All 284

See SANCTION FOR PROSECUTION

I L R 42 Cal 667

See TRANSFER OF MAGISTRATE

I L R 40 Mad 108

of goods to creditor—Effect of—

See PRESIDENCY TOWNS INSOLVENCY ACT
(III of 1909), s 57

I L R 39 Mad 250

of Magistrate who has written
but not delivered judgment—See CRIMINAL PROCEDURE CODE (ACT V
OF 1908) s 367

I L R 40 Mad 108

of Management—

See TRUSTEES OF A TEMPLE

I L R 39 Mad 456

of Proceedings—

See DIVORCE ACT (IV OF 1869) ss 3,
16, 37, 44

I L R 40 Bom 109

of portion of jote—

See LANDLORD AND TENANT

I L R 37 Cal 687

of shares—

See COMPANY I L R 36 Bom 334

of suit—

See PROVINCIAL SMALL CAUSE COURTS
ACT (IX OF 1897) ss 23, 27

I L R 38 Bom 180

of tenants rights—

See PARTIES 14 C W N 703

oral—

See TRANSFER OF PROPERTY ACT (IV OF
1882) ss 118 to 120, 54 and 55, CL 6
(b)

I L R 38 Mad 518

to Bona fide purchaser—

See SHARES I L R 46 Cal 331

to landlord—

See CHAUKIDARI CHAKARAN LANDS
I L R 45 Cal 685Transferee taking possession before
execution of agreement—

See AGREEMENT TO TRANSFER

24 C W N 463

with consent of reverend—

See TITLE, SUIT FOR DECLARATION OF
I L R 38 All 440Bona fide transferee for value
without notice of mortgage—See DEKKAN AGRICULTURISTS RELIEF
ACT s 10A I L R 45 Bom 871 ——— Transfer of share
of a claim in respect of property not in possession of
valid A transfer by a person of a share of his

TRANSFER—co 11

claim with respect to property of which he is not in possession on is valid and operative. An agreement between the transferor and the transferee that it shall not be competent to the former to confess judgment in favour of the defendant or to enter into compromise or withdraw the claim in respect of the whole or any part of the subject matter of the suit in tituled for the recovery of the property, is valid and should be given effect to. *Lal Achit Ram v Kazi Hussain Khan* L R 32 I A 113 see 9 C W N 477 followed. In such a suit if the transferor wants to withdraw, he may be permitted to do so but the suit may proceed at the instance of the transferee. *RAMDHAN LUNI v GOSSAIN DALMIH PURI* (1909) 14 C W N 191

2. ——— Transfer of a suit under s 92 Civil Procedure Code (Act V of 1908) from the Court of a District Judge to that of the Additional District Judge—Authority of Additional District Judge to try such suit—Civil Courts Act (XII of 1887) s 8, sub s (2)—Convenience. An Additional District Judge by virtue of the assignment of all the functions of a District Judge under the provisions of sub s (2) of s 8 of Act XII of 1887 is empowered to exercise the same powers as the District Judge in suits under s 92 of the Civil Procedure Code. *See* Any other Court empowered in that behalf by the Local Government in s 92 of the Code, probably refers to Courts such as the Subordinate Judges Courts. Transfer of the suit was ordered in this case on the ground of convenience the opposite party being compensated by payment of his costs. *TOHAROH RAHMAN v HAZI ABUL FATHIM* (1920) I L R 48 Cal 53

3. ——— Notification by Local Government empowering a particular Judge to deal with a part heard case pending in another Court, how far legal—Civil Procedure Code (Act V of 1908), s 9.—Power of District Judge to transfer a case from his file by virtue of such notification. A notification by the Local Government under s 92 of the Civil Procedure Code (Act V of 1908), directed to a particular Judge and purporting to deal with a particular litigation which was already pending in the Court of the District Judge, is ultra vires. A District Judge therefore has no power to transfer a case brought under s 92 of the Civil Procedure Code which was pending in his Court to the Court of a particular Subordinate Judge who was empowered by Local Government to try it by virtue of such a notification. *ABDUL KARIM ABU AHMED KHAN v ABDUS SOBHAN CHOWDURY* (1911) I L R 39 Cal 146

4. ——— Appeal—Powers of Court to whom case is transferred for trial—Limitation—Practice. When an appeal has been transferred for trial by a District Judge to a Subordinate Judge the Subordinate Judge has, for the purpose of disposing of the appeal under the Bengal North Western Provinces and Assam Civil Courts Act, all the powers which could be exercised by the District Judge. Where therefore an appeal was presented to the District Judge after the period of limitation owing to a mistake of law as regards the appealability of the suit and the District Judge admitted the appeal under s 6 of the Limitation Act and transferred the appeal to the Subordinate Judge for disposal the Subordinate Judge has power to consider whether the appeal was competent or barred by limitation.

TRANSFER—contd

Moties Sahoo v Om sh Chunder Sircar 1 L R 5 Calc 1 not followed *VISHNADEV DAS v SITA NATH ROY* (1912) 1 L R 40 Calc 259

5 ————— Application for adjournment to move the High Court for transfer—Criminal case—*viante g of—Proceedings for security to keep the peace—Criminal Procedure Code Act V of 1838* as 107 8th (3). A proceeding under a 107 of the Criminal Procedure Code is a criminal case, and is subject to the application of cl (3) of s 520 *WAZED ALI KHAN v FAKHRAH* (1913) 1 L R 41 Calc. 710

6 ————— Transfer by District Judge of parties for case to Additional Judge—*Civil Courts Act (XII of 1837)* as 8 sub a (9) 2nd sub-a (9)—*Roba e and Administration Act (I of 1837)* as 51, 63 It is competent to a District Judge to transfer a particular case to an Additional Judge under the provisions of sub a (2) of s 8 of the Civil Courts Act of 1837 *RAT KISHORE LAL v NEMAN BIRI* (1914) 1 L R 42 Calc. 512

7 ————— No notice to parties—Dismissal for default—application for rehearing—*Code of Civil Procedure (Act I of 1908)* O VII, r 19—“sufficient cause” Where an order of transfer

made notice should be given to the parties or their representatives On the 16th July the hearing of an appeal pending before the District Judge was postponed until the 21st August On the 9th August the appeal was transferred to the Court of the Subordinate Judge and on the 10th August the Subordinate Judge ordered the case to be put up on the 21st The order of transfer was not communicated to the parties On the 21st neither of the parties appeared before the Subordinate Judge, and he dismissed the appeal. *Held* that under the circumstances there was sufficient cause for granting rehearing of the appeal. *RAM SUKHAL PATHAK v MAHARAJA KESHO PRASAD SINGH* 3 Pat L J 218

8 ————— Criminal case—Grounds for Expression of opinion by Judge in counter case The basis of all applications for transfer is that the accused must have a reasonable apprehension that he will not receive a fair trial But a Judge is not incompetent to try a case of rioting merely because he has tried and decided a counter case and expressed an opinion therein *AMRIT MOYDAL v KING EMPEROR* 1 Pat L J 399

TRANSFER DEED

See *LIVERPOOL CITY*

1 L R 43 Calc. 933

TRANSFER OF APPEAL

When an order of transfer is made notice should be given to the parties or their agents *RAM SUKHAL PATHAK v MAHARAJA KESHO PRASAD SINGH* 3 Pat L J 218

TRANSFER OF HOLDING

See *CRIMINAL PROCEDURE CODE* s 520

1 L R 31 All 533

See *LANDLORD AND TENANT*

1 L R 40 Calc 570

See *PENAL CODE (ACT XLV of 1860)*

s 182 1 L R 33 All 163

See *TRANSFER*

TRANSFER OF HOLDING—contd

Gomastha if can be d landlord by recognising transferee of jote a question of fact—Burden of proof of the *gomastha* authority if lies on landlord—Transfer of holding recognition of what constitutes It cannot be laid down as an inflexible rule of law that a landlord is not bound by the act of *gomastha* in recognising a transferee of an occupancy holding The question of the *gomastha* s power to bind his landlord is one which must be decided on the particular facts of each case The burden of proof is in the first instance upon the landlord to prove the extent of the authority of the *gomastha* as a matter peculiar within his knowledge Where therefore a *gomastha* of the landlords accepted rent from a transferee of a jote and the landlords failed to show that the *gomastha* acted beyond the scope of his authority—*Held* that the facts constituted sufficient recognition of the transferee by the landlord *SUDHAN JAMADAR v BHENARI MAHTOV* (1911) 15 C W N 953

TRANSFER OF PROPERTY

See *RIGHT OF SUIT*

1 L R 36 Mad. 373

See *TRANSFER OF PROPERTY ACT (IV OF 1882)* s 6 CL (a)

1 L R 32 All 88

to the jurisdiction of another Court—

See *CIVIL PROCEDURE CODE (ACT V OF 1908)* as 37, 38 and 150

1 L R 37 Mad. 462

TRANSFER OF PROPERTY ACT (IV OF 1882)

See *MAHOMEDAN LAW—GIFT*

1 L R 39 All 627

See *MORTGAGE* 1 L R 43 Bom. 703

1 L R 35 All 48

applicability of, to Crown lands—

See *LEASE* 1 L R. 40 Mad 910

Vendee s right to possession against unpaid vendor—Lender only entitled to statutory charge The provisions of the Transfer of Property Act that the vendee after conveyance is entitled to possession and that the vendor has a statutory charge on the property for unpaid purchase-money are clear and it is not competent to the Courts in a suit for possession by the vendee to pass a decree for possession conditional on the vendee paying the balance of the purchase money *Bhai Nath Singh v Palla, I L R 39 All 125* not followed *VELAUTUTHA CHETTY v. GOVINDASAWMI NAIDHY* (1910)

1 L R. 34 Mad. 543

In the absence of evidence to the contrary a homestead land comprised in a tenancy created before the Transfer of Property Act 1882 was passed must be presumed to be non-transferrable *AMRICA PRASAD SINGH v BALPPO LAL* 1 Pat. L J 253

Lease created before—Holding over—Reservation of a yearly rent—Presumption that tenancy one from year to year—Lease before Registration Act (VIII of 1871) reserving a yearly rent if required registration Where it appeared that the tenant took settlement of a

TRANSFER OF PROPERTY ACT (IV OF 1882)

—*contd*

holding for a term of one year by executing a *kabuliyat* in 1273, and after the expiry of the term he and his successors in interest were holding over until the present suit to eject upon 22 days' notice to quit was instituted by the land lord *Held*, that a stipulation in the *kabuliyat* that the tenant would be liable "to pay the rent of which assessment notice will be served by the landlord," and on his failing therein the landlord would be free to settle the holding with somebody else, did not take away the right of the landlord to eject the tenant after service of notice to quit according to law, even if the landlord did not choose to exercise his right to call upon the tenant to pay additional rent and settle the land with others in the event of the tenant refusing to pay such rent. That the tenancy having been created long before the Transfer of Property Act, s 106 or s 116 of the Transfer of Property Act did not apply, and inasmuch as a yearly rent had been reserved, the tenancy was to be presumed to be a yearly tenancy, even though the rent was payable according to monthly instalments. That the tenancy having been created before the Registration Act, VIII of 1871, the stipulation reserving a yearly rent could be validly made without a registered instrument. That the tenancy could be terminated by a reasonable notice to quit. *CHAKU CHANDRA NAI v SATYA SEBAK GHOSAL* (1919) 23 C W N 641

— ss 2, cl (c), 116—*Ijaradar* for a term, sub lease for residential purposes granted by before 1882—*Holding over and acceptance of rent by next such ijaradar, effect of—Transfer of Property Act, effect of, on such tenancy—S 2, cl (c), s 116, conditions necessary for the application of—Notice required to terminate such tenancy* The defendant was brought upon the land as a tenant under a verbal lease before the Transfer of Property Act came into force by an *ijaradar* of the land, who held for a limited term which expired after the Transfer of Property Act had come into operation. The tenancy was created for residential purposes. The defendant continued in occupation of the land and was treated as tenant by the next *ijaradar* who accepted rent from the defendant. The landlord, the lessor of the *ijaradar*, never accepted rent from her. *Held* (in a suit for ejectment of the defendant), that in order to entitle the defendant to avail herself of the benefit of cl (c) of s 2 of the Transfer of Property Act it is necessary for her to establish that her right as it exists at present arose out of a legal relation constituted before the Transfer of Property Act came into force, in other words, that the tenancy created by the first *ijaradar* continued in operation even after the termination of the first *ijara*. That the tenancy of the defendant came to amend when the *ijara* during which it was created expired, and the true effect of the acquiescence by the second *ijaradar* in the continuance of the possession by the defendant and the acceptance of rent from her was to create in her a new tenancy and the provisions of cl (c) of s 2 of the Transfer of Property Act were consequently of no avail to the defendant. That in order to come within the scope of s 116, the defendant, besides proving that she as under lessee remained in possession of the property after the determination of the *ijara* granted to her lessor, had to establish that the lessor or his legal representative

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—*contd*

— ss 2, cl. (c), 116—*contd*
accepted rent from her. That the expression "legal representative" is not defined in the Transfer of Property Act, but it clearly implies a person who occupies the same position as the lessor and it could not include the second *ijaradar* who had transferred to him only a fraction of the interest possessed by the lessor. That the land in suit having been leased for a purpose other than agricultural or manufacturing, the tenancy must, even if s 116 applied, be deemed, in the absence of an agreement to the contrary, to have been a lease from month to month terminable by fifteen days' notice expiring with the end of a month of the tenancy. *DURGI NIKHINI v GOORODHAN BORA* (1914) 19 C W N 525

— s. 2 (d)—*Mortgage—Assignment of mortgage—Application of rule of damdupat* The fact that the person entitled to sue on a mortgage happens by assignment to be a Parnes cannot affect the (Hindu) mortgagor's right to claim the advantage of the rule of damdupat if it existed when the mortgage was entered into. It is not proper to infer that, because it has been expressly enacted that nothing in Chapter II of the Transfer of Property Act (IV of 1882) shall be deemed to affect any rule of Hindu Law, the Legislature has deprived a Hindu mortgagor of the protection afforded him by the rule of damdupat. The right of a mortgagee to sue for his principal and interest is a right arising from a contract and must be taken to be made subject to the usages and customs of the contracting parties. *JEEWANRAI v MANODAS* (1910) I L R 35 Bom 199

— ss 2 (d) 8, 36, 44, 52—
See SUBSTITUTION OF PROPERTY AND SECURITY I L R. 39 Mad 283

— ss 2 (d), 36—
See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH II, ART 7
I L R 41 Mad 370

— ss 2 (d), 52—
See COMPANY I L R 42 Bom. 215

— ss 2, 54—
See LAND REVENUE CODE (BOM ACT V OF 1879), s. 74 I L R. 41 Bom. 170

— ss 2, 108 (h)—
See LANDLORD AND TENANT—TREES,
I L R 37 Cal 815

— s 3—
See MORTGAGE, I L R 45 Cal. 1
See NOTICE 25 C. W. N 49
See PRESCRIPTION ACT, 1877 s 17
25 C. W. N. 49

— Actionable claims, transfer of—*Mortgage-debts, book-debts and promissory notes, gift of—Unregistered instrument, validity of, to effect gift—Law before and after amending Act of 1900* Under the Transfer of Property Act, 1882 as originally passed, mortgage-debts were assignable as actionable claims, and the assignment of the debt passed the security with it under s 8 of the Act. But in consequence of the amendments made in 1900 of the original Act, mortgage-debts, being excluded from the

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—*contd*—s 3—*contd*

definition of actionable claims, can only be transferred together with the security as immovable property and therefore only by a registered instrument. Where however the law still admits of the separate transfer of the mortgage debt as by the endorsement of promissory notes secured by a deposit of title deeds or by attachment and sale in execution of a mortgage debt under the Civil Procedure Code, s 8 of the Transfer of Property Act still operates, to carry the security with it. Where certain mortgage debts, book debts and promissory notes were transferred by way of gift under an unregistered document the gift of the mortgage debts, was invalid under s 123 of the Act but the gift of book debts and promissory notes fell under Chapter VIII of the Act (Transfer of actionable claims) and not under Chapter VII (Gifts), and was valid and took effect. Where there is a gift of immovables and moveables but the former fails owing to want of registration, the latter may nevertheless be held good, the question to be considered being whether the latter was conditional on the validity of the former. *Godman v Godman* (1920) P. 261, followed. *Polak Nauker v Naganna Nauker* (1915) 30 M L J, 63, distinguished. *PERUMAL NAJUKER v PERUMAL NAJUKER* (1921) I L R 44 Mad 198

Bare right to sue

assignment of—Claim for unascertained damages—Comparison between the English and Indian law The Defendants entered into a contract with one B undertaking to take delivery of certain goods in accordance with the contract and on their failure to do so the matter was referred to arbitrators who gave an award to the effect that the Defendants were to pay for and take delivery of the goods B, therefore, resold the goods which fetched a lower amount than that contracted for. He then brought a suit against the Defendants for the balance and then assigned to the Plaintiff all his claim in and the right to proceed with the suit and all advantages and benefits of all proceedings thereof. *Held*, that the suit was not maintainable inasmuch as the claim was for unascertained damages for breach of contract and the assignment was an assignment of a mere right to sue. *Glegg v Bromley* (1) referred to. That there were no materials justifying the application of sec 107 of the Contract Act and the resale was not justified by the award so that the claim was one for unascertained damages. That on a true construction of the terms of the assignment the subject matter of the assignment was not property with an incidental right to sue but a mere right to sue for unascertained damages for alleged breach of contract with the meaning of sec 8 (e) of the Transfer of Property Act. *JEWAN PAM v RAYAN CHAND KUNER CHAND* 28 C. W. N. 235

—ss 3 and 41—*Doctrine of constructive notice—Court-sale in execution—Certified purchaser—Benami—Mortgagee of certified purchaser—Civil Procedure Code (Act IV of 1882), s 317 (Act V of 1908) s 6* The mortgagee of the certified purchaser at a Court-sale is entitled to rely upon the title of his mortgagor including such immunity from suit as the law provides in support of the statutory title. S 86 of the Civil Procedure Code (Act V of 1908)—which may be called in aid for

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—*contd*—ss 3 and 41—*contd*

the purpose of assisting in the construction of s 317 of the Civil Procedure Code (Act IV of 1882)—support's the conclusion *Hari Govind v Ramchandra* I L R 31 Bom 61 followed. The doctrine of constructive notice applies in two cases, *first*, where the party charged had actual notice that the property in dispute was charged incumbrance or in some way affected, in which case he is deemed to have notice of the facts and instruments to a knowledge of which he would have been led by an inquiry after the charge or incumbrance of which he actually knew, and, *secondly*, where the Court has been satisfied from the evidence before it that the party charged had designedly abstained from inquiring for the very purpose of avoiding notice. This does not conflict in any way with the statutory definition of notice in s 3 of the Transfer of Property Act (IV of 1882). A purchaser of property is under no legal obligation to investigate his vendor's title. But in dealing with real property as in other matters of business regard is had to the usual course of business; and a purchaser who wilfully departs from it in order to avoid acquiring a knowledge of his vendor's title is not allowed to derive any advantage from his wilful ignorance of defects which would have come to his knowledge if he had transacted his business in the ordinary way. This is what is meant by 'reasonable care' in s 41 of the Transfer of Property Act (IV of 1882). Occupation of property which has not come to the knowledge of the party charged is not constructive notice of any interest in the property. *MAHAI KARTIKAR v HOORBAI* (1910) I L R 35 Bom 342

—*Benami sale—Sale by benamidar—Estoppel—Notice—Wilful abstinence from calling for title-deeds and from making an enquiry as to title—Infant, if may be estopped by his own fraudulent misrepresentations—Acts and admissions of guardian, if bid word B executed in favour of R a benami sale deed which as well as the property conveyed (a patti tenure) he kept in his own possession. R subsequently purported to transfer the property to the defendant: Held, in a suit by the representative of B against the defendant for recovery, that if it was found that the latter made no attempt to take the title deeds of the property including the sale deed of B in R's favour, the wilful or negligent abstinence on the part of the defendant to call for the title-deeds would deprive him of the protection which a Court of Equity would extend to a bona fide purchaser for value without notice, and the defendant would not be allowed to set up the plea of estoppel against the plaintiff. *Quare* Whether in a case of fraudulent representation an infant may be bound by an estoppel. *Held*, that an infant is not estopped by the acts or admissions of other persons in this case his mother and natural guardian. *Held* further, that as the mother of the infant did not place the benamidar of his father, R, in a position where she knew R would be able to commit a fraud (there being no finding and it being unlikely that she even knew of the existence of the benami conveyance to R) there was no ground for a plea of estoppel as contemplated by s 41 of the Transfer of Property Act. A purchaser is bound to make enquiry into the title and if he does not take reasonable care to do so,*

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—*contd*ss 3 and 41—*concl'd*

he takes the chance of his claim being defeated by the real owner **RAM CHARAN DAS v JOY RAM MAJHI** (1912) 17 C W N 10

ss 3, 78—

See MORTGAGE I L R. 43 Calc 1052

ss 3 and 136—

See LEGAL PRACTITIONER'S ACT (XVIII of 1870), s 13 I L R. 37 Mad 238

s 4—

See DAMDUPAT, RULE OF

I L R. 42 Calc 826

See MORTGAGE 2 Pat L J 168

ss 4 and 54—*Unregistered sale-deed for land of less than Rs 100 in value invalidity of, when no previous oral sale—Evidence, inadmissibility of, to prove adverse possession—Possession change of, in cases of oral sale, how to be effected* A sale of tangible immovable property of the value of less than Rs 100 effected by an unregistered instrument (without any prior oral sale) followed by delivery of possession is invalid and inoperative to pass the title to the property under s 54 Transfer of Property Act (IV of 1882). A document which affects immovable property and which is required by law to be registered is if it is not registered, inadmissible in evidence to prove the nature of possession of the person claiming under it such as the adverse character of the possession *Per CURRIE* If an oral sale is made of immovable property of the value of less than Rs 100 to a person already in possession of the property it is sufficient to pass title if the vendor converts by appropriate declarations or acts the previous possession into a possession as vendee and it is not necessary that to satisfy the section 54 of the Transfer of Property Act the person in possession should give it up formally and take it afterwards as vendee *Sivendrapada Banerjee v Secretary of State for India* I L R 34 Calc 207 not followed **MUTHUKARUPAN v MUTHU** (1914) I L R 38 Mad 1158

ss 4, 105 107—

See KABILIVAT I L R. 39 Calc 1016

ss 4 and 107—*Indian Registration Act (XVI of 1908) ss 17 and 49—Unregistered lease for six months—Whether admissible to prove tenancy* S 49 of the Registration Act applies only to instruments which are required to be registered by s 17 of that Act and is not applicable to instruments which have to be registered under the provisions of the Transfer of Property Act. Hence an unregistered lease for a period of less than one year which is required to be registered under s 107 of the Transfer of Property Act but not under s 17 of the Registration Act is admissible in evidence to prove the nature of the possession under the instrument **RAMA SASTI v GOWRI RATHO** (1921) I L R. 44 Mad. (F.B.) 55

ss 5, 6, 7 and 127—*Minor—Validity of transfer in favour of a minor* Held, that inasmuch as there is nothing in the law to prevent a minor from becoming a transferee of immovable property so a minor in whose favour a valid deed of sale has been executed is competent to

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—*contd*ss 5, 6, 7 and 127—*co cl'd*

sue for possession of the property conveyed there by *Ujjat Rai v Gauri Shankar* I L R 33 All 657, and *Raghunath Baksh v Haji Sheskh Mubim mad Baksh* 18 Oudh Cases 116 referred to *Mohori Bibee v Dharmadas Ghose* I L R 30 Calc 539 and *Naralotti Narayan Chetty v Loganigga Chetty* I L R 33 Mad 312 distinguished **MUNNI KUNWAR v MADAN GOPAL** (1915) I L R 38 All 62

ss 5, 54—

See DEPOSIT I L R 35 Bom 403

s 6—

See s 3 . 26 C W. N 285

See CONTRACT FOR SALE
I L R 36 Bom 139

See EXPECTANCIES
I L R 39 Mad 554

See HINDU LAW—REVERSIONER
I L R 48 Calc 536

See HINDU LAW—WOMAN'S ESTATE
I L R 44 Bom 498

See MAHAMMADAN LAW—DOWER
I L R 33 All 457

See MAINTENANCE
I L R 38 Calc 13

See OFFERINGS TO A TEMPLE
I L R 41 Calc 2E

See REVERSIONARY INTEREST
25 C W N 496

—Of a contingent right of inheritance

See MAHOMEDAN LAW
I L R 41 Mad 365

1 ——— *Transfer of expectancy* *Compromise between Hindu brothers that property of a brother dying without male issue should be divided amongst survivors—Hindu law—Dayabhaga—Administration—Suit to enforce administration bond—Limitation* Held that a provision in a family settlement whereby certain Hindu brothers divided the family property belonging to them amongst themselves and agreed that upon the death of any one of them without male issue his share should pass to the surviving brothers was neither in contravention of Hindu Law nor obnoxious to the provisions of the Transfer of Property Act s 6 (a) as being a transfer of an expectant interest in property **Ram Narayan Singh v Prayag Singh** I L R 8 Calc 138, followed. Held also that where the assignee of a bond given by an executor for the due administration of the estate sues to enforce the bond, time does not begin to run against him necessarily until the death of the obligor **KANTI CHANDRA MUKHERJI v ALI NABI** (1911) I L R 33 All 414

2 ——— *Compromise of claim to possession of property of deceased person—Such compromise not a transfer of reversionary rights* D claimed adversely to M the property left by M a deceased father. The claim was compromised, and D for a consideration of Rs 5000 and some immovable property, withdrew his claim and recognized the title of M as absolute owner. M died, and the property passed to her husband K who sold part of it to S. Held, on suit by S to

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—contd

recover possession of the property so purchased that the compromise by B of his claim against M was not of noxious to the prohibition contained in s 6 of the Transfer of Property Act 1882 as being a sale of reversionary rights. *Mohammad Hashmat Ali v Kaniz Fatima*, 13 All L J 110, referred to. *BARATI LAL v SALIK RAM* (1915).

I L R 38 All. 107

3 ———— **Compromise of claim to possession of property of deceased person.**—Such compromise not a transfer of reversionary rights. Of four separated Hindu brothers, Hazari the second, died first leaving a widow, Musammatt Mulo who married the eldest brother Parmal. Next, another brother Pransukh, died, without issue, leaving a widow, Musammatt Indo. A question having arisen as to the legal effect of the remarriage of Musammatt Mulo, the two surviving brothers, Parmal and Gokul, entered into an arrangement by which, in consideration of his being allowed to retain the property of Hazari, Parmal agreed to make no claim against Gokul to the property of Pransukh on the death of his widow Musammatt Indo. Held that this was a valid agreement and did not offend against the provisions of s 6 (a) of the Transfer of Property Act, 1882. *Rani Meena Kuar v Rani Hulas Kuar* L R 11 A 157, *Kanti Chandra Mukerji v Ali Vahi* I L R 33 All 414, *Nawab Ali v Fayaz Ali Rahman*, I L R 33 All 475, *Mohammad Hashmat Ali v Kaniz Fatima* 13 A L J 110, and *Barati Lal v Salik Ram* I L R 38 All 107, followed. *Olavi Pullak Chetti v Tara Darajulu Chetti*, I L R 31 Mad 474 referred to. *Bayrang Singh v Bhagwan Baksh Singh*, 11 Oudh Cases 301, referred to by *Piott J Chaulvi v Parmal* (1919). I L R 41 All. 611

4 ———— **Release by reversioner of his interest in certain promissory notes executed on death of present holder.** The reversioner executed a document purporting to be a release in favour of the widow of his interest in certain Government promissory notes to which the widow was entitled during her life. Held, that this was a transfer of the chance of an heir apparent succeeding to property and therefore void. *Sham Sunder Lal v Achhan Kuar* I L R 21 All 71, referred to. *MARGAWAN MAGAN v BALI NATH DAS* (1909).

I L R 32 All 88

5 ———— **Hindu temple offerings to—Pujari's right to a share of alienable—Entropel—Res extra commercium.** The chance that future worshippers will give offerings to a temple is a mere possibility within the meaning of s 6 (a) of the Transfer of Property Act and as such cannot be transferred. Such a transfer being prohibited by statute the transferor is not estopped from questioning its validity. *Per SHANMUGAN, J.* The right of the pujari of a Hindu temple to take a share of the offerings is a *res extra commercium*. *TRICHAI THAKUR v BINDERHAI THAKUR* (1915).

19 C. W. N. 580

6 ———— **Hindu law—Adoption—Post ponement of adopted son's estate during the widow's life—Transfer made by adopted son of property forming part of the estate in the widow's life time—Spec successful.** An agreement depriving an adopted son of his right to take possession of the property of his adoptive father is not prohibited

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—contd

by law. *Kali Das Dyal v Shankar*, I L R 13 All 391, and *Isakulakshi Ammal v Sivararnien*, I L R 27 Mad 577, referred to. Where such an agreement has been entered into, for example an agreement giving a life estate to the adoptive mother and the remainder to the adopted son, the interest of the son is not merely that of a contingent collateral Hindu reversioner, but he has vested interest in the property of his adoptive father which he is competent to deal with, subject only to the previous life estate. He is not barred by the provisions of s 6 (a) of the Transfer of Property Act, 1882, from dealing with the property. *BALWANT SINGH v JOTI PRASAD* (1918).

I L R 40 All. 692

——— **Maha Brahmin—Mortgage by of right to receive dues of office.** There is nothing in the law to prevent a Maha Brahmin mortgaging his right to offerings receivable by him in his professional capacity. *Raghoo Pandey v Lassy Parey* I L R 19 Cal. 73, referred to. *SUREN LAL v BISHAMBHAR* (1916).

I L R 39 All. 186

——— **Transfer of lessor's interest—Breach of condition prior to the transfer—Right to enforce forfeiture by the transferee.** A *mutuus* lease provided that the lessee was not to alienate the property leased. The lessee committed a breach of the condition by sale of his rights under the lease to defendant No 2 in 1908. In 1911, the plaintiff purchased the landlord's rights from the lessor who had not given the lessee notice of his intention to enforce the forfeiture before the transfer. The plaintiff having sued to recover possession of the property on breach of the condition, defendant No 2 contended that the plaintiff could not take advantage of the breach of condition incurred before the assignment in his favour. Held disallowing the contention, that the plaintiff was entitled to recover possession of the property from defendant No 2. *VERSHYWAR v MAHA BLESHWAR* (1918). I L R 43 Bom 28

——— **s 6 (e)—'Mere right to sue'—Assignment of decree for mesne profits.** A and B, holders of a decree for (a) possession of immovable property and (b) directing an enquiry as to mesne profits obtained possession through the Court and, thereafter, sold to C and D their right to recover the mesne profits. All four applied to the Court to ascertain the amount of mesne profits and the Court ordered accordingly. Held that the sale was valid, the right of A and B under clause (b) of the decree not being a 'mere right to sue' within the meaning of s 6 (e) of the Transfer of Property Act, 1882. Held further that proceedings under a decree directing an enquiry as to mesne profits are proceedings in the suit. C and D acquired a right to carry on the suit without giving the leave of the Court under O XX r 10 of the Code of Civil Procedure 1908. They should have applied for leave under that rule but their omission to do so under the circumstances of this case was not fatal to their claim. The order of the Court on the petition presented by A B C and D was equivalent to the grant of leave. *HARI PRASAD MISHER v KORO MARYA*.

1 Pat. L J 427

——— **Assignment of a decree passed for immovable property and for ascertainment of mesne profits—Transferee a right to be**

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—cond

s 6 (e)—cond

made a party and to mesne profits Where the right to mesne profits has been declared by a decree, but the exact amount has been left to be ascertained at a future stage in the same suit, a transfer of such right is not invalid under s 6 (e) of the Transfer of Property Act as the transfer of a "right to sue" *VENKATARAMA AYYAR v RAMASAMI AYYAR* (1921) . I. L. R. 44 Mad. 539

Right to sue, assignment of—Tort—Assignment of claim founded on, validity of—Damages for negligence of agent, assignment of claim for A mere right to recover damages for the negligence of an agent in failing to collect rents cannot be transferred. Such a right is nothing more than a right to sue within the meaning of s 6 (e) of the Transfer of Property Act (IV of 1882). If such a claim is founded on tort, it is not assignable. *Dawson v Great Northern and City Railway*, [1905] 1 K B 260, and *Deffre v Milne*, [1913] 1 Ch 93, referred to. *Held*, also, that the claim is founded on contract was unassignable in law being transferred after breach. *Abu Mahomed v S C Chunder*, 1 L R 36 Cal 315, applied. *Shyam Chand Koondoo v The Land Mortgage Bank of India*, 1 L R 9 Cal 675, referred to. *Mahodas v Ranj Palak*, 1 L R 16 All 256, distinguished. *Dawson v Great Northern and City Railway*, [1905] 1 K B 260, explained. *VARAHASWAMI v RAMACHANDRA RAJU* (1913) . I. L. R. 35 Mad 138

Transfer of right to past mesne profits, illegality of A transfer of a claim for past mesne profits is invalid under clause (e) of s 6 of the Transfer of Property Act (IV of 1882). *Varahaswami v Ramachandra Raju*, 34 Mad L J 293, followed. *King v Victoria Insurance Company*, [1896] A C 250, distinguished. *SREETHAMA v VENKATARAMANAYTA* (1913) . I. L. R. 35 Mad. 308

Settlement for concubinage—Immoral object carried out—Right to annul the settlement It is a well established rule of equity that a person who has transferred a property to another for an illegal or immoral purpose cannot get it annulled if the intended purpose has been carried out, and s 6, (h) of the Transfer of Property Act has not the effect of modifying it. *Ayeri v Jaitias*, L R 18 Eq. 275, followed. *Per OLFIELD, J*—It is the sense of the community as a whole that decides whether a certain purpose is immoral; the fact that in a certain section of the community concubinage is allowed and it is not regarded as immoral does not make a settlement made by a member of such community in consideration of concubinage any the less immoral. *DEVIYAYAGA PADAYACHI v METTU REDDI* (1921)] I. L. R. 41 Mad. 329

ss. 5 and 7—

See s 6 I. L. R. 33 All. 62

s. 7—

See MINOR . I. L. R. 40 Mad. 308

s. 8—

See s. 3 . I. L. R. 44 Mad 196

See SUBSTITUTION OF PROPERTY AND SECURITY . I. L. R. 39 Mad. 233

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—cond

s 8—

See MORTGAGE I. L. R. 45 Cal. 748

See REGISTRATION ACT, 1908, ss. 17 AND 49 . I. L. R. 43 All 1

s 10—

See LEASE I. L. R. 45 Cal. 940

Hindu Law—Grant, deed of, for maintenance and other expenses—Grant by zamindar to his wife and minor son—Estate of grantees—Restraint on alienation—Lease for fifteen years by mother as guardian, if void, or voidable by minor—Repudiation by zamindar as natural guardian, mere act of, if sufficient—Suit to set aside—Decree in such suit necessary—Suit by guardian—Dismissal for default, effect of—Suit by lessee for rent—Objection by tenants as to validity of lease A zamindar made a grant of certain lands to his wife and his minor son for their maintenance, clothing and other expenses. The deed of grant contained a provision that the grantees were not to alienate the properties by sale, mortgage, etc. The mother of the minor son granted a lease of the lands for fifteen years in favour of the plaintiff, and died a few months thereafter. The zamindar, the father and natural guardian of the minor, sued to set aside the lease, but the suit was dismissed in consequence of the zamindar's default in obeying an order of the Court to appear in person. The plaintiff as the lessee of the lands, sued to recover *melvaram* due to him from the defendants who were the ryots but did not join the minor grantees as a party to the suit. The defendants contended that the lease to the plaintiff was not valid and that the plaintiff was not entitled to recover rent from them. *Held* (on a construction of the deed), that both the mother and the minor son obtained under the grant an estate in the property and were tenants in-common during the life time of the mother after which the son was to hold the whole property. The provisions against alienation contained in the deed of grant were absolute restraints on alienation and were void under s 10 of the Transfer of Property Act and under the Hindu Law. The lease for fifteen years granted to the plaintiff by the mother acting as guardian of her minor son, even if it was beyond the powers of a guardian, was not void against the minor but only voidable by him. The party who is entitled to avoid a transaction may do so by an unequivocal act repudiating the transaction or by getting a decree of Court setting it aside. When a guardian (natural or appointed) of a minor has given a lease, another guardian cannot set it aside by a mere act of repudiation, he can do so only by obtaining a decree of Court in a suit which may be instituted on behalf of the minor during his minority, but his action in instituting a suit to set it aside (which was dismissed for his default) has no greater effect than his mere act of repudiation. *Held*, consequently, that the plaintiff was entitled to recover rent from the defendants under the lease. *MUTHUSUMARA CHETTI v ANTHONY UDAYAR* (1914) . I. L. R. 38 Mad. 867

ss. 10 and 11—

private religious gift to Brahmins—

See HINDU LAW—GIFT.

I. L. R. 44 Bom. 304

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—contd

ss 10, 108 111—

See LEASE I Pat. L J 1

ss 10, 111 117—

See KHOD KAST JATEY
I L R 48 Calo 359

s 14—

See LEASE I L R 44 Mad 230

ss 14 40 and 45—

See CONTRACT I Pat. L J 238

s 36

See LESSOR AND LESSEE.
I L R 38 Mad 86See PROVINCIAL SMALL CAUSES COURT
ACT, 1887, s 11 ART 7

I L R 41 Mad 370

ss 36, 44 and 52

See SUBSTITUTION OF PROPERTY AND
SECURITY I L R 39 Mad. 283

ss 36 and 108

See LESSOR AND LESSEE
I L R 38 Mad. 86

s 33

See HINDI LAW—DEBT
I L R 35 Mad 108

s 40 Specific Relief Act (I of 1877)

s 3—Indian Trusts Act (II of 1822) s 41—*Suit for declaration and possession—Sale—Prior agreement of purchase—Notice—Subsequent purchaser, a trustee* Plaintiff sued for a declaration of title to and for possession of immovable property from the defendant. He based his title upon a registered sale deed dated the 5th December 1911 from one A. Prior to this date the plaintiff had notice of the execution of a contract of sale of the same property by A to the defendant. The defendant relied upon his possession under the contract of sale and contended that he had paid to A portion of the purchase money agreed upon and the balance was to be paid after the sale deed was passed. Both the lower Courts allowed the plaintiff a claim for possession though it was found that the plaintiff had notice of the defendant's contract of sale and that nearly half the purchase money was in fact received by A from the defendant under the contract. The defendant having appealed. *Held*, that the plaintiff having purchased with notice of the defendant's contract his suit for possession must fail. He stood in the position of a trustee for the defendant of the land purchased by him and could not profit by his conveyance except to stand in the shoes of his vendor and receive the balance of the purchase money due, on payment of which he would have to convey to the defendant. *Latchand v Lakshman* I L R. 23 Bom 466, and *Kurri Yerrareddi v Kurri Bupreddi*, I L R 29 Mad 330 doubted. *GANGARAM v LAXMAN GANGA* (1916) I L R 40 Bom. 498

s 41—

See s 3 I L R 35 Bom 342
17 C W N 10See CIVIL PROCEDURE CODE, 1908 s 47
I L R. 45 Bom 812

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 41—contd

See DEKKHAN AGRICULTURISTS RELIEF
ACT, 1879, s 10A.

I L R 45 Bom 87

See MAHOMEDAN LAW—ENDOWMENT
I L R 47 Calo. 866

1 *Osteensible owner*
—*Owners of property minors at date of transfer—Act (Local) No 11 of 1901, s 201* The owner of certain zamindari property died leaving him surviving a widow and two minor sons. During the minority of the sons their mother not only got herself recorded in respect of one-third of the property left by the husband (her proper share being one-eighth and the balance being her sons), but she mortgaged it to one A. A sold his rights to B who brought a suit for sale on his mortgage and having brought the property to sale purchased it himself. He subsequently transferred it to M. M brought a suit for profits against the sons and got an *ex parte* decree. *Held*, on suit by the sons for declaration of title to their share in the property excluding the one-eighth belonging to their mother or in the alternative for possession, (i) that the suit was not barred by the provisions of s 41 of the Transfer of Property Act 1882, and (ii) that the proviso to s 201 of the Agra Tenancy Act 1901, protected the present suit. *Dalibos v Gopibai*, I L R 26 Bom 43, and *Dambur Singh v Jaisirs Anwar*, I L R 29 All 292, referred to. *ABDUL LAH KHAN v MUSAMMAT BUKKI* (1911).
I L R. 34 All 22

2 *Osteensible owner*
—*Binding as to question of fact—Second appeal* *Held*, that the questions whether a person in apparent possession of immovable property is the 'osteensible owner' with the consent, express or implied, of the real owner within the meaning of s 41 of the Transfer of Property Act 1882, and whether a transferee from such a person took the transfer *bona fide* after taking reasonable care to ascertain the title of his transferor are questions of fact, the finding on which by the lower Appellate Court, cannot be disturbed in second appeal. *JANNA DAS v UMA SHANKAR* (1914).
I L R 36 All 308

3 *Husband's property sold by wife—Bona fide purchaser for value without notice—His rights—Without notice, significance of the expression—Husband's right to redemption* Where, during the husband's absence on pilgrimage the wife sold a piece of land which had before the husband's departure been mortgaged by her the purchaser who paid off the mortgage having by proper enquiries satisfied himself that the wife was owner. *Held*, that the husband could not recover the land nor was he entitled to be allowed to redeem the mortgage. *NIRAS PURSE v TETAT PARSIN* (1915).
20 C W N 103

4 *Osteensible owner, transfer by when bona real owner—Res judicata* In a suit by A to recover from B property the title to which was disputed between A and B. B in whose favour B had on 14th March 1893 executed a usufructuary mortgage—in lieu whereof on 21st January 1895 another mortgage was executed in his favour by B—was made a defendant apparently on the ground of his being a transferee

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—contd

s. 41—contd

under the mortgage of 14th March 1893. The suit was decreed. In a suit by M to enforce his mortgage of 21st January 1893, which the representative in title of A contested the High Court held that the decision in the previous suit was *res judicata*, and also that s. 41 of the Transfer of Property Act did not apply to give M a title, although B had got his name entered in the Revenue papers as owner because the application for the entry having been opposed by A, B could not be said to have been entered as ostensible owner with A's consent, and also because if M had made enquiries before he advanced money to B, he could have discovered the fact of B's opposition and facts showing B's title. The Judicial Committee on appeal found the judgment of the High Court to be so satisfactory and sufficient that they felt themselves justified in advising the dismissal of the appeal without following the practice of making an elaborate report. *NAYESHAR PRASAD PANDE v PATESHRI PARTAB NARAIN SINGH* (1915)

20 C W N 265

5 ————— *Equitable estoppel—Hindu law—Mistakshara—Joint family—Karta's name recorded in survey papers in respect of joint property—Alienation by Karta whether other members of family estopped from challenging—Constructive notice—Suit for partition—Admission of separation by plaintiff, effect of.* The mere fact that the name of the karta of a joint family is entered in survey papers as the owner of the family properties is not sufficient to show that a minor member of the family had held the karta out to be the ostensible owner of the properties within the meaning of s. 41 of the Transfer of Property Act, 1892. A person dealing with the karta of a Hindu family governed by the *Mistakshara* must inquire whether, and how far, the other members of the family are interested in the family property, and is not entitled to rely on entries in collectorate registers and survey papers. The presumption is that all the members of the family are interested in the property. If the person dealing with such a karta has had previous transactions with him and is a neighbour not only is he bound to enquire as to the interests of other members of the family but he is charged with notice and knowledge of the title of such members. The reasonable care referred to in the proviso to s. 41 is the care that is expected of an ordinary man of business. Where a Hindu and his nephew were members of a joint family and the uncle executed a mortgage in the presence of the nephew who attested it, *held*, that the mere presence of the nephew did not involve any notice or knowledge that his share of the joint family property was being mortgaged, and that he was not estopped from subsequently claiming his share unless it was satisfactorily proved that he was aware that the document dealt with his share of the property and that it was intended that his interest should be effected thereby. *KAMRU LAL MAHWARI v PALU SAHU* 5 Pat. L. J. 821

6 ————— *Ostensible owner—Duty of transferee to inquire into transferor's title—Transferor in possession as sister's son of last full owner—Duty of transferee to ascertain if any collaterals existed.* Defendant took a mortgage

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—contd.

s. 41—contd

of a house from a person who was the son of a sister of the last full owner (a Hindu). The house was entered in the municipal register as in the possession of the mortgagor, but the mortgagee did not appear to have made any inquiry as to the title, although there was reason to suppose that he must have been aware of the existence of collaterals of the last owner. *Held*, on suit by the collateral heirs for recovery of possession of the house, that the defendant mortgagee, not having made proper inquiries as to his mortgagor's title, was not entitled to the protection afforded by s. 41 of the Transfer of Property Act, 1892. *BALLU MAL v RAM KISHAN* I L R 43 All 263

7 ————— *Rights of a mortgagee purchaser in execution of a decree upon a mortgage by a widow in whose name her husband had purchased the property—Rights of a purchaser in execution of a money decree against the husband—Such purchaser if estopped from disputing the rights of a mortgagee purchaser—Bona fide transferee for value without notice, actual or constructive.* A Hindu husband purchased some lands in the name of his wife, who after his death mortgaged them and the mortgagee purchased them at a sale held in execution of the decree obtained upon the mortgage. In the meantime the lands had been sold in execution of a money decree against the husband and taken possession of by the decree holder purchaser. The mortgagee purchaser thereupon sued for a declaration that the lands belonged to the wife and for possession. The *Kabulyants*, *town* counter foil rent receipts stood in the name of the wife and the mortgagee had taken the mortgage in good faith after making proper inquiry. *Held*—That so far as there were occasions for doing so the husband held out his wife as the real owner, and therefore the purchaser in execution of the money decree against the husband, being the successor in interest of the said husband was estopped from disputing the title of the wife and should not be allowed to defeat the rights of the mortgagee who is a transferee in good faith from the ostensible owner without notice, actual or constructive, of the husband's title. The mortgagee was not bound to inquire into the financial position of the husband at the time when the purchase was made in the name of the wife. *ANANDA MOHAN ROY v NURMAHAI DEBI*

25 C. W. N. 436

s. 43—

See ADVERSE POSSESSION
I L R 40 Cal 173

See BENAMI TRANSACTION
I L R 46 Cal 566

See CENTRAL PROVINCES TENANCY ACT,
1892, s. 4 . 4 Pat. L. J. 505

See CIVIL PROCEDURE CODE, 1882,
s. 317 . I. L. R. 23 All. 332

s. 323A . I L R 36 Bom. 510

See MADRAS PROPRIETARY ESTATES REGULATION SERVICE ACT, 1894 s. 5
I L R. 29 Mad. 830

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—contd.

s 43—contd.

1 ——— Held, that a permanent lease by fractional co sharers was binding on them when they subsequently acquired the whole property *PILAY MOHAY BAKERYER v RAJ KRISHNA GHOSH* 25 C W N 420

2 ——— *Deshgat Vatan*—Mortgage—Subsequent enlargement of the mortgagor's estate—Private property—Mortgagee's claim to hold the property against the mortgagor's heir—Reg XVI of 1827 A mortgagee of Deshgat Vatan knew that the property which was mortgaged to him was land appurtenant to an here diary office and mal enable beyond the life time of the incumbent Subsequently to the mortgage the estate of the mortgagor was enlarged so as to be alienable in the life time of the holder After the enlargement the mortgagee having claimed to hold the property against the heir of the mortgagor Held that the mortgagee took only such estate as the holder of the Vatan property was capable of conveying to the mortgagee at the time of the mortgage and that the mortgagee could not claim to retain the property in virtue of the mortgage after the death of the mortgagor *GANGABAI v. BASWANT* (1909) 1 I L R 34 Bom 175

3 ——— Benefit of section can be claimed only by person who has acted on the erroneous representation of another The benefit of s 43 of the Transfer of Property Act can be claimed only where the person claiming such benefit has acted on the erroneous representation of the party who subsequently acquired interest he claims An undivided Hindu father had two sons A and B A, who was entitled only to one third of the family property, mortgaged one half of it to C, who knew that A was entitled only to one-third and did not bargain and pay for a half share Subsequently A's father died and A having become entitled to a half share C sued on his mortgage seeking to make A's half share liable Held that he could enforce his mortgage only against the one third share which belonged to A at time of mortgage *PANDIT BANGARAN, v. HARMOOHY SUBBARAO* (1910)

1 I L R 34 Mad 159

4 ——— Estoppel, feeding of by after acquired property when transferor had no title at date of transfer—Principle of applicability to Hindu conveyances The observation in *Dooly Chand v Brij Bhookun Lal Awasthi* 10 C L R 61, 6 C L R 528 that the principle of English law which allows a subsequently acquired interest to feed on estoppel does not apply to Hindu conveyances was treated as obiter and held that when a grantor of a lease by a recital is shown to have stated that he is seized of a specific estate and the Court finds that the parties proceeded upon the assumption that such an estate was to pass an estate by estoppel is created between the parties and those claim ag under them, in respect of any after acquired interest of the grantor the newly acquired title being said to feed the estoppel. The principle is not inapplicable to a case where there was originally no title at all and is not confined in its application to cases where there is an enlargement of an existing interest. *KRISHNA CHANDRA GHOSH v RASIK LAL KHAN* (1916)

21 C W. N 218

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd.

s 43—contd.

5 ——— Permanent lease by fractional co sharers who subsequently acquire title to the whole property effect of — Permanent lease by widow, if operative against her sons, the reversionary heirs—Legal necessity—Such lease if void or voidable if the lease has to be avoided before suit for possession—Tenancies of homestead or agricultural lands created before the Transfer of Property Act transferability of—Custom and contract A widowed daughter of a Hindu M, and her two male cousins, J and S, held a property in equal shares M and S granted a permanent lease of the entire property to the Defendant Subsequently J died making a testamentary disposition of his properties to M and S in equal shares On the death of M her sons and J's widow brought a suit to recover the property from the Defendant Held, that the lease was operative in respect of a two third share during the life time of M and S But the one third share of J having subsequently vested in M and S the provisions of sec 43 of the Transfer of Property Act applied and the share of J became available to perfect their title and consequently the title of the Defendant in the entire property That the lease did not bind the reversionary heirs of M as she did not execute it for any legal necessity Alienation by a Hindu widow is not absolutely void but voidable at the election of the reversionary heir It is not, however necessary for him to take steps to avoid the lease before he brings an action for possession Held further that under the law as it stood before the Transfer of Property Act, tenancies whether of homestead or of agricultural lands were not transferable in the absence of a custom to the contrary or of an express contract to that effect *SULIV MOHAY BAKERYER v RAJ KRISHNA GHOSH* 25 C W. N 420

ss 44, 52—

See SUBSTITUTION OF PROPERTY AND SECURITY 1 I L R 39 Mad 283

s 45—

See JOINT TENANCY

1 I L R 34 Mad 80

ss 45 and 55—

See CROSS OBJECTION 5 Pat L J 328

s 48—

See CONSTRUCTION OF DOCUMENT

1 I L R 40 Bom 378

ss 51, 51, 118—

See ESTOPPEL BY CONDUCT

1 I L R 40 Mad 1134

s 52—

See CIVIL PROCEDURE CODE 1908, s 47, O XXI, s 2 1 I L R 43 Bom 240

See COMPANY 1 I L R 42 Bom 215

See SUBSTITUTION OF PROBATE AND SECURITY 1 I L R 39 Mad 283

See LIASPENDENS 1 I L R 41 Mad 458

1 ——— The rule of lis pendens will operate in favour of a plaintiff who at the time of the transfer was erroneously prosecuting his suit in a Court which from defect of

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—contd

s 52—contd

jurisdiction was unable to entertain it and in consequence returned it for presentation to the proper Court which Court ultimately decreed the suit on the basis of a lawful compromise. **TARON MAJHI v JALADHAR DEARI (1909) . 14 C W N 322**

2 ————— *Suit on prior mortgage—Fresh mortgage pending suit to pay off mesne mortgages—Effect—Subrogation* Where during the pendency of a mortgage suit a fresh mortgage was executed with the object of paying off certain mesne mortgages. *Held*, that in so far as the mortgagees under the new mortgage was entitled to be subrogated to the rights of the mesne mortgagees, the transfer was not affected by the rule of *lis pendens*. That in the absence of evidence to show an intention to extinguish the mesne mortgages paid off, the presumption was that they were intended to be kept alive. **TARA PRASAD MONDAL v KRISTA PRASAD PANDA (1910)**

15 C W N 261

3 ————— *Lis pendens—Suit to enforce simple mortgage ending in compromise—Execution sale pending suit—Purchaser, if bound by compromise—“Contentious suit”—“Immovable property,” suit respecting* The mere fact that a suit is terminated by a consent decree does not take the suit out of the operation of the doctrine of *lis pendens* as enunciated in s 52 of the Transfer of Property Act. A suit to be “Contentious” within the meaning of s 52, need not be contested in all its stages. A contentious suit is one in which a party having difference with another puts the law in motion as against the other. **Kailas Chandra v Pul Chand B B L R 474, Kusumunness v Airostina, I L R 8 Calc 183, distinguished Kishory Mohan v Mazafar Hussain, I L R 18 Calc 79, referred to Fayaz Hussain v Prag Narain L R 34 I A 102, relied on.** The doctrine of *lis pendens* applies to a suit to enforce a simple mortgage. **Fayaz Hussain v Prag Narain, L R 34 I A 102, referred to.** The doctrine applies to a purchase at an execution sale pending the suit. **Kadha Madhub v Monohur, L P 15 I A 97, Moti v Kurabuddin, L R 24 I A 170, Fayaz Hussain v Prag Narain, L R 34 I A 102, relied on. TINOODHAN CHATTERJEE v THAI LOENYA CHARAN SANTAL (1912)**

17 C W N 413

4 ————— *Lis pendens—Partition between defendants under as if the property in dispute—Partition affected by lis pendens—Plaintiff’s omission to bring partition to the notice of the Court—Practice—Array of parties—Plend ing—Change of parties in pending litigation—Procedure* The plaintiff, who owned a third share in an equity of redemption obtained a decree to redeem his share of the mortgaged property from its four mortgagees. The plaintiff paid the redemption money in the Court but after the expiry of the period fixed by the Court. The Subordinate Judge held that the payment was validly made and ordered possession of the property to be delivered to the plaintiff. This order was reversed by the District Judge on the 7th January 1902. On the 10th January 1902, the four joint mortgagees effected a partition *inter se*, and the property the subject matter of the suit, fell to the share of one of them, Gopal. The plaintiff

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—contd

s 52—contd

if appealed to the High Court from the District Judge’s order on the 14th January 1902. The next day, that is, on the 15th January 1902, Gopal died, leaving him surviving a widow Gangabai. In the High Court appeal, the fact of partition dated the 10th January 1902 was not mentioned, but Gopal’s death was brought to the Court’s notice, but it was held that the right to sue survived against the other defendants. The High Court reversed the order of the District Judge and remanded the suit for extending the time of payment if any good cause were shown for it. In the District Court Gopal’s name was removed from the array of parties and time was extended. The plaintiff paid the money within the time so extended and obtained an order to recover possession of the property. Gopal’s widow, Gangabai, intervened on the ground that as she was no party to the District Judge’s order, she was not bound by it and could not be dispossessed. The Subordinate Judge granted the application. The plaintiff thereupon brought a suit to establish his right to the possession of the property. The Subordinate Judge decreed the plaintiff’s claim, but on appeal, it was dismissed by the District Judge. On appeal to the High Court, the decree was confirmed on the ground that the plaintiff’s right was affected by his own negligence in omitting to bring upon the record the representatives of Gopal; and his right was not affected by the partition of the 10th January 1902 which did not fall within s 52 of the Transfer of Property Act, 1882. On appeal, under the Letters Patent. *Held*, that the plaintiff could not be defeated on the ground that in another proceeding he did not communicate to the Court the fact of Gopal’s death, which he did not know. *Held* further that the partition in question fell within s 52 of the Transfer of Property Act, 1882 for it was a transfer or, at any rate, a dealing with the property in suit. *PER CURIAM*. It is part of any litigant’s right so far as the subject matter and conduct of the suit are concerned to know precisely where he stands. He is entitled to know who his opponents are, and, when that has been definitely and finally ascertained, to insist that no dealing on their parts with the property in suit, shall compel to go further afield, and bring in new parties, who but for such dealing, could have had no *locus standi* at all. A complete right needs a person of incidence as well as a person of inheritance. No party during the conduct of a suit has any power, by dealing with the property, to change the person of incidence or inheritance to the detriment of the other. **ISHWAR LINGO v DATTU GOPAL (1913) . I. L. R. 37 Bom. 427**

5 ————— *Lis pendens—Main matter decreed—Execution proceedings after a long period—Alienation of property during the period—Active prosecution* In 1902, defendant No 1 obtained a maintenance decree which declared a charge in her favour on the family property. In 1906 the judgment-debtors sold a portion of the property to plaintiff. Defendant No 1 applied in 1907 to execute the decree. In the execution proceedings, one of the lands sold to plaintiff was put up to sale and purchased by defendant No 3 in 1910. The plaintiff sued for a declaration that the sale to him was not affected by the subsequent sale. The lower Court rejected his claim on the

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—contd—

— 4. 52—contd

ground that the sale in plaintiff's favour was affected by his *pendens*. On appeal *Held*, reversing the decree that the doctrine of *lis pendens* had no application to the case, for the decree was passed four years earlier and no execution proceedings were taken, and it could not be said that the purchase by the plaintiff was made during the active prosecution of a contentious suit or proceeding. *BHOJE MADHDEV PARAB v GARGA BAI* (1913) I L R 37 Bom. 621

6. ——— *Lis pendens*—

Contentious suit meaning of—Friendly suit, no contest—Plea of *lis pendens* not taken in the written statement—Point of Law—Plea permitted after revival? The words 'contentious suit' in s 52 of the Transfer of Property Act (IV of 1882) are used in contradistinction to a friendly suit in which there is no contest. Every suit other than such a friendly suit by its origin and nature falls within the definition of a contentious suit. *Jogendra Chandra Ghose v Fulkumari Dassi* I L R 27 Cal 77, followed. *Krishna Kamini Devi v D no Many Choudhary*, I L R 31 Cal 655 and *Upendra Chandra Singh v Mohri Lal Narwar* I L R 31 Cal 745 dissented from. *Fayaz Hussain Khan v Prag Narain* I L R 29 All 339, referred to. A point of law such as *lis pendens* which was argued before the first court and which required no further facts than those already on record must be considered by the Appellate Court though the defendants did not plead it in the written statement. *KATHIR v VARENDHARA* (1913) I L R 38 Mad 450

7. ——— *Lis pendens*—

Attachment before judgment—Claim to attach property by third party allowed—Suit by decree holder against claimant to establish his right to attach—Suit dismissed—Appeal by decree holder—Judgment-debtor not a party to suit or appeal—Sale in execution of another decree by another decree holder pending appeal—Decree on appeal—Subsequent sale in execution—Validity of prior sale. A decree holder had attached the property of his judgment-debtor before decree in his suit, and while he was seeking to establish his right to attach and sell such property as the property of his judgment-debtor by suit against a successful claimant, another decree holder attached the same property and brought it to sale during the pendency of the appeal in the claim suit. The judgment-debtor was not made a party to the claim proceedings or the subsequent suit or appeal. The property was again sold in execution of the decree of the former decree holder who purchased it and sued to recover possession. *Held*, that the auction purchaser in the prior sale was not affected by the doctrine of *lis pendens* and his purchase was valid as against the purchaser in the subsequent auction sale. *Per WALLIS C J*—The doctrine of *lis pendens* was inapplicable on the ground that the judgment-debtor was not a party to the claim proceedings or the subsequent suit and could not be considered to be represented in that suit by the plaintiff therein. *Lala Mulji Thakar v Kanki Das* I L R 10 Bom 400 referred to. Even if the judgment-debtor was a party thereto, there is no *lis pendens* as the doctrine of *lis pendens* applies only to alienations which are inconsistent with the

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—contd—

— 8. 52—contd

right which may be established by the decree in the suit here as the sale in execution proceeded on the very footing that the property belonged to the judgment-debtor, the doctrine is inapplicable. *Per NATHAN, J*—The doctrine of *lis pendens* does not apply as the judgment-debtor was not actually or constructively a party to the claim suit. *Phul Kumari v Ghanshyam Misra*, I L R 35 Cal 202, explained. *Krishnappa Chetty v Abdul Khader Sahib*, I L R 33 Mad 535, dissented from. *PETHU AYYAR v SANKARANARAYANA PILLAI* (1916) I L R 40 Mad. 955

8. ——— *Lis pendens* doctrine of—Suit which is compromised and in which a consent decree is passed, whether falls within the scope of the doctrine—Contentious suit—significance of. In a suit for declaration of title to a certain zemindari certain mortgagees, who too were impleaded as Defendants set up their title by purchase in execution of a mortgage decree. After being hotly contested for some time the suit was compromised with the said Defendants but was continued against the other Defendants. The suit was eventually decreed partly in terms of solenama and partly on contest. The purport of the compromise was that the compromising Defendants relinquished in favour of the Plaintiff whatever interest they had in the zemindari for a consideration of a sum of money which was secured by a mortgage on the zemindari, as the Plaintiff was unable to pay the amount in cash. The present suit was subsequently brought to enforce a mortgage security executed by the Plaintiff in the previous suit after the institution of the said suit and the above mentioned Defendants, who had compromised were also made parties. They set up the mortgage executed in their favour and contended that though subsequent in point of time, it had priority over the mortgage in suit by the application of the doctrines of subrogation and *lis pendens*. *Held*—That the compromise and the mortgage executed in the previous suit constituted one entire and indivisible transaction and when the said decree gave effect to the compromise, it validated the whole contract between the parties inclusive of the mortgage. The mortgage in suit, executed after the institution of the previous suit, was affected, by virtue of the rule of *lis pendens*, by the consent, decree in the suit which incorporated and gave effect to the mortgage executed in connection with the said compromise. If a suit is not collusive, it is a contentious suit if it was so in its origin and nature and even if it is subsequently compromised. *Fayaz Hussain v Prag Narayan* L R 34 I A 302. s c I L R 29 All 339 II O W N 561 (1907), *Bandon v Beecher*, [1835] 3 Cl & F 479, *Annamalai v Malayand*, I L R 29 Mad 425 (S B) (1906) and other cases, referred to. *Kailash v Fulchand* 9 B L R 474 (1877) considered. Further, unless a compromise shows that the suit was in its origin and nature contentious, otherwise there would be nothing to compromise. Hence a consent decree falls within the scope of the rule of *lis pendens* enunciated in sec 52 of the Transfer of Property Act. *London v. Morris*, [1832] 2

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—contd

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L. J. Ch 35, 5 Sim 247, and other cases referred to BHARAT RAMANUJ DAS MOHANTA v SRI NATH CHANDRA SAHOO

25 C. W. N. 806

8. ———— *Contentious suit*—*Suit decided ex parte but not fraudulent* If a suit is neither fraudulent nor collusive it may be none the less a contentious suit within the meaning of s. 52 of the Transfer of Property Act, 1882 notwithstanding it was decided *ex parte* RAM BHAROSE v RAMPAL SINGH

I L R 42 All. 319

ss 52, 56, 81—

See APPEAL . I L R 41 Calc 418

ss 52 and 91—

See CIVIL PROCEDURE CODE ACT (V OF 1908) O XXI, r 103 AND O XXXIV, r 1 I L R 43 Mad 696

s. 53—

See ATTACHMENT I L R 44 Calc. 662

See DECREE, ASSIGNMENT OF I L R 37 Mad. 227

See FRAUDULENT CONVEYANCE

I L R 33 Mad 334

I L R 41 Mad. 612

See MORTGAGE BY MINOR

I L R 38 Mad 1071

1. ———— *Subsequent creditors are within the rule in cl (1) of the section*—*Presumption in cl 2 of section applies to subsequent creditors* Subsequent creditors are within the rule enunciated in the first clause of s. 53 of the Transfer of Property Act and a settlement can be avoided at the instance of subsequent creditors *Hussain Bhai v Haji Ismail Sait* 5 Bom L R 255 referred to. The presumption in cl 2 of s. 53 of the Transfer of Property Act applies in the case of subsequent creditors *THOMAS PILLAI v MUTHURAMAN CHETTIAR* (1909)

I L R 33 Mad 205

2. ———— *Mortgage in fraud of creditors, validity of* A, being in insolvent circumstances mortgaged certain property to B where having been a failure in payment of part of the consideration money, C holding a money decree against A, impeached the mortgage as fraudulent. *Held*, that the fact that the mortgage was for an amount larger than was really paid, was no reason for not upholding it to the extent that it was supported by a debt existing at the date of the mortgage and that A was entitled to a decree for the amount actually paid by him *Chidambaram Chettiar v Sams Aiyar*, I L R 30 Mad 6 distinguished. *Isham Chander Das Surcar v Bishu Sardar*, I L R 24 Calc 325, followed. See *CHITRA PITCHAIAN v PEDAKOTIAM* (1913)

I L R 36 Mad. 29

3. ———— *Fraudulent transfer*—*Transfer voidable at the option of the person defrauded*—*Purchaser at Court sale not a subsequent transferee*—*Person having interest at the property means person having interest at the date of the transfer*. The plaintiff purchased certain lands in 1906.

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—contd

s. 53—*conclld*

In execution of a money decree against the vendor, the lands were sold at a Court auction and purchased by the defendant in 1909, with full notice of the sale of 1906. The defendant having been put into possession of the lands, the plaintiff sued to recover possession relying on the sale of 1906. The defendant contended that the sale was not genuine and was not supported by consideration and was made with the object of defeating the creditors of the vendor. The trial court negatived the contentions and decreed the plaintiff's claim. The lower appellate Court held that the sale of 1906 was bad under s. 53 of the Transfer of Property Act, as the consideration was grossly inadequate, the sale was effected with the object of defeating and delaying the creditors of the vendor, and the plaintiff participated in the fraud. The plaintiff having appealed—*Held*, that the sale of 1906 could not be avoided, under s. 53 of the Transfer of Property Act (IV of 1882), at the option of the defendant, who was not a creditor of the vendor, or a subsequent transferee or a person having an interest in the property, within the meaning of the section. Having regard to the preamble as well as s. 5 of the Transfer of Property Act (IV of 1882), a person who steps in by operation of law and not by any act of the owner is not a subsequent transferee or a person having an interest in the property within the meaning of s. 53 means the person who has such interest at the time of the transfer objected to. *VASUDEO RAGHUNATH v JAYARDHAN SADASHIV* (1915) I L R 39 Bom. 507

4. ———— *Transfer to defraud or defeat single creditor, validity of*—*Bond fide transfer effect of* S. 53 of the Transfer of Property Act, 1885, is not limited in its application to cases where there is an intention to defraud or defeat the general body of creditors. The section is applicable where a debtor disposes of his property with the intention of defeating even a single creditor. But if the property of the debtor is transferred for consideration to a bond fide purchaser then, even though such transfer has the effect of putting the debtor's property out of the reach of the creditors the transfer will be effective and the creditors will not be entitled to have the transfer set aside or declared void. *TAKIRA SINGH v MARGO SINGH* 2 Pat. L. J. 546

5. ———— A suit by the purchaser of property sold in execution of a decree for a declaration that a conveyance by the judgment-debtor was fraudulent and for possession is not a suit on behalf of all the creditors within the meaning of s. 53 of the Transfer of Property Act, 1882. *SRI THEAKUTUJ v NARAYAN NARAY SINGH*, 6 Pat. L. J. 43

6. ———— *Fraudulent alienation to defeat and delay creditors*—*Attachment of alienated property*—O XXI, r 63, suit under—*Plea of attaching creditor as to fraudulent nature of alienation, validity of* In a suit by an alienor, whose claim to property attached under a decree has been rejected to set aside the order and establish his title, it is open to the attaching creditor to plead in defence that the transfer was in fraud of creditors. *Subramania Aiyar v Muthia Chettiar* (1915) I L R 41 Mad 612 (F. B.) and *Palu-*

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—contd.

— s 53—contd.

And: Chetty v Appanna Chettyar (1916) 30 M Y J 565, overruled RAMASWAMI CHETTIAR v MALLAPPA REDDIAR (1920)

I L R 43 Mad. (F B) 760

7 ————— Debtor and

Creditor—Suit to set aside deed as being void as delaying or defeating creditors—Deed made on good consideration—Preference by debtor to one creditor rather than another where debtor retains no benefit for himself In this appeal their Lordships of the Judicial Committee upheld the decision of the High Court, which is reported in I L R 31 Cal 999, at page 1003 The transfer which defeats or delays creditors is not an instrument which prefers one creditor to another, but an instrument which removes property from the creditors for the benefit of the debtor The debtor must not retain a benefit for himself He may pay one creditor, and leave another unpaid In re Moroney, L R 21 Ir 27 and Middleton v Pollock, L R 2 Ch D 194 followed When it was found that the transfer impeached was made for adequate consideration in satisfaction of genuine debt and without reservation of any benefit to the debtor, it followed that no ground for impeaching it lay in the fact that the plaintiff (appellant), who also was a creditor was a loser by payment being made to the preferred creditor—there being in the case no question of bankruptcy MUSAHAN SAHU v LALA HAKIM LAL (1915)

I L R. 43 Cal 521

8 ————— Mortgage in

fraud of creditors The first defendant mortgage two properties, viz., a parcel of land and a hut on second parcel to the plaintiff Subsequent to the mortgage the second defendant a creditor of the first defendant, purchased the hut in execution of a decree for money obtained by him against the first defendant prior to the mortgage In a suit by the plaintiff to enforce the mortgage security the lower Appellate Court made a decree for realisation of the mortgage money by sale of the first property alone although it found that at the date of the mortgage which was for an antecedent loan and an alleged cash payment which was not proved the plaintiff was not aware of the decree obtained by the second defendant nor of its impending execution against the first defendant, and that there was no evidence to show that there were other creditors of the mortgagor at the time of the mortgage transaction who were intended to be defrauded or defeated Held, that the facts found were not sufficient to bring the case within the scope of s 53 of the Transfer of Property Act That even assuming the mortgage to be within the mischief of s 53 the second defendant was under that section which rendered the transaction only voidable at the option of the person defrauded entitled to question the mortgage only in so far as it affected the property acquired by him, and therefore the Court's order directing the sale of the first property was not open to exception That the Court in proceeding to grant relief by way of avoidance of the transaction would do so only on equitable consideration and would apply the principles of justice equity and good conscience and as it appeared that the second defendant acquired the hut subject to the lien of the plaintiff,

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—contd.

— s 53—contd.

he should be granted relief only on condition that he satisfied the lien The plaintiff was therefore entitled to a decree for his dues also as against the second property in the hands of the second defendant KRISHNA KUMAR NANDY v JAI KRISHNA NANDY (1915) . 21 C. W. N 401

9. ————— Transfer to

stranger for value in fraud of creditors—Knowledge of intention to defraud, if sufficient A transferee who is not himself a creditor and who takes the transfer with full knowledge of the fraudulent intention of the transferor to defeat his creditors is not a transferee in good faith and such a transfer is void as against a creditor even if the transferee has paid full value of the property purchased by him Such a transfer cannot be held to be valid on the ground that a portion of the consideration money was applied by the transferor in payment of some debts which he owed to third persons ATTABUDDIN CHAUDHURY v BASANTA KUMAR MUKHAPADHYAYA (1916) 22 C W N 427

10 ————— Transfer made

with intent to defeat or delay the creditors—Whether the transfer void in toto or void in so far as there is no consideration One J mortgaged his property with the plaintiff for Rs 4,000 in 1911 In the same year, the defendant, a creditor of J brought a suit against him and obtained a decree in execution of which the properties mortgaged to the plaintiff were attached The plaintiff having failed to raise the attachment sued for a declaration that the defendant was not entitled to attach the properties Both the lower Courts found that out of the consideration of Rs 4,000, the only sum for which the plaintiff was a creditor of J at the time of the mortgage transaction, was Rs 1,000 and dismissed the plaintiff's suit on the ground that the plaintiff and J had an intention to defeat or delay the creditors of J in effecting the transfer On appeal to the High Court it was contended that the plaintiff was entitled to a declaration that he had a lien to the extent of the debt existing at the time of the mortgage Held, that it being found that both the transferor J and the transferee plaintiff had the intention of defeating or delaying the creditors of the transferor and the consideration of the mortgage being treated as one and indivisible, under s 53 of the Transfer of Property Act, the document must at the option of the person defeated or delayed be treated as void in toto and not merely as void in so far as there was no consideration Ex parte Chappin In re Sinclair, 26 Ch D 319 and Hakim Lal v Moosahana Sahu I L R 34 Cal 999 at p 1017, relied on DHIRKARSI MULJIBHAI v PARACKAND (1919) . I L R 43 Bom 707

11. ————— Transfer in fraud

of creditors—Attaching decree holder—Claim petition by transferee, allowed—Right of suit of attaching decree holder and an ordinary creditor—Form of suit—Whether representative suit on behalf of all creditors, necessary—English and Indian Law—Statutory right of suit under O XXI, r 63, Civil Procedure Code—Objection to form of suit if permissible on appeal for the first time An attaching decree holder, whose attachment has been raised on the claim petition of a transferee of the attached property, is not bound to bring a representative

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—contd.

s 53—contd

suit on behalf of all the creditors of the judgment debtor to set aside the transfer as fraudulent under s 53 of the Transfer of Property Act but is competent to institute a suit to establish his right to proceed against the property under O XXI r 63 of the Civil Procedure Code. *Subramania Ayyar v Mutha Chetty or I L R 41 Mad 612* and *Palaniand, Chetty v Appavu Chettiar, 30 M L J 865*, explained and distinguished English and Indian cases reviewed. *Quare* Whether an ordinary creditor who seeks to set aside an alienation as fraudulent under s 53 Transfer of Property Act, is bound to sue in a representative capacity on behalf of all the creditors of the transferor? *Per KRISHNAN, J* There is no rule either in English or Indian Law justifying the dismissal of a suit brought under s 53, Transfer of Property Act because it is not brought in a representative capacity, and objections to the form of the suit should not be allowed to be taken for the first time in appeal. Adopting the English rule an attaching decree holder has a personal right to sue by himself to avoid the transfer. Further as the defeated party in a claim petition the attaching creditor has a statutory right of suit given to him under O XXI r 63 Civil Procedure Code and that suit must necessarily be one brought by himself alone and is not a representative suit, such right of suit cannot be defeated by any rule of practice which has no statutory basis. *POKKER v KUNHAMAD (1918)*

I L R 42 Mad 143

s 54—

See s 4 I L R 38 Mad. 1158

See s 5 I L R 35 Bom 403

See ESTOPPEL BY CONDUCT

I L R 40 Mad 1134

See LAND REVENUE CODE (BOM) 1879

s 74 I L R 41 Bom. 170

See MORTGAGE I L R 48 Calc 509

I L R 44 Calc 542

See OFFICIAL RECEIVER

I L R 46 Calc 887

See PRE EMPTION I L R 2 Lah 199

See REGISTRATION ACT s 17

25 C W N 985

See SALE I L R 41 Calc 143

I L R 43 Calc 780

Compromise in suit for land—
whether a sale—

See LUNACY (DISTRICT COURTS) ACT,
1859 I L R 1 Lah. 109

oral sale followed by—registered
sale—

See SALE I L R 44 Bom 586

1 Pre-emption—

Whether sale is complete before registration. Defendant No. 4 sold the property in dispute to defendant No. 2 by a *Kobala*, dated the 14th July, 1911. The *Kobala* was registered on the 17th. At 6 A M

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—contd

s 54—contd

on the 17th plaintiff heard of the sale. At 3 P M he went to the Registration Office and put in a petition praying that the registration of the sale deed might be stayed. *Held* that the petition to the Sub Registrar was not a sufficient compliance with the rules of Muhammadan Law with regard to the performance of the *Talabi mauasibot* and the *Talabi istislah*. *Per MULLICK, J* A sale is not complete till legal ownership passes no matter whether there has been payment and delivery and a pre-emptor's title in the case of property worth more than Rs 100, does not arise until after registration. *KHRYALI PRASAD v MULLICK NAZRUL ALUM* I Pat L J 174

2

Sale of mortgaged property by mortgagor—Institution of suit by mortgagee—Registration of sale-deed—Purchase by mortgagee in execution of decree—Suit by mortgagee against vendee for possession, whether maintainable. Where an instrument which purports to transfer title to property requires to be registered the title does not pass until registration has been effected. Therefore, where a mortgagee instituted a suit on the mortgagor on the 7th November and the mortgagor had sold the property on the 11th August by a deed which was registered on the 24th November, and the mortgagee purchased the property in execution of his decree but was resisted in taking possession by the mortgagor's vendee. *Held* that in a suit by the mortgagee against the vendee the mortgagee was entitled to decree for possession and not a decree for sale only. *TILAKDHAR SINGH v GOUB NARAIN* 5 Pat L J 715

3

Salvage—Compromise—Land worth less than Rs 100—Registration of deed, or delivery, of possession not necessary. The terms of a compromise affecting a claim to land of the value of less than Rs 100 were reduced to writing. The document was not registered, nor was the transaction accompanied by delivery of possession. The material provisions of the deed were as follows—You and we are co-sharers in your and our land, Survey No 20 there is a well. Therein you and we have a joint share. Partition is to be made including it. After the said (survey) number is divided we shall give 9 pands more from our share and both of us should put up a bandh (embankment) in the middle of the well, and possession and enjoyment should be carried on according to our respective shares. According to this condition we should not cause obstruction to each other. One who will act in contravention of this agreement will be able to ruin burrs loss which may be caused. The lower Appellate Court regarded the transaction as a sale which under the provisions of the Transfer of Property Act (IV of 1882) required delivery of possession in order to validate it. *Held* that the terms of the deed did not bring the transaction within the category of a sale as defined in the Transfer of Property Act (IV of 1882). *Held* further that the document in question merely embodied a compromise between the parties and was in effect an acknowledgment of existing rights and that therefore no delivery of possession was necessary. *Pani Meva Kuar v Pani Hulas Kuar, L R I I A 157*, followed. *KRISHNA TANHAJI v ABA SHETTI PATIL (1909)* I L R 34 Bom. 139

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—contd

s 54—contd

4 ————— *Interim Registration Act (III of 1877) ss 17 (b), (c) and 49—Agreement of sale—Registration—Possession given subsequently—Deed operating as transfer* The plaintiff's guardian executed in favour of the defendants a registered agreement of sale and received Rs 100. The agreement provided that in consideration of the defendants' helping the plaintiff's guardian with money to carry on litigation to recover possession of certain property, the latter agreed to sell half of the property to the defendants when recovered. The suit was brought, the property recovered and the defendants were put in possession of the moiety. No registered conveyance accompanied the delivery of possession. Subsequently the plaintiff brought a suit to eject the defendants alleging that in the absence of a registered conveyance the title to the property was still in him. *Held*, dismissing the suit that the transaction was intended to operate as a sale on the recovery of the property and that the deed operated as a transfer on the fulfilment of the condition. **KONDU BIN KACHOLI v VISWAN MORESHVAR (1912)** . I L R 37 Bom 53

5 ————— *Sale compulsorily registrable, to defendant by unregistered kholra—Part performance—Payment of purchase money and delivery of possession—Subsequent sale by registered kholra to plaintiff with notice of defendant's rights—Plaintiff if may recover—Equity—Specific performance—Registration Act (XVI of 1908) ss 17 and 49* Where a purchaser of immovable property under an unregistered kholra paid Rs 500, the agreed price to his vendor and was placed in possession: *Held*, that in the absence of circumstances showing that such purchaser was not entitled to sue his vendor for specific performance, a subsequent purchaser of the property under a registered conveyance could not succeed in a suit to recover possession of the property from the former purchaser. The defendant is entitled, apart from the provisions of the Registration Act, to resist such a suit and to permit such a defence to be taken does not amount to an invasion or evasion of the Registration Act. *Walsh v Lonsdale, L R 21 Ch D 9* followed. **PRUTHI LAL v KUNJ BEHARI LAL MONDAL (1913)**

18 C W N 445

6 ————— *Sale—Condition attached to the payment of the purchase money—Public policy* Where a deed purporting to be a sale-deed contained a stipulation that the price should be paid within one year, provided that possession was obtained within that time, if possession was not obtained, then the payment of the price should be postponed, and further that in the event of the vendee not getting the property, the price should not be paid at all. *Held*, that the transaction amounted to a sale within the meaning of s 54 of the Transfer of Property Act, and the condition postponing the payment of the consideration was not contrary to public policy. **KAGLISHAR PRASAD MISRA v ABADI BIRI (1915)** . I L R 37 All 631

7 ————— *Sale—Agreement to reconvey—No bar to recovery of possession—Construction of statute* An agreement by the plaintiff to reconvey the property to the defendant made

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—contd

s 54—contd

contemporaneously with the sale deed cannot be pleaded in bar of plaintiff's right to recover possession under the deed of sale. The provisions of s 54 of the Transfer of Property Act are imperative. The express words of an Indian Statute are not to be overridden by reference to equitable principles which may have been adopted in the English Courts. **KURU VEERARATHI v KURU BAPURATHI, I L R 29 Mad 335** followed. **TIRUN GOWDA v BRUNGGOWDA (1915)**

I L R 39 Bom 472

8 ————— *Agreement to sell land not creating any interest therein—Rule of perpetuities not offending—Specific Relief Act (I of 1877) s 27 (b)—Indian Contract Act (IX of 1872), s 37* A contract to convey or reconvey immovable properties, whenever demanded, for a certain amount is only a personal contract and does not create any interest in immovable property and is therefore enforceable and not void as contravening the rule against perpetuities. *South Eastern Railway v Associated Cement Manufacturers, Limited, (1910) 1 Ch 12, 33*, followed. **KOLATHU APPAR v PANGA VADHYAR I L R 33 Mad 111**, distinguished. *Per CURHAM*—The contract is also enforceable according to s 37 of the Indian Contract Act (IX of 1872) against the representatives of the contracting parties. **CHABAMUDI v RAGHAYYU (1915)** . I L R 39 Mad 462

9 ————— *Sale-deed of property in possession of tenants—Deed should be registered* A house which was in the possession of defendants as tenants was sold to them by the owner in 1909 for Rs 60 by an unregistered deed of sale. It was again sold in 1910 by the owner to the plaintiff by a registered sale deed. The plaintiff having sued to recover possession. *Held* that the defendants were entitled to set up their sale-deed to defeat the plaintiff's claim for the deed though earlier in point of time required registration, as the only interest which the vendor had at the date of the sale was a 'reversion' in the house within the meaning of s 54 of the Transfer of Property Act (IV of 1882). **BRASKAR GOPAL v PADMAN HIRA (1915)**

I L R 40 Bom 313

10 ————— *Transfer of immovable property of less than Rs 100 in value to mortgagee with possession on failure to pay off mortgage—Oral transfer—Delivery of possession, necessity of—Formal delivery* Where immovable property of less than Rs 100 in value was first mortgaged to A with possession and then on mortgagee's failure to pay up the mortgage amount, the latter on 5th March 1906 orally sold the property to B, and at the same time formally delivered possession by pointing out boundaries by endorsing on the back of the mortgage bond the fact of the sale and by handing it over to A, and the mortgagee later on on 6th June 1906 sold the property to B by a registered deed. *Held*, that every thing that could be done to deliver possession to give effect to the sale of 5th March 1906 was done and the requirements of s 54 of the Transfer of Property Act having thus been satisfied, title passed to B and B's suit to recover the property from A must fail. **Sibendrapada Panerjee v**

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—contd—

s 54—contd.

Secretary of State for India, I L R 31 Calc 207, distinguished SONAI CHUTIA v SONARAI CHUTIA (1915). 20 C W N 195

11. ——— Agreement for sale of immovable property—Possession taken under the agreement—No registered conveyance—Suit by vendor to recover possession—Agreement for sale, whether a valid defence to the suit—Agreement capable of specific enforcement at the date of the suit—Specific Relief Act (I of 1877), s 3, Illustration (y) and ss 12 and 27—Indian Trusts Act (II of 1882), ss 41, 95 Where the plaintiff being the owner of certain immovable property seeks to recover possession of that property and there are no facts operating to his prejudice it is a valid defence to the suit that the plaintiff has agreed to sell the property to the defendant, the agreement being at the date of suit still capable of specific enforcement, but there being no registered conveyance passing the property to the defendant who has taken possession under the agreement for sale and is willing to perform his part of it with the plaintiff BAFU APAJI v KASHINATH SADOBA (1917) I L R 41 Bom 438

12. ——— Indian Registration Act (XVI of 1908), ss 17, 50—Sale of land below Rs 100 in value by unregistered deed of sale and delivery of possession—Sale valid on proof of sale and delivery of possession—Secondary evidence of unregistered deed of sale, whether admissible On the 10th May, 1899, defendant No 1 sold the land in dispute to the plaintiff's father for Rs 40 and delivered possession thereof to him. At the same time defendant No 1 executed a sale deed in favour of the plaintiff's father which was not registered. The plaintiffs remained in possession till 1911 when they were dispossessed by defendant No 2. In the suit to recover possession of the lands, the plaintiffs having lost the unregistered deed of sale adduced secondary evidence of its contents. The lower Courts accepted the evidence and decreed the suit. The defendants having appealed. Held, that the appeal failed inasmuch as the plaintiff's title was based on a contract of sale accompanied by delivery of possession which was proved. Per BRAMAN, J.—I am clearly of opinion that neither the original unregistered deed of sale of 1899 nor secondary evidence of it was admissible in the present case to support the plaintiff's allegation that in 1899 there was a complete and valid sale of the property in suit effectuated by delivery of possession." Per MACLEOD, J.—In my opinion in cases of transfer of property under the value of Rs 100, if the transfer is effected by delivery of possession accompanied by an unregistered document that document can be adduced in evidence in order to show what was the character of the possession given by the vendor of the land to the purchaser." DAWAL PIRATSHAH v DHANMA RAJARAM (1917)

I L R 41 Bom 550

13. ——— Sale of immovable property of less than Rs 100 in value—Delivery accompanied by an unregistered conveyance—Conveyance if admissible in evidence—Oral evidence to prove sale if admissible When the property sold is less than Rs 100 in value and the sale is effectuated or completed by delivery of possession, there is no reason why the transaction should not

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s 54—contd

be evidenced by a writing in the terms of a conveyance even though the document is not registered. The document does not confer title and is merely evidentiary, but having regard to s 91 of the Evidence Act it may be the only admissible evidence of the nature and terms of the transaction, though that section would not exclude proof of the fact of delivery of possession JUMAN SHEIKH v MOHAMMAD NOBINEGAR (1917)

21 C W N 1149

14. ——— Effect of section on doctrine of part performance where vendor has paid full purchase money and obtained possession The plaintiff sued to recover possession of land which originally belonged to him and was purchased by D at a sale in execution of a decree for money against him. Symbolical possession was taken by D who agreed to convey the lands to the plaintiff in consideration of a certain sum and actually executed a conveyance which however was not registered for non payment of the whole of the consideration money. Thereafter the land was sold in execution of another money decree against the plaintiff, who remained in possession, and purchased by the defendant. Subsequent to this the plaintiff obtained a second *kobala* from D which was duly registered. It was found that the whole of the purchase money was paid by the plaintiff to D before the purchase by the defendant and he was in possession at that time. Held that the plaintiff at the date of the purchase by the defendant had acquired a right to the property and as D could not at that date enforce any right against the plaintiff he could not contend that he had no interest in the property which could be purchased by the defendant. That in *Mauing Shwe Goh v Mauing Inn* I L R 44 Calc 542 s c 21 C W N 500 the Privy Council only pointed out that s 54 of the Transfer of Property Act differs from the rule of English law to this extent that it expressly lays down that a contract for the sale of immovable property does not of itself create any interest in or charge on such property. The question whether the equitable doctrine of part performance which arises from the fact that the vendor has paid the full purchase money and has obtained possession of the property agreed to be sold is inapplicable by reason of the provisions of s 54 of the Transfer of Property Act was not considered nor decided by their Lordships JHAN CHANDRA DAS v HARI MOHAN SEN (1917)

22 C W N 522

15. ——— Sale of equity of redemption by unregistered document—Admissibility of document to show satisfaction of mortgage Two plots of land were mortgaged to the defendant stipulating that he should keep possession of them for a fixed period in satisfaction of the debt and interest. Subsequently the mortgagee sold one plot to the defendant and thus paid off the mortgage and took back the other plot. The conveyance of sale was by an unregistered document. In a suit by the mortgagee for recovering possession of the plot sold. Held per CHITTY, J. That the property being in the possession of the mortgagee the sale was of the equity of redemption and being a sale of an intangible thing could under s 54, Transfer of Property Act only be effected by a registered document. The conveyance was therefore inadmissible to prove the sale or to show

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—contd

s 54—contd

when and how the mortgage was satisfied. *Per WALMSLEY J* (upon finding that the plot was sold free from incumbrance)—That the sale was never the less ineffective for want of delivery of possession. *HUSEMAT SUREKH v SUREKH JAMIN* (1918)

23 C W N 513

16 ————— *Purchaser of immovable property, suit to recover possession by—Agreement to reconvey to person in possession of certain taluk was sold in execution of a mortgage decree. The auction purchaser transferred the properties to the plaintiffs by a conveyance. The plaintiff sued for declaration of title to and possession of the land by virtue of the conveyance, while the defendant in possession alleged that the purchase was for his benefit and the plaintiff was his benamadar. It appeared that prior to the purchase there was an agreement between the plaintiff and the defendant that the properties would be reconveyed. Held, that the Transfer of Property Act did not contain the whole law on the subject of the transfer of property because there are other Acts which contain provisions relating to the same subject and s 54 of the Act was not of itself sufficient to enable the plaintiff to succeed in the contention that title being in the plaintiff by virtue of the conveyance, the defendant cannot resist his claim for possession on the basis of a mere agreement to reconvey. Held (as to the argument that the defendant could not rely on the agreement because it was too late for him to sue for specific performance)—That it might be that the defendant could not actively enforce his rights under the agreement by legal proceedings but possession is itself a title (at any rate to remain in possession) which a plaintiff must displace before he can succeed. *SHARIFUL HUSSA CHOWDHURY v KRISHNA GOVINDO DUTT* (1918)*

23 C W N 294

ss. 54, 55—

See s 118 I L R 38 Mad 519

See *MIRON* I L R 38 All 154See *SALE OF LAND*

I L R 43 Mad 712

Purchase money non-payment of portion—Sale of nevertheless complete—Registration of complete conveyance—Non-delivery to purchaser—Intention—Vendor a lien if may be given effect to in purchaser's suit for possession—Equity is—Subsequent purchaser's rights—Costs—False allegations in plaint. Where it was found that there was no intention on the part of the vendor or the purchaser to postpone the operation of a conveyance with consideration and been actually paid and the conveyance was executed and registered, but not delivered to the purchaser, and a part of the purchase money remained unpaid. Held that the conveyance was completed and title in the property passed to the purchaser. That the vendor had a lien on the land for the unpaid balance of the purchase money and though the lien does not entitle him after execution of the conveyance to resume possession of the land sold it gives him the right to keep the title deeds until payment. A Court of equity can direct the vendor

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ss. 54, 55—contd

to be again let into possession, if on a sale directed by it for enforcement of his lien, the property is found unsaleable at an adequate price. The right of the purchaser to obtain possession under s 55 (1) of the Transfer of Property Act and the right of the vendor to realise the unpaid balance of the purchase money under s 55 (4) (b) may be enforced in one action. In the suit by the purchaser for recovery of the land sold he was directed to deposit in Court the unpaid balance of the purchase money within a time specified failing which the suit was directed to be dismissed. Certain persons to whom the vendor had again sold the property for consideration, having been joined as parties to the suit were given liberty to withdraw the unpaid balance of the purchase money to be deposited by the purchaser. The purchaser plaintiff was made liable for the costs of the litigation as he had come to Court with a false plea, viz. that the whole of the purchase money had been paid to the vendor. *NILMADHAR PARIH v HARA PRASHAD PARIH* (1913).

17 C W N 1161

—ss 54 and 118—*Usufructary Mortgage*—Oral arrangement that mortgagee should give up possession of the mortgaged property in part and receive the equity of redemption in part—*Sale or Exchange—Price, meaning of—Evidence Act (I of 1872) s 29—Adverse possession by mortgagee. A usufructuary mortgagee of items A and B sued to redeem item A, alleging that item B had been previously redeemed by him. The defendant pleaded that more than 12 years prior to suit the mortgage had been extinguished by an oral arrangement by which the mortgagor orally sold item A to the mortgagee in consideration for the latter surrendering item B to the mortgagor freed from the mortgage lien. The defendant also contended that the possession of the mortgage became adverse from the date of the arrangement, and that the suit was barred by limitation. *Per CURRAM, J.* Held, that the transaction pleaded was not merely a compromise in acknowledgment of existing right but amounted to an exchange of property within s 118 of the Transfer of Property Act if it was not a sale, and was invalid for want of a registered instrument. *Per MILLER, J.* The transaction could not be proved for showing the change of the mortgagee's possession into adverse possession, since the intention to discharge the mortgage involved the intention to make certain transfers and it could not be said that if those transfers failed, both the parties nevertheless intended to discharge the mortgage. *Per SADA SIVA AYYAR, J.* All transfers by conveyance, if they are not settlements or declarations of trust were intended by the Legislature to come within one of the 'advertisements', 'transfers' or 'gifts' in the Transfer of Property Act. *The respondent charior v Ranganatha Aiyangar*, 13 Mad. L. J. 500 directed from. Price means not only money in current coin but includes money due on prior debt and the words 'price paid' will cover cases where the vendor's claim to the receipt of the price is satisfied by giving him what he accepts as tantamount to such payment. A mortgagee in possession as such cannot by merely asserting possession as owner under an invalid sale convert his possession into adverse possession so as to*

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—contd.

s. 54 and 118—contd.

presented for a title under the Limitation Act. *Yazari v Pulamra, I. L. R. 14 Mad. 39, Jagannath v Konda Chait Mahade, I. L. R. 14 Bom. 279, Ramanna v Attal Varma Laksh Rija, I. L. R. 15 Mad. 158, and Ahiraymal v Dasm, I. L. R. 32 Cal. 296, applied.* A mortgage created by a registered instrument may be proved to have been discharged by admissible evidence (including oral evidence) of payment of the mortgage amount, or by admissible evidence of any other transaction which operates as mode of payment. *Ramachand v Tulsi Prasad Singh 14 C. L. J. 517, Kattila v Panayannam v Kattila Kristannam, I. L. R. 10 Mad. 231, Karampalli Unai Krasu v Thekku Vellu Melharakutti, I. L. R. 26 Mad. 195 and Gouti Subba Poo v Varipanda Narayannam, I. L. R. 27 Mad. 367, referred to.* But oral evidence of an invalid oral conveyance (of which evidence is legally inadmissible) of the equity of redemption in a portion of the mortgaged property in discharge of the mortgage debt is inadmissible. *ARIVATUPPA v METTICKOMARAWAMI (1912)*

I. L. R. 37 Mad. 423

Mutual sales of property effected by registered deeds—Subsequent agreement to exchange portions of the property and agreement acted upon, but without execution of written instrument—Legal position of parties. In 1903, A by means of a duly registered deed, sold property X, with other property, to B, and B similarly sold property Y, with other property, to A. Possession of items X and Y was however, not transferred, and shortly afterwards A and B agreed to exchange the two properties. No deed of exchange was ever executed, but the parties remained in possession of the properties in question from 1905 onwards. In 1915 some of the heirs of B sued to recover property X from A in virtue of the sale deed of 1903. *Held*, that in the circumstances the plaintiffs were not entitled to recover. *Kurri Veerappa v Kurri Rappreddi, I. L. R. 29 Mad. 336, and Chidambara Chettiar v Vealinga Padayachi, I. L. R. 33 Mad. 512, disapproved.* *Mahomed Musa v Aphore Kumar Gangul, I. L. R. 12 Cal. 801, Mudhoon v Alderson S. A. C. 467, Sumoudin Ghulam Hussain v Abdul Hussain Kalimuddin, I. L. R. 31 Bom. 165, Karala Nanubhai Mahomedhai v Manekhrum Yakatchand, I. L. R. 24 Bom. 400, Ram Ballesh v Mughlani Akhanam, I. L. R. 26 All. 566, Begam v Muhammad Yakub, I. L. R. 16 All. 344, Muhammad Talib Hussain v Inayat Jan I. L. R. 33 All. 513, Jhampu v Avramani, I. L. R. 32 All. 626, and Maung Shwe v Maung Inn, I. L. R. 44 Cal. 512 referred to.* *SALAMAT UZZAMIN BEGAM v MASHA ALLAH KHAN (1911)*

I. L. R. 40 All. 187

s. 85—

See EQUITY RIGHT

R. 42 Cal. 28

See VENDOR AND PURCHASER.

I. L. R. 1 Lah. 330

Vendor's lien for unpaid purchase money—Consideration paid in part—Bond executed by vendee promising to pay balance of purchase money by instalments. The acceptance by a vendor of immovable property, of a separate bond given by the vendee to secure payment

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by instalments of the balance of the purchase money, does not in any way imply an intention on the part of the vendor to relinquish the lien given to him by s. 55 of the Transfer of Property Act, 1882. *Webb v Macpherson, I. L. R. 31 Cal. 57, referred to.* *BASHIR AHMAD KHAN v NAZIR AHMAD KHAN I. L. R. 43 All. 544*

Sale of land—Covenant of title—Failure of consideration—Warranty implied—Absence of express covenant to the contrary—Mortgage for balance of unpaid purchase money (if may be enforced on failure of consideration for sale)—Adverse claim compromised by purchaser—Vendor, if bound—Notice of compromise. A conveyed a property to D and D executed a mortgage bond for a part of the purchase money yet remaining due. At the time of the sale there was some dispute between A and some other persons relating to some part of the lands sold. Subsequently after D's purchase a suit was instituted by one R for a part of these lands and the suit was ultimately decreed in the first Court. Against that decree D appealed to the High Court where it was compromised on terms by which D gave away 133 bighas of the lands. *Held* that A's legal representative who acquiesced in the decision of the original Court could not contest the validity of the compromise made in the appeal Court in her presence and without any protest on her part that it was improvident. The law relating to compromise of an adverse claim by the purchaser with or without notice to the vendor, as affecting the vendor's covenant of title discussed. That the purchaser was entitled to a reduction of the price settled because the vendor had failed to convey all that he had agreed to sell and the consideration for the mortgage, being unpaid purchase money, the liability under it should be reduced pro tanto. That D was entitled to the benefit of s. 55 of the Transfer of Property Act although there was no active fraud on the part of A as there had been a failure of consideration with reference to 133 bighas. Any express covenant to the contrary relied on as a bar to the plaintiff's claim to be indemnified under s. 55 of the Transfer of Property Act, must be in plain and unambiguous language. *DIGAMBAR DAS v NISHIBALA DEBI (1910)*

15 C. W. N. 635

s. 55, Sub-s (1), cl. (b)—

See SPECIFIC PERFORMANCE.

I. L. R. 41 Cal. 852

s. 55 (1) (g)—

See VENDOR AND PURCHASER

I. L. R. 38 Cal. 458

Sale free from incumbrances of property subject to mortgage charges—Incumbrances discharged by purchaser—Right of purchaser to be indemnified—Payment of incumbrances by purchaser, if voluntary—Indian Contract Act (IX of 1872), sec. 69—Arrangement by vendor with a third party to pay off incumbrances, if enforceable by purchaser, when no trust created. Where a deed of sale of properties which in fact were subject to mortgage charges contained an express declaration that the property was sold free from incumbrances, the vendor was, under sec. 51 (1) (g), sub-sec. (2) of the Transfer of Property

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Act, liable to the purchaser for moneys paid by the purchaser either for redemption of the mortgages existing on the property purchased at the date of the purchase, or for purchase of the properties on sales under such mortgages or to prevent such sales. *Semle*.—It is difficult to accept the view that purchasers of a property are not compelled to pay off mortgages who have obtained decrees for sale, even though a sale is not immediately threatened. Where after the sale the vendor sold another item of property to a third person, and it was agreed between them that the latter should discharge the incumbrances on the property which the vendor had sold to the first purchaser free from incumbrances *Held*.—That a suit by the first purchaser against the second purchaser for recovery of the amount of incumbrances was misconceived the former being no party to the latter's purchase deed and no trust having been thereby created in his favour. **NATHU KHAN v. THAKUR BUNOVATH SINGH (P C)** 28 C. W. N. 514

s. 55, (2)—See **CONTRACT ACT (IX OF 1872)**, s. 73

I. L. R. 40 Mad. 338

See **CROSS OBJECTION** 5 Pat. L. J. 323See **SALE DEED** I. L. R. 38 Mad. 1171**s. 55 (4) (b)—**See **DEBT** I. L. R. 42 Cal. 849

Vendor has no absolute

title to interest in all cases irrespective of equities—Right of vendor in possession to interest S. 55, cl. (4) of the Transfer of Property Act, does not give the vendor an absolute title to interest in all cases irrespective of equities. It only provides that the vendor shall have a lien for interest when it is payable. Interest on the purchase money cannot be claimed so long as the vendor remains in possession of the property sold. **MUTHIA CHETTY v. SINGA VILLIAM CHETTY (1912)** I. L. R. 35 Mad. 625

Sale of land—Vendor

and purchaser—Vendor's direction to pay purchase money to a third party on his behalf—Existence of vendor's Lien, in spite of. A contract to forego the vendor's charge for unpaid purchase money is not to be necessarily inferred when the whole or part of the consideration for the purchase of immovable property is agreed to be paid by the purchaser to a third party on behalf of the vendor. **Abdulla Beary v. Mamnani Beary** I. L. R. 33 Mad. 416, and **Sivasubramania Mudaliar v. Unnan Sambanda Pandarab Sannadhi**, 21 Mad. L. J. 339, overruled. **Webb v. Macpherson**, I. L. R. 31 Cal. 57, referred to **RIVASUBRAMANIA AYYAR v. SUBRAMANIA AYYAR (1916)**

I. L. R. 38 Mad. 997

Sale—Consideration

therefor—Covenant by purchaser to discharge liabilities of seller—Breach of covenant gives rise to action for damages only—Statutory charge under cl. (4) (b) negatived by contract to the contrary arising by implication. When a purchaser of immovable property covenants in consideration of the transfer on such property to him to discharge certain liabilities of the seller and further stipulates, 'but upon his

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failure to do so he shall be liable for any damages resulting from such default. *Held*, that upon breach of such a covenant the seller is entitled to be compensated in damages but has no charge upon the property in the hands of the purchaser under s. 55, cl. (4) (b) of Act IV of 1882. To negative the statutory charge afforded by s. 55 it is sufficient if 'a contract to the contrary' arises by implication. **Webb v. Macpherson**, I. L. R. 30 I. A. 233, referred to *In re Albert Life Assurance Company v. Western Life Assurance Society*, 11 Eq. 164, followed. **Ramakrishna Ayyar v. Subramania Ayyar**, I. L. R. 29 Mad. 305, distinguished. **ABDULLA BEARY v. MAMNANI BEARY (1916)**

I. L. R. 33 Mad. 448

Sale—Vendor's lien—

Lien not enforceable against subsequent purchaser without notice. The vendor's lien for unpaid purchase money provided for by s. 55 (4) (b) of the Transfer of Property Act, 1882, cannot be enforced against the property in the hands of subsequent transferees for value without notice of the lien. **Webb v. Macpherson**, I. L. R. 31 Cal. 57, distinguished. **GUR DAYAL SINGH v. KARAM SINGH (1916)** I. L. R. 38 All. 254

On a sale of immovable

property a suit for preemption was brought and succeeded. At the time of the sale part of the purchase money had been left in the hands of the purchasers to pay off incumbrance, of which fact the preemptors had notice. As a matter of fact however, owing to a suit for preemption the incumbrance was not paid off. *Held* that the vendor had a lien on the property in the hands of the preemptors, to the extent of the unpaid purchase money. **RAMA NAND BHARTI v. SREO DAS** I. L. R. 43 All. 514

ss 55 (6) (b), 123—Registration Act

(III of 1877), s. 17—Exemption of assessment in

lieu of services rendered or to be rendered—Docu-

ment granting exemption not stamped or registered—

sale—Gift—Hindu Law—*Nibandha*. In considera-

tion of services already rendered or thereafter to be

rendered by the defendant to the predecessor in title

of the plaintiff the latter executed two documents

whereby he released the defendant from payment

to him of the assessment on certain lands. Those

documents were not stamped or registered. The

plaintiff sued to recover arrears of assessment from

the defendant, who pleaded exemption under the

two documents. The lower Appellate Court found

the transaction to be one of sale, and applying s.

55 (6) (b) of the Transfer of Property Act, 1882,

ordered the plaintiff to pay to the defendant what

the Court calculated to be the equivalent of pur-

chase-money before he (the plaintiff) could recover

the assessment. *Held*, that the transaction evi-

denced by the documents could not be regarded as a

sale, for the consideration could not be regarded as

"price", and even if it could be assessed in money

value, it was vitiated by the fact that it was vague

and uncertain as to future services. *Held*, further,

that the transaction must be regarded as one of

gift. It was a gift of the grantee a right to assess-

ment, and such a right is regarded as *Nibandha* in

Hindu Law and therefore immovable property.

The documents not having been registered, the

gift did not operate. *Held*, also that there having

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—contd.

ss 55 (6) (b), 123—contd

been no registered instrument in support of the defendant's title the right set up in defence must be negatived. *MADHAVRAO v KASHIBAI* (1909).

I L R. 34 Bom 287

ss 55, 58, 100—

See RATES AND TAXES

I L R. 42 Calc 625

s 56—*Marshalling*—Application of doctrine as between purchasers of different properties subject to the same mortgage—Act No III of 1907 (Provincial Insolvency Act), ss 16 and 34—*Insolvency*—Property of applicant sold in execution of decree before order of adjudication but after filing of application The rule of equity stated in s 56 of the Transfer of Property Act, 1882, does not apply to a case between purchaser and purchaser, the section being limited in its operation to the case in which the party claiming marshalling is a purchaser and the party against whom it is claimed is the original mortgagor *Magniram v Mehdi Hosein Khan*, I L R 31 Calc 95, followed *Held* also, that s. 16, cl. (6), of the Provincial Insolvency Act, 1907, does not control s 34, cl. (1), of the Act But where property of the applicant in insolvency is sold in execution between the dates of the application and of the order of adjudication, the property sold vests in the auction purchaser and not in the receiver *Sri Chand v Murari Lal* I L R 31 All 623, followed, *Basarmal Acsatmal v Khemchand Daryanomal*, 11 Indian cases, 433, approved. *DIN DAYAL v GUR SARAN LAL*.

I L R 42 All 336

ss 56 and 81—

See APPEAL I. L. R. 41 Calc. 418

ss. 56, 81, 88—

See MORTGAGE I. L. R. 35 Bom 395

s 57—

See MORTGAGES I. L. R. 39 Mad 419

See MORTGAGE DECREE 2 Pat. L. J. 118

s 58—

See s. 6 I L R. 39 All 196

See CONSTRUCTION OF DEED I L R. 40 Bom. 74, 373

See LIMITATION ACT 1908, sec 5, ART 132 . 25 C. W. N. 57

See MORTGAGE 1 Pat L. J. 563

See RATES AND TAXES

I L R. 42 Calc. 625

Mortgage—Construction of document A bond was executed in the following terms—"I have borrowed Rs. 1000 from so and so . . . and ½ out of the entire 20 biswa zamindari property in . . . belonging to me, and have brought the same to my use I therefore covenant and give it in writing that I shall repay the aforesaid amount with interest, etc Until the repayment of the aforesaid amount I shall not transfer the aforesaid property . . . If I do so then such transfer shall be invalid. I have, therefore, executed these few presents by way of a bond (*tamassuk*) *Held*, that the document did not constitute a simple mortgage as there was no transfer of a specific interest in im

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—contd.

s. 58—contd

moveable property to the lender nor any power of sale conferred on him *Dalip Singh v Bahadur Ram* I L R 34 All 416 referred to by PIGGOTT, *J MOHAN LAL v INDOMATI* (1916)

I L R. 39 All. 244

Mortgage by conditional sale—Sale and agreement to re-sell same transaction, whether a sale or a mortgage—*Construction*—Intention of parties—Surrounding circumstances, terms of instrument or oral evidence of intention, whether can be considered—*Decisions of Privy Council on transactions before Transfer of Property Act*—*Applicability of, to those after the Act* Where in one and the same transaction land is sold abso- lutely but with a right of re purchase to be exercised before a certain date, the transaction does not necessarily become by virtue of s 53 of the Transfer of Property Act a mortgage by condi- tional sale, whatever the intention of the parties might have been The Privy Council have laid down that in transactions before the Transfer of Property Act not governed by Bengal Regulation XVI of 1866, instruments of the above kind are to take effect according to their tenor, unless it appears from the terms of the instrument or the surrounding circumstances excluding oral evidence of intention as inadmissible that the intention was to effect a mortgage Though such decision dealt with transactions before the Act, they still govern transactions after the Act which has not effected any change in the pre existing law on this subject *Pattabhiramer v Venkatarao Naiken*, 13 Moo I A 560, *Thumbusamy Moodley v Hossein Routher*, I L R 1 Mad 1, *Situl Purshad v Luckm Purshad*, I L R 10 Calc 30, *Bhagwan Sahai v Bhagwan Din* I L R 12 All 337, *Bal kishen Das v W F Legge*, I L R 22 All 149, and *Jhanda Singh v Wahid ud-din* I L R 38 All 370, relied on, *Palanappan v Subbaraya Goundan*, I L W 50, overruled *MUTHUVELU MUDALIAR v VYTHILINGA MUDALIAR* (1919)

I L R 42 Mad 407

ss 58, 59, 70 and 71—

See EQUITABLE MORTGAGE.

2 Pat L J. 293

ss 58, 59, 68—

See MORTGAGE I. L. R. 44 Calc 388

ss. 58, 60, 68—*Possessory mortgage*, "1891 for one year with a covenant to treat it as sale, in default of payment—*Anomalous mortgage*—No right to redeem after one year A document of 1891, which was described as a "Swadina Tanaka Meddattu Sharatu Pattiram" which may be translated as a possessory mortgage deed con- taining a condition for a period fixed contained among others, the following terms "within three months a house site together with a thatched house thereon we have mortgaged that is, we have kept it as a possessory mortgage and have received Rs 10 from you So having paid the principal and interest pertaining to these Rs. 10 within the end of a year from the said date we shall take possession of our house and site If we do not act according to the said condition we shall quit the land and house as if this is a sale." In a suit for redemption brought after the date fixed for redemption: *Held* that the transaction was as an anomalous mortgage as described in s

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ss 53, 60, 93—contd.

53 of the Transfer of Property Act (IV of 1882), that the rights of the parties were governed by the terms of the mortgage document and that accordingly the plaintiff had no right to redeem after the period of one year fixed by the document. The right of redemption given by a 60 of the Transfer of Property Act to every mortgagor has no application to cases governed by a 93 of that Act. *Sreenivasa Iyengar v Radakrishna Pillai*, I L R 33 Mad 667, referred to *Uman Aksh v Dasanna* I L R 37 Mad 515 distinguished. *HAKHEM PATTE MOHAMMAD v SHAIK DAVOOD* (1916) I L R 39 Mad 1010

ss 53, 67 and 68—

See MORTGAGOR AND MORTGAGEE.]

I L R 45 Bom. 523

—*Usufructuary mortgage*

—*Failure of mortgagor to deliver possession*—*Right of mortgagee to sue for sale*. Held by the Full Bench—Where a mortgagor fails to deliver possession to his mortgagee, the mortgagee is not a usufructuary mortgage within the meaning of a 53 (d) of the Transfer of Property Act and the mortgagee is entitled to bring a suit for sale of the mortgaged property ss. 53 (a) and (d), 67 and 68 (c) of the Transfer of Property Act referred to. *Ram Narayan Singh v Adhindra Nath Mukherji*, I L R 44 Cal 331 followed. *Arunchalam Chetti v Ayyanayyana*, I L R 21 Mad 475, overruled. *SUBRAMMA v NARAYANA* (1917)

I L R 41 Mad. 259

ss 53, 100—

See MORTGAGE

I L R 34 All. 446

Construction of document—*Mortgage—Charge*. A deed commenced by reciting that the executant had borrowed a certain sum of money from certain persons, and then proceeded to refer to certain shares in a property, and finally there was a clause by which the executant undertook that until repayment of the amount he would not transfer the property by sale mortgage, gift or in any other way, but there was in no part of the document any expression conveying the idea of mortgage or hypothecation, nor was there any reference to any right of sale in the property. Held by RICHARDS, C J that it was the intention of the parties to make the property mentioned therein security for the loan and interest and that the document created a charge within the meaning of a 100 of the Transfer of Property Act, 1882. But as there was no transfer of any interest for the purposes of securing the loan, in the property mentioned in the deed it was not a simple mortgage without the meaning of a 53. *PER BAXENDT, J* (concur). The intention was that the persons who had lent the money should have a right to realize their money from the property by causing it to be sold. The document was therefore a simple mortgage within the meaning of a 53 of the Transfer of Property Act. *Martin v Parson*, N W P. H C 124, referred to. *JAWAHAR MAL v INDOMATI* (1914) I L R 36 All. 201

s 59—

See ATTESTATION I L R 37 Cal 526

See ATTESTING WITNESSES.

I L R 48 Cal. 61

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See EQUITABLE MORTGAGE.

I L R 33 Cal. 824

2 Pat. L J. 293

See EVIDENCE I L R 41 Cal. 345

See EVIDENCE ACT, 1872, s 78

1 Pat. L J. 129

See MALABAR LAW

I L R. 44 Mad 341

See MORTGAGE

I L R. 43 Cal. 895

I L R. 45 Cal. 748

See MORTGAGE BOND.

I L R. 46 Cal. 522

See NOTICE

25 C. W. N. 49

See REGISTRATION ACT, 1877, s 17

25 C. W. N. 49

See USUFRUCTUARY MORTGAGE

I L R. 39 Cal 227

1. —*Executant if may attest so as to bind co-executants—Improperly attested mortgage-bond, if operates as a charge*. A party to a document cannot under any circumstances be allowed to sign a document as an attesting witness and a person who has once signed as an executant of a mortgage bond and as one of the persons who were borrowing the money on the bond cannot be allowed to have his position altered from an executant of the bond to that of a witness for the purpose of rendering the document valid as a mortgage against the other executants. *DEBENDRA CHANDRA ROY v BHUBAI LAL MUKHERJEE* (1912) 16 C. W. N. 1075

2. —*The "attestation" of certain mortgage-deeds by two witnesses required by a 59 of the Transfer of Property Act is attestation of the actual fact of the execution*. *Ganga Das v Shyam Sundar*, I L R 26 All. 69, overruled. *SHAMU PATEL v ABDUL KADER RAUF TRAI* (1912) 16 C. W. N. 1009

I L R. 35 Mad 607

3. —*Mortgage bond—*

Attestation by only one witness—Bond judicially found to be invalid and unenforceable—Government notification—Retrospective effect—Exemption of certain Districts from the operation of a 59 of the Transfer of Property Act (IV of 1882)—Subsequent suit to enforce the mortgage—Res judicata—Rights vested under decrees not affected. In execution under a money decree certain property mortgaged to the plaintiff on the 8th September 1893 was attached and was about to be brought to sale. The plaintiff, thereupon, applied that the property should be sold subject to his mortgage lien. The Court rejected the plaintiff's application on the ground that the mortgage-bond was invalid and not enforceable because it was attested by only one witness and not by two as required by a 59 of the Transfer of Property Act (IV of 1882). The plaintiff, thereupon, brought a suit in the year 1906 for a declaration that his mortgage-bond was valid and operative according to law and, therefore, enforceable. The suit came up in second appeal to the High Court which on the 14th August 1908, finally decided that the plaintiff's mortgage was void and, therefore, inoperative.

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—*contd.*— s. 59—*contd.*

under s. 59 of the Transfer of Property Act (IV of 1882) In the meanwhile on the 24th June 1908, the Government of Bombay issued a notification exempting certain districts including the Poona District in which the mortgaged property was situate, from the operation of s. 59 of the Transfer of Property Act (IV of 1882). The notification was given a retrospective effect from the 1st January 1893. On the strength of the said notification, the plaintiff applied to the High Court for review of judgment and his application being rejected, he, in the year 1910 instituted the present suit to enforce his mortgage and both the lower Courts having rejected the claim on the ground of *res judicata* the plaintiff preferred a second appeal. *Held* confirming the decree, that the decree passed by the High Court in 1908 still subsisted and was not affected by the Government notification although the notification on had retrospective effect. The notification could not abrogate rights which had been judicially declared and had been merged in decree *Kay v Goodwin*, 6 Bng 576 and *Lem v Mitchell* [1912] A C 400 followed. LAKSHMANRAO KRISHNAJI v BALKRISHNA RANG NATH (1912) I L R 36 Bom. 617

4. — Where a deed was executed by two pardanashin ladies in the presence of their husband and the latter after seeing the execution of the document signed his name underneath but not where other witnesses signed and apparently just to notify his approval *Held* he was not an attesting witness *SIRVATI BAI KUBARI ALAK MANJARI KUBARI v SIRVATI BAI NARAD COMPANY* 6 Pat L J 473

5. — *Equitable mortgage—Deposit of title deeds of property situate in mofussil—Intention to create charge, proof of—Registration* The plaintiff deposited with the defendant in Bombay title deeds of his property situate at Nauk and borrowed a sum from the defendant. The defendant also at the same time executed in favour of the plaintiff a writing setting forth the clear intention of the defendant that the deposit of title deeds should be security for the loan from the plaintiff and binding the defendant to execute on demand a proper legal mortgage of the property covered by the title deeds deposited. This writing which was the only evidence available of the defendant's intentions in making the deposit of title deeds, was not registered. *Held* that the deed required registration as it created a charge upon the property, that in its absence there was no evidence whatever of intention to connect the deposit of title-deeds with the debt, and that the mere fact that there was a subsequent or contemporaneous loan was not sufficient in law to warrant a presumption apart from any other evidence that the contemporaneous or antecedent deposit of title-deeds was necessarily made as security for the loan. DENRAM RASHID v SOHARJI PASTORJI (1913) I L R 38 Bom. 372

6. — *Mortgage deed executed by pardanashin ladies, attestation of—Requirements as to identity of executants, and as to how incense being signatures made—Waiver of right of priority by first mortgagee in favour of second mortgagee—Right to recover unsatisfied portion of claim in subsequent suit from purchaser of mortgagor's interest in other property comprised in*

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—*contd.*— s. 59—*contd.*

mortgage In a suit on a mortgage executed by two pardanashin ladies, the defendant objected that the deed had not been duly attested in accordance with the provisions of s. 59 of the Transfer of Property Act (IV of 1882), as interpreted in the decision of the Privy Council in *Shamu Patter v Abdul Kadir Barudhan* I L R 35 Mad 607; I L R 39 I A 218, and was therefore not operative as a mortgage. On this point the High Court differed Sir H G RICHARDS C J, finding that the attestation was not complete, because the attesting witnesses had not actually seen the signatures of the executants put on the deed, and Sir P C. BANERJI being of opinion that that requirements as well as all others necessary had been observed *Held* (upholding the finding of BANERJI, J.) that the deed had been duly attested within the meaning of s. 59 of the Act. Two at least of the witnesses were well acquainted with the executants, and though they did not see their faces they recognized their voices and saw them sign the mortgage deed. *Held* (affirming the decision of the High Court), that the plaintiffs (respondents) had not in a former suit insisted on their right as prior mortgagees but had waived it in favour of the second mortgagees and so lost their claim only partly satisfied did not, under the circumstances of the case disentitle them from recovering the unsatisfied portion of the debt in the present suit from the appellants (defendants) who were purchasers of the mortgagor's interest in other portion of the property comprised in the mortgage. PANDIT HALWAI v PAM NATH UPADHIA (1913) I L R 37 All. 474

7. — *Attestation—Document attested by one witness only—Mortgage—Charge* A document purporting to be a deed of mortgage bore the signature of one attesting witness and the name of another person was written on the margin by the scribe but there was no signature or mark made by his second person. In a suit brought upon the document after his death it was held that the document was not duly attested by two witnesses within the meaning of s. 59 of the Transfer of Property Act, inasmuch as there was nothing to show that the person whose name appeared on the document as an attesting witness had authorized the scribe to sign it for him and therefore it could neither operate as a mortgage nor create a charge on immovable property. PARAM HANS v PANDIT BHOU (1916) I L R 38 All. 461

7 (a). — *Attestation of mortgage deed—Scribe who signs for and on behalf of the mortgagor is competent to become one of the attesting witnesses—Personal decree, when allowable* The executant of a certain mortgage deed was illiterate and she executed the instrument 'by the pen of' the scribe of the document who also signed the document as one of the attesting witnesses. *Held*—That the document was not legally attested by the scribe according to the provisions of sec. 59 of the Transfer of Property Act. Where no mark, seal or thumb impression of the mortgagor appears on the mortgage deed, the scribe who executes the document for and on behalf of the mortgagor is not competent to become an attesting witness to attest the signature he himself has written out. *(pendra*

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—contd

s 59—contd

v *Hutum*, I L R 48 Calo. 522 s c 23 C W N 290, approved and followed. A personal decree for the money is only allowable if the suit is brought within 6 years of the date of the Bond or for any payment within section 20 of the Limitation Act. *SRISTIDHAR GHOSH v PAKHYAKALI DAS*

28 C W. N 264

8. Mortgage bond—

Attestation on—Person subscribing as scribe if attesting witness Per *CHAMBER C J*—To be an attesting witness within the meaning of s 59 of the Transfer of Property Act the witness must not only have seen the execution of the document but should have also subscribed as a witness. *Shamu Potter v Abdul Kadir* I L R 39 I A 218 s c I L R 35 Mad 607 16 C W N 1000 *Raj Narain Ghose v Abdul Rahim* 5 C W N 451 *Dinamoy Deb v Dow Behari Kapur* 7 C W N 160 and *Badr Prasad v Abdul Karim* I L R 35 All 251 referred to. Where a person who subscribed a mortgage bond as scribe was proved to have been present when the document was executed and the lower Appellate Court upon this and other evidence found that he had seen the document executed and held that he was an attesting witness within the meaning of s 59 of the Transfer of Property Act. *Held per CHAMBER C J*—That although on the finding he must be held to have seen the mortgage deed executed the scribe was not an attesting witness as he did not subscribe as a witness. Per *JWALA PRASAD J*—That in the absence of evidence showing that he had witnessed the execution it could not be presumed that he had. A scribe of a deed who has witnessed the execution may sign the deed because he has done so and yet describe himself as a scribe. *RAM BAHADUR SINGH v AJODHYA SINGH* (1916)

20 C W N 699

9. Deed of mortgage

Attestation—Execut on—Mark by illiterate executant—Mark described by the scribe—Signature—General Clauses Act (X of 1897) s 3 cl. 52 An illiterate person signed a deed of mortgage by putting his mark to it which mark was described by the scribe of the deed. It was attested by two witnesses. The deed was sought to be proved by the testimony of one of the witnesses and the scribe. *Held* that the deed was duly proved for its execution was completed when the executant made his mark and the object of the scribe in describing the mark was to authenticate the mark, that is to vouch the execution. *Goverdhan BHAIJI v BHAIJI GOPAL* (1916)

I L R 41 Bom. 384

10. Mortgage deed

executed by the scribe on behalf of the mortgagor—Attestation only by the scribe and one witness if sufficient Where the mortgagor not being able to sign his own name the mortgage deed which contained no mark or seal or thumb-impression of the mortgagor was executed by the scribe on behalf of the mortgagor. *Held*, that the scribe having executed the document for and on behalf of the mortgagor was not competent to attest his own signature as an attesting witness even in the view that the subscription of his own name as the

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—contd.

s 59—contd

scribe amounted to attestation within the meaning of s 59 of the Transfer of Property Act. *RAJANI KANTA BHADRA v PANCHANANDA* (1918)

23 C W. N 290

11. Mortgage—Attestation—Execution—Scribe, whether an attesting witness, meaning of—

Evidence Act (I of 1872) s 68 A mortgage bond was written and signed at the writer's house where one of the attestants put his attestation on the deed but the other witness attested the document in the Sub Registrar's office. Both the lower Courts held that there was no proper attestation of the document as required by the Transfer of Property Act 1882. On appeal to the High Court it was contended that the scribe who signed the document should be treated as an attesting witness. *Held* that a writer of a document who put his signature at the end of a document could not be treated as an attesting witness within the meaning of s 68 of the Indian Evidence Act, 1872, unless he actually signed as an attesting witness in the document. Attesting witness is a witness who has seen the deed executed and who signs it as a witness. *Goverdhan Bhikaji v Pohn Gopal* (1916), 41 Bom. 384 distinguished. *Renu v Laxmanrao* (1908) 33 Bom. 44 followed. *Dalit CHAND SHIVRAM v LOTU SAKHARAM* (1919)

I L R 44 Bom. 405

12. Validity of mortgage bond when scribe who executed the deed on behalf of the mortgagor, attested his own signature—

Evidence Act (I of 1872) secs 63 and 70 proof of the deed by the scribe who also acted as an attesting witness, if sufficient where execution of the deed is admitted. In a suit upon a mortgage bond the Defendant admitted the execution of the bond but pleaded *inter alia* that the bond should not be regarded as a mortgage bond. The first Court held that the execution of the bond being admitted the necessity of its proof did not arise and decreed the suit. On appeal it was held that the scribe having executed the deed on behalf of the Appellant was not competent to attest his own signature and there being no other evidence dismissed the suit. *Held*—That the validity of a mortgage bond and the proof of its execution are two different questions. The question of the validity of a mortgage bond with reference to the provisions of sec. 59 of the Transfer of Property Act can arise even though the document might be proved according to law or is not required to be proved by calling an attesting witness under sec. 68 of the Evidence Act by reason of the execution of the document being admitted by the executant as laid down in sec. 70 of the Evidence Act. Where in the above circumstances the Plaintiff produced only the scribe who executed the deed on behalf of the executant to prove the deed, although the names of other persons appeared as attesting witnesses in the document. *Held*—That instead of dismissing the suit the plaintiff should be given an opportunity of producing evidence that the document was duly executed. *PATAN KHAN v BADAL SARDAR*.

20 C W N 950

ss 59 100—Mortgage—Charge—

Attestation—Document attested by one witness only *Held* that a document which purported to be a mortgage, but which was attested by only one witness

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—contd.

ss 59, 100—contd.

ness, could not operate either as a mortgage or as creating a charge on immovable property within the meaning of s 100 of the Transfer of Property Act, 1882. *Shamu Patter v Abdul Kadir Rautan, 1 L R 35 Mad 607*, referred to COLLECTOR OF MIRZAPUR v BHAGWAN PRASAD (1913)

I. L. R. 35 ALL 164

s. 60—

See s 58. . I. L. R. 39 Mad. 1010

See s 98. . I. L. R. 43 Mad. 589

See MORTGAGE. I. L. R. 43 Bom 334

I. L. R. 43 Mad. 37

1. ————— Mortgage—

Redemption—Tender of mortgage money as a condition precedent to a suit for redemption S 60 of the Transfer of Property Act, 1882, does not necessarily mean that before a suit for redemption can be instituted the amount due on the mortgage must be paid or tendered and this would obviously be impossible when, the mortgage being usufructuary, the plaintiff's case is that the debt has been liquidated by the profits of the property mortgaged. *Bansi v Gurdhar Lal, Weekly Notes, 1894, p 143 Narain Singh v Achhai Singh, 1 L R 36 All. 36, Muhammad Ali v Baldeo Pande, 14 A L J 56 Meera Ram Singh v Ganga Ram, 17 A L J, 910 and Muhammad Mushtaq Ali Khan v Banke Lal, 1 L R 42 All 420*, referred to *HET SINGH v BHARI LAL*

I. L. R. 43 ALL 95

2. ————— Mortgage—

Redemption—Mortgagee to remain in possession so long fruit bearing trees remain on land—Whether the term operated as a clog on equity of redemption—Dekhan Agriculturists' Relief Act (XVII of 1879), s 13 A mortgage deed of 1867 provided that on payment of the principal sum on the expiry of twenty one years the mortgagor shall be entitled to recover the land and trees free of all charges and that if the money was not so paid the mortgagee will be allowed to develop the land by growing fruit bearing trees on it and will not be required to give up possession until the trees had ceased bearing fruit. The mortgagor did not redeem at the expiry of the stipulated period of twenty one years. The mortgagee who remained in possession planted a number of fruit bearing trees on the land. In 1913, the mortgagor sued for redemption. *Of the mortgage of 1867 under the Dekhan Agriculturists' Relief Act* contending that the stipulation in the deed postponing the mortgagor's taking possession so long as there were fruit bearing trees on the land was a clog on the equity of redemption. *Held*, that the provision in the deed postponing the mortgagor's taking possession so long as there were fruit bearing trees did not operate as a clog on the equity of redemption. *Held*, further, that the proper relief which the mortgagor was entitled to was that under s. 13 of the Dekhan Agriculturists' Relief Act, 1879, namely, the taking of an account from the beginning of the mortgage up to the date of the suit. The words "at any time after the principal money has become payable" in s. 60 of the Transfer of Property Act, mean become payable according to the terms of the contract. *PER HUTTON, Acting C J*—S 60 of the Transfer of

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—contd.

s 60—contd.

Property Act merely enacts that redemption is to be according to the terms of the mortgage contract and there is nothing in the Transfer of Property Act which says anything about clogs on the equity of redemption. *GEYU v NARAYAN (1920)*

I. L. R. 45 Bom. 117

3. ————— Suit by assignee of

Hindu widow a right to annuity charged on properties a portion whereof acquired by plaintiff—Apportionment of the plaintiff's claim between properties acquired by him and rest of charged properties—Widow's right whether personal or transferable A Hindu widow in consideration of releasing her life interest in her husband's properties, obtained from her two brothers in law a deed of maintenance whereby she was entitled to receive Rs 100 per annum in cash and certain rice from them with the payment whereof certain properties were charged. The plaintiff the assignee of this right of the widow, subsequently purchased a portion of the properties not free from encumbrance created by the deed of maintenance. The first Court partly decreed the plaintiff a suit to enforce the charge. The lower Appellate Court decreed the whole of the suit against the properties not purchased by the plaintiff. *Held*, that the case was covered by the last few words of the final clause of s. 60 of the Transfer of Property Act. A mortgagee having become a partial owner of the equity of redemption is bound to apportion the money which he seeks to recover as between the properties acquired by him which were subject to the charge and the rest of the mortgaged properties. *Held*, also that this was not a personal right of the Hindu widow. It was a claim which the widow had under a deed of covenant for which there was a charge on certain properties and it was capable of transfer in the same manner as in other cases. The mere fact that the grantee of the deed of covenant happened to be a Hindu widow did not prevent her from transferring her interest, if she thought fit so to do. *RAJAT KAMINI DEBI v RAJA SATYA NIBANJAN CHAKRABARTY (1919)*

23 C W. N. 824

4. ————— Mortgage—Suit

for redemption—Tender of mortgage money not a condition precedent—Usufructuary mortgagee planting trees—"Improvement" It is not necessary that a mortgagor who wishes to redeem should make a tender or payment of the money due on the mortgage before instituting a suit for redemption. All that s 60 of the Transfer of Property Act, 1882, provides is what constitutes the right of redemption, and there is nothing in the section which requires that a tender of the mortgage money should be made as a condition precedent to the institution of a suit for redemption. The planting of trees on the mortgaged property by a mortgagee in possession is not such an improvement as entitles him to claim compensation from the mortgagor, but he is entitled to cut down and remove those trees. *RAGHUNANDAN RAI v RAGHUNANDAN PANDE . I L. R. 43 ALL 638*

5. ————— One of several

mortgagors may redeem whole mortgage—Mortgagee foreclosing without making transferee of one of the mortgaged properties party—Latter if bound to re-

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—contd.

s 60—contd

deem that property only—English law and Indian law on the point, if different. It is not the law in India, any more than it is in England, that one of several mortgagors cannot redeem more than his share unless the owners of the other shares consent or do not object. Subject to proper safeguarding of the right to redeem which these other owners may possess, he is entitled to redeem the mortgage in its entirety, unless something had happened which extinguished the mortgage in whole or in part. The concluding part of sec 60 of the Transfer of Property Act does no more than declare applicable what is but the law as established in England. In English law, the transferee of a part of the security is entitled to redeem the entire mortgage on the properties generally and correlatively cannot compel the mortgagee to allow him to redeem his part by itself. *MIRZA KADALI BEG v. TURK RAM* (F. C.)

25 C. W. N. 241

s 60, 61, 62—Mortgage in the possession and charge on the same property in favour of the same person—Assignment of equity of redemption—Breach of contract by mortgagor—Loss to mortgagee—Rights of assignee of equity of redemption to redeem mortgage in the possession without paying amount due on the charge and the loss sustained by mortgagee. A mortgagor has a statutory right under s. 62 (b) of the Transfer of Property Act to redeem a usufructuary mortgage on property which is also subject to a simple mortgage, without redeeming the latter also. Therefore where a person mortgaged some of his properties with possession and regained possession of them by executing a rental agreement giving a charge thereon and on other properties for all arrears of rent held that the mortgagor could redeem the properties mortgaged with possession alone without being obliged to pay at the same time any amount due under the simple mortgage. *Tajoo Bibi v. Bhagwan Prasad*, (1894) I L R 16 All. 295, followed. The losses which the mortgagee might have sustained by reason of breach of contract committed by the mortgagor and which were not specifically charged on the mortgaged properties are recoverable only from the mortgagor and not from the mortgaged properties in the hands of his assignee. *Bakra Thakur Das v. Collector of Algarh* (1910) I L R 32 All. 612 (P. C.) followed. *Per WALLIS C. J.*—*Quere* whether in India a mortgagor has the right to redeem one mortgage on a property without at the same time paying off another mortgage on the same and other properties as well. *Per BHESAGIRI AYYAR J.*—Whatever may be the rights of a mortgagor in India to compel the mortgagee to consolidate mortgages upon the same property, the rule is not applicable against purchasers of the equity of redemption. The rule in *Vint v. Padget* (1848) 2 Dr G. J. 611, s. c. 44 F. P. 1126 is not applicable to India. *RAMADEVANMOOR v. MANA RAJAH OF VENKATAGIRI* (1921)

or I L R. 44 Mad. 301

s 60—Document in favour of redemption—Previous suit by mortgagor to compel mortgagee to sell—Decree in favour of mortgagor was defendant, for redemption and recovery of the mortgage in execution—Decree, not executed by mortgagee or mortgagor—Suit for redemption by mortgagor, Maintainability

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—contd

ss 60, 67—93—contd

of—*Res judicata*. Where a mortgagee sued for sale on a mortgage bond of 1864 and obtained a decree in 1872 which contained a provision, in favour of the mortgagor who was a defendant therein, for redemption and recovery of possession of the mortgaged lands in execution of the decree but the decree was not executed by either party. Held, that a fresh suit instituted by the mortgagor for redemption of the mortgage was barred by the rule of *res judicata*. *Vedapurath v. Vallabha Vahya Raja*, I L R 25 Mad 300, and *Adipuram Pillai v. Gopalamm Mudali*, I L R 31 Mad 351, referred to. *Rama v. Bhagchand*, I L R 39 Bom. 41, dissented from. *RAMA AYYANGAR v. NARAYANA CHARIAR* (1915)

I L R 39 Mad. 896

ss 60, 74, 91—

See MORTGAGE I L R 34 Mad. 115

ss 60, 69 and 95—

See REDEMPTION . 3 Pat L J. 490

ss 60 and 91—Redemption, suit for, by the owner of a portion of the equity of redemption—Mortgagee in possession—Vendee from other co-owners of the equity of redemption—Payment by vendee of his share of mortgage-amount to the mortgagee—Possession, surrender of, by mortgagee to vendee of aliquot portion of lands—Objection by mortgagee and vendee to redemption of the whole mortgage and surrender of the whole mortgaged property—Redemption of plaintiff's share only on payment of his share of debt—Possession of lands, right to, by fair partition in a suit for redemption—Equities on partition—Transfer of Property Act (IV of 1882), s 91, construction of. Where the plaintiff (an owner of a half share in the equity of redemption) sued the mortgagee and the owner of the other half of the equity of redemption, who had redeemed one half of the mortgage, for redemption of the whole mortgage and for the recovery of possession of the whole of the mortgaged property, the High Court on Second Appeal passed a decree for redemption of the plaintiff's half-share on payment of half the mortgage-amount and for partition and delivery of possession of half the mortgaged lands in respect of such share. The owner of a portion of the equity of redemption is not entitled as matter of right to redeem the whole of the mortgage and recover possession of the whole of the mortgaged property, on payment of the whole of the mortgage-amount against the will of the mortgagee in possession and of the vendee of another portion of the equity of redemption who was put in possession of some of the lands by the mortgagee on payment of an aliquot portion of the mortgage-amount. The question whether the Court will allow redemption of the whole of the mortgage at the instance of a person entitled to a part only of the equity of redemption must depend on the circumstances of each case and the rights acquired by the mortgagee or by third persons subsequent to the mortgage. *Kwayi Mal v. Furan Mal* I L R 2 All. 363, *Munshi v. Davlat*, I L R 29 All. 262, and *Narad Azmat Ali Khan v. Jowahir Singh*, 13 Moo. I A 404, followed. *Ruthasan Nambudri v. Parameswaran Nambudri*, I L R 22 Mad 209,

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—*contd*ss 60, and 91—*contd*

dissented from S 91 of the Transfer of Property Act, explained. **RATHA MUDALI v PERUMAL REDDY (1912)** . I L R 38 Mad. 310

ss 60 and 98—

See s 58 . I L R 39 Mad. 1010

Mortgage deed, simple and usufructuary combined—No anomalous mortgage—Redeemable—Mortgage, to be vendee on mortgagor's failure to pay at the stipulated time—Whether mortgage by conditional sale Where the usufructuary mortgage deed provided that if the mortgage amount was not paid on the stipulated date, the mortgage was to work itself out as a sale for the principal amount and further contained a covenant that the mortgagor would pay to the mortgagee the costs of the construction of earth work, etc., on the date fixed for redemption as per the accounts of the mortgagee. *Held* that it was not an anomalous mortgage as defined in s 98 of the Transfer of Property Act the word 'not' in s 98 governing equally the words 'a combination of the first and third or the second and third of such forms' in the section and that therefore it was redeemable. **Amarchand v Kula Marar, I L R 27 Bom 600** and **Ammanna v Guruswami, I L R 16 Mad 64**, dissented from. **Perayyan v Venkata, I L R 11 Mad 403** and **Akinedu v Subbiah I L R 35 Mad 744**, followed. **Per Sadasiva Ayyar J** It is a combination of a simple mortgage and a usufructuary mortgage clogging the equity of redemption. A mortgage deed which begins as a mortgage transaction, cannot be called a mortgage by conditional sale, though it is a mortgage giving the mortgagee after a certain time and on breach of certain conditions, a right to claim title as vendee. **Per Srinivasan J** It is either a usufructuary mortgage deed with a clog on the equity of redemption or a usufructuary mortgage combined with a mortgage by conditional sale and in either case redeemable under s 60 of the Transfer of Property Act. **Gopalasami v Arunachella, I L R 13 Mad 304**, referred to. **Kanpaya Gurukul v Kalimuthu Annan, I L R 27 Mad 526** distinguished. **Srinivasa Ayyangar v Radhakrishnan Pillai (1913)** . I L R 38 Mad 687

s 61—

See MORTGAGE 25 C W N 129
I L R 1 Lah. 103

ss 61 and 62—

See s 60 . I L R 44 Mad. 301

ss 61, 85 and 89—*Civil Procedure Code (Act V of 1908) O XXXIV, rr 1 and 11—Mortgagee holding two mortgages—Sale on the second mortgage subject to his interest in a prior mortgage—Maintainability* It is open to a mortgagee to bring a suit for the recovery of his debt by sale of the properties mortgaged to him subject to his interest in a prior mortgage. **Srinivasa v Balasubramania (1915)** I L R 38 Mad. 927

s 63—*Accession to mortgaged property, mortgagor's right to, if depends on special advantage of mortgagee as such in acquiring the accession—Mortgagee also co-owner of the property—acquisition by mortgagee of rayatti holdings in the property—Mortgagee's right on redemption of*

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—*contd*s 63—*contd*

mortgage Where the plaintiff's share in a mehal was mortgaged to the co-proprietors of the mehal and the mortgagees during the continuance of the mortgage bought in some of the rayatti holdings of the mehal from the tenants and obtained possession thereof, separating the lands purchased from those in the possession of the tenants. *Held*, that on redemption of the mortgage, the plaintiff was entitled to get *khas* possession of the lands to the extent of the share in the mehal on payment to the mortgagees of the proportionate share of the expenses incurred in acquiring them. **Per N R CHATTERJEE, J**—The purchases were accessions to the mortgaged property within the meaning of s 63 of the Transfer of Property Act. The mortgagee's right to the accessions to the mortgaged property under s 63 of the Act does not depend upon whether the mortgagee had any special advantage by reason of his position as mortgagee in acquiring the accession. **Kudendatti v Mumtaz Ali I L R 3 Cal 193** referred to. S 63 of the Act applies to a case where the mortgagee holds the property both as co-proprietor and as mortgagee. **RAM BHAU VARMA SINGH v AMBEKA PRASAD SINGH (1913)**

17 C W N 586

ss 63, 72, 76—

See MORTGAGOR AND MORTGAGEE

I L R 43 Bom 69

s 65—

See s 68—

2 Pat. L. J 490

See MORTGAGE I L R 35 All. 43
I L R 38 Mad. 18

Duty of a mortgagor in possession to pay public charges, partly personal—Acquisition of equity of redemption by trespasser—Non-payment of public revenue and purchase by trespasser in revenue sale—Extinction of mortgage The implied covenant on the part of the mortgagor in possession mentioned in s 65, of (c) of the Transfer of Property Act (IV of 1882), to pay all public charges is in the nature of a personal covenant and is not one arising by virtue of his being in possession of the mortgaged property. Hence if after the creation of a simple mortgage, a stranger acquires the equity of redemption by adverse possession as against the mortgagee, the acquirer is under no duty towards the mortgagee to pay the public revenue payable on the property; and therefore, if after allowing it to be sold for arrears of revenue, he buys it himself, he holds it free from the mortgage. The rule that no man can take advantage of his fraud does not apply to a case like this where the party charged with fraud does not stand in any fiduciary relation to, or has a joint interest with, the person defrauded and is under no duty to protect his interests. **Nawab Sadique, Nawab Ally Khan v Fajal Ojodhyar Khan, 10 Moo I d 640**, distinguished. *Quare* Whether an assignee for value from the mortgagee is affected by the mortgagor's covenant to pay the public charges? **FERRIS v RAM PRASAD (1916)**

I L R, 30 Mad. 939

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—contd

s 67—

See MORTGAGE I L R 47 Calc. 175
I L R 39 Mad 17

Usufructuary mortgage

—Date payable within a fixed period—Expiry of the period—Mortgagee's right to an order for sale Where under a usufructuary mortgage the mortgage debt is made payable within a fixed period, the mortgage is not purely a usufructuary mortgage and the mortgagee has in the absence of a contract to the contrary the right to an order under s 67 of the Transfer of Property Act (IV of 1882) that the property be sold after the debt has become payable. *Mahadaji v Joti* I L R 17 Bom 4-5 and *Ashwini v Hari* 10 Bom I R 615 explained. *DATTABHAT RAMBHAT v KRISHNABHAT* (1910).

I L R 34 Bom 482

Right of purchase mortgage

—Mortgagee to sue for sale only if prior mortgagee—Suit for sale by first mortgagee without impleading subsequent mortgagee—Purchaser in execution rights of—Right of purchase mortgage to sue for sale against purchaser—Purchaser in purchase mortgage's suit right of Where a prior mortgagee sued for sale on his mortgage without making a purchase mortgage a party to his suit and obtained a decree and in execution of the decree the property was sold and purchased by a third person the purchase mortgagee is entitled to sue for sale on his mortgage subject to the prior mortgage after making the purchaser a party to his suit. *Mulla Fattul Seethi v Achuthan Nair* 21 Mad L J 213 followed. *Venkatagiri v Sadigoyya Chinnar* 21 Mad L J 122 and *Venkataramamiah v Ponniah* I L R 2 Mad 103 discussed in *Muhammad Usan Borth n v Abululla* I L R 24 Mad 171, *Venkatarama Iyer v Comperiz* I L R 31 Mad 425 and *Rangayya Chinnar v Parthasarathi Navekar* I L R 20 Mad 190 referred to. Case law on the subject reviewed. Rights of purchasers in the prior or subsequent mortgagee's suits discussed. *CHITTEL PILLAI v VENKATASAMY CHETTIAR* (1915).

I L R 40 Mad 77

Mortgage—Suit by one

mortgagee to recover his individual share in the mortgage debt—If debt amounts to a severance of the interests of the mortgagees Certain property was mortgaged by K to B and J. Then other property was mortgaged by G (K's brother) also to B and J. Subsequently K and G made a usufructuary mortgage of both properties in favour of B alone ostensibly in lieu of the former mortgages and B purported to give the mortgagees a discharge of those mortgages. Held, that in these circumstances it was competent to J to sue the mortgagees for the recovery of his share in the mortgage debts due in respect of the two earlier mortgages, the action taken by B amounting in law to a severance of the interests of the mortgagees with the consent of the mortgagees. *Cobind Ram v Sunder Singh* 1899 All Weekly Notes 416 distinguished. *JATHARI SINGH v GANGA SARAI* (1919).

I L R 41 All 631

Mortgagee's right to

a decree for sale when the mortgage is an English mortgage—Civil Procedure Code (Act V of 1908) Or XXXI s 6—Mortgagee's right to a personal decree against the mortgagor when after the transfer and redemption clauses in the mortgage

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—contd

s 67—contd

deed there is a covenant for payment of the mortgage debt—Appellate Court's power to pass a personal decree in the appellate stage Under the provisions of sec 67 of the Transfer of Property Act a decree for sale may be made in favour of the mortgagee when the mortgage is an English mortgage. When the mortgagor covenants to transfer the hypothecated properties indefeasibly to the mortgagee with the usual clause for redemption and further covenants to pay the mortgage debt with interest to the mortgagee his heirs and assigns the latter clause is a personal covenant to pay out of properties other than the hypothecated properties as the latter clause would be entirely superfluous if the parties had no intention that the mortgagor should be personally liable to pay to the mortgagee the money due to him. Therefore in such cases the mortgagee is entitled to a decree for sale as also to a personal decree against the mortgagor. A personal decree may be made against the mortgagor at the appellate stage. *ASHWAN BAI v GOBURNAN BOWRA*. 26 C W N 318

ss 67 and 68—

See s 58 I L R 41 Mad 259
I L R 45 Bom 523

ss 67 83—

See s 83 I L R 39 Mad 898

ss 67 80 100—

See CIVIL PROCEDURE CODE O XXXIV,
RR 4 5 14 AND 15 2 Pat L J 55

s 68—

See CIVIL PROCEDURE CODE 1908 O
XXXIV R 14 I L R 39 All 36See MORTGAGE I L R 44 Calc. 388
3 Pat L J 162

Usufructuary mortgage

—Dispossession on of mortgage—Right of mortgagee to sue for debt. A usufructuary mortgagee who has failed in a suit by a subsequent mortgagee to take a defence which would have preserved the security is not entitled to sue for the mortgage money under s 68. *DUVIA LAL CHOWDHURY v MISRAMAT BOWBATAN ROY*.

2 Pat L J 490

2 ——— Mortgage with dispossession—Dispossession by person having higher title than mortgagor—Right to sue for mortgage money. The mortgagee of the mortgagee by a person holding a better title than the mortgagor comes under the provisions of s 68 (c) of the Transfer of Property Act and entitles the mortgagee to sue for the mortgage money. *Nakchedi Ram v Ram Charitar Bai* Weekly Notes 1397 p. 14 referred to. *PAN SUBAT MISRA v CHER PRASAD*. I L R 43 All 434

3 ——— Usufructuary mortgage invalid for want of attestation—Deprivation of possession not by mortgagor but by title paramount—Suit for mortgage money whether maintainable. S. 88 of the Transfer of Property Act does not entitle a person who takes a usufructuary mortgage which is invalid for want of attestation and who is deprived of his possession by title paramount

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—contd

s. 68—contd

mount and not by any act of his mortgagor, to sue for the mortgage money. The default referred to in s. 63 (b) as entitling the mortgagor to sue for the mortgage money is one anterior to the deprivation of possession, and failure of the mortgagor to establish the possession when called upon as against the strangers dispossessing the mortgagee is no default within s. 64 (b). *Jam Narayan Singh v Abhimata Nath Mukherji*, 11 J. 41 Cal. 335, distinguished. *MUTTER v PERIAKARTHA KAVUNDAV* (1919). I L. R. 42 Mad 578

s. 69—Sale by mortgagee—Surplus proceeds retained by mortgagee—Whether attachable under warrant under Criminal Procedure Code (V of 1895), s. 356—Priority of Crown over attaching creditor. A mortgagee sold the mortgaged property under a power of sale and after discharging his own dues, retained the surplus sale proceeds for payment to the mortgagor. The mortgagor was convicted and sentenced to pay a fine which, if recovered, was directed to be paid to the complainant. A warrant for recovery of the fine was issued under s. 356 of the Criminal Procedure Code against the funds in the hands of the mortgagee who paid the amount to the bailiff. The plaintiff, who had attached the mortgaged property in execution of a decree against the mortgagor, disputed the right of the Crown to proceed against the fund, or at least in preference to him and sued the Secretary of State for India and the complainant to whom the amount was paid. *Held*, (i) that the surplus amount retained by the mortgagee was money held in trust by him for the mortgagor under s. 61 of the Transfer of Property Act; (ii) that a warrant could be issued for the levy of the fine by distress on the amount in the hands of the mortgagee under s. 356 of the Criminal Procedure Code, and (iii) that the fine was a Crown debt which had priority over the plaintiff's debt, though the fine if recovered, was directed to be paid to the complainant. *PICHU VANDHAR v THE SECRETARY OF STATE FOR INDIA* (1916).

I L. R. 40 Mad 767

s. 70—

See EQUITABLE MORTGAGE

2 Pat. L. J. 293

Mortgage of mukarrars right Where a mukarrandar mortgaged his mukarrari right and the mortgagee obtained a decree on the mortgage for sale of the mortgaged property. *Held*, that the decree holder was not entitled in execution of the decree to sell the mukarrari right in the property which had been acquired by the mortgagor subsequent to the passing of the decree. *HARADHAN CHAKRABARTY v HANGORIND DUTTA*. 6 Pat. L. J. 347

ss 70 and 71—

See EQUITABLE MORTGAGE.

2 Pat. L. J. 293

s. 72—

See MORTGAGE

1 Pat. L. J. 589

I L. R. 46 Cal. 448

I L. R. 38 Mad. 18

See MORTGAGOR AND MORTGAGEE

I L. R. 43 Bom. 69

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s. 72—contd

Mortgage—Redemption

—Purchase by mortgagee of portion of mortgaged property—Right of mortgagee to put whole burden of mortgage debt on remainder—Enhancement of revenue assessed on mortgaged property whose mortgagor makes himself liable for it and mortgagee pays it to protect property. In 1848 a village named Kachaura was mortgaged to the predecessors of the respondent (defendant), and in 1870 the same mortgagor mortgaged 11 biswas of Kachaura and 6 biswas of another village called Agrana to the same mortgagee. Under the terms of the later mortgage the mortgagee was to have possession of the mortgaged properties, realize the rents and profits and pay therewith the Government revenue which was separately assessed on the two shares. Out of the balance he was to retain the interest of the loan and pay the mortgagor a yearly sum as *malikana*. As a fresh settlement was in progress the mortgage further provided that if at the recent settlement the Government revenue is enhanced or decreased to some extent (the mortgagor) shall be entitled to and liable for it, and the mortgagee shall have nothing to do with it. The revenue on the two properties was enhanced, on Kachaura by Rs 89 and on Agrana by Rs 469. In 1873 the equity of redemption in Agrana was purchased by the predecessor of the appellants (plaintiffs) who afterwards sued and obtained a decree for the apportionment of the *malikana* due in respect of his share of Agrana, which amount they subsequently received annually less the enhanced amount of the Government revenue assessed on it. In 1878 the mortgagee purchased the whole of Kachaura in execution of a decree obtained by him on the mortgage of 1868 but he only obtained possession of an 11 biswas share of it. The mortgagee had from the date of the enhancement up to the time of his purchase paid the enhanced revenue assessed on Kachaura for which the mortgagor had made himself liable on the terms of the mortgage. In a suit by the appellants to redeem their 6 biswas share of Agrana on payment of a proportionate amount of the mortgage money, and for surplus profits if any. *Held*, by the Judicial Committee (affirming the decree of the High Court) that Agrana was liable for the whole mortgage debt, and the applicants could not therefore redeem on payment of only a proportionate amount. *Held*, also, (reversing the decree of the High Court), that in calculating the amount to be paid on redemption the mortgagee was not entitled to tack on to the mortgage debt the amount he had paid for the enhanced revenue on Kachaura. The mortgagee was, on the terms of the mortgage, liable to pay the Government revenue. The clause as to the enhanced revenue could not be construed as meaning that the mortgagor agreed to pay every year separately the enhanced revenue nor did it alter the liability of the mortgagee to meet the demand for the Government revenue. In the case of Agrana he had protected himself by deducting the enhanced revenue from the *malikana*; but he had omitted to do so in the case of Kachaura, and could not now be allowed to throw the burden of his laches on Agrana. It was not the mortgagor who was seeking to redeem the property, and any equity that might have been invoked against him, did not, in their Lordships' opinion, arise as against the appellants.

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s 72—contd

BOMBA THAKUR DAS v COLLECTOR OF ALICHAH (1910) I L R. 32 All. 612

Mortgage—Right of mortgagee in possession to charge for repairs and additions to the mortgaged property. During the subsistence of a mortgage of a house the mortgagee being in possession a portion of the house, consisting of a *kachcha* room fell down. The mortgagee replaced this at a cost of Rs 147 6 making it *pucca*. But he then proceeded to add without the consent of the mortgagor an upper storey at a cost of Rs 113 and a staircase costing Rs 40 8 6 and on suit by the mortgagor for redemption he claimed a right to add the various sums so spent to the principal mortgage money which was Rs 400. *Held* that the mortgagee's claim could only be allowed in so far as it fell within the terms of s 72 of the Transfer of Property Act 1882 and it was allowed as to the first item but not as to the upper storey or the staircase. *Arunachella Chetti v Sikkaya Ammal* I L R 19 Mad 377 and *Samana v Abdul Wahid Ali* Weekly Notes 1883 208 followed. *Nikmatullah v Yusuf Ali* 10 All L J 124 and *Shppard v Jones* 21 Ch D 469 referred to. *RUPAY SINGH v CHAMPA LAL* (1914)

I L R 37 All. 81

Laying improvements by mortgagee. Though a mortgagee is entitled, apart from the provisions of section 72 of the Transfer of Property Act to claim the value of lasting improvements the claim will depend upon what are reasonable improvements. A mortgagee should not be allowed to improve the property to such an extent as to deprive the mortgagor in effect of the right to redeem. *Asaf Ali v Chandasana* (1918) 43 Bom. 89 referred to. *DNYANU LAXMAN v FAKIRA*.

I L R 45 Bom 1301

s 73—

Puina created and registered after mortgage of revenue paying estate—Act XI of 1859 ss 40 41—Decree on mortgage against proprietor and putnadar—Sale of estate for arrears of revenue—Transfer of lien to sale proceeds of revenue—Puinai interest from liability to sale. The proprietor of a revenue paying estate executed mortgage in favour of A and subsequently granted a *puina* to B who had it registered under s 40 of Act XI of 1859. The mortgagee A, obtained a decree on his mortgages in a suit in which the putnadar B was made a party. After the decree the estate was sold for arrears of revenue subject to the encumbrance of the *puina*. The mortgagee withdrew the surplus sale proceeds in part satisfaction of his decree and for the unsatisfied balance applied for sale of the *puina* interest. *Held* that s 73 of the Transfer of Property Act by providing that the mortgage lien is to be transferred to the surplus sale-proceeds did not relieve the *puina* from liability to sale in satisfaction of the mortgagee's decree. A mortgagee is not bound upon receipt of notice of an application for registration of an encumbrance under s 41 of Act XI of 1859 to oppose such application. *Quare* Whether such opposition by a mortgagee would be a sufficient ground for the reject on of the application by the revenue officer. *Kristo Dass Kundoo v Ramkanti*

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—contd

s 73—contd

Raj Chowdhry I L R 6 Calc 142. *Gosto Behary Pyne v Shab Nath Dutt* I L R. 20 Calc. 241. *Ramala Kant Sen v Abdul Barkat* I L R 27 Calc 181, considered. *SUSILALAL DASI v DINA BANDHU NATHI* (1909) 14 C W N 186

Mortgagor in possession—Compulsory acquisition of land—Application for purchase money by mortgagor—Whether mortgagee entitled to injunction. Where during the pendency of a suit by a mortgagee in which he obtained a preliminary decree a part of the mortgaged property was compulsorily acquired under the Land Acquisition Act 1894. *Held* the mortgagee was entitled to an injunction restraining the mortgagor from taking the purchase money out of the hand of the Land Acquisition Deputy Collector. *ASHUTOSH RAI v BABU LAL JHUGAN*. 5 Pat L J 650

s 74—

See MORTGAGE I L R 37 Cal 589
I L R 34 Mad. 115

Prior and subsequent mortgages—Subsequent mortgagee redeeming prior mortgage—No receipt obtained for the payment made to prior mortgagee—In lieu of receipt mortgage deed secured—Subsequent mortgagee gets a right to sue for amount on the first mortgage. If a second mortgagee pays off the first mortgagee without obtaining an assignment of the mortgage and without getting a receipt for the amount paid, but in lieu thereof obtains the actual mortgage document it cannot be said according to the principle of justice equity and good conscience that the first mortgage is extinguished and that the second mortgagee has no right to sue for the amount due under the first mortgage. *Mahomed Ibrahim Hossain Khan v Ambika Pershad Singh* (1912), 32 Calc. 527 followed. *NARAYAN BUDHANI v POSHA JANA* (1900) I L R 45 Bom 1112

Mortgage—Prior and subsequent mortgagees—Right of purchaser of mortgaged property in execution of a decree of a subsequent mortgagee who has paid off a first mortgage as against a second mortgagee suing for sale. A mortgaged certain property first to B and afterwards to C and finally sold it to D. D mortgaged the property to E who paid off B's mortgages and brought the property to sale in satisfaction of his own mortgage, and it was purchased by M. *Held* on suit for sale on behalf of mortgagees by C the second mortgagee that M was entitled to hold up as a shield against C the mortgages in favour of B which had been satisfied by E. *Rafin v Sant Lal Ali* Weekly Notes (1896) 129. *Baldeo Prasad v Uman Shankar* I L R 32 All I 1 and *Munir v Ramji Lal* I L J 15 referred to. *Bayanah v Murli dhar* All Weekly Notes (1907) 85 distinguished. *MATI ULLAH KHAN v BANWALI LAL*.

I L R 32 All. 138

s 75—

See DEKKHAY AGRICULTURISTS RELIEF ACT (XVII OF 1879)

I L R 40 Bom. 483

See MORTGAGE I Pat L J 582

See MORTGAGOR AND MORTGAGEE.

I L R 43 Bom. 69

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—contd.

— ss 70—contd

Mortgagee in possession, obligations of—Mortgagee in possession as lessee, obligations of— There is a difference between the case of a mortgagee who enters into possession of the mortgaged property by virtue of a lease under which a rent is payable to the lessor and the case of a mortgagee who enters into possession of the mortgaged property by virtue of a lease under which the rent is appropriated by the lessee towards the reduction of the mortgage debt. In the former case he is not chargeable as a lessee in possession under s 70 of the Transfer of Property Act, 1882, and in the latter case he is so chargeable. *KISHUNDAYAL v MAHABIR BHAGAT*, 5 Pat L J 492

— ss 76, 92—

See LIMITATION ACT, s 23 SCH II
ARTS 36 115 116

I L R 33 Mad 71

— s 78—

See MORTGAGE L R 43 Calc 1052

— s 81—

See APPEAL I L R 41 Calc 418

— ss 81 and 88—

See MORTGAGE I L R 35 Bom 395

— s 82—

See MORTGAGE (CONTRIBUTION)

Mortgage—Contribution—Principle upon which contribution is to be assessed— Where of two properties belonging to the same owner one is mortgaged to secure one debt and then both are mortgaged to secure another debt for the purpose of apportioning the liability of the respective properties in regard to the subsequent mortgage the value of the two properties must be taken into account and credit given for the amount due upon the earlier mortgage out of the value of the property comprised in the subsequent mortgage. Where the amount due upon the earlier mortgage exceeds the value of the property comprised in that mortgage the necessary result is that the whole of the amount of the second mortgage is recoverable from the other property comprised in the latter mortgage. *GHULAM HAZRAT v GOBARDEAN DAS* (1911)

I L R 33 All 387

Mortgage—Contribution—Principle upon which contribution should be assessed—Civil Procedure Code (1908) O XXI, s 30— Where a mortgagee is suing the other co-mortgagors for contribution upon the allegation that the portion of the mortgaged property in which he is interested has been made to discharge more than its proper share of liability under the mortgage, the Court in assessing contribution has first to ascertain the values of the various items of property in question as they stood at the date of the mortgage; next the rateable liability of each item for the amount payable under the decree; next how much each item has contributed to the payment of the decretal amount, disregarding any purchase money which any of the purchasers has paid or retained and it should then proceed to apportion the liability between the different items. *BHAGWAN SINGH v MAHAR ALI KHAN* (1914)

I L R 26 All 272

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

— s 82—contd

Mortgage—Contribution—Charge— In the year 1830 one Tikam Singh, who with several sons constituted a joint Hindu family, executed a mortgage of a village forming part of the joint family property. In 1889, he with five of his sons executed a second mortgage of the same village. In 1891, he with two of his sons, executed a third mortgage of the same village. Tikam Singh died and the sons partitioned the village amongst them into several mahals. The first mortgagee brought a suit for sale on his mortgage and having obtained a decree brought to sale the share of Het Singh one of the brothers and the mortgage was discharged. Thereafter Het Singh brought a suit for contribution and obtained a decree. After the satisfaction in this manner of the mortgage of 1880 the other brothers discharged the later mortgages of 1889 and 1891 and then brought the present suit for contribution against Het Singh. Held, that in these circumstances the plaintiffs were not entitled to a decree against Het Singh. *Har Prasad v Raghunandan Prasad* I L R 31 All 166, referred to. *HASHI PAM v HET SINGH* (1914)

I L R 37 All 101

— ss 82 and 86—*Mortgage—Contribution between several properties subject to the same mortgage—Part of mortgaged property passing to auction purchasers at a court sale—Mortgage money realized from property remaining in hands of mortgagor—Mortgagor's right of contribution against the auction purchasers—* Some out of several properties covered by a mortgage were sold, subject to the mortgage in execution of a simple money decree against the mortgagor. The mortgagees then brought to sale in execution of his decree on the mortgage a village, L which still remained in the possession of the mortgagor, and the proceeds of the sale of the village being insufficient to satisfy the decree subsequently caused a share in another village D in the possession of the mortgagor, to be sold. In this way the mortgage decree was fully satisfied. Thereafter, the mortgagor brought a suit for contribution against the auction purchasers of the villages above referred to upon the ground that the village L had been made to contribute more than its rateable share of the mortgage debt. Held that the suit would lie and the plaintiff, after the sale of L was entitled to get contribution from the other villages which had been sold subject to the mortgage in execution of the simple money decree. *Magniram v Mohd. Hossain Khan*, I L R 31 Calc 95 and *Ibn Hasan v Brijbhawan Saran* I L R 26 All 407 distinguished. *Bhagwan Das v Karam Hussain* I L R 33 All 708, referred to. *PAMA SHANKAR PRASAD v GHULAM HUSAIN* I L R 43 All 580

— ss 82 100—*Mortgage—Contribution—Equitable lien—Limitation—Indian Limitation Act (IX of 1908) Sch I, Arts 6^o 170 and 132—* The owner of a property which is mortgaged with other properties to secure a single debt acquires by virtue of the provisions of ss 82 and 100 of the Transfer of Property Act 1882, a charge against such other properties when his property has been sold in execution of a decree on the mortgage and has contributed more than its rateable share of the mortgage debt and none the less if the owner of such property has neither redeemed the mort-

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—contd—

ss 82, 100—contd

gaged property nor has the sale of his property alone discharged the mortgage-decree. A claim to enforce such a charge is governed by Art 132 of the first schedule to the Indian Limitation Act, 1908. *Ibn Hasan v Brybhukan Saran*, I L R 26 All 407, *Muhammad Ishtiyaq v Rashid ud-din*, I L R 31 All 65, *Rajah of Lusanagram v Rajah Satruchera Samasaharan*, I L R 26 Mad 686, and *Bhagwan Das v Har Day*, I L R 26 All 227, referred to. *Per BAKER and CHAMBER, JJ* (dubitante *RICHARDS, C J*).—If property against which a charge for contribution would otherwise have accrued has been sold and has realized more than the amount remaining due on the mortgage, an equitable lien on the surplus sale proceeds arises in favour of the person entitled to contribution. A suit to recover contribution in virtue of such a lien is governed by Art 62 of the first schedule to the Indian Limitation Act, 1908, if not, perhaps by Art 120. *Berkhamjee Pershad v Tara Chand* I L R 23 Cal 92, *Gosta Bihary Pyne v Shab Nath Dutt* I L R 20 Cal 211, *Kamala Kant Sen v Abul Barkat*, I L R 27 Cal 180, *Mahomed Wabib v Mahomed Ameer*, I L R 32 Cal 627. *The Rajputana Malwa Railway Co-operative Stores, Limited v The Ameer Municipal Board*, I L R 32 All 491, and *Guru Das Pyne v Ram Narain Sahu*, I L R 10 Cal 360, referred to. *BHAGWAN DAS v KARAM HUSAIN* (1911).

I L R 33 All 708

s 83—

1. Deposit paid to mortgagee—Balance of mortgage debt promised—Mortgage not discharged. The consequences resulting from a payment into Court under s 83 of the Transfer of Property Act, 1882, only occur when the amount paid in is found to be or is accepted by the mortgagee as being equivalent to the full amount due under the mortgage in suit. *HAN DAYAL v IRTIJI SINGH* (1903).

I L R 32 All 142

2. Tender under s 83 in one Court subsequent to suit by mortgagee, in another Court to enforce his mortgage invalid—Where mortgagee entitled to possession, mortgagee must be put in possession before deposit under s 83—Costs, right of mortgagee to. Where after the institution of a suit by the mortgagee to enforce his mortgage in one Court, the mortgagor deposits the amount in another Court under s 83 of the Transfer of Property Act, the deposit is not a valid one and cannot have the effect of stopping the running of interest on the amount deposited. Where the mortgagee proposes to take action under s 83 of the Act, he must have a valid right to redeem under his contract with the mortgagee. No deposit can be made if the mortgagee being entitled to possession is not put in possession. *Ram Sonji v Krishnaji*, I L R 26 Bom 312, followed. A mortgagee is entitled to his costs unless there are special reasons disentitling him to them. *BAIYA SAO v NARASINGA MAHAPATRO* (1911).

I L R 35 Mad. 209

3. Redemption of mortgage—Money payable on last day of Jeth—Deposit in Court on last day of Jeth—Notice served on mortgagee after month of Jeth—Effect of such deposit. A deed of usufructuary mortgage provided

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—contd—

s. 83—contd

that, if the mortgagor wished to redeem the mortgage, he could do so on the last day of Jeth in any year. The mortgagor filed a suit for redemption and paid the mortgage money into court on the last day of Jeth, 1910. *Held*, that it was no reason for dismissing the suit that notice could not be given to the mortgagee within the time limited. Even if the tender was not enough to warrant the Court in passing a decree for redemption from the date of the deposit, it was certainly proper and legal for the Court to pass a decree from the last day of Jeth next succeeding the date of the deposit. *Hai Singh v Bhari Lal*, I L R 43 All 95, referred to. *SAYYID AHMAD BEG v DHARM V RAI*.

I L R 43 All 424

4. *Usufructuary mortgage—Hypothecation—Deposit of usufructuary mortgage amount only—Refusal by mortgagee—Subsequent deposit of hypothecation amount—Compound interest at enhanced rate—Penalty—Deposit of compound interest at the original rate only, sufficiency of—Acceptance by Court, as reasonable compensation, effect of—Mene profits claimed for, by plaintiff from date of deposit, if sustainable*. The plaintiff, as the vendee of certain lands which were subject to a usufructuary mortgage as well as a hypothecation in favour of the defendant sought to recover the property on payment into Court of the amount due under the usufructuary mortgage under s 83 of the Transfer of Property Act. The defendant claimed that the plaintiff should deposit the sum due under the hypothecation bond also. The plaintiff paid subsequently into Court an amount as due for principal and interest on the latter bond, but calculated compound interest at the original rate and not at the enhanced rate after default as mentioned in the bond disputing the provision as penal. The Court held the provision to be penal and accepted the amount paid for interests as reasonable compensation. The plaintiff claimed mene profits from the date of his first deposit, but the defendant disputed his right to any mene profits as the plaintiff did not deposit the full amount specified in the bond. *Held*, (i) that the plaintiff was bound to deposit the amounts due under both the bonds, and (ii) that the plaintiff was not bound to deposit the penal rate of interest but that the payment of an amount as reasonable compensation which was accepted by the Court as proper, was legally sufficient to entitle the plaintiff to mene profits from the date of the second deposit. *ATTAKUTTI MAN KONDAN v PERIYASWAMI KAVENDAN* (1915).

I L R 39 Mad. 579

ss 83, 84—

Withdrawal by mortgagor, effect of—Interest on mortgage amount does not cease to run—Costs of mortgage in redemption suit. Where the mortgage amount deposited by the mortgagor under s 83 of the Transfer of Property Act has been withdrawn by the mortgagor on the mortgagee's refusal to accept it, interest in such amount does not cease to run under s 84. The continuance of the deposit is necessary to justify the claim to the cessation of interest. The mortgagee is entitled to his costs in a redemption suit. It will be forfeited by some improper defence or misconduct.

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—contd—

ss. 83, 84—contd

but not by merely claiming a larger amount than is due *KRISHNASAMI CHETTIAR v RAMASAMI CHETTIAR* (1910) I L R 35 Mad 44

Deposit in Court—Title of mortgagee's legal representative in dispute in suit—Withdrawal by mortgagor before decision in suit—Cession of interest Where a mortgagor, who had deposited in Court under s 83 of the Transfer of Property Act the money due from him on the mortgage, withdraw the amount from Court before the title of the legal representatives of the mortgagee, which was then in dispute was established in a suit *Held* that the mortgagor was not entitled to exemption from interest on the mortgage amount from the date of the deposit under s 84 of the Transfer of Property Act *Krishnasami Chettiar v Ramasami Chettiar*, I L R 35 Mad 44, referred to. *THEVARAYA REDDY v VENKATACHALAM PANDITHAN* (1916)

I L R 40 Mad 804

Mortgage—Redemption—Right of owner of share in property mortgaged to redeem the entire mortgage The owner of a portion only of the equity of redemption is competent to maintain a suit for redemption of the entire mortgage even against the will of the mortgagee *Norender Narain Singh v Devika Lal Mundur*, I L R 51 A 18 *Huthasanan Nambudri v Parameswaran Nambudri*, I L R 22 Mad 209, *Velayudhan Chetty v Alangaran Chetty* 15 I C 605 and *Mustafa Khan v Shadi Lal* 10 Oudh C 31, referred to. *Cirish Chunder Dey v Juramoni De*, 5 C W N 83, dissented from. *FAKIR CHAND v BABU LAL* (1917) I L R 39 All 719

s 84—

Tender, what amounts to Under s 84 of the Transfer of Property Act, interest ceases to run on the principal amount from the date of tender, it is not necessary that the mortgagor should after such tender always keep the money ready for payment *VELAYUDHAN CHETTY v HYDER HUSSAIN KHAN SAKIB* (1909)

I L R 33 Mad 100

Held that an offer by letter of the amount due on a mortgage is not a good tender within s 84 It is necessary that the money should be actually produced unless the person entitled to receive has waived this condition. *CHETAN DAS v GOBIND SARAN*

I L R 36 All 139

s 85—

See ATTACHMENT I L R 44 Mad. 232

See DEKKHAN AGRICULTURISTS RELIEF ACT (XII OF 1879) ss 47 AND 48
I L R 36 Bom 624

See HINDU LAW—JOINT FAMILY
I L R 33 All 7, 71
I L R 36 All 353

See HINDU LAW—MORTGAGE.
I L R 42 Calc 1068

See MORTGAGE I L R 38 Calc 60
I L R 39 Calc 627
I L R 45 Calc 1

See NOTICE 25 C W N 49

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—contd—

s. 85—contd

Suit upon mortgage—Mortgage executed by adult members of the family—Suit brought against all members excepting a minor—Decree—Sale of mortgaged property in execution—Minor seeking to exempt his share from sale—Representation of the minor by the adult members A Hindu family living jointly consisted of S, his son M, and his two grandsons S² and R (minors) by a predeceased son S mortgaged a house for purposes allowed by Hindu law The deed of mortgage was signed by S M and S² represented by his mother The mortgagee sued on the mortgage and joined S M and S² as party defendants The suit passed into a decree, in execution of which the house was sold at a Court auction and purchased by the plaintiff In a suit by the plaintiff against M, S² and R (S having died) for possession of the house R claimed to exempt from the sale his share in the house which was one fourth on the ground that as he was not a party to the suit, he was not bound by the decree *Held* that though R was omitted from the suit he was represented by the adult members who were the managing members of the family *Held* also, that the debt was contracted by S, the grandfather of R and R was bound by it unless it had been contracted for illegal or immoral purposes *RAMKRISHNA v VINAYAK NARAYAN* (1909)

I L R 34 Bom 354

ss 85 89—

See LIMITATION I L R 42 Calc 778

See CIVIL PROCEDURE CODE 1908 s.
156 AND SCH V

See MORTGAGE I L R 40 All 407

Civil Procedure Code (1908) O XXXIV, r 5—Mortgage—Suit on prior mortgage without impleading puisne mortgagee—Effect of failure to implead—Suit for sale by puisne mortgagee impleading prior mortgagee—Duty of puisne mortgagee to redeem the prior mortgage A prior mortgagee without impleading the puisne mortgagee, sued for and obtained a decree for sale on his mortgage under the provisions of s 83 of the Transfer of Property Act 1882 After the Code of Civil Procedure of 1908 has come into force the decree holder obtained a decree absolute for sale Before however the sale actually took place, the puisne mortgagee instituted a suit for sale on the basis of his mortgage and in such suit he contended that the prior mortgagee by omitting to implead him had forfeited his right to execute his decree *Held* that this was not so The position of the puisne mortgagee was rendered neither better nor worse by his not having been impleaded in the prior mortgagee's suit If the prior mortgagee was valid the puisne mortgagee was not entitled to a decree for sale without giving the prior mortgagee an opportunity of redeeming him *Janki Prasad v Kishan Dutt* I L R 16 All 452 dissented from *Pam Prasad v Bakari Das* I L R 26 All 464 *Drobal Kunwar v Alim-un-nissa Bids Weekly Notes* 1901, p 22 and the judgment of *BANKS J* in *Bhawanji Prasad v Kallu* I L R 17 All 537, referred to. *Het Ram v Shadi Ram*, I P 45 I A 130, distinguished. *HUKAM SINGH v LALLANJ*

I L R 43 All 204

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—*contd*—

ss 85 80—

See MORTGAGE I L R 40 Calc 342

ss 85 91—*Mortgage suit—Parties*

Non joinder of attaching money-dee holder—Sale, validity of. Where after attachment by a money decree holder of certain property previously mortgaged by the judgment debtor the mortgagee brought a suit on the mortgage without impleading the attaching decree holder as a party obtained a decree for sale and himself bought the property in execution of his decree. *Held* that the order for sale and the sale held thereunder were not binding on the attachment decree-holder and that the latter was entitled to bring the properties to sale under his attachment. An attaching decree-holder has under s. 91 Transfer of Property Act an interest in the mortgaged property entitling him to redeem the mortgage and is a necessary party in a suit on the mortgage. *Gulam Hussain v D Na Nath I L R 23 All 467* referred to *VENKATA SEETHARAMAYYA v VENKATARAMAYYA* (1912) I L R 37 Mad. 418

ss 85 93—

See s 61 I L R 38 Mad. 927

See MORTGAGE I L R 41 Calc 727

ss. 86 to 90—

See CIVIL PROCEDURE CODE, 1908 O XXXIV

ss 88 89 and 90—*Mortgage decree for sale—Decree silent as to costs whether costs recoverable against mortgagor personally.* In a mortgage decree for sale costs are part of the amount due upon the mortgage and are recoverable from the mortgaged property and not personally from the debtor unless the decree itself so directs. Such a direct on cannot be presumed where the decree is silent on the point. *Per ATKINSON J.*—Costs awarded by a decree prepared under the joint provisions of ss 86 and 88 of the Transfer of Property Act 1882 can only be realised from the mortgaged property. *MATHEDHARI SINGH v RAMDAS SINGH* 2 Pat L J 51

s 83—

See s 86 2 Pat L J 51

See MORTGAGE I L R 35 Bom 395

See MORTGAGE DECREE 4 Pat L J 213

ss 88, 89—

See MORTGAGE I L R 38 Calc. 913

See MORTGAGE DECREE 4 Pat L J 213

Joint decree for sale—Application for order absolute made by some of the decree holders after the coming into force of the Civil Procedure Code 1908—Civil Procedure Code 1908 O XXXIV—General Clauses Act (X of 1907). s 6. A decree for sale under the provisions of s 88 of the Transfer of Property Act 1882 was passed jointly in favour of B and K. B died before any order absolute for sale was passed. On 30th April 1909 the sons of B made an application for an order absolute for sale under s 89 of the Transfer of Property Act. K was not made a party to it. *Held* that the application would lie inasmuch as the sons of B being joint decree-holders with K were entitled to apply for an order for sale (whether or not such order be in fact a final

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—*contd*—ss. 88, 89—*contd*

decree) their right to do so being inherent in the decree under s 88 of the Transfer of Property Act. The subsequent repeal of the act on could not "affect any right acquired or liability incurred" thereunder. *GANGA SINGH v BANWARI LAL* (1911) I L R 34 All 72

Application for order absolute for sale—Limitation—Limitation Act (XV of 1877) Sch. II Art 179. Where a preliminary decree for sale on a mortgage was passed on 23rd September 1898. *Held*, that an application for order absolute made more than three years after that date was barred by limitation—such an application on being a proceeding in execution. *Kista Bar v Bananoy Debba 19 O W N 470* reversed. *Munna Lal v Sarat Chandra Mukerjee 21 C L J 118 s c 19 C W N 581* referred to. *Batuk Nath v Munna Devi I L R 36 All 284 s c 18 C W N 740* and *Abdul Majid v Jawahar Lal, I L R 36 All 350 s c 18 C W N 863* followed. *KISTA BAR v BANANOY DEBBA* (1915) 19 C W N 649

Civil Procedure Code (Act XIV of 1882) s. 244—Limitation Act (XV of 1877) Sch. II Arts 178 179—Civil Procedure Code (Act V of 1908) s 97 O XXXIV rr 1 and 5—Order passed under s 88 of the Transfer of Property Act if not appealed against cannot be questioned in an appeal from the decree absolute for sale. In 1907 a suit was filed to recover the mortgage amount by sale of the mortgaged property. A preliminary decree was passed on the 30th of June 1910 as contemplated by O XXXIV r 4 of the Civil Procedure Code (Act V of 1908) ordering among other things defendants Nos. 1 and 2 to pay the mortgage amount within six months to the plaintiff and in default directing a sale of the mortgaged property. The payment was not made and a final decree for sale was made on the 15th March 1912. Defendant No 1 appealed against the decree of 1912 and raised substantially points against the decree of 1910. The lower Appellate Court held that the defendant not having appealed against the preliminary decree within time was precluded by s 97 of the Civil Procedure Code (Act V of 1908) from disputing its correctness in an appeal preferred from the final decree. The defendant appealed to the High Court contending that the suit having been filed in 1907 the right of appeal which he had under the Civil Procedure Code of 1882 was not taken away by the Civil Procedure Code of 1908. *Held* that whether an order absolute for sale was treated as an order falling under s 244 of the Civil Procedure Code (Act XIV of 1882) and appealable on that footing or not it was quite clear that even under the Civil Procedure Code of 1882 the correctness of the decree under s 88 of the Transfer of Property Act (IV of 1882) corresponding with O XXXIV r 4 of the Civil Procedure Code of 1908 could not be questioned in an application for an order absolute under s 89 or in an appeal from an order absolute made on such an application. *MULJIDHAR NARAYAN v VISHNUDAS* (1915) I L R 40 Bom. 321

s 89—

See CIVIL PROCEDURE CODE, 1908 O XXXIV r 6 I L R 42 All 817

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—contd.

s 89—contd

See MORTGAGE I L R 42 All 364
I L R 37 Cal 897

See PRIVY COUNCIL—PRACTICE OF

I L R 38 All 350

See REDEMPTION 3 Pat L J 490

Execution of a decree—

Benamidar Held, that in an application under s 89 of the Transfer of Property Act the fact that the Court came to the conclusion that the applicants transferees were *benamidars* was no bar to its granting an order absolute. A *benamidar* is competent to take out execution of a decree. *Intikhab Husain v Pafin Hussain, All Weekly Notes, (1907) s 39, Yad Ram v Umrao Singh, I L R 21 All 380 Nawad Kishore Lal v Ahmed Ali, I L R 18 All 69, Bachcha v Gayadkar Lal, I L R 23 All 44, Parmeshwar Datt v Anandan Datt, I L R 37 All 113* referred to KAMTA PRASAD v KONDANI (1915)

I L R 37 All 414

Suit on prior mortgage

—Second mortgagee not made a party—Sale of property and purchase by decree holder—Subsequent suit by second mortgagee on his mortgage—First mortgagee purchaser, if may claim to be paid on the foot of mortgage contract or the amount decreed—Transfer of Property Act (IV of 1882), s 89 An order made under s 89 of the Transfer of Property Act (IV of 1882) for the sale of the mortgaged property has the effect of substituting the right of sale thereby conferred upon the mortgagee for his rights under the mortgage and the latter rights are extinguished. Where a first mortgagee obtained a decree for sale upon his mortgage in a suit in which he did not make the second mortgagee a party and purchased the mortgaged property at such sale *Held*, in a suit by the second mortgagee upon his mortgage, that the first mortgagee purchaser had no greater rights than any stranger would have had who had purchased the property under the mortgage decree and paid cash for it and the latter was entitled to set up only the amount of the decree made in his suit. *Het Ram v Shadi Lal I L R 45 I A 139 22 C W N 1013 (1913)* followed. *Umash Chand v Sircar v Musummat Zakoor Fatima L F 17 I A 291 (1909)* distinguished. *LALA MATHU MAL v MRSAMMAT DURGAL KUKWAR (P C) 25 C W N 307*

s 90—

See s. 89 2 Pat L J 51

See CIVIL PROCEDURE CODE 1908, s. 47
I L R. 35 Bom. 452

See MORTGAGE . 47 Cal 370

See SUIT TO SET ASIDE A DECREE

I L R 33 All 7

1 Civil Procedure

Code (Act XIV of 1857), ss. 43 and 50—Transfer of Property Act (IV of 1882), s 89—Suit to recover mortgage-debt by sale of mortgaged and unapportioned property—Decree against mortgaged property alone—Sale—Amount realized not sufficient—Application for supplemental decree to recover balance by sale of other property—Insulation—Putting forward allegations of a late stage. In a

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—contd

s 90—contd

suit upon a mortgage dated the 18th April 1887 the plaintiff claimed on the 18th April 1899, to recover the mortgage-debt by sale of the mortgaged property and the balance if any from the non hypothecated property of the mortgagor. The decree was passed in plaintiff's favour against the mortgaged property alone. The amount realized by the sale of the mortgaged property being insufficient to satisfy the decree the plaintiff applied under s 90 of the Transfer of Property Act (IV of 1882) for a supplemental decree against the other property of the mortgagor. The first Court found that the claim for a personal decree against the mortgagor was time barred. On appeal by the plaintiff he attempted to prove that the claim was within time owing to an intermediate payment by the defendant but the Appellate Court found that the plaintiff failed in his attempt and confirmed the decree. On second appeal by the plaintiff *Held* confirming the decree, that the mortgage in suit being of the year 1887 and the suit of the year 1899 the plaintiff's right to a personal decree against the mortgagor was time barred. The plaintiff having failed to show the ground on which exemption from the law of limitation was claimed *Held*, further that the plaintiff could not be allowed at a late stage of the suit to bring forward for the first time allegations which it was necessary to prove in order to show that he was entitled to a further decree against the defendant personally. *GILAN HUSSAIN v MAHAMADALI IBRAHIMI (1910)* I L R 34 Bom 540

2 Mortgage—Sub

mortgage—Purchaser from mortgagor—Mortgage money forming part of consideration for sale—Personal liability of purchaser—Sale of mortgage rights. In this case it was *held* (affirming the decisions of the Courts in India in *Jamna Das v Pam Astar Lande I L R 31 All 35*) that the purchaser of the mortgaged property was not a person from whom the balance of the mortgage debt was "legally recoverable" within the meaning of s 90 of the Transfer of Property Act IV of 1882. *JAMNA DAS v RAM ATAR LARIE (1911)* I L R. 34 All. 83

3 Mortgage Decree

—Decree for costs of a personal decree. A decree had been passed on appeal in a mortgage suit upholding the mortgage and ordering that the appellant who was a transferee of a portion of the mortgaged property from the mortgagor do pay costs to the respondents, the mortgagee. The mortgaged property having been sold in execution of the decree, the decree-holder applied for execution of the decree for costs against the transferee personally. *Held* on a construction of the decree, that there was a personal liability imposed by the decree. In such cases regard should be had to what decree was passed rather than to what decree ought to have been passed. *MOHAYYA QAN v I AM BANARAS SINGH (1912)*

16 C. W. N 731

4. One decree on

mortgage for sale at also on personal covenant for sale of other properties, if mortgaged properties fail to satisfy decree, if legal—Civil Procedure Code (Act XIV of 1857), s 316—Sale set aside before confirmation—Second suit before former sale set aside, if passes title—Delay in litigation. The words of

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—contd—

—contd—

s. 90—contd

s. 90 of the Transfer of Property Act are satisfied when the Court in passing a decree in a mortgagee's suit granting him the necessary relief under the mortgage proceeds in addition to provide that if the proceeds of the sale be not sufficient to cover the amount secured by the mortgage with interest till the date of realisation the balance should be recovered from the other properties of the mortgagor. Where property previously sold in execution of another decree was before confirmation of such sale sold again and the sale was never confirmed by reason of its being subsequently set aside. *Held* that under s. 316 of the Civil Procedure Code of 1902 which was in force at the date the property remained the property of the judgment debtor notwithstanding the sale and passed by the second sale. There is delay in bringing litigation to a final hearing. *Jai Va Rani v Parmeshwar Nara, Yan Manthra* (1918) 23 C. W. N. 490

s. 91

See s. 60 I L. R. 35 Mad. 310

See s. 83 I L. R. 37 Mad. 418

See ATTACHMENT s. 1 I L. R. 37 Mad. 418

I L. R. 44 Mad. 232

See CIVIL PROCEDURE CODE, 1908, s.

XXI, r. 107 I L. R. 43 Mad. 696

See MALABAR LAW

I L. R. 43 Mad. 393

See MORTGAGE I L. R. 38 Mad. 426

I L. R. 34 Mad. 115

1 ————— Redemption mortgage of fixed rate tenancy—Death of tenant without heirs—Right of zamindar to redeem—Excluded to Crown—Agra Tenancy Act (Local II of 1901) ss. 3, 13, 20, 57. *Held* that on the death of a fixed rate tenant without heirs his tenancy does not escheat to the Crown but reverts to the zamindar. *Ram Dihal Rai v The Maharaja of Vizianagram* I L. R. 39 All. 485 overruled. *Panoo Sant Kowar v Maharaj Ramnath Bahadur* I R. 31 4 92. I L. R. 1 Cal. 391 distinguished. *Tilash Ram Baru v G. B. Dyal Singh* (1910) I L. R. 33 All. 111

2 ————— Mortgage suit—Attaching creditor if necessary party—Right of purchaser in execution of money decree to redeem purchaser pending attachment in execution of mortgage decree—Attachment effect of. Although an attaching creditor is entitled to redeem a mortgage under s. 91 Transfer of Property Act he has no interest in the mortgaged property. A purchaser at the sale in which the attachment culminated has no right to redeem the purchaser at the mortgage sale, or to resist his getting possession of the property. *Ghulam Hussain v Dina Nath* I L. R. 23 All. 467, 469 commented on. *Fredrick Peacock v Madan Gopal* I L. R. 22 Cal. 429 and *Masbil v Karaballia* I L. R. 25 Cal. 179, referred to. *Shamanda Chandra Pal v Sri Nath Ray Chowdhury* (1912) 17 C. W. N. 871

3 ————— Mortgage—Right to redeem—Attaching creditor. Certain property was mortgaged on the 4th of April 1861. One

s. 91—contd

A. A. obtained a simple money decree against the mortgagor on the 25th of May, 1880. Before judgment A. A. had attached the property, and it was subsequently sold by auction and purchased by L. R. on the 24th of September, 1902. In 1897, the mortgagor sued on their mortgage without impugning either A. A. or L. R. In execution of their decree the property was sold and purchased by defendant's father who obtained possession on the 25th of April 1900. I. I. brought suit for recovery of possession or, in the alternative, for redemption. *Held*, that under s. 91 (f) of the Transfer of Property Act A. A. was entitled to redeem, and the plaintiff as a person claiming under him is also entitled to redeem. *Lakshmi Bai v Fakiruddin* (1917) I L. R. 39 All. 536

s. 92

See LIMITATION ACT 1877 s. 23, SCH. II.

ART. 36 I L. R. 33 Mad. 71

See MORTGAGE I L. R. 47 Cal. 377

— ss. 92 and 93. Power of mortgagee to apply for sale of mortgaged properties. In a suit for redemption of a mortgage (the mortgage not being a simple mortgage or a mortgage by way of conditional sale) where the mortgagor fails to pay the mortgage amount according to the decree, he may apply for sale of the mortgaged properties. Paragraph 2 of s. 93 Transfer of Property Act, while giving the defendant mortgagee a right to apply for sale does not take away such right from the plaintiff mortgagor. *Govinda Taragan v Vethay* (1913) I L. R. 36 Mad. 32

s. 93—

See s. 80 I L. R. 39 Mad. 696

s. 95—

See s. 54 I L. R. 39 Mad. 1010

See LIMITATION ACT (IX of 1909), SCH.

I, ARTS. 134, 144

I L. R. 38 All. 133

See MORTGAGE 14 C. W. N. 617

See REDEMPTION 2 Pat. L. J. 490

ss. 95, 100—

See LIMITATION I L. R. 46 Cal. 111

See MORTGAGE (REDEMPTION)

6 Pat. L. J. 630

s. 96—

See MORTGAGE I L. R. 47 Cal. 682

s. 98—

See s. 60 I L. R. 39 Mad. 1010

I L. R. 38 Mad. 667

See MALABAR LAW

I L. R. 44 Mad. 344

— ss. 98 and 60—Anomalous mortgage—Mortgages defined in s. 58 and combined mortgages under s. 98—Claw on equity of redemption, validity of—Applicability of provisions of the Act to ordinary and anomalous mortgages—Terms of the deed and local usage, how far binding—Construction of document. Where the mortgage was put in possession of the lands mortgaged under a deed executed in 1900, which provided that the principal with interest at a specified rate should be repaid on a

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—*contd*ss 98 and 60—*co id.*

certain date eleven years thereafter and that in default the mortgagor should give up the lands as sold to the mortgagee and execute a proper sale-deed and further that the latter should enjoy the property paying the revenue due to Government and where the mortgagor sued in 1914 to redeem the mortgage and the mortgagees pleaded that the former could not redeem after the time limited under the deed *Held* (by the Full Bench) that the transaction evidenced by the deed was not a mortgage by conditional sale or an anomalous mortgage under s 92 but a combination of a simple mortgage and a usufructuary mortgage and that consequently the stipulation in the deed which fetters the equity of redemption was invalid as opposed to s 60 of the Act *Held* (by WALLACE C J and SESHAGIRI ATYAR J)—In the case of anomalous mortgages referred to in s 98 the provisions of s 60 as to the right of redemption do not apply when there is a contract or local usage to the contrary *KANDULA VENKIAH v. DONGA PALAYA* (1900) I L R 43 Mad. (F B) 589

s 99

See CIVIL PROCEDURE CODE 1908 O

XXXIV—

R. 4

2 Pat L J 55

R 14

I L R. 35 Bom. 248

See EQUITY OF REDEMPTION

2 Pat L J 587

See MORTGAGE

I L R 47 Cal 377

14 C W N 579

I L R 42 Cal 780

Civil Procedure Code

(1908) O XXXIV r 14—*Hindulaw—Joint Hindu family—Mortgage by father alone—Suit on mortgage and on money decree—Sale of mortgaged property in execution—Suit by sons for redemption—One V S the father and managing member of a joint Hindu family executed a simple mortgage of joint family property in favour of R L. R L brought a suit for sale on this mortgage against A S alone not impleading his son but in that suit he released the security and took a simple money decree against V S in execution of which he attached and brought to sale the mortgaged property and purchased it himself. The sons of V S neither objected to the passing of the decree against the father nor to the sale of the property but subsequently filed a suit against R S for redemption of the mortgage. *Held* that the mortgagee could not by taking a simple money decree for his debt and bringing the property to sale in execution of such decree divest himself of his character as a mortgagee and that the sons of the mortgagor not having been made parties to the original suit for sale were still entitled to sue for redemption of the mortgage made by their father. *Mayan Palanis v. Patuman* I L R. 2nd Mad 317 *Mariand Balakrishna Rhat v. Dhondra Domodar Kallarni* I L R 2nd Bom 674 *Panham Lal Chowdhury v. Kulkarni Prakash Misra* 14 C W N 579 and *Kharajmal v. De m* I L R. 3rd Cal 906 referred to *Debi S Singh v. Jia Pasm*, I L R. 13th All 211 *Tara Chand v. Indad Husa* I L R 13 All 325 *Paramanand v. Daulat Ram* I L R 24 All 449 *Pankaj Lal v. Manu Lal* I L R 27 All 450, *Muhammad Abdul Rasid Khan v. Dilrukht Esi**

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—*contd*s. 99—*contd*

L R 27 All 51st *Kishan Lal v. Umrao Singh* I L R 30 All 146 and *Muham v. Karaypan* 17 Mad. L J 163 distinguished. *SARDAR SINGH v. RATAN LAL* (1914) I L R 36 All 516

Sale of mortgaged property in contravention of terms of auction—Right of redemption of mortgagor to redeem. If a mortgagee brings the mortgaged property to sale in contravention of the provisions of s 99 of the Transfer of Property Act 1882 such sale is not void but merely voidable. If such a sale is confirmed the auction purchaser whether he be an outsider or the mortgagee bidding with the leave of the Court obtains an indefeasible title and the right of the mortgagor and those who represent him to redeem is absolutely extinguished. *Tara Chand v. Indad Husa* I L R 13 All 325 *Muhammad Abdul Rasid Khan v. Dilrukht Esi* I L R 27 All 517 *Madan Lakund Lal v. Jamna Kaulpur* All L J 123 and *Mangli Prasad v. Pahi Ram* I All L J 360 followed. *Jhabba Lal v. Chhazay Mol* 4 All L J 73 overruled. *Sardar Singh v. Raon Lal* I L R 36 All 516 *Ashwath Sedar v. Behari Lal Khatua* I L R 35 Cal 61 and *Pancham Lal Chowdhury v. Ashwin Pershad Muser* 14 C W N 579 referred to. *LAL BAHADUR SINGH v. ANBARAN SINGH* (1915) I L R 37 All 125

Held that where a mortgagee in contravention of s 99 has attached the mortgaged property and brought it up to sale and purchased it himself the mortgagor or his transferee cannot successfully maintain a suit for redemption of the property without first getting the sale set aside. Assuming that upon purchase by the mortgagee himself the equity of redemption is a contravention of s 99 the mortgagee merely becomes a trustee for the mortgagor in respect of it. *Held* by the majority of the Court that the mortgagor is right to recover the property cannot be enforced by a suit for redemption within art 148 of the Limitation Act 1904. *UTTAM CHANDRA DAW v. RAJ KRISHNA DALAL* 24 C W N 230

s 100—

See s. 59 I L R 36 All 20

See s. 59 I L R 35 All 164

See s. 8th I L R 33 All 708

See CIVIL PROCEDURE CODE 1908 O

XXXIV R. 4 2 Pat L J 55

See LIMITATION I L R 46 Cal 111

See MADRAS ESTATES LAND ACT (1908) s. 5 I L R 4th Mad. 114

See MORTGAGE I L R 34 All 446

See PROVINCIAL SMALL CAUSE COURTS

ACT no. 2 of 1913 5 Pat L J 248

See RATES AND TAXES

I L R 42 Cal 625

Construction of document—Charge created where words though wide are definite. Where by a document the property is of one of the parties is made liable and it appears on the construction of the document that the word "properties" does not mean the property as of such party generally but certain specific properties as

TRANSFER OF PROPERTY ACT (IV OF 1882)

—could.

— s 100—could.

charge will be created on such specific properties alone. A distinction must be drawn between wideness and indefiniteness of language. *Bheri Dorayya v Madhi Patil Ramayya* 1 L. R. 3 Mad 35, considered. *MATHURAM PILLAI v ARDINARA YANA PILLAI* (1910) 1 L. R. 34 Mad. 47

A document which is imperative as a mortgage by reason of its not being properly attested cannot take effect as creating a charge under s 100. *Transfer of Property Act. DEBENDRA CHANDRA ROY v BENARI LAL MUKERJEE* (1912) 16 C. W. N. 1073

— s 101]

See MORTGAGE 1 L. R. 33 Bom. 24
1 L. R. 33 Mad. 18

First and subsequent mortgages—Purchase of mortgaged property by prior mortgagee. Suit for sale by subsequent mortgagee. Held, that a prior mortgagee who had in the exercise of a right of redemption purchased the property mortgaged to him had a right to be repaid the money due in respect of his mortgage before a subsequent mortgagee could bring such property to sale in execution of a decree on the mortgage held by the latter. *RATHO PRASAD v. UMAN SHANKAR* (1907) 1 L. R. 32 All. 1

Purchase—Intention of mortgagee on property purchased—Intention of purchaser to keep mortgage alive for his benefit—Presumption. In considering the question whether an incumbrance should be deemed to continue to subsist on the ground that the continuance of it was for the benefit of the person who has acquired the property, the point of time to be regarded is the date of the acquisition of the property. If an intention to keep alive a charge on property is inconsistent with the real intention of the parties to the deed by which the purchaser of the property takes an assignment of it, the charge cannot be treated as still subsisting simply because the purchaser afterwards finds that it would have been better for him to have kept the charge alive. *Liquidation Estates Purchase Co v Willoughby*, (1898) A. C. 321, followed. *Pradeshkur Singh v Pandit Balraj Sahai* 10 Oudh Cases, 42 and *Mohesh Lal v Bawa Das*, 1 L. R. 9 Cal. 561, referred to. *JOGAL KISHORE v RAM NARAIN* (1912) 1 L. R. 34 All. 268

Extinction of charge—Mortgage having two charges—Purchase by mortgagee at the sale under the first mortgage—Second mortgage cannot be enforced. O took a mortgage of certain lands in 1886. They were mortgaged to him again in 1894. In 1895, he sued on his first mortgage and obtained a decree. In execution of the decree the lands were sold subject to the mortgage of 1895 and purchased by O with the permission of the Court. In 1905 a partition took place between O's heirs, at which the certificate of sale went to the share of the defendant and the mortgage-deed of 1895 went to the share of the plaintiff. The plaintiff next sued the defendant to enforce the mortgage against her. Held that at the plaintiff could not sue the defendant on the mortgage, for after what had occurred in 1895 O could have had no right to sue himself in a double capacity as mortgagee under the

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—could.

— s 101—could

mortgage of 1894 and mortgagor under the sale certificate of 1905, that is he could have had no cause of action against himself, and the plaintiff as his heir could have no higher rights. *LAXMAN CHANDRAN v MATHURANAI* (1913) 1 L. R. 38 Bom. 389

s 103. *Lease—Proof—Khatuliyat executed by alleged licensee if sufficient.* A khatuliyat by itself does not prove a lease being only an undertaking by the prospective tenant to take the lease. *Abad Lal v Hanuman Das*, 1 L. R. 26 All. 368. *Aashir Giv v Jagendra Nath Ghosh*, 1 L. R. 27 All. 136. *Turaj Sahib v Enaf Sahib* 1 L. R. 39 Mad. 327 approved. *MUHAMMAD NAKKAR v. HOUL DAS* (1907) 14 C. W. N. 73

— ss 105 and 107 -

See COMPROMISE 2 Pat. L. J. 253

See Khatuliyat 1 L. R. 39 Cal. 1016

Agreement to let land on payment of annual rent—Construction of building in reliance on agreement—License—Remedy of licensee for wrongful eviction. The defendant's father gave the plaintiffs permission to build a gada or market place on a certain plot of land, the latter agreeing to pay Rs. 6 a year as ground rent, but no lease was executed. The plaintiffs began to build the gada but before it was finished they were evicted by the owner of the land. Held, on suit by the plaintiffs for possession and for an injunction to prevent the defendant from interfering with the gada, that the plaintiffs were not licensees, but merely licensees and that their remedy if any was by way of a suit for damages for the wrongful eviction of their license. *HARSHO RAI v. DWARKA RAM* (1915) 1 L. R. 33 All. 178

ss 105 and 109. *Whether lease can give notice to quit a monthly tenant who has not been informed of the lease.* One H. P. leased his house to the plaintiff on the 1st October 1917. The defendants were in possession of the house as monthly tenants of H. P. The plaintiff on the 16th February 1918, gave the defendants notice to vacate the house before the 16th March. The defendants replied that they had no knowledge of the plaintiff's lease and did not recognize him as the landlord. Then, at the plaintiff's request H. P. sent a notice to the defendants on the 23rd March to quit within a week. As the defendants did not comply with the notice the plaintiff brought the present suit for ejectment and for Rs. 79 12-0 on account of rent. The only question was whether the plaintiff's notice to the defendants of the 16th February 1918 was valid no notice having been given by the owner to the defendants of the lease in favour of the plaintiff. Held that it was not necessary for the landlord to inform the defendants that he had leased the house to the plaintiff. *Our's Law of Transfer, 4th Edn. p. 1701*, referred to. Held, also, that the plaintiff as lessee was a transferee of a part of the lessor's interest in the property, and under s 109 of the Transfer of Property Act, possessed all the rights of the lessor as to the property transferred and was consequently entitled to serve the defendants with a notice to quit. *Manikam Pillai v. Rathamanni Nadar* (43 Indian Cases 210), approved. *PANNU RAM v. TEJ CHAND* 1 L. R. 1 Lah. 241

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—contd

s 106—

See EJECTMENT I L R 40 Calc 858

See LANDLORD AND TENANT

I L R 46 Calc 458

ss 106 107—

See LANDLORD AND TENANT

I L R 44 Calc 403

Land held not for agricultural or manufacturing purpose on oral settlement of an annual rent—Presumption that tenancy annual—Contract to the contrary not valid because not registered—Notice, length of Where, there being no written lease the tenants were found to have been holding the land on an annual rent of Rs 15 and not for an agricultural or manufacturing purpose *Held* that from the fact that the rent was an annual rent the presumption ought to be drawn that the tenancy was an annual tenancy That in the absence of anything to rebut the presumption, s 106 of the Transfer of Property Act if it stood alone would be inapplicable, there being a contract to the contrary' within the meaning of that section This contract, however not being in writing and registered was invalid under s 107 That the tenancy was therefore terminable under s 106 on fifteen days' notice expiring with the end of a month of the tenancy *Durga Nilasini v Gobardhan Bost*, 19 C W N 525 s c 20 C L J 448, 454, referred to *AKLOO v EMARON* (1918)

I L R 44 Calc 403

20 C W N 1005

Lease without registered instrument for purposes other than agriculture or manufacture at a fixed rent a year without any settlement as to duration of tenancy—Effect of holding over with acceptance of rent by landlord—Notice necessary to terminate tenancy, nature of Notice signed by an *mukhtar* is valid—Fifteen days from date of notice calculation of The defendant took the premises in suit for a stationery shop as a tenant from the commencement of the Bengali year the rent being fixed at a certain amount a year but the period during which the tenancy was to continue was not settled The tenant continued in occupation after the end of the year and the landlords accepted rent for the next year The plaintiff landlords subsequently served a notice to quit by registered post The notice was signed by an *mukhtar* and was dated the 16th Baisakh and called upon the defendant to vacate the premises within the 31st Baisakh The registered cover which was addressed to the defendant at his place of business was returned to the sender by the Postal authorities with an endorsement that the addressee had refused to accept it There was no oral evidence to show where the cover was posted or when and where it was tendered to the defendant On the cover were the seals of the office of posting and the office of destination as also an endorsement that the letter was returned as the addressee refused to receive it the seals and the endorsement bearing date corresponding to the date of the notice *Held* that under s 107 of the Transfer of Property Act which was in force at the time a lease of immovable property from year to year or for any time exceeding one year or reserving a yearly rent could be made only by a registered instrument and consequently the

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—contd

ss 106, 107—contd

defendant became a tenant for one year only and in the absence of an agreement to the contrary within the meaning of s 116 of the Act, the effect of his holding over was that after the expiry of the year in which the tenancy took effect it was renewed from month to month and was terminable by the lessors by fifteen days' notice expiring with the end of a month of the tenancy That the notice was a fifteen days' notice and was properly signed. It was not intended to lay down in *Subadani v Durga Charan*, I L R 28 Calc 118 s c, 4 C W N 790, that in calculating the 15 days the day on which the notice was served as also the date on which the notice expired were both to be excluded. *GOBINDA CHANDRA SHAHA v DWARAKA NATH PATTA* (1914) 19 C W N 489

*Notice to quit—Construction of—*A notice of ejectment served by a landlord on his tenant contained besides the usual terms of a notice to quit a further statement that if the tenant did not vacate the house by the time specified the landlord would hold him liable from that date to rent at an enhanced rate The tenant did not attempt to treat this latter statement as an offer to renew the tenancy at the enhanced rate *Held* that the notice was a good notice and the landlord was entitled to a decree for ejectment *SHANKAR LAL v BABU RAM*

I L R 43 All 330

s 107—

See s. 4 I L R 44 Mad 55

See s. 105 L L R 38 All 178

See COMPROMISE 3 Pat L J 255

See HABULIYAT I L R 39 Calc 1016

See LEASE 25 C W N 225

See REGISTRATION ACT, 1908 ss 17 and 90 I L R 36 All 176

See TENANCY AT WILL

I L R 44 Calc 214

1 ———— *Lease exceeding one year—Registration—Unregistered lease cannot be received as evidence—Evidence Act (I of 1872) s 91—Oral evidence of the lease cannot be given—Tenant admitting landlord's title—Amount of rent can be proved by other evidence—Parties—Admission—Estoppel—Practice* The plaintiff owned a one third share in certain salt pans which share was during her minority leased by her guardians for a period of three years at an annual rental of Rs 500 The plaintiff having attained majority she at the expiration of the period let her share to the same lessees for a further period of two years at the rent of Rs 1000 a year The new lease though in writing was not registered The plaintiff sued to recover the rent for the two years at the rate of Rs 1000 a year and also Rs 653 for rent due on the first lease The defendants admitted the plaintiff's ownership and their tenancy under her, but disputed the amount of rent *Held* that the plaintiff could not be allowed to rely on the lease set up by her because it was not registered (s 107 of the Transfer of Property Act) nor could she be allowed to give oral evidence of the lease (s 91 of the Indian Evidence Act) *Held*, further that the defendants having admitted the ownership of the plaintiff and that they were in ss her tenants

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—contd.

§ 107—contd.

proof of the relation of landlord and tenant became unnecessary. *Held*, also, that the plaintiff could only recover as for use and occupation for the two years of the tenancy admitted, at the rate claimed by her which was not excessive. **RAMCHANDRA SHIVATIGAM v TAMA** (1912)

I L R 36 Bom. 500

2. ———— *Signature of lessor, necessity of, to registered instrument.* The registered instrument which under s 107 of the Transfer of Property Act, is necessary to create a lease within the section, need not necessarily be an instrument signed by the lessor. Such a lease may be created by a registered instrument signed by the lessee and accepted by the lessor. **Tufos Sahib v Esuf Sahib**, I L R 30 Mad 322, overruled. *Per* THE CHIEF JUSTICE AND AYLING J.—If a registered instrument signed by the lessee and accepted by the lessor is not a lease the mere fact that the instrument is signed by the lessee does not preclude him from denying his liability thereunder. *Per* KRISHNASWAMI AYYAR J.—If a registered instrument signed by the lessee and accepted by the vendor is not a lease the lessee will not be liable except on the footing of use and occupation. **SYED AJAM SAHIB v MADURA SREE MEENATCHI SUNDARESWARI DEVASTANOM** (1910)

I L R 35 Mad 95

3. ———— *Oral lease for a year, with delivery of possession—Renewal every year by annual oral lease. Leases, of valid Non-delivery of possession—Holding over where a lessee, to whom possession of the demised land was delivered under an oral lease for one year, continued to hold the land under successive oral leases each of one year's duration: Held*, that even if these later leases be invalid on the ground of non-delivery of possession. **Sibendrapada v Secretary of State**, I L R 34 Cal 207, there was a holding over by the lessee with the lessor's assent, within the meaning of s 116 of the Transfer of Property Act. A series of successive leases each for one year is quite different from a lease from year to year. **MITRAJIT MANTON v SUTIKH LEAKUT HOSSAIN** (1914)

18 C W N 858

§§ 107, 108 (b)—

See CIVIL PROCEDURE CODE, 1882, s. 375

I L R. 33 Mad. 102

§ 108—

See HOMESTEAD LAND

I Pat. L J 253

See LANDLORD AND TENANT

I L R. 37 Cal 815

See LEASE. 2 Pat. L J 713

See LESSOR AND LESSEE

I L R 38 Mad. 86

See LESSOR AND LESSEE.

I L R 37 Cal 683

Applicability of to Crown Lands—

See LEASE. I L R. 40 Mad. 910

I L R. 43 Mad. 132

1. ———— *Failure of lessor to put lessee in possession—Absence of request by lessee to be put in possession—Applicability of section to agricultural leases.* In a case where the

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—contd.

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lessor does not put the lessee in possession, but there is no obstruction or likelihood of obstruction to the lessee taking possession of the same, and he neither tries nor requests the lessor to put him in possession. *Held*, in a suit by the lessor for rent, that the lessee is liable. **NARAYANASWAMI NAIDU GURU v YERANATHI RAMAKRISHNAYYA** (1910)

I L R 33 Mad. 499

2. ———— *Landlord and tenant—Sub-lessee—Avoidance of lease—Vacant possession—Holding over.* The plaintiffs were lessees of a godown for one year from 1st April 1908 at a monthly rent. From 1st May 1908 they sublet it on the same terms for the remainder of their lease to the defendant who used it for storing bags of sugar. On 5th December the godown was partially destroyed by fire, and a quantity of sugar therein considerably damaged. The defendant's insurers came in to take charge of the salvage, but soon after sold the remains of the sugar to G M, and the latter then took possession on, and continued in possession, storing the sugar until 16th February 1909. Meanwhile on 10th December the plaintiffs had written to the landlord advising him of the fire and of their termination of the lease in consequence. The landlord, however, insisted on their liability to pay rent until such time as vacant possession should be given to him. The defendant in answer to a bill for rent wrote to the plaintiffs to the effect that he had terminated his lease on account of the fire, and would not pay more than the proportionate rent for the first 5 days of December. As however vacant possession was not given until 16th February (on which day G M went out of possession) the plaintiffs sued the defendant for rent and for use and occupation. *Held*, that the plaintiffs could not exercise their option to terminate the lease until they put the landlord into possession. If the avoidance of the lease under s 108(e) of the Transfer of Property Act (IV of 1882) was effectual without surrender of vacant possession, the plaintiffs by failing to give vacant possession were holding over after the termination of their lease and were liable for rent under an implied monthly tenancy on the same terms as before. If the avoidance was ineffectual, the lease continued until put an end to by mutual consent. *Held* further, that the abandonment to the insurers by the defendant was effected for his benefit, and, in the absence of evidence that the insurers and their vendee G M kept the sugar in the godown in spite of protests by the defendant the latter (as between the plaintiffs and the defendant) must be taken to have been in occupation either under his original tenancy or under a similar one resulting from his holding over. **SINICK HAJI HOOGZIN v BRUEL & Co.** (1910)

I L R 35 Bom 333

3. ———— *Working of new mines by lease—Mining lease from the holder of maintenance grant for life—Absence of express authorisation to work new mines in deed of grant—Contract of parties reliance on, for ascertaining intention of grantor—Open mine, what is.* Three of the principal defendants held a mining lease of the disputed properties from defendant No 1.

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—contd.

s. 108—contd.

to whom the property had been given for her maintenance for life by the former proprietor. The deed did not contain any express provision authorising the grantee to open new mines and to appropriate the minerals therefrom. The plaintiff who was a proprietor by right of purchase sued for a declaration that these four defendants had no right to open new mines and to raise minerals therefrom on the disputed property, also for a perpetual injunction to restrain them from opening and working new mines and from further working the new mines which they had opened. *Held*, that s. 108 of the Transfer of Property Act which defines the rights and liabilities of lessor and lessee provides in cl. (a) that in the absence of a contract or local usage to the contrary the lessee must not work mines or quarries not open when the lease was granted and no question of local usage arising in the present case and there being no express provision authorising the grantee to open new mines and to appropriate the minerals therefrom in the deed which was one for maintenance for the life of the grantee, the grantee had no right to grant a mining lease for the purpose of opening and working new mines. Circumstances under which a mine may be said to be open considered. *CHRISTIAN v. NARBADA KORI* (1914)

19 C W. N. 798

4. *Fixtures, right of tenant to remove.*—Acquisition of land with building by Government.—Tenant if only entitled to price of material. *Held*, (as to the contention that under s. 108 of the Transfer of Property Act, the right of the tenant to remove fixtures must be exercised during the continuance of the lease) that the provisions of s. 108 of the Transfer of Property Act are subject to local usage, and in the present case the leases not being determined by any notice to quit and the decree in the mortgage suit under which the respondents lost their right not having given them an opportunity to remove the building, they should be allowed to remove them unless the appellant chose to take them on payment of compensation. In the circumstances of the case, the respondents were given one-half of the amount awarded on account of the building. *KANATLAL JALAN v. RANEE LAL SADHUKHAN* (1914)

19 C W. N. 361

s. 108 (a) and (e)—*Lease—Disturbance of possession by paramount title holder.*—Lessor's liability to indemnify.—Lessor's defective title, if a material defect in the property with reference to its intended use. *R.*, the registered proprietor in possession of the estate left by her husband granted a *surgepasi* lease of certain properties to the plaintiff and others. *C.*, the brother of the husband of *R.*, instituted a suit against *R.* and obtained a declaration that on the death of *R.*'s husband, he became the rightful owner of the estate, and *R.* had no title in it. The plaintiff remained in possession till he was dispossessed by *C.* The plaintiff sued *R.* for the recovery of his share of the *surgepasi* money and for damages for loss sustained by him in consequence of his dispossession. There was no evidence to warrant a finding that the defect in *R.*'s title was one which the plaintiff could have with ordinary care

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd.

s. 108 (a) and (e)—contd.

discovered. *Held*, that s. 108, cl. (e) of the Transfer of Property Act is wide enough to include disturbance of possession by a person with a paramount title. A defect in the lessor's title is not a 'material defect in the property with reference to its intended use' within the meaning of s. 108, cl. (a). Those words have reference to the nature and condition of the property demised. *Held*, further, that s. 108, cl. (a) is inapplicable to the present case and the defendant is liable for damages for the interruption of the plaintiff's possession under the provisions of s. 108, cl. (e). *MUKHTAR AHMED v. SUNDAR KORN* (1913)

17 C W. N. 960

s. 108 (e)—

See LESSOR AND LESSEE

I L. R. 43 Mad 132

Lease of colliery—Destruction by fire—Notice by lessor to determine lease if should be 15 days' notice. A notice by the lessee under s. 108 (e) of the Transfer of Property Act avoiding the lease on the ground of destruction of the lease hold property by irresistible force taken effect immediately on service. S. 108 of the Act has no application to such a notice. *DANODA COAL COMPANY LIMITED v. HIRMOOK MARMARI* (1915)

19 C W. N. 1019

s. 108 (h)—

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879) s. 83

I L. R. 38 Bom 716

See LANDLORD AND TENANT

I L. R. 38 Mad 710

See MADRAS ESTATES LAND ACT 1909

s. 3 I L. R. 37 Mad 1

s. 108 (i)

See LANDLORD AND TENANT

I L. R. 37 Cal 377

See LEASE

I Pat L. J. 1

Lease or license—

Agricultural land left for building purposes under special agreement and afterwards included in bazaar bearing town. Some fifty years ago, by an agreement between the Government, the zamindars and certain butchers a certain area of cultivated land adjoining the city of Allahabad was let in plots to the butchers for building purposes at a uniform rent of Rs. 10 per bigha. There was also a proviso against arbitrary enhancement of the rent. Subsequently, the land upon which the butchers had settled was included in the municipal limits of the city of Allahabad and was called *muhalla Atala*. One of the butchers having sold his house the zamindars evicted him and his vendee under the terms of the *wajib-nam* claiming either one-fourth of the price, or, in the alternative, that the site might be cleared and possession made over to them. *Held*, that in the circumstances these sites were not subject to the ordinary law with reference to village sites occupied by agricultural tenants, but the butchers must be taken to be lessees, and in the absence of a contract to the contrary their rights as such were transferable without reference to the zamindars. *ABDUL HAQ v. DATTA LAL* (1914)

I L. R. 37 All 144

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd.

s 108 (j)—contd.

—Lessor and lessee—
Mortgage with possession by lessee—Mortgagee not liable to the lessor for rent—Privy of estate, meaning of A mortgagee with possession from the lessee is not liable to the lessor for rent as there is neither privy of estate nor of contract between them. *PER WALLIS C J*—Privy of estate is a technical term of English Law and under that law, such privy arises only where the whole of the lessee's interest is assigned over and not where a subsidiary interest is carved out of the lessee's interest. The Transfer of Property Act in enacting s 108 (j) does not seem to have introduced any departure from the English Law. English and Indian cases reviewed. *THRETHALLAN v THE ERALPAD RAJAH CALICUT* (1917) 1 L R 40 Mad 1111

—Lease from year to year in existence from before 1882—Transferability—Custom—Onus—Sublease transfer by way of—
Landlord if may recover his possession A lease of homestead land from year to year which was in existence before the passing of the Transfer of Property Act is not governed by that Act and s 108, cl (j) of that Act does not make it transferable absolutely or by way of sublease. Such leases are not transferable except by custom, the burden of proving which is on the party who sets it up. Whether a tenant from year to year had power before the Transfer of Property Act to transfer the holding by way of sublease or not, where it appeared that the tenant had abandoned the lands without arranging for payment of rent, and no rent had been paid by him since the *year* and that the transaction was in substance though not in form an assignment. *Held* that the landlord was entitled to recover his possession of the land. *ANANDA MOHAN SARKAR v GORINDA CHANDRA RAY CHOUDBHURY* (1915) 20 C W N 322

—s 108 cl (o)—Principles applicable to agricultural leases—*Mulgeni tenant has no right to fell timber standing at time of grant* Although Ch V of the Transfer of Property Act does not apply to agricultural leases the principles embodied therein may be applied to such leases. The rules contained in s 103 (k) (o) will apply to mulgeni leases and a mulgeni tenant is not entitled to cut trees standing at the date of grant. The law applicable to occupancy tenants will not apply to such leases as the former is not a tenant but one holding divided ownership. *QASIMAMMA v BHOM MAKKA* (1909) 1 L R 33 Mad. 253

ss 108, 117—

See LANDLORD AND TENANT

L R 37 Calc 723

s 109—

See s. 106

L L R. 1 Lab 241

ss 109 and 111—

See s. 6

I L R 43 Bom 28

—s 111 (d) (f)—Merger doctrine of—
Application to tenures in India—Equitable considerations The predecessors of the defendants who held a *malguzari* tenure directly under the 16 as *samundar* afterwards took a *mokurari* lease from the *patwadar* under s 8 as 1st *gd malka*. *Held*, that the conditions which would make s 111, cl

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—contd.

s 111 (d) (f)—contd.

(d), or s 111, cl (f), of the Transfer of Property Act, applicable did not exist in the case and the *malguzari* interest did not merge in the *mokurari* either under these provisions or under the general law. The English doctrine of merger has never been held to apply to land tenures in India in their entirety. On the other hand very eminent Judges have doubted that it does. *Woomesh Chandra Goopla v Raj Narain Ray*, 10 W R 15, and *Jibanti Nath Khan v Gocool Chandra Choudhuri* 1 L R 19 Calc 760, referred to. *Raja Kishen Datt Ram v Raja Muma Ali*, 1 L R 5 Calc 193 was not decided on the ground of merger. In *Promatho Nath Mitter v Kaly Prasanna Choudhury* 1 L R 28 Calc 741, *Surja Narain Mandal v Nanda Lal Sinha* 1 L R 33 Calc 121⁹ and *Ulfat Hussain v Gayans Dast*, 1 L R 36 Calc 80⁹, apart from the application of s 111, cl (d), of the Transfer of Property Act, there was no equitable consideration to prevent the merging of rights whereas in the present case there was no equitable consideration to attract the application of the doctrine of merger. In deciding whether there is a merger in equity what must be first looked at is the intention of the parties and if that be not expressed, then the Court looks to the benefit of the person in whom the interests coalesce. *Gokuldas Gopal Das v Puran Mal* 1 L R 10 Calc 1935 referred to. *ANATOO v SURESH MUKSUD ALI* (1914)

19 C W N 435

s 111 (g)—

See s 6 . I L R 43 Bom 28

See EJECTMENT 1 L R 45 Calc 469

See BHOD KANT JOTES

I L R 48 Calc 359

See LEASE 1 Pat L J 1

See LANDLORD AND TENANT

1 L R 41 Mad 629

I L R 42 Mad. 589, 654

See LESSOR AND LESSEE.

I L R 38 Mad 445

—Suit for lease possession on breach of covenant of lease—*Over-act of lessor determining lease as condition precedent—Limitation Act (IV of 1908) Art 143—Period of limitation and point of time whence period runs* A lease provided that the lessee was to enjoy the land from generation to generation for purpose of residence without any power of alienation, and that in the event of such alienation the lessor would be entitled to his possession. The lessor sold the land and the lessor sued to recover possession. *Held*—Art 143 was applicable and the period of limitation was 12 years and time began to run from the date of alienation and not from the date when the lessee surrendered possession to the transferee. That under cl (g) of s 111 of the Transfer of Property Act it was necessary for the plaintiff to establish that the lessor had prior to the institution of the suit done some act showing an intention to determine the lease. Where the rights and obligations of the parties are regulated by cl (g) of s 111 of the Transfer of Property Act there is no determination of a lease by forfeiture immediately on breach of covenant but such breach must be followed by an

TRANSFER OF PROPERTY ACT (IV OF 1882)

—contd

s. 111 (g)—contd

overt act on the part of the lessor before the institution of the suit for ejectment; the institution of the suit cannot be rightly regarded as the requisite act because the forfeiture must be completed and the lease determined before the commencement of the action. *Nourang v. Jannardan*, I. L. R. 45 Calc. 469. s. c. 22 C. W. N. 312, 27 C. L. J. 277 (1917), approved. A suit for ejectment does not lie in respect of a portion of the lands of a tenancy which has been forfeited or a condition whereof has been broken. *Gopalram Mohuri v. Dhulakshwar Pershad Narain Singh*, I. L. R. 35 Calc. 807 (1908) and *Syed Ahmad Sahib Shailari v. Magnesite Syndicate, Ltd.*, I. L. R. 39 Mad 1049 (1915), referred to. *MOTILAL PAL CHAUDHURY v. CHANDRA KUMAR SEN*

24 C. W. N. 1084

—Landlord and tenant
—Denial of title—Suit for ejectment of tenant—Landlord's intention to take advantage of denial of title to be expressed before suit The denial of his landlord's title by a tenant, in order to work a forfeiture under s. 111 (g) of the Transfer of Property Act, 1882, must be an unequivocal and unambiguous denial mere non payment of rent or even the mortgaging of the premises as belonging to the tenant does not necessarily constitute such a denial. A landlord wishing to take advantage of his tenant's denial of title to determine the lease must do some act showing his intention to do so before he can file a suit for ejectment. *PRAG NARAIN v. KADIR BAKSH* (1913)

I. L. R. 35 All 145

—Landlord and tenant
—Forfeiture—Ejectment—Cause of action—Intention to determine the lease—Whether institution of the suit to eject, a sufficient manifestation of intention. A landlord sued to eject his tenant on the ground that the lease was determined by the tenant's disclaimer of the landlord's title. The tenant contended that the landlord had no cause of action inasmuch as he had never before filing the suit done any act showing his intention to determine the lease as required by cl. (g) of s. 111 of the Transfer of Property Act, 1882. *Held*, that the mere institution of the suit and the assertion in the plaint as to the repudiation of the landlord's title constituted a sufficient manifestation of the landlord's intention to determine the lease. *ISABALI TAYABALI v. NAHADU EKORA* (1917)

I. L. R. 42 Bom. 195

s. 114—

See LANDLORD AND TENANT

I. L. R. 39 Mad. 834

I. L. R. 42 Mad. 654

I. L. R. 44 Mad. 629

See LEASE . I. L. R. 45 Bom. 300

s. 116—

See s. 2 . . . 19 C. W. N. 525

See s. 106 . . . 19 C. W. N. 489

See s. 107 . . . 18 C. W. N. 858

See PENAL CODE, s. 341

I. L. R. 43 Bom. 531

s. 117—

See KHOD KAST JOTES

I. L. R. 48 Calc. 359

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—contd

s. 117—contd.

See LANDLORD AND TENANT.

I. L. R. 37 Calc. 723

I. L. R. 42 Mad. 654

See UNDER RAYATI HOLDING.

I. L. R. 42 Calc. 751

s. 118—

See s. 54 . . . I. L. R. 37 Mad. 423

I. L. R. 40 All. 187

See ESTOPPEL BY CONDUCT

I. L. R. 40 Mad. 1134

ss. 118, 119, 120, 54 and 55, cl. 6 (b)—

Exchange of lands of the value of one hundred rupees or upwards—No registered instrument—Oral transfer, invalid—Parties placed in possession of the lands—Sale by one of the parties of lands obtained on exchange—No estoppel against the transferor or his creditor—No estoppel against statute—No charge for the value or price of the lands on the date of the transactions. An exchange of immovable property the value of one hundred rupees and upwards can be made only by a registered instrument under ss. 118 and 54 of the Transfer of Property Act. No estoppel can be pleaded against the directions and the prohibitions enacted by the statute law and against the rights accruing to any party by reason of such directions and prohibitions. A party to an exchange which is not valid in law is not entitled to a charge on the property obtained by him in exchange for the price of such property on the date of the exchange under ss. 120 and 55, cl. (b) of the Transfer of Property Act. *Kurri Veerareddi v. Kurri Bapireddi*, I. L. R. 29 Mad. 336, followed. *Ram Bakhsh v. Mughlani Ahanam*, I. L. R. 26 All. 268, dissented from. *Karaha Narubhai v. Mansukhram*, I. L. R. 24 Bom. 400 distinguished. *Mutha Venkatachellapathy v. Pynda Venkatachellapathy*, 23 Mad. J. 662, referred to. *CHIDAMBARA CHETTIAR v. VAIDILINGA PADAYACHI* (1913) I. L. R. 38 Mad. 519

s. 119—

See LIMITATION ACT (IX OF 1908), ARTS

113 AND 143 . I. L. R. 42 Mad. 690

ss. 122, 123, 126—

See OCCUPANCY HOLDING

I. L. R. 45 Calc. 434

s. 123—

See s. 3 . . . I. L. R. 44 Mad. 196

See s. 55 . . . I. L. R. 34 Bom. 687

See s. 55 . . . I. L. R. 34 Bom. 287

See GIFT

See LIMITATION . I. L. R. 43 Mad. 244

I. L. R. 46 I. A. 285

See OTHER ESTATES ACT (I OF 1869), ss.

13, 16 AND 17 . I. L. R. 32 All. 227

Gift of land—Oral gift

—No registered deed of gift—Gift inoperative—Unauthorized occupation and use of land—Owner of land making an oral gift of land—Acquiescence—Estoppel—Indian Evidence (Act I of 1872), s. 115. In 1903, the defendant Municipality took plaintiff's land into its possession and used it for making a new road through it. After a major portion of the road was constructed, the plaintiff's

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—contd.

s. 123—contd.

Father objected to the unauthorised occupation and use of his land but he was prevailed upon to give the land in gift to the Municipality. The gift was orally made, and no writing was made or registered. The plaintiff's father died in 1906. The plaintiff sued in 1914 to recover possession of the land from the Municipality. *Held*, decreeing the suit, that the absence of a registered deed of gift invalidated the gift owing to the provisions of s. 123 of the Transfer of Property Act, 1882, and that the mere consent of the plaintiff's father to make the gift was not sufficient to vest the land in the Municipality. *Held*, further, that the plaintiff was not estopped, under s. 115 of the Indian Evidence Act, 1872, from denying the gift, because the defendant had occupied the land and laid out a substantial part of the road, before the plaintiff's father was prevailed upon to make the gift. **KUVENJI KAYABJI v MUNICIPALITY OF LONAVALA (1920)**

I. L. R. 45 Bom. 164

Gift—Attestation—Meaning of attested. A deed of gift was attested by two witnesses. At the trial of the suit, only one witness was examined and he deposed that he was at some distance when the deed was being written and that he did not see the executant making his mark on the deed. *Held*, that the deed of gift was not properly executed within the meaning of s. 123 of the Transfer of Property Act 1882. The word "attested" in s. 123 of the Transfer of Property Act, 1882, meant the witnessing of the actual execution of the document by the person purporting to execute it. **Shamu Patter v Abdul Kadir (1912) 14 Bom. L. R. 1034**, relied to **AMARAPPA v RACHAVA (1919)**

I. L. R. 44 Bom. 231

—s. 123 123—*Gift—Validity of gift of immovable property—Mahomedan law* Where a Mahomedan had made a gift of immovable property which was valid according to Mahomedan law, it was *held* that the gift was none the less valid because the donor had executed a deed of gift purporting to convey the property to the donee, which owing to a defect in the attestation, was invalid according to the provisions of the Transfer of Property Act, 1882. **KARAM ILAH v SHARI UD DIN (1916)** I. L. R. 38 All. 212

s. 128—

See *GIFT* . I. L. R. 39 Calc. 933See *OCCUPANCY HOLDING* . I. L. R. 45 Calc. 434

s. 127—

See s. 5 . I. L. R. 38 All. 62

s. 129—

See s. 123 . I. L. R. 38 All. 912

s. 130—

See *CIVIL PROCEDURE CODE (ACT V OF 1908)*, s. 60 I. L. R. 37 Bom. 471See *MORTGAGE* I. L. R. 43 Mad. 803See *SUCCESSION ACT (X OF 1885)*, s. 190 I. L. R. 38 Bom. 618

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—contd.

s. 130—contd.

Instrument in writing—Transfers by way of security The appellant and the respondent were rival claimants to the proceeds of the policy of insurance on the life of their debtor which had been paid into Court by the Insurance Company as a defendant in a suit brought for the money in which the appellant was also a defendant. The appellant relied on an assignment by the debtor of the policy by an instrument in writing, and the respondent based his claim on a deposit of the policy with him by the debtor unaccompanied by any written instrument. *Held* (reversing the decision of an Appellate Bench of the High Court), that the case was governed by s. 130, sub s. (1), of the Transfer of Property Act (IV of 1882 as amended by Act II of 1900) which precluded the application in India of the principles of English Law, and the title of the appellant, as being based on an instrument in writing, and so conforming in all respects with the provisions of that section, was absolute as against that of the respondent who acquired no right to the policy or its proceeds by reason of the deposit. The right to the proceeds was an "actionable claim", and s. 130 covered transfer by way of security, as well as absolute transfers, as appeared from Illustration 2 to the section. **MULRAJ BHATTA v VISHWANATH PRABHURAM VAIDYA (1912)** . I. L. R. 37 Bom. 198

—s. 130, 131, 134—*Transfer of debt*

notice of—Duty of debtor on receiving notice from transferee. Where a creditor hypothecates a debt due to him and authorises the person to whom the debt is hypothecated by power of attorney in writing to recover the debt from the debtor, the debt is absolutely transferred to the transferee under s. 130 of the Transfer of Property Act.

Notice of the transfer is not necessary to perfect the title of the assignee but until the debtor receives notice of the assignment in accordance with law his dealings with the original creditor will be protected. The notice of transfer need not necessarily be free from any condition or qualification. A debt was assigned absolutely, and the debtor received notice of assignment from the transferor, who at the same time requested the debtor to pay only if the liability forming the consideration for the transfer was not discharged. The debtor also received notice of the assignment from the transferee who claimed payment. The transferee did not represent that he had discharged the claim on account of which the transfer was made. The debtor after receiving the above notices refusing to recognise the assignment paid the amount to the transferor. *Held*, that the payment was inoperative and that the transferee was entitled to recover from the debtor. *Ut tunc facta assignamentum et de validitate in disputata* the only safe course for the debtor who has received notice of the assignment is not to pay either party but to ask them to interplead. **William Brandts & Sons v. Danubius Reiter Co., (1905) A. C. 454**, referred to **COPALA KRISHNA IYER v GOPALAKRISHNA IYER (1909)**

I. L. R. 33 Mad. 123

—s. 130 and 134—*Mortgage in writing of a promissory note—Assignee's right and liability to sue on the promissory note* By virtue of ss. 130

s. 130—"Actionable claim"—Claims to proceeds of policy of insurance by depositors of policy and by assignees of policy by an

TRANSFER OF PROPERTY ACT (IV OF 1882)**TRANSFER OF SHARES.**

See COMPANIES ACT (VI OF 1882), ss. 58, 147 . . . I. L. R. 40 Bom. 134

See COMPANY . . . I. L. R. 36 All. 365

—*concl.*

ss. 130 and 134—*contd.*

and 134 of the Transfer of Property Act (IV of 1882), a mortgage in writing of a promissory note, executed in favour of the mortgagor by a third party, creates an assignment of the promissory note in favour of the mortgagee even without an endorsement, and as the right of the promisee to sue on the note becomes vested in the mortgagee, the mortgagee alone is entitled to sue on the note and in taking accounts he is liable to be debited with the amount of the note if he without any justification allows the recovery of debt barred by limitation *Mulraj Akatar v. Yashwanth Prabhuram*, I L R 37 Bom 198, followed *Shyam Kumari v. Rameshwar Singh*, I. L. R. 32 Cal 27, followed *MUTHURICHINER v. VEERARAGHAVA IYER* (1913)

I. L. R. 38 Mad 297

s 132,

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss. 268, 278, 283

I. L. R. 38 Bom. 631

Where a mortgage is transferred without the privity of the mortgagor the transferee takes, subject to the state of accounts between the mortgagor and mortgagee at the date of the transfer but not subject to any independent debt in no way connected with the mortgage. *SUBRAMANIA AYTAR v. SUBRAMANIA PATTAR*,

I. L. R. 40 Mad. 683

s. 134—

See s. 130,

See DEBT, HYPOTHECATION OF

I. L. R. 34 Mad. 53

s. 136—

See LEGAL PRACTITIONERS ACT, 1879,

s 13 . . . I. L. R. 37 Mad. 238

s. 137—

See CONTRACT . . . I. L. R. 41 Cal 670

See CONTRACT ACT (IX OF 1872), ss. 4, 61, 103 . . . I. L. R. 38 Bom. 255

See VENDOR AND SUB VENDOR.

I. L. R. 38 Cal 127

TRANSFER OF PROPERTY AMENDMENT ACT (III OF 1885).

s 3—

See KABILYAT . . . I. L. R. 39 Cal 1016

TRANSFER OF PROPERTY (VALIDATING ACT (XXVI OF 1917).

s. 3, proviso 5—

Review of judgment—Judgment reviewed that of appellate court—"Former Court" Where action is taken by an appellate court on an application for review presented in accordance with the provisions of Act No XXVI of 1917, and an appeal which had been dismissed is restored, the "former court" mentioned in proviso (3) to the section is not the court of first instance but the appellate court *KAMPA DEBI v. KISHORI LAL*

I. L. R. 42 All. 430

TRANSFER OF SUIT.

See CIVIL PROCEDURE CODE (1908), s. 24

I. L. R. 41 All. 381

5 Pat L. J. 588

*Transfer of a suit under s. 92, Civil Procedure Code (Act I of 1908) from the Court of a District Judge to that of the Additional District Judge—Authority of Additional District Judge to try such suit—Civl Courts Act (XII of 1887) s. 8, sub-s (2)—Convenience An Additional District Judge by virtue of the assignment of all the functions of a District Judge under the provisions of sub s (2) of s 8 of Act XII of 1887, is empowered to exercise the same powers as the District Judge in suits under s. 92 of the Civil Procedure Code. *Semble* "Any other Court empowered in that behalf by the Local Government" in s. 92 of the Code, probably refers to Courts such as the Subordinate Judges' Courts. Transfer of the suit was ordered in this case on the ground of convenience, the opposite party being compensated by payment of his costs *MOHABOR RAHMAN v. HAZI ABDUR RAHIM* (1920) . . . I. L. R. 48 Cal. 53*

TRANSFERABILITY.

See BUILDING LEASE

I. L. R. 37 Cal. 377

See OCCUPANCY HOLDING.

I. L. R. 45 Cal 434

I. L. R. 48 Cal. 184

I. L. R. 42 Cal. 172

I. L. R. 44 Cal. 272, 720

See OFFERINGS TO A TEMPLE

I. L. R. 43 Cal 28

See PALAS OR TURN OF WORKSHIP

I. L. R. 42 Cal 455

See UNDER RAITATI HOLDING

I. L. R. 42 Cal. 751

TRANSFERABLE RIGHT.

See SABARAKARI TENURE

I. L. R. 46 Cal. 378

TRANSFEREE.

See DEPOSIT IN COURT

I. L. R. 43 Cal. 100

— from benamidar, right of, to sue—

See MORTGAGE . . . I. L. R. 41 Mad 435

— from execution-purchaser—

See PARTIES . . . I. L. R. 39 Cal. 881

— of trust estate, liability of—

See TRUSTEE . . . I. L. R. 39 Mad. 115

TRANSIT.

— duration of—

See SALE OF GOODS ACT (56 AND 57 VIC. c. 71), ss 45 AND 47

I. L. R. 34 Bom. 640

TRANSMISSION BY POST

See SEDITIOUS I L R 39 Calc 522

TRANSPORT

See EXCHANGABLE ARTICLES

I L R 39 Calc 1053

TRAVELLING WITHOUT TICKET

See RAILWAY PASSENGER

I L R 44 Calc 279

TREASURY OFFICER

appropriation of payment by—

See SALE FOR ARREARS OF REVENUE

I L R 39 Calc 537

TREATY

See EXTRADITION I L R 48 Calc 328

See BOMBAY REVENUE JURISDICTION ACT
(X of 1870) s 1^o

I L R 45 Bom 463

TREES

See LANDLORD AND TENANT

I L R 34 All 545

See BOMBAY LAND REVENUE CODE (Bom
Act V of 18 0) s 87

I L R 38 Bom 716

See TIMBER

overhanging one's land—

See TORT I L R 43 Bom 164

right of removal of—

See LANDLORD AND TENANT

I L R 37 Calc 815

partition of—

See JURISDICTION (CIVIL AND REVENUE)
I L R 42 All 574

whether temporary right to take
fruit of is immovable property—

See PUNJAB PRE-EMPTION ACT 1913

I L R 1 Lah 567

GROWING ON BOUNDARY BETWEEN 2
FIELDS—

See EASEMENT I L R 44 Bom. 605

Growth of sandalwood trees on
occupancy lands subsequent to survey settle-
ment—

See FOREST ACT (VII of 1878) s 75
CL. (c) R. 2 I L R 45 Bom 110

Trees planted after lease
—Right of removal of trees by tenant—Fruit
doctrine of—Bengal Tenancy Act (VIII of 1885)
s 23—Transfer of Property Act (IV of 1882) s 2
105 (A) In the absence of any special provision
in a lease granted before the Transfer of Property
Act (IV of 1882) came into force the property
in the trees planted by the lessee after a
lease had been granted does not vest in
the landlord. The rule laid down in s 105 cl (A)
of the Transfer of Property Act (IV of 1882)
has no application to such a case. The lease
in the present case not being for agricultural or
horticultural purpose s 23 of the Bengal Tenancy
Act has no application. The doctrine of the

TREES—contd.

English Law of Fixtures cannot be appropriately
extended to this country on equitable grounds
Barnes v Brand 1 App Cas 762 Meares v Callender
(1901) 2 Ch 388 Elvins v Maw 2 Smith's Leading
Cases 189 3 East 38 Ness v Pocard 2 Pelly
137 referred to. The Law of Fixtures is not
recognised under the Hindu or Mahomedan laws
Thakoor Chunder Paramanick v Ramdhone
Bhattacharjee 6 W R 2^o3 B L R F B 525
Secretary of State v Charlesworth Pilling & Co
1 I R 26 Bom 1 Khodetram Serna v Tr. Lohani
1 Vac Sel Rep 35 Jankee Singh v Bhukhoor
Singh (1856) Beng S D A 761 Jogose v Nyamun
toothak (1858) Beng S D A 1517 Brin Bhokhar
v Dabee Dynal (1863) 2 Agra S D A 480 Kales
Peshad Dutt v Gourree Pershad Dutt 5 B R
108 relied upon. Before the passing of the
Transfer of Property Act the doctrine of the
English Law of fixtures did not prevail in this
country and the provisions of that Act substan-
tially reproduced the law on this subject as recog-
nised by Hindu and Mahomedan jurisprudence.
Imma Kanu Routhan v Nazarat Sahib I L R
27 Mad 211 referred to MOFIZ SRIKANT
RANK LAL GHOSE (1910)

I L R 37 Calc 815

TREE PATTAS.

Effect of cancellation
of on land pattadar—No resumption or grant to
the latter—Right of tree-pattadar for the trees on
after cancellation on as against land pattadar—Pos-
sessory right protect on of as against trespasser
A person who was in possession on until dispossessed
by defendants who having no title as owners were
mere trespassers is entitled to rely on his possession
on and succeed in a suit to eject them Anwar
and Pao v Dharmachar I L R 26 Mad 514 and
Subbaraya Chetty v Aiyar I L R 32
Mad 36 followed. In the absence of proof to the
contrary a cancellation of patta issued by the
Government in favour of the plaintiff in respect
of trees standing on certain lands for which land
the patta was being issued a favour of defend-
ants does not amount to a resumption of posses-
sion of the trees by the Government or to a grant
of them by the Government to the defendants
The only effect of cancellation of the patta for
the trees was that the Government no longer
made any demand on the tree pattadars for
revenue in respect of the trees. The facts that
when both pattas were in existence the land
pattadar was credited with whatever revenue
was collected from the tree pattadar and that
on cancellation of tree-patta the whole revenue
was payable by the land pattadar cannot amount
to a grant of the trees to the land pattadar. On
the right of the tree pattadar and land pattadar
Reference under s 39 of Madras Forest Act I L R
1^o Mad 203 and The v Pandthan v Secretary
of State for India I L R 21 Mad 433 referred
to KENOGODA GOUNDAN v VARADAPPAN (1913)

I L R 36 Mad 143

TRESPASS

See ARREST OF SHIP I L R 42 Calc 85

See CRIMINAL TRESPASS

See EASEMENT I L R 37 Bom 491

TRESPASS—contd.

See FOOTING. I. L. R. 33 Calc. 687

See GRAVE YARD I. L. R. 40 Calc. 548

See JURISDICTION I. L. R. 42 Calc. 942

See LIMITATION ACT (IX of 1908), Sec. 1, Arts. 120, 144

I. L. R. 42 Bom. 333

See PENAL CODE (ACT XLV of 1860) s. 297 . I. L. R. 33 All. 773

See TORT . I. L. R. 43 Bom. 184

—sue for declaration by Trespasser—

See SPECIFIC RELIEF ACT 1877, s. 42

I Pat. L. J. 95

—when supported by Land-lord—sue by tenant—

See EJECTMENT] . I Pat. L. J. 430

1. —what constitutes—The foundation of trespass is the doing of an illegal act, forcibly and without legal authority, as against the property of another. To sustain trespass the illegality and the wrongfulness of the act must be established by proof. If the act is not illegal no right is infringed. *DANAI DAS v GOVINDA GREDI*

I Pat. L. J. 533

2. —Sue for damages—Provincial Small Cause Courts Act (IX of 1887), Art. 31, Sch II, Jurisdiction under Where the plaint alleged that the defendants had trespassed upon plaintiff's land and removed his crops and assessed damages at the profit thus wrongfully obtained by defendants: *Held*, that the suit was one for damages for a single act of trespass and not exempted from the jurisdiction of the Provincial Small Cause Courts by Art. 31, Sch II of the Provincial Small Cause Courts Act (IX of 1887). *Annamalai v Subramanyam I. L. R. 15 Mad. 238*, followed: and *Pankaja Rao v Muthu Aiyar, 18 Nat. I. J. 31*, dissented from *RAMAIAH v SAMINATHA AYYAR (1912)* . I. L. R. 35 Mad. 728

3. —Right of Magistrate to order search for arms—Criminal Procedure Code (Act I of 1893), s. 36, 94, 96, 105 Sch III (5)—Jurisdiction to issue search warrant—Arms Act (XI, of 1878), s. 25—Provision as to recording grounds for belief, s. 25, whether mandatory or directory—Protection of Judicial Officers—Directing search where offence has been committed is judicial action—Charge of want of bona fides and malice rebutted For some time prior to 27th April 1907 much illfeeling existed in and about Jamalpore, a sub-division of Mysnensingh, between the Hindu and Mahomedan communities, and much excitement and resentment had been aroused on account of the action of the Hindus in attempting some days before that date to enforce a boycott of badeks or foreign goods. On 27th April, at night, a Mahomedan was wounded by a revolver shot fired by one of a party of Hindus, dressed as Mahomedans, who after the occurrence took refuge in some cutcherries belonging to the leading zamindars of the neighbourhood who were active sympathisers with the action of the Hindus. A crowd of Mahomedans at once collected and proceeded to the cutcherries but were prevented from attacking them by the District Superintendent of Police, and the Sub-divisional Officer who, hearing of what had occurred, proceeded to the cutcherries, and restrained the mob thereby

TRESPASS—contd.

averting a serious riot. A large number of Hindus, some of them with arms, had collected in a temple close by, and having bolted and barred the doors refused admittance which was demanded by the District Superintendent of Police and the Sub-divisional Officer. Shots were fired from inside the temple and a man in the crowd outside was wounded. The District Magistrate was then sent for and on his arrival on the morning of 28th April, he decided, in consultation with the District Superintendent of Police and the Sub-divisional Officer, that it was necessary to search the cutcherries to obtain possession of the arms used on the 27th, and others which it was reported to them were concealed there, and also for the purpose of, and in connexion with, the investigation of the offences committed. The cutcherries were found locked and as no officer or servant of the zamindars could be found, they were broken open under the District Magistrate's orders and instructions, and a search was made therein by the District Superintendent of Police and the men acting under his orders. No arms of any kind were found. In a suit for trespass against the District Magistrate instituted by one of the zamindars whose cutcherry had been searched *Held* (reversing the decision of the first Court and of the majority of the Appellate Court, and upholding the decision of *BRETT, J.*), that the search was warranted by the Code of Criminal Procedure (Act V of 1898). A serious offence had been committed against the public tranquillity into which it was the duty of the District Magistrate to enquire, and by virtue of his superior rank he was, at Jamalpore, the proper person to conduct the enquiry. By s. 36, Sch III, and s. 96 of the Code the power of issuing a search-warrant was among his "ordinary powers," and therefore under s. 103 he had power to direct a search to be made in his presence if he thought it advisable to do so. That being so, it was unnecessary to decide on the other defences set up but, *semble* (agreeing with the majority of the Court of Appeal), that the District Magistrate not having complied with the preliminary condition prescribed by s. 25 of the Arms Act (XI of 1878) could not defend his action under that Statute. Also (agreeing with *BRETT, J.*), that the District Magistrate in directing a general search of the plaintiff's cutcherry in view of an enquiry under the Criminal Procedure Code, was acting in the discharge of his judicial functions and, had it been necessary, might have appealed for protection to Act XVIII of 1860. The charge of personal misconduct advanced and reiterated without any shadow of proof, deserved the severest reprobation. *CLARKE v BRAJENDRA KISHORE ROY CHOWDHURY (1912)*

[I. L. R. 39 Calc. 953

4. —Who may sue for tenant or owner—Title by adverse possession not pleaded if may be allowed in the Court of Appeal—Civil Procedure Code (Act V of 1908) O. XLII, r. 24—Adverse possession against Municipality or the Crown *Per SANDERSON, C. J.*, and *MOOREHEAD, J.*—The tenant is the proper plaintiff to sue for trespass committed in respect of the land, and the reversioner can only sue for trespass if the alleged trespass is injurious committed in respect of the land, and to the reversion *Per SANDERSON, C. J.*—Even though the trespass is accompanied

TRESPASS—contd.

by a claim of right, it is not necessarily injurious to the reversionary estate *Baxter v Taylor, 4 Barn & Ad 72*, referred to *Per Woodroffe, J*—It is not sufficient for the plaintiff in an action in ejectment to prove possession. He must show title *Per Mookerjee J*—Mere previous possession will not entitle a plaintiff to a decree for recovery of possession, except in a suit under s 9 of the Specific Relief Act *Permeswar v Brojpal, 1 L R 17 Calc 256 Nishachand v Kancharam 1 L R 26 Calc 579 s c 3 C W N 563, Shama Charan v Abdool 3 C W N 155 and Manik Boras v Banicharan, 13 C L J 649* referred to. The plaintiff may be allowed to succeed on a title by adverse possession pleaded for the first time in the Court of Appeal provided such a case arises on the facts stated in the plaint and the defendant is not taken by surprise *Sundari Doss v Madhu Chauder, 1 L R 14 Calc 592, Vasudeta v Magun, 1 L R 23 I A 81 88 s c 5 C W N 545 Majkal v Thunbuswamy (1914) Mad W N 734, Soma sundaram v Paduriv, 1 L R 31 Mad 531 Shirokumari v Govind Shaw 1 L R 2 Calc 413 Joytars v Mahomed Mobaruck 1 L R 8 Calc 975 and Bijoya v Bydonath 24 B R 444* referred to. To establish a title by adverse possession the plaintiff must prove enjoyment possessing the same characteristics as are necessary for presumption of a lost grant and consequently that the possession was adequate in continuity, in publicity an extent to extinguish the title of the true owner *Subramania v Secretary of State, 21 Ind L J 130 and Radhamani v Collector of Kuluva 1 I R 27 Calc 943 s c 4 C W N 593, 690*, referred to *Per Woodroffe, J*—Where in a suit for declaration of title and possession the plaintiff did not in the alternative plead title by adverse possession, the plaintiff cannot ask the Court to frame such an issue on appeal except by amendment and O LXI r 24, which authorises the Court to remodel the issues does not apply to such a case *RAM CHANDRA SIL v RAMANMANI DAS (1918)*

20 C W N 773

TRESPASSER.

See *BENGAL TENANCY ACT* s 102
14 C W N 812

See *EJECTMENT* 1 L R 37 Mad. 281

See *MADRAS ESTATES LAND ACT* (I OF 1908), s 8 EXCEP

1 L R 38 Mad 843

See *MISRE PROFITS* 4 Pat L J 301

See *PUBLIC RELIGIOUS TRUST*
1 L R 41 Calc. 749

purchase by—
See *TRANSFER OF PROPERTY ACT* (IV OF 1932), s 85 (c)

1 L R 39 Mad. 959

tenant as—
See *LIMITATION ACT* (IX OF 1908) s. 28,
ART 47 1 L R 38 Mad 432

Tenants entitled by trespasser—Principle of *Basad Lal Pakrash's Case* if applies when tenant never got possession—*Basad fides*. The principle of the Full Bench case of *Basad Lal Pakrash v Kailu Pramanick 1 L R*

TRESPASSER—contd.

20 Calc 708, is an encroachment upon the ordinary rule of law that a grantor is not competent to confer upon the grantee a better title than what he himself possesses and must be cautiously applied and is not to be extended. In order to make the principle available it is essential that the lesser should be in possession of the disputed property as *de facto* landlord and that in good faith he should have inducted into the land a cultivator who has accepted the settlement in good faith. Want of good faith either on the part of the lessor or the lessee makes the rule inapplicable. The principle could not be applied in favour of the plaintiff who took a lease from the owner after his interest had been sold in execution of a decree who never obtained juridical possession of the disputed property and who had to be bound down by a Criminal Court to prevent him from interfering with the possession of the defendant *KRISHNA NATH CHAKRAVARTI v MAHOMED WAFIZ (1915)* 21 C W N 93

TRIAL.

See *CONTENT OF COURT*

1 L R 45 Calc 169

See *CRIMINAL PROCEDURE CODE* ss 255

AND 342 1 L R 38 Mad. 302

s 360 1 L R 42 Bom 202

See *JOINT TRIAL.*

See *SUMMARY TRIAL.*

1 L R 39 Mad. 842

— a new, demand for—

See *CRIMINAL PROCEDURE CODE* (ACT V OF 1898), s 367

1 L R 40 Mad. 108

— conduct of—

See *PRESIDENCY MAGISTRATES.*

1 L R 42 Calc 313

— Reduction in Bench of Magistrates during—

See *CRIMINAL PROCEDURE CODE*, s. 16
1 L R 44 Bom. 400

— of an offence with the aid of assessors—

See *CRIMINAL PROCEDURE CODE* (ACT V OF 1898), s 238

1 L R 45 Bom 619

— Practice condemned—Grant—*Elvarama*—Lease or License—Construction—Practice Cases ought not to be tried pecuniary: such a method may facilitate the disposal of a case but certainly does not conduce to the administration of justice *MOHITL SING v LALJI SING (1912)*

17 C W N. 166

TRIAL BY JURY

See *EVIDENCE* 1 L R 47 Calc 671

See *JURY, TRIAL BY*

See *REFERENCE.*

1 L R 42 Calc. 739

TRIAL BY JURY—contd**Charge to the Jury—**

Misdirection—Omission to explain the law as to abetment—Uncertainty in the meaning of the Judge's direction relating to a confession—Omission to direct the Jury upon the evidential value of a retracted confession Where one accused was charged under s 52 of the Post Office Act (VI of 1893) and s 380 of the Penal Code and the other under s 52 read with s 70 of the Post Office Act and s 112 of the Penal Code and the Judge omitted to direct the Jury to consider what evidence there was of abetment and to explain the law in connection therewith—*Held* that the law was not adequately explained and that the omission of any explanation with regard to the charge of abetment constituted a misdirection. *Abbas Peada v Queen Empress* 1 L R 25 Cal 736, referred to Where it did not appear clear in the charge to the Jury whether the Judge intended to require them to consider how far the statements of the accused amounted to admissions of guilt or how far they believed them to be true—*Held* that the uncertainty in the meaning of the charge when the statements formed a large part of the evidence against the accused was a misdirection The omission to direct the Jury that a retracted confession should have practically no weight as against a person other than the maker, and that the very fullest corroboration was necessary, far more than was required for the sworn testimony of an accomplice on oath *Held* to be a serious misdirection on *Fauz v King Emperor*, 1 L R 28 Cal 639 followed *HEMANTA KUMAR PATHAK v EMPEROR* (1919)

1 L R 47 Cal 46

Charge to the Jury—

Record of heads of charge—Directions on the law actually given to be embodied in the record—Verdict of Jury justified by the evidence—Retrial not ordered—Criminal Procedure Code (Act V of 1898) s 367 (5) proviso A mere statement by the Judge in the record of the heads of charge that he referred to certain sections of the Penal Code and explained the law relating thereto is insufficient The record must itself embody the directions on the law actually given so as to enable the High Court on appeal to determine whether the constituent elements of the offence or offences charged were correctly and fully explained to the Jury The Court, however refused to direct a new trial for such defect in the record when the Jury were justified in convicting on the evidence in the case *KASIMUDDIN NASYA v EMPEROR* (1920)

1 L R 47 Cal 795

The law requires the judge to record only the heads of charge to the jury but this record should be sufficient to enable the High Court to ascertain what was actually said to the jury *ABDUL GOFUR v KING EMPEROR*

26 C W N 998

Jury trial by—Mis-

direction on points of law and improper direction on facts The three accused were found guilty by the unanimous verdict of the jury two under sects 302-34, Indian Penal Code and one under ss 302 149, Indian Penal Code and further all under ss 304 148 I P C The Sessions Judge in charging the jury said—Sec 34 provides that where it is doubtful which of several persons has taken the chief part in any given crime committed in

TRIAL BY JURY—contd

furtherance of the common intention of all of them each of such persons is severally liable as if he alone had done the deed—*Held*—That it is necessary for the Judge to read the very words of the section itself to the Jury if he purports to give them what are the provisions of the section and then if necessary to explain what is the meaning of the section and the direction with regard to s 34 was not a proper direction In charging the Jury as to what constitutes murder the Sessions Judge said—Murder is the intentional killing of another human being with malice aforethought—*Held*—That it is not the way in which Judges ought to charge the Jury in this country It is usual to refer to the sections which relate to culpable homicide and to direct the Jury as to what is culpable homicide and in what circumstances culpable homicide amounts to murder As to the charge under ss 302 149 the Sessions Judge charged the jury as follows—

—This charge is to some extent redundant and strictly applies only to one accused A for the other accused are supposed to have been the actual murderers By s 149 A becomes a constructive murderer and liable for the substantive offence Just as by s 34 all the accused are equally liable for the murder as though each of them had committed it single handed—*Held*—That this was a misdirection *Held further*—That the Sessions Judge was in error in not drawing the attention of the jury to some material evidence and to the fact that many of the prosecution witnesses were related to a person who was the prime mover in the prosecution or to one another and to the discrepancies in the evidence and his direction on the evidence in one instance was not borne out by the record That the attention of the jury should have been directed to the individual cases of the three accused On the ground of misdirection the High Court set aside the verdict of murder as regards all the accused and holding that there was no misdirection as to the charge under s 364 Ind an Penal Code upheld the conviction of two of the accused on that charge but set it aside in the case of the other accused and set aside the conviction of two of the accused under s 148 and upheld it in the case of the other *KING EMPEROR v DURGA CHAMAN BEPARI*

26 C W N 1002

TRIBAL COMMUNITY, PUNJAB

See CUSTOM 1 L R 44 Cal 749

TRIBUNAL OF APPEAL

See BOMBAY CITY IMPROVEMENT ACT 1898;
1 L R 36 Bom 203

TRUST.

See ADMINISTRATOR 2 Pat L J 642

See CHARITABLE OR RELIGIOUS TRUST
1 L R 40 Bom 439

See CHARITABLE TRUST

See CIVIL PROCEDURE CODE 1882—

ss 13, 539 . 1 L R 33 All 752

s. 539 . 1 L R 26 Bom 19

1 L R 34 All 468

See CIVIL PROCEDURE CODE (ACT V of
1908) s 97 1 L R 57 Bom. 95

TRUST—contd.

- See CONTRACT. I L. R. 38 Mad. 785
 See COURT FEES ACT 1870, Sec 111
 (ART) 2 Pat L. J. 611
 See HINDU LAW—FIDUCIARY
 L. R. 46 I A. 204
 See KMOJA MAHAMEDANS.
 I L. R. 36 Bom. 216
 See LIMITATION ACT (N OF 1908), s. 10,
 Sec 1, Arts 14 120
 I L. R. 39 Bom 572
 See MAHOMEDAN LAW—WILL
 I L. R. 38 All. 827
 I L. R. 41 Bom 372
 See MAHOMEDAN LAW—TRUST
 I L. R. 34 Bom 604
 See MAHOMEDAN LAW—WILL
 I L. R. 42 Calc 933
 See MORTGAGE I L. R. 38 All. 209
 See PUBLIC TRUST
 I L. R. 42 Mad. 335
 See RESULTING TRUST
 I L. R. 40 Bom 341
 See SUCCESSION ACT (X OF 1865), s. 104
 I L. R. 38 Bom 618
 See TRUSTEES I L. R. 33 All 125
 See TRUSTEE
 See TRUSTS ACT (II OF 1882), s. 49
 I L. R. 34 All. 306
 See TRUST FUND
 See WILL I L. R. 38 All. 214

1. ———— Deed of trust, construction of
 —Uncertainty—Gift for religious acts (*dharma-karmarthi*) and for "religious purposes" (*dharma-dake*)—Works of public good—Discretion of trustee. A settlor in a deed of trust in the Bengali language after declaring that for religious acts (*dharma-karmarthi*), with a desire for the spiritual benefit of the deceased forefathers, and to please Vishnu, she made over the properties covered by the deed for religious purposes (*dharma-dake*) proceeded to direct that certain *Thaloo*s should be worshipped and maintained and the annual *Dargotab* performed out of the income of the trust estate and further by the sixth clause, of the trust deed provided that out of the income which should remain after incurring the expenses *above* a sum not exceeding one thousand rupees should be applied in supporting the poor the blind and the destitute and in imparting education in *upanayan* (assumption of the sacred thread ceremony) in removing marriage difficulties (*zetting gis married*) or in works of public good. It was to be paid at the discretion of the trustee towards *dispensaries*, hospitals, charitable societies, schools, or any students' education, feeding of the poor etc., marriage, *upanayan* etc., excavation and consecration of tanks etc., in villages having a dearth of water or in the reconstruction and consecration of *ghats* and *maths*. The trustee for the time being had under the deed discretion to render assistance beyond a thousand rupees and had also, full power to decide where or for whose education, *upanayan* or for whose daughter's marriage the same should be applied. *Held*, that such direct ones as were

TRUST—contd.

contained in the sixth clause of the trust deed, were void and inoperative for vagueness and uncertainty. *Trakumdas Damodhar v Haridas Morari*, I L. R. 31 Bom. 583, *Grinstead for Macintyre v Grinstead*, (1905) A C 124 *Bul Chaudhary v Dady Dussanji*, *Dady I L. R. 26 Bom 632*, *Williams v Acreham*, 5 C1 d F. 111, *Subbomungala Dabbe v Vokchedranath Nath I L. R. 4 Calc 503*, and *Panchodas Chandraswamy v Laxmi Bai*, I L. R. 23 Bom 723, I L. R. 26 I A 71, referred to. *NARAY CHANDRA GHOSH v PRATAP CHANDRA GHOSH* (1912) I L. R. 40 Calc 232

2. ———— Scheme of management of a temple made by the High Court—*Intervention in its decree for modification of scheme by itself* and for lower Court carrying out modification so made—Application to lower Court for directions involving modification of scheme—Competence of lower Court to entertain such application. Under a decree of the High Court, the petitioner was appointed High Priest of a temple and the opposite party and another person members of a committee thereafter on the application of one of the members of the committee the High Court amended its decree in so far as it gave liberty to any person interested to apply to the High Court for any modification of the scheme that might appear necessary or convenient and to apply to the District Judge with reference to the carrying out of the directions of the High Court on such application. Subsequently the members of the committee applied to the District Judge for such directions on the petitioner as involved a modification of the scheme: *Held* that the application could be entertained only by the High Court. *UMESHANANDA DUTTA JAI v RAVANESWAR PRASAD GHOSH* (1912) 17 C W N 341

3. ———— Deed of trust, construction of—Scheme of Management—*Superintendent, if cestus que trust—Trustee, power of dismission by—Control of trustee—Perpetual injunction—Specific Relief Act (I of 1877), ss. 21 (b) and 34*. A donor by an *organama* or deed of trust transferred certain property to trustees for religious and charitable uses. The deed provided, *inter alia*, that there should be a superintendent of the trust properties subject to the control of the trustees. It was further provided that the superintendent should be the executive hand of the trustees should supervise the management of the property which were to be registered in his name in the Collectorate summon meetings of the trustees and keep accounts and submit them to the trustees. The first superintendent was to be the donor himself and after his death or relinquishment of office the superintendent was to be appointed by the trustees. No express power of dismission was given to the trustees by the deed: *Held* that a superintendent appointed by the trustees under the foregoing power was not a *cestus que trust* but was the servant of the trustees, and that if dismission by them he had no right to an injunction restraining the trustees "from interfering with his enjoyment of the rights and privileges of such superintendent as in the deed of trust provided". *Dean v Bennett* L. R. 6 CA App. 489, *Hills v Child* 13 Bore. 117, *Attorney General v Magdalen College, Oxford*, 10 Bore 402 and *Wiston v Dunn and Chaplin of Rochester*, 7 Bore 532, referred to. *Dargers v Rana*, 25 Bore 233, distinguished. The position of such

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a superintendent is not, analogous to that of a *shebait* or mutual. *Nanabhai v Shriman Goswami Girdhary*, 1 L. R. 12 Bom 331, *Goswami Shri Girdhary v Madhoddas Premji*, 1 L. R. 17 Bom 600, and *Gulam Hussain v Ali Ajam*, 4 Mad. H. C. 40, referred to *Held*, further, that the contract of service between the superintendent and the trustees was governed by s. 21 (b) of the Specific Relief Act, and an injunction should therefore not be granted in respect of it under s. 54. A power of appointment ordinarily involves a power of dismissal. *RAM CHARAN BAJPAI v RAKHAL DAS MOOKERJEE* (1913)

1 L. R. 41 Cal. 19
17 C. W. N 1045

4 ———— **Trust charitable—construction of conditional gift—cyprus doctrine**—To determine the true construction of a deed of settlement regard must be had to the object and scope of the instrument judged if necessary by surrounding circumstances. Where a charitable gift is made upon a condition precedent the gift fails if the condition is not satisfied. To attract the cyprus doctrine an absolute declaration of intention to give a charity must be established. *SREEMATTY SANTONA ROY v THE ADVOCATE GENERAL, BENGAL*

25 C. W. N 344

5 ———— **Court's power to sanction sale of trust property—Voluntary settlement—Sale of trust property—Trustees having no express power to sell immoveable property—Remainder estate in favour of issue of the tenant for life—Trustees contracting to sell immoveable property with the consent of beneficiaries living—Such consent not sufficient as issue may include unborn children or grand-children of the tenant for life—Sanction of Court to a sale by trustees under its extraordinary jurisdiction—Sanction given in a case of emergency—The Indian Trusts Act (II of 1882) ss. 20, 36, 40** An immoveable property in Bombay was settled in trust in February, 1893 by a Parsi lady since deceased, the trustees being her two daughters S and R. The trusts were for the settlor for life with remainder as to one moiety for R for life with remainder for the issue of the body of the said R in the shares prescribed by law as if the said R had died possessed of the said share in estate leaving such issue only as her right heirs and in default of such issue upon the trusts hereinafter declared in regard to the other half. The other moiety went to the other daughter S for life with a limitation over to her issue similar to that contained as regards R's moiety. There was an ultimate gift over of all the property to charity in case there should be no person living entitled to take the said premises under the trusts hereinafter declared. In March 1918 the trustees entered into an agreement of sale of the property at a fair and advantageous price. All the beneficiaries living at the date of the agreement, namely, R and her six children had consented to the sale. The trust instrument itself did not contain a power of sale and the purchasers did not accept the title without the sanction of the Court. The trustees accordingly presented a petition to the Court asking for sanction. It was urged that ss. 40 and 73 of the Indian Trusts Act, II of 1882, enabled the trustees to effect such a sale, or in the alternative that the case was one of emergency not foreseen by the author of the trust. The property stood at

TRUST—contd.

the corner of two streets and was liable to a set back under Municipal Regulations, and if the set back arose it would be very seriously depreciated. The property further needed heavy repairs and was defective as regards sanitary conveniences. The trustees apprehended that they might be served any moment with a sanitary notice which might result in a set back being enforced. *Held*, (i) that the proposed sale could not be said to have been consented to by all the beneficiaries interested under the trust instrument appearing before the Court, inasmuch as it was possible that when the settlement came finally to be construed and the trusts wound up, some child or grandchild born hereafter might be entitled to a share in the property, (ii) that the present case, however, was one of emergency not foreseen or anticipated by the author of the trust and the sale though not provided for by the trust instrument ought, in the interests of all the beneficiaries concerned, to be sanctioned by the Court in the exercise of its extraordinary jurisdiction, (iii) that the extraordinary jurisdiction of the Court to sanction a sale of immoveable property in the absence of a power of sale in that behalf in the trust instrument is of an extremely delicate character and should be exercised with the greatest caution. *In re Auer*, (1901) 2 Ch 534, and *In re Tollenmacher*, (1903) 1 Ch 457, 555, referred to. *In re SHIRINBAI MEERWANJI* (1918)

1 L. R. 43 Bom 519

TRUST-DEED.

See STAMP ACT, 1899 s. 2 (24), Sec 1
ART 7 1 L. R. 35 Bom 444

TRUST ENDOWMENT.

——— *Held*, that possession of a portion of endowment property by other persons who pay over and apportion revenue to different purposes of the trust is not incompatible with the position of general trustee but may be adverse to him. *AMBALARAVA PANDARA SACHINCHI AVENGAL v FRI MEENAKSHI SUNDARAYARAL DASAS PATTAM*

25 C. W. N 1

TRUST PROPERTY

See PRINCIPAL AND AGENT

1 L. R. 48 I. A. 250

See TRUSTEE 1 L. R. 38 Mad 71

——— **Permanent lease not void ab initio** A permanent lease of trust lands is not void ab initio, it is only voidable. *KADIR MUSTAF NORTHER v SENGUMMAS* (1920)

1 L. R. 43 Mad. 433

——— **Suit for account by trustee against trustee de son tort—Intermeddling when there is a personal representative—Limitation Act (IX of 1905) s. 10, applicability to suit for accounts in respect of trust property—Limitation Act (XI of 1877) Sec 11, Art 120—Constructive obligation.** The Plaintiff and another person as executors and trustees appointed by the Will of a Hindu lady took out probate but the estate was administered by the latter alone during his life time and on his death in 1900 by his son and by his grandsons the Defendants on the death of his son. In 1913, the Plaintiff and the Defendants for accounts. *Held*—(1) that the Defendants were in the position of a trustee de son tort

TRUST PROPERTY—contd.

and it was not open to them to deny their liability as such or to contend that they were trespassers and could not therefore be liable to render accounts. The rule of English law that no liability as executor *de son tort* can arise where there is a personal representative did not apply in this case where Plaintiff the rightful executor took no part in the administration when the Defendants were intermeddling with the estate *Narayananam v Eas Abbay*, I L R 28 Mad 351 (1905), referred to. That the trustee represents the *cestus que trust* and the suit for accounts at the instance of the Plaintiff was maintainable against the Defendants. That under the present Limitation Act a suit for accounts in respect of trust property comes under s 10 and a trustee *de son tort* stands in the same position as an express trustee. That the claims for accounts for six years prior to the institution of the suit would be saved by Art 120 of the Limitation Act of 1877. The obligation of a trustee to account being continuous. *Held*—That the suit was barred as to the Defendants dealings with the trust property from 1900 to 1903, but was not barred as to their dealings from 1904. *Dhanpat Singh Khettry v Moheshnath Tewari* 24 C W N 752

TRUSTEE.

See CHURCH . I L R. 38 Mad. 418

See CIVIL PROCEDURE CODE (ACT V of 1908), s 92 I L R 37 Mad. 184
I L R 40 Bom 439

See LIMITATION ACT (XV of 1877), s 10
I L R 35 Bom 49

SCH II, ART 120
I L R 38 Mad. 280

See MORTGAGE . 14 C W N 579

See RELIGIOUS ENDOWMENTS ACT (XX of 1863) s 3 I L R 38 Mad. 1176

See TRUSTEES AND MORTGAGEES POWERS ACT . I L R 35 Bom. 380

— alienation by—

See LIMITATION I L R 37 Bom 231

— absence of—

See PARTIES I L R 42 Calc 1135

— appointment of—

See MAHOMEDAN LAW—ENDOWMENT
I L R 43 Calc 1085

See RELIGIOUS ENDOWMENT ACT (XX of 1863) s 5 14 C W N 1104

— compromise of suit by—

See TRUSTEE I L R 39 Mad. 115

— death of, pending appeal—

See CIVIL PROCEDURE CODE (ACT V of 1908) ss 92 AND 93
I L R 38 Mad 1064

— liability of, on funds—

See NEGOTIABLE INSTRUMENTS ACT ss 28 27 28 I L R 41 Mad. 815

— line of, failure of—

See RELIGIOUS ENDOWMENT
I L R. 40 Mad 612

TRUSTEE—contd

— loan by—

See MAHOMEDAN LAW—ENDOWMENT
I L R 37 Calc. 179

— of a temple in Malabar—

See LIMITATION ACT (IX of 1908), SCH. I, ART 124 I L R 41 Mad. 4

— of charitable inams—

See CHARITABLE INAMS
I L R. 40 Mad. 939

— power of dismissal by—

See TRUST I L R. 41 Calc. 19

— suit against—

See LIMITATION ACT (IX of 1908) s 10
I L R 41 Mad. 319

— suit by, against co-trustee—

See CIVIL PROCEDURE CODE (ACT V of 1908), s 92 I L R 40 Bom. 439

— suit for recovery of office of—

See CIVIL PROCEDURE CODE (ACT XIV of 1882), s 539
I L R. 36 Mad 384

— suit to remove—

See PARTIES . I L R. 42 Calc. 1135

— transfer by—

See MAHOMEDAN LAW—ENDOWMENT.
I L R 47 Calc. 886

1. — Powers of investment of—
Investment by trustees, who are members of a firm in the firm under direction of cestus que trust—Firm does not hold the money in a fiduciary capacity—Indian Trusts Act, s 51 Where the settlor appoints the members of a banking firm as trustees and directs them to invest the trust funds with the firm in deposit account without any directions which would constitute the firm a trustee such funds are, when invested, held by the firm as its own property and the relation between the firm on the one hand and the trustees and settlor on the other is merely that of debtor and creditor. On the bankruptcy of the firm such amount cannot be recovered in full, but can only be proved as a debt. The doctrine embodied in s 51 of the Trusts Act that a trustee cannot use trust funds for his own profit does not apply where the settlor directs such use. *In re Beale Es parte Corbridge*, L R 4 Ch D 246, referred to. *OFFICIAL ASSIGNEE of MADRAS v KRISHNAIAH NAIDU* (1909) . I L R. 33 Mad. 154

2. — Trustee mixing trust money with his own—*Indian Insolvency Act, II & 12 Act, c XXI, s 24—Voluntary payment* By a resolution, dated 31st July 1906 the Directors of the Madras Equitable Insurance Company resolved that a sum of Rs 75,000 standing to the credit of the company with Messrs. Arbuthnot & Co., its Secretaries and Treasurers, should be invested in Government promissory notes. Messrs. Arbuthnot & Co., purchased for the Insurance Company Rs 25,000 of Government promissory notes on 7th August 1906 Rs 25,000 on 9th October 1906 and Rs 10,000 on 20th October 1906, the securities being credited to the Insurance Company. On 22nd October 1906 Arbuthnot & Co failed. *Held* that Arbuthnot & Co., held

TRUSTEE—contd.

the securities as trustees for the Insurance Company which was entitled to rank as a secured creditor *Held*, also, that the fact that Arbuthnot & Co., before purchasing the Government promissory notes mixed up the Insurance Company's money with their own and used it in their banking business, did not amount to misappropriation of the money, the trust having a lien on the aggregate amount in the hands of the trustee and any sum which may have been drawn for the trustee's own use being deemed to have been taken out of his own money *Held*, further, that even if Arbuthnot & Co. could be held to have misappropriated the trust money, a subsequent payment in reparation by them would not amount to a "voluntary" payment within the meaning of s. 24 of the Indian Insolvency Act (1819), 11 & 12 Vict., Cap. XXI. *Ramsay & Co v The Official Assignee of Madras* (1912) I. L. R. 35 Mad. 712

3. ——— Breach of trust—Liability in damages—Failure to trust invest funds in authorised securities—*Indian Trusts Act* (II of 1882), s. 20—Failure of unauthorised security—Degree of care and prudence—*Indian Trusts Act* (II of 1882), s. 15 and 20—Fund to be applied immediately or at an early date, construction of—Fund payable to minor, if payable to guardian—Liability of trustee for interest—Interest on damages—*Indian Trusts Act* (II of 1882), s. 41 and 23. A testator appointed certain persons as trustees and directed them to realise an amount payable by the Oriental Life Assurance Company and to pay a sum of Rs. 200 to his brother, another sum of Rs. 400 to his daughter for her bride's jewels and the remainder to his minor son. The trustees realise the amount due from the Insurance Company, and after paying Rs. 200 to the testator's brother, invested the balance on one year's fixed deposit with Messrs. Arbuthnot & Co., who were then believed to be in very good credit. After the deposit had been renewed several times, Messrs. Arbuthnot & Co. became insolvent and the trust fund was lost. The plaintiff, who was appointed by the Court as trustee in the place of the defendants (who were the previous trustees appointed under the will), brought this suit against the latter for damages for loss of the trust funds by reason of their breach of trust. The District Judge decreed damages against the defendants who preferred a Second Appeal to the High Court. *Held*, that the defendants were liable in damages for breach of trust. As regards the amount payable to the minor son, it could not be applied for the purposes of the trust immediately or at an early date, as the trustees could not pay the money to the minor until the attainment of his majority, nor could it be paid to the guardian of the minor during minority. B. 41 of the Trusts Act permits payment to the guardian only of the income of the property. The specific provisions contained in the other sections of the Indian Trusts Act are as obligatory as the general provisions of s. 15 of the said Act. The defendants were bound to invest the trust moneys in the securities specified in s. 20 of the Indian Trusts Act, and having failed to do so, they must be held to have committed a breach of trust, although they had acted honestly and with the prudence which an ordinary man would exercise in the conduct of his own affairs. A trustee guilty of breach of trust

TRUSTEE—contd.

by not investing trust funds as required by s. 20 of the Indian Trusts Act is not exempted by s. 15 thereof from liability in damages. The Indian Courts have not been given the power (conferred by statutes in England) to protect trustees in any case where a clear breach of trust has been committed. Where a trustee invests money in an unauthorized security, this must be treated as tantamount to failure to invest within the terms of s. 23, cl. (c), of the Trusts Act, and he is liable to pay interest under that section. It may be doubted whether the rule disentitling the beneficiary to interest except in the cases enumerated in s. 23, could be applied where the trust money has been lost in an unauthorized investment. The Court should have power in such cases to award interest as damages. *THIRUPATHIRAYUDU NAIDU v LAKSHMINARAYANNA* (1912) I. L. R. 38 Mad. 71

4. ——— Powers improperly and unreasonably exercised—Liability of transferee of trust estate—Compromise of suit by trustee—Decree ordering party benefiting by breach of trust to repay benefit—Compromise where minor is party to suit—*Civil Procedure Code* (Act XIV of 1882), s. 462. In the suit out of which this appeal arose the plaintiff (respondent) was the minor Raja of Ramnad. The first defendant (appellant) was a creditor of the late Raja and the party in whose favour the three instruments which the suit sought to set aside were made. The second defendant was the trustee appointed under a deed of settlement executed by the late Raja on 12th July 1895. The suit was brought for a declaration that an agreement of 16th January 1899 between the appellant and the trustee, and two mortgages of 6th and 13th July 1899 executed by the trustee in favour of the appellant were invalid, and for an order that a sum of Rs. 43,000 paid under those instruments should be repaid by the appellant to the credit of the trust estate. The validity of the deeds was largely dependent on the consideration of whether the trustee under the voluntary settlement of 12th July 1895 had power to give a mortgage bond for four lakhs of rupees on the security of a suitable portion of the Ramnad estate to the then Raja of Ramnad. *Held*, by the Judicial Committee (upholding the decision of the High Court), that on the evidence and the construction of the settlement, and under the circumstances of the case, the power of the trustee was not exercised properly and reasonably, and in the interest of the trust estate; that the deed of compromise was therefore not valid; and that being so the mortgages could not be regarded as valid and binding on the properties therein comprised. Their Lordships concurred in the conclusions of the High Court both as to the validity of the deed of compromise and of the two mortgages, and as to the amount of the payment ordered to be made by the appellant to the credit of the trust estate. Even if the deed of compromise could be supported on other grounds it was invalid as not complying with the condition imposed by s. 462 of the Civil Procedure Code, 1882, in that one of the parties to the suit being a minor, the sanction of the Court to the making of the compromise had not been obtained. *Munier Lal v Jodh Nath Singh*, I. L. R. 25 All. 615, 519; I. R. 23 I. A. 125, 131. *Per Lord Macnaghten, and Curia Eor v*

TRUSTEE—contd

Tularam Row, I L R 36 Mad 295, L P 40 I A 112, followed SUBRAMANIAN CHETTIAR v RAJA RAJESWARA DORAI (1915)

I L R. 39 Mad. 115

TRUSTEES AND MORTGAGEES POWERS ACT (XXVII of 1886)

— s 3—

See MAHOMEDAN LAW—WARY

I L R. 37 Cal. 870

— ss 8, 20, 32—

See RECEIVER . I L R. 43 Cal. 124

— s 43—

Trust deed—Application by trustees to divert funds to other objects—Trustee's opinion—Cyprus doctrine The surviving trustees of a fund founded with the object of distributing food amongst such poor persons as might assemble at certain stated times and places petitioned the Court under s 43 of the Trustees and Mortgagees Powers Act to divert the fund to more useful purposes on the grounds that in their opinion the charity tended to prostrate the recipients thereof and to encourage idleness and laziness and vagrancy and to produce other undesirable results that the donor's intention was to benefit the poor of Bombay and the best way to carry out his intention would be to devote the trust funds to the education of poor boys. *Held* that the application was entirely misconceived so far as the Act was concerned as the word "trustees" has been deleted in s 43 of the Trustees and Mortgagees Powers Act of 1882. Even if the Act applied the Court could not under s 43 do more than give advice or directions. It could not pass any order which would in any way alter the duties of the trustees under the trust deed. *Held*, further, on the merits of the application, that the trustees had no justification for coming to the Court, to try and get their duties under the trust deed altered according to their ideas of what was fit and proper. *In re Wair Hospital*, (1910) 2 O.L. 121 referred to. *In re CURIMBOY ESBRAHIM, BART* (1910)

I L R. 35 Bom. 380

— s 45—

See MAHOMEDAN LAW—WARY

I L R. 37 Cal. 870

TRUSTEE DE FACTO

See TRUSTEE OF A TEMPLE

I L R. 39 Mad. 456

TRUSTEE IN BANKRUPTCY.

See INSOLVENCY I L R. 28 Cal. 542

TRUSTEE OF TEMPLE

See SPECIFIC RELIEF ACT, ss 9, 42

I L R. 33 Mad. 452

See TRUSTEE

— and Temple Committees respective rights of—

See CIVIL PROCEDURE CODE (ACT V of 1908) s 92 I L R. 40 Mad. 212

I — Delegation of powers of the trustee—Power to appoint and dismiss hereditary temple servants—Delegation of such

TRUSTEE OF TEMPLE—contd.

power to an agent whether valid—Dismissal of archaka by agent, whether valid A trustee of a temple cannot appoint an agent to do acts which involve the exercise of judicial discretion by himself. He cannot therefore delegate to an agent his power of appointing and dismissing hereditary temple servants who cannot be dismissed without sufficient cause being established. *Krishnaswami v Rangaswami* (1893) I L R 16 Mad. 73, referred to. *PARASURAMA UDAYAN v THEBUNAL ROW SAHIS* (1921)

I L R. 44 Mad. 636

2. — Trustees of Temple, powers of, suspend hereditary archakas—Suspension otherwise justifiable not bad for want of previous notice—Archaka, a servant, subject to the disciplinary power of trustees—Power of interim suspension incidental to trustee's power to enquire and dismiss for misconduct The position of the hereditary archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee of a temple has power to inquire into the conduct of such servants and dismiss them for misconduct. The right of interim suspension pending such inquiry is incidental to such power and no notice is required for an *ad interim* suspension pending enquiry. Even if such notice is deemed necessary, the order of suspension will not be set aside, if misconduct is proved at the enquiry. A hereditary archaka can be dismissed by the trustee but only for good reasons which are liable to examination by a Court of Justice. *SEEMURI AYYANGAR v RANGA BHATTAR* (1912)

I L R. 35 Mad. 631

3. — Transfer of management—Lost or vendible—Selling aside if necessary—Suit by trustees to recover temple properties and for account—Indian Limitation Act (IX of 1908), Art 91 or 124 applicability of—Some trustees, joined as defendants—Denial of their title by plaintiffs—Abandonment of the denial, —Decree in favour of plaintiffs and defendants if can be given—De facto trustees—Expenses during management—Right for reimbursement—Right to retain possession of trust property—Indian Trusts Act (II of 1882) s 32—Decree for possession and for account—Provision for account of expenses incurred in the final decree The plaintiffs, who were the *Audjars* (trustees) of a temple, brought the suit on the 30th January 1911 to recover possession of the temple properties from the defendants to whom the trustees had made over the management of the temple under an agreement dated 21st June 1901. The plaintiffs alleged in the plaint that the ninth and the tenth defendants (who were also originally *Audjars*) had lost their right to the office owing to their neglect to discharge its duties and that they were joined as defendants merely because they asserted a right to it. But at the trial in the original Court the plaintiffs abandoned this contention. The defendants contended, *inter alia*, that the suit was bad for non-joinder of all the trustees as plaintiffs and was barred under art 91 of the Limitation Act, and that the defendants were entitled to be reimbursed out of the trust properties for expenses properly incurred by them during their management and to retain possession of the properties until they were so reimbursed. The lower Court passed a decree in favour of the

TRUSTEE OF TEMPLE—*contd*

plaintiffs and the ninth and the tenth defendants for possession and a preliminary decree for accounts against the defendants. *Held*, that the objection as to non joinder was not sustainable, but that a decree could be passed in favour of the plaintiffs and the ninth and the tenth defendants as trustees with the consent of the latter and the other defendants. *Koklasari Dasi v Mohuni Rudranand Gowram, 5 C L J 527*, distinguished. The transfer to the defendants being void, did not require to be set aside. Art 91 of the Limitation Act did not apply to the suit but Art 124 was the Article that was applicable and under that Article the suit was not barred. *Malkarjun v Narhari, 1 L R 25 Bom 337*, followed. *Gnanambhanda Pandara Sannadhi v Velu Pandaram, 1 L R 23 Mad 371*, explained. *Sidhu Sahu v Gopicharan, 11 C L J 233*, referred to. A trustee of a public charitable endowment like a trustee of a private trust is entitled to reimburse himself all expenses properly incurred in connection with the trust, and has a first charge enforceable only by prohibiting any disposition of the trust property without previous payment of such expenses—not that is to say, in the ordinary way by sale of the property subject to such charge. It is the duty of the Court especially in the case of a public charitable trust to take the trust property out of the possession of persons not entitled to hold it, while making due provision for any claims that they may have in respect of expenditure properly incurred in connection therewith. *Held*, consequently, that the defendants were not entitled to retain possession of the suit properties, but that the preliminary decree should direct that accounts should be taken as to what was due to the defendants from the trust, leaving it to be determined by the final decree how such claim, if established, should be enforced. *NARA YANAN v LAKSHMANAN (1915)*

I L R. 39 Mad. 456

4

Suspension from office of an hereditary archaka—Order passed without notice to archaka or previous inquiry whether valid—Order, ad interim, continued for an unreasonably long time, whether legal—Punitive order of suspension, whether valid without notice Where the trustees of a temple suspended an hereditary archaka of the temple from his office on account of certain imputations of misconduct made against him, without giving him notice or making any inquiry previous to passing such order, and no subsequent inquiry was made by them for fourteen months after the date of the order whereupon the latter brought a suit to recover his office and damages for wrongful suspension: *Held*, that the order of suspension pending inquiry into alleged misconduct should not have been continued in force for a longer period than was reasonably necessary, that, in this case, the delay of fourteen months between the date of the order and the institution of the suit being unreasonable, the order as an *ad interim* order ceased to be valid before the date of the suit; and that the order viewed as a punitive order, was invalid as having been passed without notice and inquiry, whatever be the merits of the case might be. *Thiru vembaka Desikar v Manikotharchala Desikar, 1 L R 41 Mad 177*, and *Leelanarasayana Pillai v Ponnaswami Nadar, 1 L R 41 Mad 327*, followed. *Willis v Sir C Lippes, 3 Moore 379*,

TRUSTEE OF TEMPLE—*contd*

applied. *Seshadri Iyengar v Panga Bhattar, 1 L R 35 Mad 631*, distinguished. *Held*, further, that out of the temple funds the plaintiff was entitled to recover damages due to him, as the trustees in passing the order of suspension and continuing it, acted in their capacity as trustees and in what they conceived to be the proper discharge of their duties on behalf of the temple. *JAGANNATHA ACHARIAR v SRIKUR BHATTACHARIAR (1919)*. 1 L R. 42 Mad. 618

TRUSTEES OF CASTE-FUNDS

See TRUSTS ACT (II OF 1882) *et seq* AND 6
I L R. 24 Pcm. 467

TRUSTS ACT (II OF 1882).

— 23 3 and 6—

See MORTGAGE . 24 C. W. N 769

— 5 —

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 60 I L R 37 Bom. 471

See ESTATE ACT (II OF 1869) Sec 1, Art 22 . I L R 28 Bom. 576

Trust declared outside British India—Proceedings in British Indian Courts—Redeemed mortgagee retaining mortgaged share as trustee for mortgagee—Notice of assignment by mortgagee—Death of mortgagee before registration of transfer to assignee—Validity of trust—Completion of gift. A, through her agent T, mortgaged a share in the Bank of Pcnlay with P. Later she directed T to redeem it and have it transferred by way of gift to her two nephews. It was redeemed and a transfer form was signed by P in favour of the nephews, but the Bank declined to register it on the ground that the transferees were minors. A, thereupon, directed that it should be transferred to the names of T and M jointly as trustees for the minors. A transfer was accordingly signed by T in favour of T and M, and this was duly registered by the Bank. The day before it was lodged with the Bank for registration, A died. It was contended that the gift was imperfect and the trust in favour of the nephews invalid. *Held*, that as the trust was set up in a British Indian Court the Indian Trusts Act applied, although both A and P were living and domiciled in Kathiawar (i.e., outside British India) when A declared her wishes regarding the share. *Held* further, that A had an equitable interest in the share and that the mortgage having been discharged P, the registered proprietor, held the legal title as trustee and was bound to deal with it as T or his principal. A should direct *Held*, further, that the share had passed out of the control of A before her death, the certificate as well as the transfer being in the hands of T under the control of T, to whom her desire to benefit the minors had been communicated, and that the legal holder P, having notice and having signed a transfer in favour of the minors before A's death, could only carry for their benefit, and had subsequently done so to the trustees desired by A. *Held* therefore, that the trust was valid and the gift complete. *MADONJI DNYESHAND v TRISHNOWN VIKRAMJI (1911)*. . I L R. 26 Bom. 286

TRUSTS ACT (II OF 1882)—*contd*

ss 5 and 6—

See DEPOSIT I L R. 35 Bom. 403

Caste fund—Trustee of caste funds—

Extent of right to inspect documents—Demand and refusal—Jurisdiction of Civil Courts in caste questions—

Application of Indian Trusts Act (II of 1882),

ss 5 and 6, to creation of trusts of caste funds—

Civil Procedure Code (Act V of 1908), s 151 As

a result of discussions in a Hindu caste, a suit was filed by the plaintiff, a trustee of certain caste funds and member of the Managing Committee against the defendant, a co trustee and the President of that Committee. The plaintiff prayed for a declaration that he had the right to inspect all books and documents of the Mahajan Managing Committee Sub Committee and Trustees, and for an injunction restraining the defendant from interfering with him in the exercise of such right. The only two documents about which there was any real controversy were the minutes of the Sub-Committee and the correspondence file of the Mahajan *Held* that as trustees of the Deccan and Madharan funds the plaintiff had no right, either in law or by virtue of any caste rules, to the roving inspection claimed. *Bank of Bombay v. Sulman* I L R 32 Bom. 466 474 referred to. *Held* further, that the Mahajan fund of this caste being a purely secular fund the Indian Trusts Act applied, and the plaintiff could not claim to have been made a trustee of that fund merely by virtue of a caste resolution and his own letter of acceptance. *Held*, further on the evidence that there had been no express demand addressed by the plaintiff to the proper quarter and no refusal by the defendant such as would be necessary to enable a suit of this character to succeed. *Held*, further that where rights to property are not involved all matters of internal management must be left to the decision of the caste. The question in dispute was in reality a question between the caste and a section apparently a small section, of the caste led by the plaintiff, and as such it was outside the Court's jurisdiction in accordance with the decision in *Nemchand v. Sanyaschand* I L R 5 Bom 84 F A, *Lalji Shamji v. Walji Wardman*, I L R 19 Bom 507, referred to and distinguished. *Held*, lastly that when, according to well established principles certain questions have been removed from the jurisdiction of the Court, they cannot be brought within the jurisdiction under a 151 of the Civil Procedure Code (Act V of 1908). *JETHABAI NARSEY CHAPSEY COOVERJI* (1909) . I L R 34 Bom 467

s. 10—

See TRUST PROPERTY

24 C W. N 752

ss 15 and 20—

See TRUSTEE I L R 33 Mad. 71

ss 20, 26, 40—

See TRUST I L R 43 Bom. 519

See TRUSTEE I L R 33 Mad 71

s. 32—

See TRUSTEES OF A TEMPLE

I L R 39 Mad. 456

s. 36—Lease by trustee—Lease by trustee for term exceeding twenty-one years not void but only voidable. A lease by a trustee for a term

TRUSTS ACT (II OF 1882)—*contd*s 36—*contd*

exceeding twenty-one years is not void and illegal under s 36 of the Indian Trusts Act, but only voidable at the instance of the cestui que trust. *KADIR ISRAHIL ROWTHEN v. ARUNACHILLAM CHETTIAR* (1909) . I L R. 33 Mad 397

ss. 36 and 40—

See TRUST I L R 43 Bom. 519

ss 41, 95—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54. I L R 41 Bom 433

s 42—

See CHARITABLE TRUST

I L R 39 Mad. 597

s 51—

See TRUSTEE, POWERS OF INVESTMENT OF . I L R 33 Mad 154

ss 80 to 96—

See LIMITATION ACT, 1877, ART 91

I L R 38 Mad. 321

s 83—

See SETTLEMENT BY A HINDU WOMAN ON TRUSTS I L R 40 Bom 341

ss. 86, 89, 90, 91 and 96—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 91. I L R. 33 Mad. 310

s 83—

See IVAM. I L R 42 Mad. 181

See PRINCIPAL AND AGENT

I L R 41 All 635

Trust—Trustee entering into dealings in which his own interest may come into conflict with his duty as trustee—Purchase of mortgaged comprising property belonging at the time of purchase to the trust. A member of a body of trustees purchased for a very low price at an auction sale in execution of a simple money decree held by the trustees as such a mortgage-bond comprising amongst other property a village of which two-thirds had been previously purchased by the author of the trust and formed part of the trust property. Neither the purchaser nor the trustees had obtained the leave of the Court to bid. The auction purchaser claimed the purchase for himself and sought to enforce the mortgage by suit. *Held*, that the auction purchaser could not be allowed to do this, but must, on the contrary, be taken to have made the purchase for the benefit of the trust. All that he was entitled to was to be repaid the actual sum which he himself paid for the mortgage-debt at the auction sale. *GORI NARAIN v. KUNY BHARAI LAL* (1912)

I L R. 34 All. 306

Sale deed in favour of uncle—Fiduciary relationship of contracting parties—Undue influence—Voidable contract—Indian Contract Act (IX of 1872), ss 19 and 19A—Hindu Law—Marriage—Aurora form—Succession. Two sisters M and S executed a sale-deed in favour of their uncle. After the death of M, S sued for a declaration that the sale-deed was obtained by the uncle through fraud, misrepresentation and undue influence, and to recover possession of the property from him. S claimed the property both

TRUST ACT (II OF 1882)—contd**s. 88—contd.**

in her own right and also as the heir of *M*. The lower Courts allowed the plaintiff's claim holding that the uncle was in a fiduciary relation to his nieces and the consideration paid under the sale-deed was inadequate. On appeal to the High Court, two contentions were raised: (1) that *S* was not the heir of *M* and (2) that claiming through *M*, *S* had no right to exercise the option to avoid the deed as to one moiety of the property since *M* in her lifetime did not exercise the option: *Held*, that *S* was heir of *M* as *M*'s marriage was performed in *Asura* form. *Held*, further, that on the facts found the case fell within the scope of s. 88 of the Indian Trusts Act, 1882, and the sale deed was, therefore, null and void. *GOVIND RAMAJI v SAVITEI* (1918)

I. L. R. 43 Bom. 173

s. 90—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)

I. L. R. 40 Bom. 483

See HINDU LAW—(WIDOW)

I. L. R. 43 All. 374

Co-owner, right of, to appropriate rents collected by him towards his share A co-owner who has collected as rent more than sufficient to pay the Government peshkash and has paid it, is not entitled to sue another co-owner for contribution to the peshkash. *S* 90 of Trusts Act (II of 1882) referred to. *SEVARNARASA REDDI v DORASANI REDDI* (1918)

I. L. R. 41 Mad. 861

s. 91—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 40 . I. L. R. 40 Bom. 498

s. 95—

See TRANSFER OF PROPERTY ACT, 1882, s. 54 . I. L. R. 41 Bom. 438

TURN OF WORSHIP.

See PALAS OR TURNS OF WORSHIP.

See USUFRUCTUARY MORTGAGE

I. L. R. 39 Calc. 227

U**UBAYAKAR.**

See HINDU LAW—CUSTOM

I. L. R. 40 Mad. 1108

ULTRA VIRES

See ASSESSMENT . I. L. R. 37 Calc. 374

See LEGISLATION, ULTRA VIRES.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 14 . I. L. R. 39 Bom. 494

See MERCHANT SEAMEN ACT (I OF 1839), s. 63, CL. (4) . I. L. R. 39 Bom. 558

See PROSECUTION—BYE LAWS.

I. L. R. 37 Calc. 545

ULTRA VIRES—contd.**Orders—**

See BOMBAY DISTRICT POLICE ACT, s. 42

I. L. R. 36 Bom. 504

See LIMITATION ACT, 1877, SCH. II, ART.

14 . I. L. R. 36 Bom. 325

Rules—

See ADEN SETTLEMENT REGULATION (VII OF 1900), s. 13.

I. L. R. 40 Bom. 445

See RAILWAYS ACT (IX OF 1890), ss. 72,

47 . I. L. R. 39 Bom. 485

See SCHEDULED DISTRICTS ACT (XIV OF

1874), s. 7 . I. L. R. 41 Bom. 657

*Bengal Tenancy Act (VIII of 1885), s. 101, cls 2 (a) and (3)—“A large proportion of landlords,” meaning of—Order passed by Local Government under s. 101, cl 2 (a), at the instance of landlords having large proportion of interest, effect of—Jurisdiction of Civil Court to question validity of the order, after issue of Notification under the section. The words “a large proportion of the landlords” in s. 101, cl 2 (a) of the Bengal Tenancy Act, mean a large proportion of the landlords as determined by the interests they hold in the estates. Where, therefore, an application was made by landlords having a large proportion of interest in an estate, to the Local Government for the issue of an order under the said section, and an order was accordingly issued by a Notification in the official Gazette. *Held*, that the order was not ultra vires. *Held*, further, that it was with the Local Government the discretion rested to determine whether the application was in due form under the provisions of s. 101, cl 2 (a) of the Act, and after the Local Government had decided that point and had issued the Notification, the jurisdiction of the Civil Court to interfere with the order was barred by cl. 3 of the same section. *SECRETARY OF STATE FOR INDIA v PURVENDU NARAYAN ROY* (1912)*

I. L. R. 40 Calc. 123

A Calcutta landlord was tried by the President of the Tribunal appointed under the Calcutta Improvement Act, 1911, for cutting off water connection and was fined. On a rule to set aside. *Held*, that the provision of s. 20 of the Act was not ultra vires but rule framed under s. 23 was GOSWAMIDHAR DAS DEORA v DOOLCHAND SETHIA

I. L. R. 48 Calc. 955

UNALIENATED VILLAGE.

See BOMBAY LAND REVENUE CODE (BOM ACT V OF 1879)—

ss. 83, 216 . I. L. R. 44 Bom. 565

s. 216 . I. L. R. 45 Bom. 994

UNANIMOUS VERDICT.

See CRIMINAL TRIALS

I. L. R. 41 Calc. 662

UNAUTHORISED ACT.

See PRINCIPAL AND AGENT

I. L. R. 43 Calc. 511

UNCERTAIN EVENT

See WILL I L R 38 Calo 327

UNCERTAIN POSSESSION

See LIMITATION I L R 44 Mad 823

UNCERTAINTY

See CUSTOM I L R 45 Calc 475

See DEDICATION I L R 46 Calc 951

See RELIGIOUS TRUST
I L R 40 Calc 232

UNCERTIFIED PAYMENT

See LIMITATION I L R 45 Calc 630

UNCHASTITY

See HINDU LAW—INHERITANCE
I L R 38 Bom 138

See HINDU LAW—MAINTENANCE
I L R 34 Bom 278
I L R 39 All 234

UNCONSCIONABLE BARGAIN

See CONTRACT ACT, SS 16 AND 74

See INTEREST I L R 42 Calc 652

I L R 43 Calc 632

See SPECIFIC PERFORMANCE
I L R 38 Calc 805

UNDEFENDED SUIT

See EX PARTE DECREE
I L R 43 Calc 1001

UNDER-BROKER

dismissal of—

See DAMAGES I L R 47 Calc 220

UNDER-ESTIMATION OF VALUE OF PROPERTY

See APPEAL TO PRIVY COUNCIL
I L R 40 Calc 635

UNDERGROUND RIGHTS

See LANDLORD AND TENANT
I L R 57 Calc 723

See MINERAL RIGHTS

UNDER PROPRIETOR

See BIRT I L R 43 All 358

UNDER-RAIYATS

See EJECTMENT I L R 40 Calc 858

See LANDLORD AND TENANT
I L R 43 Calc 184

See OCCUPANCY HOLDING
I L R 44 Calc 272

See OCCUPANCY RIGHT
I L R 46 Calc 43

See ORISSA TENANCY ACT 1913 s 67
3 Pat L J 112

UNDER-RAIYATS—contd.

1 ————— Eviction of occupancy raiyat under decree for rent.—Position of under raiyat Where an occupancy raiyat in Chota Nagpur has been evicted in execution of a decree for rent obtained against him by the landlord, an under-raiyat holding under him becomes a trespasser and is liable to be evicted by the landlord by a suit in the Courts of ordinary civil jurisdiction. In a suit for eviction by the landlord under such circumstances the under raiyat has no locus standi under the Bengal Rent Acts, 1859 to contest the validity of the decree obtained by the landlord against the occupancy raiyat. *Bishun Narayan Das Poddar v Chandra Kanta Naik*

1 Pat. L J 543

2 ————— The heir of an under riyat has no heritable right to continue as such. *NADIRAM CHANDRA SIL v SRINATH CHAKRA VARTI* 24 C W N 93

3 ————— Bengal Tenancy (Act VIII of 1885) s 45.—Holding of Under raiyat S 48 of the Bengal Tenancy Act applies to cases in which the land held by the raiyat is co-extensive with the land held by the under raiyat. *Nitir Chand Saha v Joy Chandra Nath* (1912)

I L R 39 Calc 839

4 ————— Patta for a period of indefinite duration.—Ejectment.—Notice.—Bengal Tenancy Act (VIII of 1885) s 49, cl (b) The case of an under raiyat holding under a patta executed before the passing of the Bengal Tenancy Act and not expressly providing for the period of its duration, comes within cl (b) of s 49 of the Bengal Tenancy Act and the notice must be as provided thereunder. *Madan Chandra Kapali v Jaki Karikar* 6 C W N 377, overruled. *PAI KUMARI DEBI v BARATULLA MANDAL* (1911)

I L R 39 Calc 278

5 ————— If may acquire occupancy right.—Transferability of under-raiyat's interest. The provisions of the Bengal Tenancy Act show that an under raiyat may, under certain circumstances, acquire an occupancy right. If he does acquire such a right that right may be transferable by custom or local usage but there is no authority for the proposition that the interest of an under raiyat is *ipso facto* transferable. *AKHIL CHANDRA TIWARI v HASAT ALI SAPAGAR* (1913)

19 C W N 246

6 ————— Acquisition of, status of A person in whose favour a permanent sub lease has been granted by a raiyat acquires on payment of rent to his grantor the status at least of an under raiyat, if he is shown to have been in possession of the holding from before the lease. *JAYAKUMATH HOBE v PRABHASINI DAS* (1915)

19 C W N 1077

I L R 43 Calc 178

7 ————— Permanent lease by, if valid.—Suit by lessee to recover possession from lessor As between grantor and grantee, a permanent lease granted by an under raiyat is a valid document, and the grantee can recover possession of the land from the grantor on the strength of such a lease. *Gurudas Das v Kuldas Chango*, 18 C W N 832 followed. *PURUSHULLA SETHI v SITAL CHANDRA DAS* (1915)

19 C W N 1110

UNDER-RAIYATS—contd.

8 ———— *Status of under-tenant where raiyat evicted from occupancy holding for non payment of rent in Chota Nagpur—Interest of under raiyat, void or voidable—Distinction between proceedings with respect to a tenure holder and a raiyat—Right of under raiyat to contest the validity of the decree against his lessor* Where a holding of an occupancy raiyat is sold, the interest of an under raiyat is not void but voidable. But when the occupancy holding has been destroyed by eviction of the raiyat for non payment of rent, s 82 of Act X of 1859 provides that the decree holder shall be put in physical possession of the land. There is a clear distinction between proceedings in regard to a tenure holder and proceedings in regard to a raiyat. Where the proceeding has been with regard to a tenure holder or under tenant the decree is to take the form of an order to all raiyats to pay rent to the decree holder, and the decree holder cannot be put into actual physical possession of the land. An under raiyat cannot contest the validity of the decree against his lessor as a defence to a suit in which it is sought to declare him a trespasser. **BISHUN NARAIN DAS PODDAR v CHANDRA KANTA NAIK (1916)**

20 C W. N 1240

9 ———— *Under raiyat to whom permanent sub lease granted, suit for khas possession against—Bengal Tenancy Act (VIII of 1885), s 85—Defendant in possession—Notice to quit under s 49 (b)—Whether defendant can rely upon any subsisting tenancy* In a suit for khas possession of the disputed land from the defendant, an under raiyat to whom a permanent sub lease had been granted after the passing of the Bengal Tenancy Act in contravention of s 85, it was found that a notice to quit under s 49 (A) had been duly served upon him. *Held*, that the defendant could not rely upon any subsisting tenancy and the plaintiff was entitled to khas possession. **NASIR ALI SHINDAR v BANSHI BADAN PATWARI (1917)**

23 C W. N 425

10 ———— *Suit for ejectment of defendant an under raiyat, after notice to quit under s 49 of the Bengal Tenancy Act (VIII of 1885)—Defendant setting up permanent sub lease by plaintiff's vendor—S 85 (2)—Lease whether valid—Whether the tenancy can be put an end to by the notice—Whether defendant can rely upon previous possession* Where, in the plaintiff's suit to eject the defendant, an under raiyat after service of a notice to quit under s 49 of the Bengal Tenancy Act, the defendant set up a permanent sub lease granted by the plaintiff's vendor and pleaded that he could not be ejected on the principle that such a lease should be held to be binding on the lessor on the ground of estoppel. *Held*, that the lease being invalid according to the provisions of cl. (2) of s. 85, the tenancy could be put an end to by a notice under s 49, and the defendant not having a subsisting tenancy could not rely upon his previous possession. *Held*, that the principle of estoppel cannot be invoked to defeat the plain provision of a statute. If the contention were given effect to the provisions of cl. (2) of s 85 would be defeated in every case. **ALI MUDDI BEPARI v CHINTANARAY MUKHOPADHYA (1918)**

23 C W. N. 437

UNDER-RAIYATI HOLDING—contd.**See UNDER RAIYAT**

Transferability—Transfer of Property Act (IV of 1882), s 117—Agricultural lands—Relinquishment or abandonment, what constitutes An under raiyati holding is not transferable. What is relinquishment or abandonment depends on the substantial effect of what has been done in each case. When a tenure or holding, apart from the Transfer of Property Act, is not transferable, it cannot become so unless it is expressly made so by some other statute. If it had been intended to make holdings transferable which were before non transferable, the Legislature in framing the Bengal Tenancy Act would have said so. S 117 of the Transfer of Property Act excludes agricultural land from the operation of the rule which makes leasehold property transferable. **Hiramoto Dasgupta v Annada Prasad Ghose, 7 C L J 555, followed AMIN KHAN v JINNAH ALI (1914)**

I L R 42 Cal 751

Transferability—Purchase by landlord in execution of a money decree without objection by tenant—Title and possession Where an under raiyati holding was without objection on the part of the under raiyat sold successively in execution of two money decrees and purchased at the first sale by a stranger and at the second by the landlord who was the decree holder. *Held*, that the title of the landlord purchaser should prevail. **PRAMATHA BEUSAN DEB v RAM CHARAN MONDAL (1917)**

22 C W N 124

UNDER-TENANT*See* **BENGAL RENT ACT, 1880 s 13**

2 Fat. L J 75

See **LANDLORD AND TENANT**

I L R 45 Cal 736

UNDER-TENURE*See* **HOMESTEAD LAND**

I L R 42 Cal 638

See **REVENUE SALE**

I L R 37 Cal 519

Act VIII of 1886, B C, s 15—Court sale of under tenure, if collusive and fraudulent, does not destroy tenancy—Second appeal—Findings of fact If a Court sale of an under tenure under Act VIII, B C, of 1886 had been the result of a corrupt agreement between the under tenure holder and the purchaser at the sale, the purchaser would lose the benefit of s 16 of the Act, specially if the default in payment of rent had been deliberately incurred in furtherance of such an agreement. The findings of fact of the Court of first appeal in this case (which did not result from the mis construction of a document or the mis application of law or procedure but depended upon the evidence in the case) being that there had been no fraud or collusion, the High Court had no authority to go behind them in second appeal. **THE MIDNAPUR ZEMINDARI COMPANY v UNA CHARAN MONDAL**

24 C. W. N 201

Effect of sale of under tenure by co-sharer landlord for arrears of rent—Non-registration of purchase in execution sale by the whole body of landlords—Locus standi to maintain a suit—Rent Recovery Act (X of 1859), ss 27, 105 106, 108, 109 and 110—Civil Procedure Code (VIII of 1859), s 259—Landlord and Tenant Procedure Act (Beng VIII of 1863) While under

UNDER-RAIYATI HOLDING.*See* **LANDLORD AND TENANT**

UNDER-TENURE—contd.

s. 103 of Act X of 1859 which contemplates a decree by the landlord, or the whole body of land lords, for an arrears of the entire rent due in respect of an under tenure, it is the tenure that is sold, under s. 103 which does not contemplate a decree for an arrears of rent, but a decree for money due on account of a share of rent and a suit for it by only a sharer in a joint undivided estate, it is only the right, title and interest of the judgment debtor in the under tenure that passes. *Doolar Chand Sahoo v Lala Chhabil Choudh.*, L. R. 6 I A 47, 3 C L. R. 681, and *Shamchand Kundu v Broj Nath Pal Chowdhary* 12 B L R 484, 21 W. R. 94, followed in principle. The purchaser of an under tenure under s. 103 of Act X of 1859 is entitled to maintain a suit for possession against a subsequent purchaser under s. 103, though he has not got his name registered in the landlord's sherista. *Kristo Chunder Ghose v Ray Kristo Bandyopadhyay*, 1 L R 12 Calc 24, followed. *Lachhmaran Mitter v Khetro Pal Singh Roy*, 13 B L R 146, 20 W R 350, referred to. *Palit Shahn v Hari Mahanti*, 1 L R 27 Calc 789, distinguished. *Bichitransawa Roy v Behari Lal Pandit*, 5 C L J 89, questioned. The mere fact that a person cannot succeed in a suit does not mean that he has no *locus standi* to maintain the suit. It is only where the Legislature distinctly or in effect provides that certain conditions must be fulfilled to entitle a person to maintain a suit, and those conditions precedent are not fulfilled, that the person has no *locus standi* to sue, *NILADBI MAHANTI v DIGNITRANAND ROY* (1910) 1 L. R. 37 Calc. 823

UNDERTAKING.

— unconditional, to pay—

See *VANTHAMANAM*

1 L. R. 38 Mad. 660

UNDERVALUATION OF SUIT.

See *JURISDICTION* 1 L. R. 38 Calc. 639

UNDISCHARGED BANKRUPT

— Vesting order under the Indian Insolvency Act, 1848 (II & 12 Act, C 21), s. 7—Subsequently acquired property, title to—Right of stranger to dispute title without alleging or proving intervention by the Official Assignee. At the trial of this suit, it appeared, according to the admissions made by the plaintiff's witnesses and according to the original documents produced, that the plaintiff's predecessor in title, one J, had a vesting order made against him on two occasions under s. 7 of the Indian Insolvency Act, 1848, viz., on the 2nd December 1899 and on the 4th May 1905. In case of neither insolvency did J get his final discharge. On the 1st August 1911, J acquired the premises in dispute from one D by means of a conveyance, bearing that date. After J's death, one P took a conveyance of the said premises from the administrator appointed by the Court to J's estate. P was alleged by the plaintiff to be a mere benamidar for himself and on the 20th May 1916, a deed of relinquishment was executed by P in favour of the plaintiff. The issue in the case broadly speaking was whether the plaintiff could prove his title. There was no reference in the written statement of the defendant to the fact of either of the two insolvencies of J, which were apparently brought to the notice of

UNDISCHARGED BANKRUPT—contd.

the defendant's advisers at a late stage, if not actually during the conduct of the plaintiff's case. In this state of things, at the close of the plaintiff's case, the defendant's counsel took the point that the plaintiff's suit should be dismissed without calling on the defendant to enter on his defence, the ground being that the title to the said premises had been shown to be vested in some one else according to the plaintiff's evidence. Held, on the authority of *Herbert v. Sayer*, 5 Q. B. 965, that the action must go on, as the point raised was not available to a stranger (as distinct from the Official Assignee or his assign) as a complete defence unless he had pleaded and was able to prove that the Official Assignee had intervened. In the circumstances of this case leave was given to the defendant to amend his written statement in order to state the fact of each of the said insolvencies and to aver and prove if he could, that at any date down to the institution of this suit the Official Assignee had intervened. *DABARATHY SINGHA v MANAHULTA ASH* (1920) 1 L. R. 47 Calc 981.

UNDISCLOSED PRINCIPAL.

See *HUNDI, SUIT ON*

1 L. R. 46 Calc 663

See *KUTMAUN RULES* (1894), R 17

1 L. R. 42 All 642

See *PRINCIPAL AND AGENT*

1 L. R. 29 Calc 802

UNDIVIDED FAMILY

See *HINDU LAW—ALIMENTATION*

1 L. R. 35 Mad. 177

UNDIVIDED INTEREST

— purchase of—

See *SALE FOR ARREARS OF REVENUE*

1 L. R. 29 Calc. 353

UNDUE ADVANTAGE.

See *TEMPORARY INJUNCTION*

1 L. R. 41 Calc 436

UNDUE INFLUENCE.

See *BENGAL TENANCY ACT, 1885*, s. 29

1 Pat. L. J 76

See *CIVIL PROCEDURE CODE (ACT X OF 1908)* O XXII, R 3

1 L. R. 38 Mad 850

See *CONTRACT ACT (IX OF 1872)*—

S 18

See *HINDU LAW—WILL.*

1 L. R. 39 Bom 441

See *INTEREST*

1 L. R. 42 Calc 652, 690

See *LIMITATION ACT (XV OF 1877)*, SCH. II, ART 91. 1 L. R. 38 Mad 221

See *PARDANASIN LADY.*

1 L. R. 43 All. 525

See *SUCCESSION ACT, 1865*, s. 2

See *TRUSTS ACT (II OF 1882)* s 68

1 L. R. 43 Bom 178

See *WILL* . . 1 L. R. 38 Calc. 355

UNDUE INFLUENCE—contd.

1 ————— *Contract—Illegal composition of non-compoundable offence—Slifting prosecution—Suit for refund—Contract Act (IX of 1872) ss 16, 19* No refund of money or return of security, given under agreement not to prosecute a criminal case will be allowed unless circumstances disclose pressure or undue influence. Mere fear of punishment in a criminal case does not constitute undue influence. *Jones v Merio Melshire Building Society* [1892], 1 Ch 173, referred to. *AMJADUNNESA BIBI v RAHIM BUKSH SHIKDAR* (1914) 1 L R 42 Cal 286

2 ————— The Judicial Committee did not approve of the idea that in India the law would make the possession of reputation or high standing an element of suspicion. *BAL GANGADHAR TILAK v SHRI SHRINIVAS PANDIT* (1915). 19 C W N 729
1 L R 39 Bom 441

UNHYPOTHECATED PROPERTY

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 90 1 L R 34 Bom 540

UNENFRANCHISED PERSONAL INAM OF LANDS

Attachment in execution of decree validity of Unenfranchised inam lands granted not for future public or private services but as a matter of favour for the maintenance of the donee and his heirs are liable to attachment and sale in execution of a decree against the holder of the inam. *A Vissappa v A Rama Jogi* (1865) 2 M H C R. 319 and *Bhanappa Garu v Kamanna S A* No 1397 of 1918 (unreported) followed. *VEKATARAMA AYYAR v CHANDRANEGARA AYYAR* (1921)
1 L R 44 Mad. 632

UNITED PROVINCES AND OUDH ACTS.

See NORTH WEST PROVINCES AND OUDH ACTS

————— 1869—I—

See OUDH ESTATES ACT

————— 1873—VIII—

See NORTHERN INDIA CANAL AND DRAINAGE ACT

XVIII

See NORTH WEST PROVINCE REPT ACT

XIX

See N W P LAND REVENUE ACT

————— 1876—XVII—

See OUDH LAND REVENUE ACT

————— 1881—XII—

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————— 1899—III—

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See UNITED PROVINCES MUNICIPALITIES ACT

X

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————— 1901—II—

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See BUNDELKHAND ALIENATION OF LAND ACT

————— 1904—I—

See GENERAL CLAUSES ACT

————— 1910—IV—

See UNITED PROVINCES EXCISE ACT

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See UNITED PROVINCES COURT OF WARDS ACT

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See UNITED PROVINCES PREVENTION OF ADULTERATION ACT

————— 1916—II—

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UNITED PROVINCES COURT OF WARDS ACT (III OF 1899)

————— ss 2, 8, 9 34—

See NORTH WESTERN PROVINCES LAND REVENUE ACT 1873 s 194

1 L R 42 All 509

————— ss 10 and 37—

See UNITED PROVINCES LAND REVENUE ACT 1873 s 194

1 L R 42 All 509

————— ss 16 20—*Claim not notified—Maintainability of suit—Admissibility of documents* R 20 of the Court of Wards Act 1899, applies only to cases where persons who have notified the claims under s 16 of the said Act have failed to produce their documents. Where the property of the debtor was taken over by the Court of Wards at a time when the Court of Wards Act of 1899 was in force and the creditor did not notify his claim under s 16 but brought a suit upon the bonds after the property was released by the Court of Wards held that the bonds were admissible in evidence and the suit was maintainable. *Collector of Ghazipur v Fazloddin Beg* 10 All. L. J. 236, overruled. *ANBAR ALI v KALYAN DAS* (1915) 1 L. R. 27 All. 533

————— ss. 16, 18, 49—*Decree on suit not made while debtor was a ward of Court—Collector not made a party—Execution of decree* Collector is a decree

UNITED PROVINCES COURT OF WARDS ACT (III OF 1899)—*contd*

ss. 16, 19, 49—*contd*

for money against M based upon a contract entered into by the latter after he had become a ward of the Court of Wards. In execution of the decrees certain movable property belonging to M was attached. Upon objection taken that a certificate that the claim was notified under s. 16 of the Court of Wards Act, 1899, should be obtained from the Collector, *held* that the decree was bad, inasmuch as the suit and proceedings in execution were a fraud upon the Court, and that as soon as it was brought to the notice of the Court that the judgment debtor was a ward of Court, the Court should have of its own motion then and there made the Collector a party and waited for such defence as the Collector might put forward. **MUAZZAM ALI SHAH v. CHUNNI LAL** (1911) **I L R 33 All 791**

s. 48—

Notice of suit—"Property of any ward"—Property attached in execution of a decree held by a ward. *Held*, that the term "property of any ward" as used in s. 48 of the United Provinces Court of Wards Act, 1899, does not include property attached in execution of a decree held by a ward. No notice is, therefore, required of a suit brought by a person claiming title to such property for a declaration of his title. **LAL SINGH v. THE COLLECTOR OF FARRUKHABAD** (1914) **I L R 38 All 331**

Notice of suit—Amendment of plaint—Whether fresh notice rendered necessary by amendment. Certain persons who intended bringing a suit against a ward under the Court of Wards upon a promissory note of date the 20th of November, 1909, served upon the Collector by way of notice under s. 48 of the Court of Wards Act, 1899, a copy of the proposed plaint, in which they stated—"For a long time there were money dealings between the shop of the plaintiffs and Kunwar Pohkar Singh, caste Thakur, resident of mauza Ghungehal. Accordingly the said Pohkar Singh, having adjusted his account under the former promissory note, dated the 15th of November, 1907, executed a promissory note on the 20th of November, 1909." In the course of the suit the plaintiffs discovered that they could not succeed on the promissory note of the 20th of November, 1909, inasmuch as Pohkar Singh was already a Ward of Court at the date of its execution, and accordingly asked and obtained leave to amend their plaint and base their claim entirely on the promissory note of the 15th of November 1907; *held*, that in these circumstances no fresh notice to the Court of Wards was rendered necessary by the amendment of the plaint. **MALNARY v. THE SECRETARY OF STATE FOR INDIA**, **I L R 38 Cal 797**, referred to **BALDEO PRASAD v. THE COLLECTOR OF PHILMUT** (1914) **I L R 37 All 13**

UNITED PROVINCES COURT OF WARDS ACT (IV OF 1912).

ss. 2, 8, 9, 10 and 34—

See **N W P LAND REVENUE ACT, 1873**, s. 194. **I L R 42 All 509**

ss. 8 and 11—*Disqualified proprietor*—Mortgage decree against Court of Wards—Discharge of estate from superintendence—Order by Govern-

UNITED PROVINCES COURT OF WARDS ACT (IV OF 1912)—*contd*

ss. 8 and 11—*contd*

ment of India—Validity of decree. Where a mortgagor has been declared a disqualified proprietor under the United Provinces Court of Wards Act, 1912 and a final mortgage decree is made against the Court of Wards during its superintendence of the estate, the decree is binding upon the mortgagor after the Local Government, acting under an order of the Government of India, has discharged the estate from superintendence, in the absence of proof that the proceedings of the Court of Wards were a nullity. **NAENDRA BHANER SINGH v. THE OODH COMMERCIAL BANK, LD** **I L R 43 All 473**

UNITED PROVINCES EXCISE ACT (IV OF 1910)

s. 40—*Rules framed under Act—Transfer or sub lease of licence—Agreement to share profits*. The plaintiff entered into an agreement with the defendant, who was a drug contractor, in consideration of a sum of money advanced by him to the defendant, that he would be entitled to a share in the profits or responsible for the losses of the drug business to an extent therein set forth. *Held*, that such an agreement was neither a transfer nor a sub lease of the drug contractor's licence and did not constitute a violation of s. 82 of the rules framed under the United Provinces Excise Act, 1910. **SHAM BHARI LAL v. MALHI** (1916) **I L R 39 All 107**

s. 60—*Unlawful possession of excisable article—Search warrant—Indian Oaths Act (X of 1873)*, s. 13—*Presumption that oath was duly administered*. An excise inspector searched the house of a person suspected to be in illicit possession of an excisable article, namely cocaine and cocaine was found in the house. *Held*, that the subsequent conviction of the person in possession of the said house was not rendered illegal by the fact that the excise inspector had not previously obtained a search warrant. **EMPEROR v. ALLAHUDDIN KHAN**, **11 All. L. J 442** **I L R 35 All 553**, **EMPEROR v. HARGOBIND**, **I L R 35 All 1**, referred to. *Held*, also, that it is a reasonable presumption that an oath has been duly administered to a witness appearing before a Court, although the record of the Court may contain no reference to that fact. **EMPEROR v. SAYED AHMAD** (1913) **I L R 35 All 575**

s. 63—*Criminal Procedure Code, s. 337—Unlawful possession of excisable article—Search warrant—Conviction not invalidated owing to absence of warrant*. Where the superintendent of police and a sub inspector searched the house of a person suspected of being in illicit possession of excisable articles and such articles were found in the house searched, it was *held* that the conviction of the owner of the house under s. 63 of the United Provinces Excise Act, 1910, was not rendered invalid by the fact that no warrant had been issued for the search, although it was presumably the intention of the Legislature that in a case under s. 63 where it was necessary to search a house, a search warrant should be obtained beforehand. **EMPEROR v. ALLAHUDDIN KHAN** (1913) **I L R 35 All 358**

UNITED PROVINCES EXCISE ACT (IV OF 1910)—*contd*

— s 64 (c)—*Breach of conditions of licence*
Breach committed by servant—Responsibility of master In order to establish an offence under s 64 (c) of the United Provinces Act 1910 against a licence holder in respect of the alleged keeping of incorrect accounts by a servant, it must be shown that the licence holder himself allowed the offence to be committed by his servant or was cognizant of what his servant was doing. *Ex PEROR v RAM DAS* (1918) I L R 40 All 523

UNITED PROVINCES GENERAL CLAUSES ACT (U P ACT 1 OF 1904)

S. GENERAL CLAUSES ACT

UNITED PROVINCES LAND REVENUE ACT (U. P. ACT III OF 1901)

— s 4—*Mahal—Part ion—Uncult cable land—Jurisdiction—Civil and Revenue Courts* Land, such as roadways uncultivated plots and even abadi sites of villages are all within the boundaries of a mahal although no revenue may be derived from them. Thus land forming the site of a *parao* but bearing a *khasra* and *khata* number in the revenue records must be considered as part of the mahal in which it is situated and can only be partitioned by a Court of Revenue. *MAHMUD JAHAN BEGAM v GOBIND RAM* I L R 43 All 45

— s 18—*Suit for rent before Assistant Collector—Sanction to prosecute granted by him—Officer at the time of granting sanction placed in charge of another sub-division of the same district—Jurisdiction* An Assistant Collector tried a suit under the Agra Tenancy Act in the course of which a question as to the genuineness of a certain document tendered in evidence by the defendants arose. Subsequently to the decision of that suit the Assistant Collector was put in charge of the work of another sub-division in the same district. *Held* that such a transfer of work did not deprive him of jurisdiction to grant sanction for a prosecution in respect of the forging of the document so tendered. *DALIT SINGH v NAVAL* (1917) I L R 39 All 297

— s 32 (d)—*Mahal—Land held revenue-free by Government not of necessity excluded from the mahal* *Held* (i) that s 32 clause (d) of the United Provinces Land Revenue Act 1901, shows that there may be in a mahal persons holding land revenue free and the land so held yet forms part of the mahal, and (ii) that a finding as to whether such land does or does not form part of the mahal is not a pure finding of fact but a mixed finding of fact and law. *ABDUL RAHIM KHAN v AHMAD KHAN* (1914) I L R 38 All 231

— s 34—

See AGRICULTURE ACT (II OF 1901)
 s 158 I L R 39 All 689

— s 38—*Agra Tenancy Act (II of 1901), s 41—Ex proprietary tenant—Fetachment of rent* The tenant of an ex proprietary holding whose rent had been fixed by the Collector under s 38 of the United Provinces Land Revenue Act, entered into an agreement with the zamindar to pay an enhanced rent. The agreement was

UNITED PROVINCES LAND REVENUE ACT (U P. ACT III OF 1901)—*contd*

— s 36—*contd*

effected by means of a registered instrument, and the enhanced rent was not in excess of the beneficial rate mentioned in s 10 of the Act, but it was made within the period of ten years from the fixation of rent by the Collector. *Held* that such agreement was not open to any legal objection. *BRAIRON PRASAD v SOMWARTUPU* (1917) I L R 39 All 318

— ss 51, 52, 59—*Assignment of Government Revenue—Right of Government to enhance or remit revenue* An assignee of Government revenue takes the assignment subject to all the rights of Government to assess, enhance, reduce, remit or suspend the revenue. *BEVI MADHO v BHAGWAN PRASAD* (1911) I L R 33 All 256

— ss 56 and 86—*Cess—Gaonkiarch—Civil and Revenue Courts—Jurisdiction* In a permanently settled portion of the Mirzapur district the tenants were in the habit of paying to their zamindars an addition to their rent of 3 to 4 pies per rupee under the name of *gaon kiarch*. This additional payment, however was not recorded under s 56 or s 86 of the United Provinces Land Revenue Act and it did not appear from the evidence that it could be regarded as part and parcel of the contract of rent. *Held* that, whether or not a suit might lie in a Civil Court for the recovery of the payment known as *gaon kiarch* no such suit would lie in a Court of Revenue. *RADHA MADHO LALJI v RAM SEWAK* I L R 43 All 422

— *Market—Right to levy tolls—Cess* *Held*, that the levy by the owner of a private market of market dues at so much per head for every beast sold and of rent for land occupied by stalls is not illegal. *Sukdeo Prasad v Nihal Chand* I L R 25 All 740 distinguished. *SADA NAND PANDU v ALI JAN* (1910) I L R 32 All 123

— *Cess—Rent—Rent payable partly in cash and partly in kind* Certain tenants holding under a *gabulati* agreed to pay as rent a fixed sum in money and also certain quantities yearly of *bhusa chori*, grain and sugar-cane described in the *gabulati* as *razam zamindari*. *Held*, that notwithstanding that the payments in kind were described as '*razam zamindari*' they were nevertheless part of the rent and could be recovered by the lessor, and did not fall within the purview of s 56 or s 86 of the United Provinces Land Revenue Act 1901. *Sri Pam v Asghar Ali* I L R 35 All 19, distinguished. *PANGY LAL v JASWA* (1916) I L R 38 All 286

— ss 56 233—

See JURISDICTION OF CIVIL COURTS

I L R 34 All 358

— s 99—

See S 51 I L R 33 All 556

— ss 106 and 233 (k)—*Partition of isolated plot in abadi—Owners not co-sharers—Civil and Revenue Courts—Jurisdiction* *Held* that a suit for partition of an isolated plot in the *abadi* of a village the parties not being co-sharers in the mahal but merely the purchasers of the plot from the zamindars, lies in the Civil Court and not in the Revenue Court. *Pam Paton v Mewtor*

UNITED PROVINCES LAND REVENUE ACT (U. P. ACT III OF 1901)—*contd.*

ss 107 and 233—*contd.*

Akmal 16 Indian Cases 878 followed. *Pam Dayal v. Meys Lal, I L R 6 All 452 (154)*, referred to. *Narain Das v. Bhanu Narain, I L R 31 All 330*, distinguished. *Rantu Lal v. Baldeo Sahai, I L R 43 All 454*

s 107—

See PARTITION ACT (IV OF 1893) ss 1
2 AND 3 I L R 35 All 387

ss 107, 111—

1. *Partition—Joint Hindu family—Claim for partition by widow in possession in lieu of maintenance merely though recorded, solati causd as a co-sharer.* *Held*, that the widow of a member of a Hindu family who is in possession of a portion of the family property under a family arrangement in lieu of maintenance merely, is not a co-sharer and cannot in virtue of such possession enforce a claim for partition of the share of which she is so in possession even though her name may be recorded solati causd as a co-sharer. *Kailash Kumar v. Budri Prasad S A No. 311 of 1913 decided 17th July 1913* and *Bhoop Singh v. Phool Kowar, N W P H C Rep 368* and *Jhanna Kuar v. Chain Sukh, I L R 3 All 400*, followed. *Bhupat Singh v. Mohan Singh I L R 19 All 324* referred to. *Habibullah v. Kuchimba S A L J 431* distinguished. *Pewa v. Jas Kunwar (1913) I L R 35 All 527*

2. *Partition—Joint Hindu family—Hindu widow—Claim for partition by widow in possession in lieu of maintenance merely though recorded, solati causd, as a co-sharer.* *Held*, that the widow of a member of a joint Hindu family who is in possession of a portion of the family property under a family arrangement in lieu of maintenance merely is not a co-sharer and cannot in virtue of such possession enforce a claim for partition of the share of which she is so in possession even though her name may be recorded solati causd as a co-sharer. *Bhoop Singh v. Phool Kowar N W P H C Rep 368* and *Jhanna Kuar v. Chain Sukh, I L R 3 All 400*, referred to. *Kailash Kumar v. Budri Prasad (1913) I L R 35 All 548*

ss 110, 111 and 112—*Partition—*

Question of proprietary title. One of the co-sharers in a village applied in a Court of Revenue for partition, whereupon another of the co-sharers raised the objection that the village had already been partitioned privately and could not again be divided. *Held*, that this objection raised a question of proprietary title in respect of which the Court of Revenue had jurisdiction to refer the parties to the Civil Court. *Ram Narain v. Jagannath Prasad (1915) I L R 33 All 115*

s 111 (1) (b)—

Partition—Non applicant required to file suit in Civil Court—Non-compliance with order—Appeal. A Collector trying a partition case made an order under s 111 (1) (b) of the United Provinces Land Revenue Act 1901, against the non applicant. He failed to comply with this order but alleged that in a civil suit between the parties to the partition case it had been decided in respect of certain non revenue-paying property that both sides were members of a

UNITED PROVINCES LAND REVENUE ACT (U. P. ACT III OF 1901)—*contd.*

s 111 (1) (b)—*contd.*

joint Hindu family. The Collector, however overruled his objection finding that the rule did not apply to revenue paying property. *Held*, that no appeal lay to the District Judge from this order. *Ram Prasad v. Mukand Lal (1915) I L R 38 All 70*

Partition proceedings

Question of proprietary title—Party raising question ordered to file civil suit—Suit filed beyond time allowed—Suit barred. Where an order has been made by a Court of Revenue under s 111 (1) (b) of the United Provinces Land Revenue Act, 1901, requiring a party to partition proceedings to institute within three months in the Civil Court a suit for the determination of a question of proprietary title raised in such proceedings, the Civil Court has no jurisdiction to entertain a suit if it is not filed within the time limited. *Pawar Lal v. Gopi, 4 A L J 713*, followed. *Randhir Singh v. Bhagwan Das I L R 35 All 451* referred to. *Tamir Ali Shah v. Shah Muhammad Khan (1918) I L R 41 All 211*

ss 111, 112—*Private partition—Lands held under a private partition claimed by non applicant—No question of proprietary title—Appeal.* When in a suit for partition of revenue paying lands one of the non-applicants alleged that under a private partition he was in possession of certain lands and claimed those lands for himself and the Collector in appeal ordered those lands to be given to him. *Held*, that no question of proprietary title was raised and no appeal lay to the District Judge against the order of the Collector. *Tuls Das v. Gate Ram, All W N (1904) 225* followed. *Muhammad Jan v. Sadanand Pandey I L R 28 All 394*, distinguished. *Muhammad Nasser Ullah Khan v. Muhammad Isma Khan (1910) I L R 32 All 523*

ss 111, 112, 233 (1)—

Partition—Hindu law

Joint Hindu family—Minor—No necessity for minor to be specially represented in partition proceedings. Where a partition of the property of a joint Hindu family in which one of the members was a minor was found to have been properly carried out with due regard to the interests of the minor it was held to be no ground for upsetting the partition, were such a course possible having regard to s 233 (1) of the United Provinces Land Revenue Act, 1901 that the minor was not represented in the partition proceedings by a formally appointed guardian. In such circumstances a minor member of the family is suitably represented by the managing member or members. *Bhagwati Prasad v. Bhagwati Prasad (1912) I L R 35 All 126*

Civil Procedure Code

(1905) s 11 O 11, r 2—*Partition—Suit for possession of property the subject of partition.* A person who was really entitled to one half of a four biswa zamindari share but was recorded only in respect of a 3½ biswa share applied for partition of the latter share. After the date fixed for filing objections the person who was recorded in respect of the remaining one-fourth biswa share came in and asked for partition of that one-fourth biswa share. The partition was completed, but sub-

UNITED PROVINCES LAND REVENUE ACT (U. P. ACT III OF 1901)—*contd.*

111, 112, 238 (k)—*contd.*

sequently the original applicant brought suit to recover the one fourth biswa share. *Held*, that the suit was not barred by s 233 (k) of the United Provinces Land Revenue Act (1901), neither was it barred by O II, r 2, of the Code of Civil Procedure, inasmuch as that rule did not apply to proceedings under the Land Revenue Act, nor by the rule of *res judicata*. *KALKA PRASAD v. MANMOHAN LAL* (1916) . . . I. L. R. 38 ALL 302

s 118—*Partition—Co sharers—Effect of order allotting to one co sharer land upon which are standing buildings belonging to another co-sharer* Where a partition has been effected under the provisions of the United Provinces Land Revenue Act, 1901, and the site of the house of one co sharer has been allotted to the share of another co sharer, the presumption is that the owner of the house is to retain possession of the house. The mere fact that ground rent has not been assessed cannot deprive the owner of the house of his right to it. *Isaur Prasad, v. Jagannath Singh*, All. Weekly Notes, 1906, 194, followed. *Nandan Pat Tewari v. Radha Kishan Kalwar*, 5 Indian Cases 684, distinguished. *SABUR LAL v. LALA* (1917) . . . I. L. R. 39 ALL 707

s 121—*Plaintiff referred to Civil Court—Suit filed within time but subsequently withdrawn—Second suit filed after prescribed period* Where a Revenue Court acting under s 111 of the United Provinces Land Revenue Act, 1901, required a party to the case before it to institute to a suit in the Civil Court within three months, and the plaintiff did so, but for some technical reason had to withdraw it with permission to bring a fresh suit, which was in fact filed without delay, but after the three months had expired: *Held*, that the second suit must be considered to be a continuation of the first suit, and it could not, therefore, be held that the plaintiff had not complied with the order of the Revenue Court. *RANDHIR SINGH v. BHAGWAN DAS* (1913) . . . I. L. R. 35 ALL 541

ss 142, 143, 146—

See PENAL CODE (ACT XLV OF 1860), s. 23B. . . I. L. R. 32 ALL 116

ss. 203 to 207—*Agria Tenancy Act (II of 1901), s 95—Arbitration—Decision of Revenue Court based on award—Dispute between rival tenants as to possession of land—Suit for possession—Jurisdiction—Civil and Revenue Courts* *Held*, that s 207 of the United Provinces Land Revenue Act, 1901, does not bar a separate suit on title, independently of the decision of the Revenue Court based on the award, to recover possession of property which has been the subject of arbitration proceedings under ss 203 to 206 of the Act. *Girdhars Chawbe v. Ram Bhawan Mehar*, 11 ALL L J 85, approved and followed. *Held*, further, that a suit between the rival tenants adjoining holdings to determine the question whether a certain parcel of land appertains to the holding of the one or of the other is cognizable by the Civil Court. *Bhaw Puri v. Ram Lal*, I L R 33 ALL 795, and *Jagannath v. Ajaydha Singh*, I. L. R. 35 ALL 116 referred to. *TARSI SINGH v. HARDEO SINGH* (1917) . . . I. L. R. 39 ALL 711

UNITED PROVINCES LAND REVENUE ACT (U. P. ACT III OF 1901)—*contd.*

s. 233—

See s 106 . . . I. L. R. 43 ALL 454

See s 311 . . . I. L. R. 35 ALL 126
I. L. R. 38 ALL 302

See JURISDICTION OF CIVIL COURTS
I. L. R. 34 ALL 358

Partition—Land belonging to plaintiffs' mahal allotted to defendants and a different plot to plaintiffs—Civil and Revenue Courts—Jurisdiction By a mistake of a partition amiri a plot belonging to the defendants was allotted to the plaintiffs and two plots belonging to the plaintiffs were allotted to the defendants: *Held*, that no suit would be in a Civil Court to rectify this error. *Kishan Prasad v. Aadher Mah*, All W N (1900) 11, distinguished. *TIRBENI SAHAI v. GOKUL PRASAD* (1911) . . . I. L. R. 33 ALL 440

Revenue Court irregularly entertaining an application for allotment of a share to applicant—Suit in Civil Court for declaration of title as to share so allotted—Jurisdiction Some of the co sharers in a mauza applied for partition. *H*, one of the non applicants, came in within the time limited in the proclamation issued under s 110 of the Land Revenue Act, 1901, and asked for his share also to be partitioned off. After the time for objecting to the partition had expired, *L* filed an application claiming a share in the portion alleged by *H* to be his share, and without notice to *H* this application was granted, and part of the share allotted to him was given to *L*. *H* then sued in the Civil Court asking for a declaration of his title to the plots so allotted to *L*. *Held*, that, however erroneous the procedure of the revenue authorities might have been *H*'s suit was barred by s 233 (k) of the Land Revenue Act, 1901. *Muhammad Sadiq v. Lavte Ram*, I L R 23 ALL 291, followed. *Khasay v. Jugla*, I L R 23 ALL 432, and *Muhammad Jan v. Eadnanda Pande*, I L R 28 ALL 394, distinguished. *Per Curiam*—"We can only repeat here what was laid down in the full bench case of *Muhammad Sadiq v. Lavte Ram* (I L R 23 ALL 291) in which it was held that any exercise of jurisdiction of a Civil Court which would disturb or in any way affect the distribution of land made by partition is barred by s 233 of Act III of 1901 whatever question is raised." *LACHMAN DAS v. HANUMAN PRASAD* (1910) . . . I. L. R. 33 ALL 169

Civil Procedure Code (1908), s 11—*Res judicata—Joint mahal formed on partition—Suit by one co-sharer against the other for exclusive possession of entire mahal* *A* and *B* applied jointly, as against the other co-sharers, to have certain revenue paying property made into a joint mahal in their names, and this was done. Thereafter *A* sued *B* on title for exclusive possession of the entire mahal: *Held*, that this suit was not barred, either by the principle of *res judicata* or by s 233 (k) of the United Provinces Land Revenue Act, 1901. In the partition proceedings no question of title as between the present plaintiff and defendant had been raised, and in his suit the plaintiff did not seek to alter the constitution of the mahal as it had been formed by the revenue authorities. *LAL BISHARI v. FAKALI KUNWAR* . . . I. L. R. 42 ALL 309

UNITED PROVINCES LAND REVENUE ACT (U. P. ACT III OF 1901)—*contd*

s. 233—*contd*

Civil and Revenue Courts—Jurisdiction—Partition—Land of a third party alleged to be wrongly included in a partitioned by imperfect partition—Suit for recovery of possession in Civil Court. Where land belonging to one party was, apparently by mistake and without notice to the person who claimed to be the rightful owner thereof, included in another partition and made the subject of an imperfect partition it was held that the person who claimed to be the owner of the land so dealt with was not debarred by s. 213 (k) of the United Provinces Land Revenue Act, 1901, from suing in the Civil Court to have his right to the land declared and to recover possession thereof. *Muhammad Sadiq v Lavie Ram*, I L R 23 All 291, distinguished. *Quare*. Whether s. 233 (k) of the United Provinces Land Revenue Act, 1901, applies at all to an imperfect partition. *SHAMBERU SINGH v DALJIT SINGH* (1916) I L R 38 All 243

Partition—Suit to recover property which had been the subject of a partition. Certain co-shares in a village applied for partition of their shares under s. 107 of the United Provinces Land Revenue Act, 1901. Notice was issued to all the recorded co-shares as required by s. 10 of the Act, and thereupon an application was made by other co-shares, under cl. (2) of the section, praying for partition of their shares. In that application the applicants set forth the extent of the shares which they prayed should be formed into one lot, or *guzra*. Subsequently a proceeding was drawn up under s. 114 of the Act, declaring the basis upon which partition was to be effected. Some time after the partition was completed certain of the parties to the partition proceedings instituted a suit in a Civil Court to recover possession of shares other than those specified in the application aforesaid, upon which the partition had been based. Held by BANERJI and TUDRALL, J J (RICHARDS, C J, dissenting), that the suit was barred by s. 233 (k) of the Act. *Muhammad Sadiq v Lavie Ram*, I L R 23 All 291, referred to. *Shambhu Singh v Daljit Singh*, I L R 38 All 243, distinguished. *Bhaji Misir v Kali Prasad Misir* (1917)

I L R. 39 All 409

Partition—Property wrongfully assigned to one party owing to a fraud practised on the Revenue Court—Suit in Civil Court to recover property so assigned—Jurisdiction. An action will lie in a Civil Court to provide a remedy where a person's rights have been infringed by some fraudulent act of the defendant, even though the fraud was one practised upon a Revenue Court, and would affect the result of partition proceedings. *Maladen Prasad v Talia Bibi* I L R 25 All 19 and *Raghunandan Ahir v Sheonandan Ahir* I L R 41 All 182, followed. *Muhammad Sadiq v Lavie Ram*, I L R 23 All 291 referred to. *JRUMAK RAI v BIRESHWAR RAI* (1919)

I L R. 41 All 626

Partition—Partition obtained by fraud—Subsequent suit with the object of setting aside the partition not barred. S. 233 (k) of the United Provinces Land Revenue Act, 1901, will not operate so as to bar a subse-

UNITED PROVINCES LAND REVENUE ACT (U. P. ACT III OF 1901)—*contd*

s. 233—*contd.*

quent suit in a Civil Court having for its object the upsetting of a partition, when the basis of suit is the allegation that the partition ordered by the Revenue Court was due to a fraud, practised upon that Court and upon the plaintiffs by the defendant. *RAGHUNANDAN AHIR v SHEONANDAN AHIR* (1916) I L R. 41 All 182

Imperfect partition—Share legally the property of one party to the partition proceedings allotted to another on the strength of entries in the khewat—Suit, after confirmation of partition, for a declaration of plaintiff's title to the share. Plaintiff, as the result of a suit for pre-emption, got possession of certain zamindari property, but never obtained mutation of names in respect thereof. Some years after this pre-emption suit, the defendants applied for imperfect partition of their share as recorded in the khewat which included the property decreed to the plaintiff. During the partition proceedings the plaintiff applied for mutation of names in his favour, but failed, and the partition was concluded on the basis of the entries in the khewat. Thereafter the plaintiff brought the present suit for a declaration that the pre-empted share, which stood in the names of the defendants and which had been allotted to them by the partition, belonged to him and did not belong to them. Held, that the suit was barred by s. 233 (k) of the United Provinces Land Revenue Act, 1901. *Muhammad Sadiq v Lavie Ram*, I L R 23 All 291, followed. *Bhaji Misir v Kali Prasad Misir*, I L R 39 All 409, and *Shambhu Singh v Daljit Singh*, I L R 38 All 243, explained. *Per Curiam*—"An examination of the plaint shows clearly that the object of the present suit is to upset partition proceedings. The plaintiff in his plaint sets forth the facts of the partition suit and the fact that he applied for correction of the khewat and failed. Hence he asks the Court for a declaration that he is entitled to the property. The case is in our opinion fully covered by precedent." *BHUPAL SINGH v USAGAR SINGH* I L R. 43 All 28

s. 234—

See CONTRACT ACT (IX OF 1872), s. 23

I L R. 39 All 51, 58

UNITED PROVINCES MUNICIPAL ACCOUNTS CODE.

See UNITED PROVINCES GENERAL CLAUSES ACT I OF 1904, s. 24

I L R. 40 All 105

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900)

See NORTH WEST PROVINCES AND OTHER MUNICIPALITIES ACT

s. 49—*Suit against a member of a Municipal Board for damages—Held: Act purporting to be done in official capacity. A member of a Municipal Board as such member, made report to the Board which resulted in the present action of certain persons for a municipal offence. The persons prosecuted were acquitted and thereafter filed a suit for damages for malicious prosecution against the maker of the report. Held, that the defendant was entitled to the notice provided for*

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900)—*contd*

s. 48—*contd.*

by s. 49 of the Municipalities Act, 1900. *Muham-
mad Sadiq Ahmad v Panna Lal*, I L R 26 All
220, distinguished *JOGAL KISHORE v JOGAL
KISHORE* (1911) . I L R. 33 All 540

ss. 87, 152—*Municipal Board—Refusal
of permission to re-erect a building—Remedy open
to applicant special appeal not suit* When a Muni-
cipal Board refuses permission to erect or re-erect a
building, the proper way to contest such refusal
is to appeal in the manner provided for by s. 152
of the United Provinces Municipalities Act, 1900
The applicant for permission cannot maintain a
civil suit for an injunction to restrain the Board
from interfering with the plaintiff's building
*ABDUS SAMAD v THE CHAIRMAN, MUNICIPAL
BOARD, MEERUT* (1916) I L R. 36 All 329

Held, that s. 152 does
not apply when the prohibition notice or order
issued by the Board is *ultra vires* and that s. 87 (5)
applies only to buildings of the kind referred to
in the preceding sub sections that is new buildings
in respect of which notice should have been given
under sub section (1) *EMPEROR v RAM DASSAL*
I L R. 33 All. 147

ss 88 and 91—*Municipal Board—
Power of Board to order demolition of structure over-
hanging a public road—Compensation—Offer to pay
compensation not a condition precedent to order for
demolition.* The owner of a house to which was
attached a balcony overhanging a public road
repaired the balcony, which had become dilapi-
dated, and made it serviceable, but without
obtaining the permission of the Municipal Board
therefor. The Board thereupon issued notice to the
house owner under s. 88 of the Municipalities
Act, 1900, to remove the balcony, and, in default
of compliance, prosecuted him: *Held*, that the
Board had power, under s. 88, cl (2), of the said
Act, to order the removal of the balcony without
assigning any reason, and that it was not necessary
for the Board, in the case of a notice issued under
s. 88, to tender or express its willingness to pay
compensation in respect of the structure the
demolition of which was ordered *EMPEROR v
NANNA LAL* (1913) . I L R. 35 All. 375

s. 123 (b) (i)—*Municipal Board—
Power of Board to make rules—Rules regulating use
by hawkers of parties of public roads* *Held*, that
the United Provinces Municipalities Act, 1900,
did not empower a Municipal Board to make
rules regulating the sale or exposure for sale of
goods in streets or public places under the control
of the Board *EMPEROR v IMAMI* (1912)
I L R. 35 All. 24

s. 130—

In order to render
a person liable to punishment for breach of the
rule made under cl (c) of s. 130 by reason of
the continuance of the sale of certain articles on
premises then used for such purpose it is necessary
that 6 months' notice in writing should have been
served upon him *EMPEROR v GHANMAN*
I L R. 38 All. 455

s. 147—

1. ——— *Municipal Board
—Jurisdiction—Prosecution in respect of matter
concerning which a civil suit was pending* The

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900)—*contd*

s. 147—*contd*

plaintiff to a suit against a Municipal Board was
permitted by the Court to erect certain structures
as specified in the decree of the Court. Subse-
quently a dispute arose as to whether the struc-
tures which the plaintiff had erected were within
or in excess of the powers given to him by the
decree, and the Court decided, and the Board did
not contest its decision, that the plaintiff had
exceeded his rights under the decree, and that
some portion of the said structures must be dem-
olished. The Board meanwhile took action against
the plaintiff under s. 147 of the United Provinces
Municipalities Act, 1900. *Held*, that it was not
open to the Board to prosecute the plaintiff in
respect of the structures, pending the decision of
the Civil Court and to continue the prosecution
after its decision. *EMPEROR v BALDIO PRASAD*
(1910) . I L R. 32 All. 620

2. ——— *Conviction for
disobedience to notice—Continuing breach* After a
conviction under s. 147 of the United Provinces
Municipalities Act, the person convicted cannot be
permitted to challenge the correctness of that con-
viction as often as he is prosecuted for continued
disobedience of the order of the Board. *ETIAL
PRASAD v THE MUNICIPAL BOARD OF CANNIGER*
(1914) . I L R. 28 All. 430

3. ——— *Prosecution for
disobedience to notice—Validity of notice to be con-
sidered* Before anyone can be convicted of an
offence under s. 147 of the United Provinces Muni-
cipalities Act, the Court must be satisfied that
what he had disobeyed was a notice lawfully issued
by the Board under the powers conferred upon it
by the Act. *EMPEROR v PIARI LAL* (1914)
I L R. 36 All. 185

ss. 147 and 152—*Notice—Prohibition
to lawfully issued notice—Competence of accused to
challenge validity of notice* *Held*, that s. 152 of
the United Provinces Municipalities Act, 1900,
does not prevent a person, who may be prosecuted
for disobedience to a notice issued by a Municipal
Board, from establishing the defence that the notice
in question was not as a matter of fact the Board's
notice, inasmuch as it was not signed by any one
legally authorized to sign such notices on behalf of
the Board. *EMPEROR v HAZARI LAL* (1914)
I L R. 36 All. 227

s. 152—
Sec s. 87 I L R. 36 All. 329

s. 187—
*See U P GENERAL CLAUSES ACT (I OF
1904), s. 23* I L R. 34 All. 291
*See NORTH WESTERN PROVINCES AND
ODISH MUNICIPALITIES ACT, s. 10*
I L R. 35 All. 368

*Municipal elections—
Rules framed by Local Government for regulation of
elections—Petition by defeated candidate—Appeal—
Procedure—"Decree"—"Order"* *Held*, on a con-
struction of r. 42 of the rules framed by the Local
Government under s. 187 of the Municipalities Act,
1900, for the regulation of municipal elections, that
the term "competent Court" as used in r. 42
means a civil Court of competent jurisdiction with
reference to the valuation given by the petitioner
in his petition. *Gur Charan Das v Har Sarup*,

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900)—*contd.*

s. 187—*contd.*

I L R 31 AL 391, followed. *Held*, also that no appeal lies from the order of a competent Court passed on an election petition under r 42 above referred to. *Sundar Lal v Muhammad Faiz, 16 Oudh Cases 36*, approved. *Raychundan Prasad v Sheo Prasad, I L R 35 All 303*, and *Sabbajai Singh v Abdul Ghafur, I L R 24 Cal 107*, referred to. *KHUNNI LAL v RAOHUNANDAN PRASAD (1913)* *I L R 35 All 450*

Municipal election—Rules framed by the Local Government for regulation of elections—Validity of rules—Petition against successful candidate—Appeal. *Held*, (i) that the provisions of a 187 of the United Provinces Municipalities Act which gave power to the Local Government to make rules "generally for regulating all elections under the Act," were wide enough to include rules for the filing and decision of election petitions, and (ii) that no appeal lies from the order of a "competent Court" passed on an election petition under r 42 of the rules framed by the Local Government under s 187 (1), cl (h) of the Act. *Kaunni Lal v Raychundan Prasad, I L R 35 All 450*, followed. *Sundar Lal v Muhammad Faiz 16 Oudh Cases 36*, approved. *NAND RAM v CHOTE LAL (1913)* *I L R 35 All 578*

UNITED PROVINCES MUNICIPALITIES ACT (U. P. ACT II OF 1916)

ss 19 to 23—Election petition—Petition presented by unsuccessful candidate against several respondents. It is not a valid objection to a petition filed by an unsuccessful candidate at a municipal election under s 19 of the United Provinces Municipalities Act 1916, having as respondents more than one of the successful candidates, that the petitioner cannot be himself declared elected in the room of more than one of the respondents. *ABDUL BAZI KHAN v SHAH UL HASAN (1919)* *I L R 41 All 646*

ss 185, 186—Erection of building without sanction of Municipal Board—Prosecution—Notice for demolition of building not necessary before prosecution. Where it is found that a building for which the sanction of a Municipal Board is required has been erected either without such sanction or in contravention thereof, it is not necessary for the Board to direct the demolition of the building before it can prosecute the person who has erected it. *EMPEROR v HASHEM ALI (1917)* *I L R 39 All 482*

ss. 209, 210—"Erect a structure"—Movable planks placed across a public drain in front of a shop. *Held* that the placing, without the permission of the Municipal Board, of movable planks over a municipal drain outside a shop, the planks being put out in the morning when the shop was opened and removed at night, did not amount to an offence under the United Provinces Municipalities Act, 1916. The expressions used in s 209 of that Act indicate that it refers to something of a permanent nature. *Kemla Nath v The Municipal Board of Allahabad, I L R 23 All 193*, referred to. *EMPEROR v MUHAMMAD YUSUF (1917)* *I L R 39 All 388*

UNITED PROVINCES MUNICIPALITIES ACT (U. P. ACT II OF 1916)—*contd.*

s. 233—

See s. 111

I L R 35 All 126
I L R 38 All 302

s. 263—

See s. 267

I L R 42 All 485

s. 267—

Notice to construct a cesspool—Appeal—Prosecution for failure to comply—Power of trying Court to question reasonableness of Board's order on the merits—Procedure in case of continuing breach indicated. No appeal will lie from a notice legally issued under section 267 (b) of the United Provinces Municipalities Act, 1916, requiring the owner of premises to construct a cesspool. The effect of section 321, read with section 318, of the United Provinces Municipalities Act, 1916, is that certain orders, directions or requirements of a Municipal Board or of the Committee of a notified area only can be called in question as regards their reasonableness or practicability, but the legality of any such orders, directions or requirements, can be questioned in any Court in which penal proceedings are brought in respect of any alleged breach for non-compliance therewith. *Emperor v Ram Dayal I L R 33 All 147*, *Municipal Board of Etawa v DEVI PRASAD I L R 42 All 435*, *Emperor v Marwari v Emperor, 13 A L J 229*, and *Emperor v Mannu, I L R 43 All 295*, referred to. *EMPEROR v KASHMIRI LAL* *I L R 43 All 644*

ss 267 and 263—Municipal Board—Distinction between order issued to protect public from physical danger and order issued to protect it from insanitary conditions. A Municipal Board issued an order, purporting to do so under s 267 of the Municipalities Act, to a person living within municipal limits requiring him to fill up a certain cesspool and to build another with a proper cover to it, the order being issued because the cesspool was without a cover and passers by were likely to fall into it at night. *Held*, that the order was a bad order, inasmuch as the only order which could be legally made under s. 267 was an order which was based on sanitary grounds. *MUNICIPAL BOARD OF ETAWA v DEVI PRASAD*

I L R 42 All 495

s. 274—"Occuper" *Held*, that a person of whom no more could be said than that he was held responsible for the upkeep and cleanliness of a temple by the former adhkari was not an "occuper" of the temple and could not be convicted as such under s. 274 of the United Provinces Municipalities Act, 1916, for throwing rubbish on to the street. *EMPEROR v PHULI LAL (1917)* *I L R 39 All 309*

ss 293 and 318—Dangerous or offensive trades—Licence—Power of Municipal Board to refuse licence—Remedy of person whose application for licence has been refused. In matters to which s 293, List I, Heading G, of the United Provinces Municipalities Act, 1916, relates a Municipal Board is not bound to grant a licence to any one who is prepared to abide by the prescribed conditions unless it be found that the necessary licence cannot be granted in respect of the particular site in question without prejudice to the health, safety or convenience of the inhabitants of the municipality. If an application for such a licence is refused, the

UNITED PROVINCES MUNICIPALITIES ACT (U. P. ACT II OF 1916)—*contd.*

s. 298 and 318—*contd.*

remedy of the applicant is by way of appeal under s. 318 of the Act. *Moran v Chairman of Motihari Municipality*, 1 L R 17 Calc. 329, and *Queen-Empress v Mukunda Chunder Chatterjee*, 1 L R 20 Calc. 654, referred to. *EMPEROR v MANU*.

I L R. 42 All. 294

s. 307—*Disobedience to notice lawfully issued by a Municipal Board—Recurring fine—Procedure necessary to imposition of daily fine.* A Magistrate convicting an accused person of an offence under s. 307 (b) of the United Provinces Municipalities Act, 1916, cannot by the same order, further sentence him to a recurring fine in the event of non compliance with the order of the Board. The liability to a daily fine in the event of a continuing breach has been imposed by the Legislature in order that a person contumaciously disobeying an order lawfully issued by a Municipal Board may not claim to have purged his offence once and for all by payment of the fine imposed upon him for neglect or refusal to comply with the said order. The liability will require to be enforced, as often as the Municipal Board may consider necessary, by the institution of a second prosecution, in which the questions for consideration will be, how many days have elapsed from the date of the first conviction under the same section during which the offender is proved to have persisted in the offence, and, secondly, the appropriate amount of daily fine to be imposed under the circumstances of the case, subject to the maximum prescribed. *EMPEROR v AMIR HASAN KHAN* (1915).

I L R. 40 All. 569

ss. 318 and 321—

See s. 267. I L R. 43 All. 644

s. 324—*Suit for damages by lessee of land against a Municipal contractor for causing obstruction to the use of his land.* Held, that section 324 of the United Provinces Municipalities Act, 1916, does not apply to a suit by lessee of land for damages against a contractor of the Municipal Board who stacks building materials upon that land and thereby prevents the lessee from using it. *MUHAMMAD GHAFANULLAH v BABU LAL*.

I L R. 43 All. 614

s. 326 (4)—*Suit for establishment of title and injunction—Notice—Suit filed before expiration of prescribed time.* The Municipal Board of Benares in June, 1916, served notice on the plaintiff requiring him to remove a certain *chabutra* which, it was alleged, encroached on a public way. The plaintiff replied by giving the Board notice of a suit in which the reliefs to be claimed were (i) a declaration of the plaintiff's title to the land upon which the *chabutra* stood and (ii) an injunction restraining the Board from ordering its demolition. The suit was, however, filed before the expiration of the period of two months provided for by s. 326 of the United Provinces Municipalities Act, 1916. Upon objection taken by the Board as to want of a proper notice, the plaintiff amended his plaint, but still left the suit as a suit which asked for further relief than a bare injunction, and which therefore could not come within the exception provided for by cl. (4) of s. 326; *Held*, that the suit could not

UNITED PROVINCES MUNICIPALITIES ACT (U. P. ACT II OF 1916)—*contd.*

s. 326 (4)—*contd.*

be maintained. *MUNICIPAL BOARD OF BENARES v. GAJADHAR* (1918).

I L R. 41 All. 162

Suit to obtain refund of octroi duty—Limitation. Held, that the special rule of limitation laid down by cl. (3) of s. 326 of the United Provinces Municipalities Act, 1916, applies to a suit against a municipal board wherein the plaintiff claims refund of octroi duty which the board has refused to pay him. *MASHAN LAL v. THE MUNICIPAL BOARD OF AGRA*.

I L R. 42 All. 207

UNITED PROVINCES PREVENTION OF ADULTERATION ACT (VI OF 1912)

ss. 4, 6—*Commission agent exposing adulterated article of food for sale.* Held, that a commission agent who exposed for sale (but did not sell adulterated ghy was liable to punishment under s. 4 of the United Provinces Prevention of Adulteration Act, 1912, and could not prevent the benefit of s. 6 of the Act. *EMPEROR v KEDAR NATH* (1915).

I L R. 40 All. 661

UNITED PROVINCES PUBLIC GAMBLING ACT (I OF 1917).

See PUBLIC GAMBLING ACT III OF 1867, ss. 3 AND 10.

I L R. 42 All. 470

UNITED PROVINCES RENT ACT (XII OF 1891)

See NORTH WESTERN PROVINCE AND OUDH RENT ACT. I L R. 41 All. 368

UNITED PROVINCES TENANCY ACT (II OF 1901).

See AGRA TENANCY ACT.

UNITY OF OBJECT.

See MISJOINDER. I L R. 42 Calc. 760

UNIVERSITIES ACT (VIII OF 1904).

See INDIAN UNIVERSITIES ACT.

See UNIVERSITY LECTURERSHIP.

I L R. 41 Calc. 518

ss. 21 (1) (c) and (f), 25 (1) and 2 (m)—

See BOMBAY CITY MUNICIPAL ACT (VOM ACT III OF 1889), ss. 140 (c) 143 (f) (c) AND (2) (d). I L R. 43 Bom. 281

s. 25 and regulations thereunder—*cheating at examination—disqualified student—not competent to sue the University.* Held, that the Senate of a University is under s. 25 of the Indian Universities Act empowered to make rules disqualifying a candidate, who cheats at an examination, from passing it and from appearing at any University examination for a period of two years from the date of his disqualification, and that a candidate against whom the rule has been enforced has no remedy of Civil action against the University. *In the matter of Darasda Fustemji*, (I L R. 23 Bom. 465), distinguished *TARAJI ARJUN v. UNIVERSITY OF THE PENJAB*.

I L R. 2 Lah. 197

UNIVERSITY LECTURESHIP.

Specific Relief Act (I of 1877), s. 43—Universities Act (VIII of 1904)—Appointments to Professorships and Lectureships in the University of Calcutta—Provisional appointment—Sanction by Governor General in Council—If remedy lies against refusal to sanction—Mandamus—University Regulations Chap. XI, s. 12 The five conditions laid down in the proviso to s. 43 of the Specific Relief Act are cumulative and all have to be fulfilled. The Senate of the University is only bound by its Resolutions. It cannot be held bound by representations, made by any individual officer without the sanction or authority of the University. Where a person deals with a corporation whose rights are defined by statute, he must be deemed to have informed himself of those rights. In this case the Resolution of the Senate cannot be interpreted as having appointed the applicant without the sanction of the Governor General, or even that it was intended to appoint him without such sanction. No legal right can be said to exist because the petitioner had lectured the previous year. A rule cannot be granted to try the title to an appointment. Such title can only be tried in a properly constituted suit. The existence of a legal right is the foundation of every writ of mandamus. The principle underlying the jurisdiction in these cases is that the proceedings can confer no title not already existing though they may affect the consummation of the relator's title if he had one, but it gives him none. Whether the sanction required under s. 12, Chapter XI of the University Regulations for the appointment of a University lecturer is *ultra vires* or not, cannot be determined in summary proceedings of this nature. The personal right referred to in s. 43 of the Specific Relief Act is not a right in rem, such as every human being in civilized society possesses independently of any act of his own. The above statement in *In re Rasool Jamshed Irani*, 3 Bom. L. R. 633 dissonant from. He alone is a competent relator who has some interest other than that of the community at large in the question to be tried. *York & North Midland Railway Co. v. The Queen*, 1 El. & B. 558 and *Ex parte Browning* in *re Marks* L. R. 9 Ch. App. 593 discussed in *re Abdul Rasool* (1913).

I L. R. 41 Calc. 518

UNIVERSITY OF MADRAS

See SPECIFIC RELIEF ACT (I OF 1877)
s. 43 I L. R. 40 Mad. 125

UNIVERSITY REGULATIONS

Chap. XI, s. 12—
See UNIVERSITY LECTURESHIP
I L. R. 41 Calc. 518

UNLAWFUL ASSEMBLY

See JUDGMENT OF APPELLATE COURT,
CONTENTS OF I L. R. 37 Calc. 194

UNLAWFUL RECRUITMENT.

See EMIGRATION I L. R. 37 Calc. 27

UNLIQUIDATED DAMAGES

See EX PARTE DEBEN
I L. R. 43 Calc. 1001

UNNECESSARY MATTER.

printing of—
See COSTS L. R. 48 L. A. 299

UNPROFESSIONAL CONDUCT

See PROFESSIONAL MISCONDUCT

1. *Pleader as litigant*—Letter to Munsif threatening legal proceedings to recover costs in execution proceedings incurred owing to the negligence of the Court officer—Legal Practitioners Act (XVIII of 1879), ss. 13 (b) and 14—Anonymous communication—Contempt of Court Where a pleader who was a decree holder in a certain suit associated himself with his co-decree holder in a notice to the Munsif threatening legal proceedings to recover costs in an execution proceeding incurred owing to the negligence of the Court officers though the pleader did not sign the notice: Held that what was done by the pleader was done by an individual in the capacity of a sutor in respect of his supposed rights as a sutor and of an imaginary injury done to him as a sutor and it had no connection whatever with his professional character or anything done by him professionally, and that this case was not one within s. 13 (b) of the Legal Practitioners Act. In *re Wallace* L. R. 1 P. C. 283 in the matter of *Jogendra Narayan Bose*, 5 C. B. N. 48, in *re a Pleader*, 13 Mad. L. J. 16 in the matter of a first grade Pleader 1 L. R. 24 Mad. 17, and in the matter of *Sarat Chandra Guha* 4 C. B. N. 663 referred to. In *re POORNA CHANDRA ADHY* (1915) I L. R. 43 Calc. 685

2. *Unprofessional conduct*—Ruler as to receiving instructions and accepting vakalatnamas, compliance with Judge's duty to enforce compliance and take disciplinary measures on breach—One pleader appearing for another—Practice—Court to be informed Where a pleader who was charged with having filed a petition for revival of a suit without authority alleged in defence that he had been instructed to appear by a clerk of the Maktear of the party, and that it had been (erroneously) represented to him that the vakalatnama filed in the original suit contained his name: Held that the pleader had acted in contravention of s. 13 (a) of the Legal Practitioners Act in the matter of receiving instructions. That even if the vakalatnama did contain the pleader's name, mere verbal acceptance of it would not be in compliance with cl. (e) of s. 43 Ch. XI, of the High Court's General Rules and Circular Orders. Where a pleader appears for another pleader who is unable at the moment to attend Court, he ought to let the Court know that he is so appearing. *Per RICHARDSON, J.* The rule in regard to the acceptance of vakalatnamas should be strictly and scrupulously observed in the Subordinate Courts. In connection with the enforcement of the rules, it is always open to a Judge to refuse to hear a pleader or to refuse to allow a pleader to act who has not accepted a vakalatnama in the prescribed manner. It is also the duty of the Judge to take such action as may be appropriate, in regard to infractions of the rule which escape notice at the time and are brought to light subsequently. In the matter of *JOONAH CHANDRA GUPTA* (1913) 20 C. W. N. 283

3. *Pleader—Altering Court's record to conceal error due to carelessness* Where a property to be sold in execution of a

UNPROFESSIONAL CONDUCT—contd.

decree was, through the carelessness of the pleader for the decree holder and his clerk, misdescribed in the application for execution, in the warrant of attachment and in the sale proclamation, and after they had been presented to Court, the clerk actuated by a desire to conceal his and his master's carelessness from the decree holder altered the descriptions and the alterations were initialled by the pleader: *Held* (ordering the pleader's suspension for three months), that to tamper with the Court's records is at all times a serious matter, and the pleader had acted without due care and caution and without that sense of responsibility which should govern the conduct of all officers of the Court in matters of such importance. *In the matter of A PLEADER* (1918)

20 C. W. N. 1069

UNREASONABLE DELAY.

See COSTS . I. L. R. 47 Calc. 974

UNRECORDED CONFESSIONS.

See MISDIRECTION.

I. L. R. 45 Calc. 557

UNREGISTERED DOCUMENT.

See LIMITATION . L. R. 46 I. A. 285

See REGISTRATION

See TRANSFER OF PROPERTY ACT 54
I. L. R. 44 Mad. 55**UNSETTLED PALAYAM.**

*Alienability of, for debts of holder for the time being—Lands held on service tenure, alienability of—Enfranchisement of service tenure, effect of, on alienation, prior and subsequent—Regulation XXV of 1802, effect of—Private Police service, abolition of, by legislation—Military service, imposition of, on landed proprietors—Abolition of—Limitation Act (IX of 1908), Sec 11, Arts 120, 112 and 114—Madras Regulation XI of 1816—Madras Regulation VI of 1831—Madras District Police Act XXIV of 1859—Madras Act III of 1895 Lands held on service tenure are, even apart from statute, inalienable by the Common Law of India beyond the life-time of the holder for the time being *Papaya v Ramana*, I L R 7 Mad 85, and *Pattam Pillay v Setharama Vadhyar*, 14 Mad L J 134, followed Abolition of service prior to the alienation renders the alienation valid. *Kutuvora Koomuree v Venohur Deo* (1864), 1 R 39, *Raojiyaras bin Tamapirav v Balharatav Venkatesh*, I L R 5 Bom 437, and *Radhakrishna and Ramachandra Konher v Anantav Bhagavat Deshapande*, I L R 9 Bom. 198, 212, followed Enfranchisement of the land from service subsequent to an alienation thereof will not validate the alienation. *Padapa v Swamirao*, I L R 24 Bom 556, and *Sannamma v Radhakrishna*, I L R 41 Mad 418, followed An unsettled palayam in the Presidency of Madras resembles a zamindari, is hereditary in its character and is alienable for the debts of the previous holders and of the holder for the time being, so as to bind the successors. The only difference between an unsettled palayam and a permanently settled zamindari is that in the latter the Government is precluded for ever from raising the revenue, and in the former the Government may or may not have that power *Oolagappa Chetty v Arbutnot*, L R 11 A 263, 306, followed *Held*, on a review of the facts of the case, that the*

UNSETTLED PALAYAM—contd.

palayam of Kannivadi in Madras district which was permanently settled in 1905 and which was in the eighteenth century liable to render military and police service to the Government of the day, was as a fact unconditionally released from such services prior to 1895 and that accordingly a mortgage executed by the grandfather and father of the present zemindar in 1895 for debts incurred by the grandfather prior to that date and a decree and a Court sale held to satisfy the mortgage debt were binding upon the present zemindar and precluded him from recovering the zemindari from the auction purchaser That the East India Company had by its Proclamations of 1799 and 1801 suppressed military service once imposed on landed proprietors in Southern India and police service similarly imposed was abolished pursuant to Regulation XXV of 1802, Regulation XI of 1816, Act XXIV of 1859, Act XVII of 1862 and Madras Act III of 1895 Regulation VI of 1831 which restrained the alienation of all public service lands is only partially repealed and replaced by Act III of 1895, as services other than those of village officers had become long ago obsolete. *Quære* Whether if the plaintiff's father had debarred himself from suing, art 120 of the Limitation Act was the article applicable in which case the plaintiff would not be barred. *MIRKAPUR ZEMINDARI COMPANY v APPAYASAMI NAICKER* (1918) . I. L. R. 41 Mad. 749
I. L. R. 44 Mad. 576

USAGE.

See CUSTOM

See OCCUPANCY RIGHT

I. L. R. 46 Calc. 43

See USAGE OF THE PROFESSION

I. L. R. 44 Calc. 741

*Usage, evidence of—Admissibility—Adding to the terms of a written contract—Repugnancy—Whether such usage makes the contract inalienable, inconsistent or unreasonable—Due date falling on a Sunday—Contract if may be performed on Monday following—European importer Evidence of well known trade usage is admissible to add to the terms of a written contract when such usage does not make the written contract inalienable, or inconsistent or unreasonable. In a contract, to which both parties were Indians, for the sale of piece goods imported by a European firm, the due date fell on a Sunday *Held*, that according to the well known usage in the market the due date would be the Monday following *KASHIRAM PANIA v HERNUND ROY FULCHAND*.
26 C. W. N. 355*

Held that various words in written documents which *prima facie* present no ambiguity may be interpreted by extrinsic evidence of usage and their peculiar meaning when found in connection with the subject matter of the transaction fixed by parole evidence. *RAJA JOTE KUMAR MUKERJEE v JADUNATH ROSE*.
26 C. W. N. 1022

USAGE OF THE PROFESSION.

See BARRISTER I. L. R. 44 Calc. 741

USER.

See TRADE MARK I. L. R. 40 Calc. 570

See USING AS ORIGINER A FORGED DOCUMENT . I. L. R. 39 Calc. 463

USING FALSE TRADE MARK.

See **TRADE MARK** I L R. 40 Calc. 281

USING FORGED DOCUMENT.

See **FORGERY** I L R. 38 Calc. 75

Handing over of a forged rent-receipt by accused, in the course of a criminal trial, to his mukhtar.—Examination by the mukhtar of a witness thereon.—Receipt filed by the Magistrate with the record though not proved.—Grant of sanction to landlord's agent not a party to the criminal case.—Sanction by successor of Magistrate before whom the forged document was used.—Penal Code (Act XLV of 1860), s 471.—Criminal Procedure Code (Act V of 1893), s 195. Where the accused, during the course of a criminal trial against him of rioting and theft of crops, handed over to his mukhtar a forged rent receipt, bearing a counterfeit seal of the landlord, to prove his possession, and the latter put the same to a witness and questioned to him as to its genuineness, but, on the witness alleging that it was a forgery, the trying Magistrate took it, initialed it and placed it on the record: *Held*, that there was a user of the document within s. 471 of the Penal Code. *Ambica Prasad Singh v Emperor*, I L R 35 Calc 820, distinguished. A sanction granted to the agent of the landlord whose seal was forged is valid, though neither was a party to the criminal case in which the forged document was used. A sanction granted by the successor of a Magistrate before whom the forged document was used is good in law. *RATI JHA v EMPEROR* (1911) I L R. 39 Calc 483

USUFRUCTUARY MORTGAGE.

See **AGRA TENANCY ACT** (II OF 1901), ss 142, 199 I L R. 41 All. 369

See **CIVIL PROCEDURE CODE** (1908), O XXXIV, r 14

I L R. 41 All. 399

See **INTEREST** I L R. 40 Calc 514

See **LANDLORD AND TENANT**

I L R. 40 Calc. 870

See **LIMITATION ACT** (IX OF 1908), Sch. I, Art 109 I L R. 39 All. 200

See **MORTGAGE**

See **SALE FOR ARREARS OF REVENUE**

I L R. 44 Calc. 573

See **TRANSFER OF PROPERTY ACT**, 1882—

ss. 65 AND 68 2 Pat. L. J. 490

ss 54, 118 I L R. 37 Mad. 423

ss. 58 (a) AND (d); 67, 68 (c).

I L R. 41 Mad. 259

S 83 I L R. 39 Mad. 579

construction of—

See **MORTGAGE** I L R. 44 Calc. 388

1. *Specific Relief Act (I of 1877), s 42.—Usufructuary mortgage—mortgages recorded as tenant—suit by mortgagor for declaration of right of redemption and that mortgagee is not a tenant.* Where a usufructuary mortgagee of land had himself recorded as the tenant of the land covered by the mortgage: *Held*, in a suit by the mortgagor (i) for a declaration that the defendant was not a tenant of the land, and (ii) for a declaration that the plaintiff was entitled to redeem the mortgage on re payment of the mort-

USUFRUCTUARY MORTGAGE—contd

gage debt, that the plaintiff was entitled to the first declaration prayed for, but not to the second. A mortgagor is not entitled to a declaration of the terms on which he may redeem the mortgaged property when it is open to him to bring a suit for redemption of that property. *RAM LOCH RAI v MAHANTH HARYAN DAS* 3 Pat. L. J. 71

2. *Transfer of Property Act (II of 1882), s 67.—Usufructuary mortgage—Debt payable within a fixed period—Expiry of the period—Mortgagee's right to an order for sale.* Where under a usufructuary mortgage the mortgage debt is made payable within a fixed period, the mortgage is not purely a usufructuary mortgage and the mortgagee has, in the absence of a contract to the contrary, the right to an order under s 67 of the Transfer of Property Act (IV of 1882) that the property be sold after the debt has become payable. *Mahadaji v Joti*, I L R 17 Bom. 425, and *Arashina v Hori*, 10 Bom. L. R 615, explained. *DATTABHAT RAMBHAT v KRISHNABHAT* (1910) I L R. 34 Bom 462

3. *Turn of worship in a temple—Transfer of Property Act (II of 1882), s 59—Mortgage bond creating right to worship, whether requires attestation.* A turn of worship is not an interest in immovable property. Therefore, an usufructuary mortgage bond creating an interest in a turn of worship does not require attestation by witnesses under s 59 of the Transfer of Property Act. *Eshan Chander Roy v Monmohini Dasi*, I L R 4 Calc 632, referred to. *JATI KAR v MUKUNDA DEB* (1911) I L R. 39 Calc. 227

4. *Dispossession of mortgage by a stranger, adverse to mortgagor from the time of his knowledge.* Where a trespasser dispossesses a mortgagee in possession and continues in possession asserting a title adverse to the mortgagor also, such dispossession will be adverse to the mortgagor from the time the mortgagor has knowledge of the assertion (though he may not be then entitled according to the terms of the mortgage to recover possession from the mortgagee). The onus is on the trespasser to prove not only that he asserted a right adverse to the mortgagor but also that the latter knew it. *PERIYA AITA ANBALAM v SHUNMOGASUNDARAM* (1913) I L R. 38 Mad. 903

5. *Lease of mortgaged property by mortgagee to mortgagor—Sale of equity of redemption to a third party in execution of a decree for arrears of rent—Liability of the kistadar for rent.* Defendant, being the owner of a zemindari share, made a usufructuary mortgage of it in favour of the plaintiff. On the same date the plaintiff executed a lease of the same property for the term of the mortgage. Defendant fell into arrears with his rent, and plaintiff sued him and obtained a decree, in execution of which he brought to sale defendant's equity of redemption under the mortgage and it was purchased by a third party; the purchaser, however, did not obtain mutation of names in his favour. *Held*, on a fresh suit brought by the lessor for arrears of rent accruing due since the sale of the equity of redemption, that the defendant was still liable for payment of rent as the kistadar. *MITRAN LAL v CHHAJU SINGH* (1918) I L R. 40 All. 429

VAKALATNAMA—contd

tion placed on the same in the answers to the several references made to this Court. It must be fully complied with by the pleader who first accepts the vakalatnama and all subsequent acceptances must be made by endorsements made in the presence of the Court or the *Shriekadar*, or the Bench officer and dated, provided of course all the pleaders so accepting a vakalatnama are named in it. Courts in the mofussil must be specially careful in enforcing this rule in cases of compromise and withdrawal of cases and withdrawal of money and documents. *PER BRACHBORTH J.*—There can be no acceptance by the pleader other than in writing. But if this Court has, in the exercise of its powers, framed certain rules which must be observed by pleaders a pleader who does not conform to those rules, ought not to be heard. *Quere*. Whether after the first endorsement by a pleader accepting a vakalatnama, a mere endorsement of acceptance by those appearing on the strength of the original vakalatnama at subsequent stages of the case is sufficient. *MANISH CHANDRA ADDY v PANCHU MUDALI* (1915)

I L R 43 Cal 834

Containing name of pleader who does not endorse and accept it—Whether the pleader can act—Vakalatnama authorizing pleader to withdraw or give up claim of Plaintiff and to do all acts on behalf of Plaintiff—Whether Plaintiff would be bound by the pleader placing a Defendant on special oath and agreeing that his client should be bound by the answers—Indian Oaths Act (X of 1873) ss 8 and 9. One of the Plaintiffs in a suit for recovery of money died and her heirs were substituted in her place. On behalf of the original plaintiffs three pleaders A, B and C were engaged. The substituted plaintiffs presented a second vakalatnama on which only two junior pleaders B and C made a formal endorsement of acceptance though it contained the name of A also. *Held*, that as senior pleader of the three, to A was entrusted the management of the case on behalf of all the plaintiffs. The two vakalatnamas were similar in terms and authorized the pleaders, amongst other things, to withdraw the suit or to give up the claim of the Plaintiffs to cite and examine witnesses or to refuse to examine the same and provided that all acts done by the pleaders for the benefit of their clients would be accepted by the parties as their own acts. At the hearing the Plaintiff No. 1 was examined and he stated that he and other Plaintiffs would be bound by the answers given to certain questions by Defendant No. 2 on the said Defendant taking a special oath in the manner provided under ss 8 and 9 of the Indian Oaths Act. Thereupon the senior pleader A presented an application on behalf of all the Plaintiffs offering this special oath to Defendant No. 2 and agreeing on their behalf to be bound by the answers given by the said Defendant to the questions set forth in his application. The Defendant No. 2 was therefore examined on special oath and he answered the questions. Upon this the Plaintiffs declined to examine any further witnesses and accordingly the suit as a whole was dismissed. On appeal the District Judge set aside the decree of the lower Court in so far as it related to Plaintiffs other than Plaintiff No. 1. *Held*—That the powers given to the pleader were very wide and when the vakalatnamas authorized him even to withdraw the suit or to give up the claim

VAKALATNAMA—concl

of the plaintiffs, the authority given and the words used were comprehensive enough to include also the step taken by the pleader in placing one of the defendants on special oath and agreeing that his clients should be bound by the answers given by the witness on such oath. *MANISH CHANDRA ADDY v PANCHU MUDALI*. 24 C W. N 385

VAKIL.

See LEGAL PRACTITIONERS

See PROFESSIONAL MISCONDUCT

I L R 40 Mad. 69

— duty and status of—

See HIGH COURT JURISDICTION OF

I L R 44 Bom. 418

— power of, to enter into compromise—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXIII, s 3 AND s 96 (5)

I L R 41 Mad 233

— Right of audience in references under s 51 of Income Tax Act—

See INCOME TAX ACT s 2

25 C W. N 80

Vakil's right to appear before a Judge sitting on the Original Side of the High Court—Application to file warrant of attorney—Extraordinary Civil Jurisdiction—Civil Procedure Code (Act XIV of 1882), s 635—Civil Procedure Code (Act V of 1908), ss 119, 129. A vakil of the High Court applied before a Judge sitting on the Original Side of the Court, claiming a right to file a warrant of attorney in respect of a suit pending before the Madras District Court, in which a rule had been issued calling upon the plaintiffs to show cause why the suit should not be transferred to the High Court in its Extraordinary Original Civil Jurisdiction. *Held*, that having regard to the long-continued course of practice during which vakils never appeared on the hearing of such applications, the present application should be refused. *Held*, further, that the Civil Procedure Code of 1908 has nothing to do with a matter governed by old rules in force before 1909. *In re A VAKIL'S APPLICATION* (1910)

I L R 37 Cal. 853

Vakil, right of audience of, at hearing of application against order of Presidency Small Cause Court refusing sanction to prosecute, before Division Bench appointed for the purpose. An application for sanction to prosecute the plaintiffs was rejected by the Judge of the Court of Small Causes at Calcutta who tried the suit. Against this the defendants applied to the Judge of the High Court sitting on the Original Side who remanded the matter to the trial court. On an appeal under the Letters Patent the order of remand was set aside and the application was remitted to a divisional bench appointed for the purpose, for disposal. At the hearing, the opposite party was represented by a vakil. *Held*, *PER TRENCHARD, J. (CHAUDHURY, J. dissenting)*, that the vakil had the right of audience. *PER TRENCHARD, J.*—That the Presidency Small Cause Court is an inferior or subordinate court and in dealing with its judgments or orders the High Court is a superior court exercising not original but appellate or revisional jurisdiction from this and the provisions of s. 4 of the Legal Practi-

VAKIL—contd

tioners Act it follows that the vakil was entitled to be heard. *Per CHAUDHURI, J.*—That the power of superintendence, direction and control which was possessed by the Supreme Court over the Presidency Small Cause Court appertains to the Original Side of the High Court and all such powers when exercised by the Original Side are exercised in its Original Jurisdiction within the meaning of s 4 of the Legal Practitioners Act. **BUDHU LAL v CHAITU GORE (1917)**

21 C W. N. 654

Right of audience in references under s 51 of the Income Tax Act 1918 established. **MAHARAJA BIRENDRAKISHOR MANI KAYA RAHADUR v SECRETARY OF STATE**

25 C W. N. 80

Suit on the Original Side of the High Court—Fees, non payment of—Duty of vakil to take necessary steps in the suit—Written statement not filed in time—Refusal of vakil to file, because his fees was not paid—Refusal of vakil to consent to transfer of case to another vakil—Application for change of vakil—Order of Court—Delay in filing written statement whether excusable—Rules of Practice, Original Side of the High Court rule 48

A vakil engaged in a suit on the Original Side of the High Court is not entitled to refuse to take a necessary step in the suit, on the ground that his own fees had not been paid and at the same time refuse his consent to a change of vakil to another vakil. Delay in filing a written statement within the time fixed by the rules of the High Court caused by such refusal on the part of the vakil on the record was excused. **MUTHU KRISHNA LACHENDRAI v URSE (1921)**

I L R 44 Mad 978

VALATDANA PATTA

See CONTRACT ACT (IX OF 1872), s 63

I L R 38 Bom. 249

VALIDITY OF WAKF

See MAHOMEDAN LAW—WAKF

L R 44 I. A. 21

VALUABLE CONSIDERATION

See LIMITATION I L R 43 Calc 34

VALUABLE SECURITY

See PENAL CODE s 30 AND 47

3 Pat L J 338

Title page of account book—*Scindle*: A title page in an account book containing the names of the partners and the amount of the capital contributed by each is, if signed by them, a "valuable security" within 30 of the Penal Code. **HARI CHARAN GORAI v GINISH CHANDRA SADRUKHAN (1910)**

I L R 38 Calc 68

VALUATION OF APPEAL

See APPEAL

See APPEAL TO PRIVY COUNCIL

I L R 44 Calc 119

See CIVIL PROCEDURE CODE 1908, s 110

See COURT FEES ACT (VII OF 1878), s 7,

CL (f) I L R 39 Mad. 725

VALUATION OF APPEAL—contd

See PRIVY COUNCIL

14 C W. N. 651, 672

See SUITS, VALUATION ACT

Court fees Act (VII of 1870), s 6, Sch I, Art 1, and Sch 11, Art 17 cl (8)—Valuation of appeal when no amount claimed, but liability of certain properties disputed—Memo randum of appeal—Taxing Officer—Acceptance of court fee by Deputy Registrar, finality of Where the appellant in an appeal against a mortgage decree does not dispute the amount decreed but raises the question of the liability of certain properties, the value of the appeal for the purpose of the court fees is the value of such properties. *Sch II, Art 17, cl (8) of the Court fees Act (VII of 1870) has no application to such a case.* **Kesava rapu Ramakrishna Pedda v Kotta Koda Reddi, I L R 30 Mad 96** **Bunwari Lal v Daya Sualar Maseer, 13 C W N 815** referred to. A memorandum of appeal was admitted by the Deputy Registrar of the High Court and no question was raised as to the sufficiency of the court fees. At the hearing of the appeal, it was objected on behalf of the respondents that the court fee was insufficient. *Held*, that there having been no decision under s 5 of the Act by the Taxing Officer who was the Registrar of the High Court, it was open to the respondents to raise the objection at the hearing of the appeal. **Kesava Chetti v Deputy Collector, Bellary I L R 21 Mad 269**, referred to. **JOGAL KISHAN SINGH v PARBHU NARAIN JHA (1910)**

I L R 37 Calc 914

VALUATION OF LAND

See ASSESSMENT I L R 42 Bom 692

See LAND ACQUISITION

I L R 41 Calc 967

I L R 33 All 733

See MUNICIPAL ASSESSMENT

I L R 39 Calc 141

See MUNICIPALITY

I L R 40 Calc 784

See RESUMPTION OF LAND

I L R 42 Bom 658

VALUATION OF RESIDENTIAL PROPERTY

Land Acquisition Act (I of 1894)—Compensation—Valuation of residential property—Elements to be considered—Evidence before Acquisition Officer—Practice The income of a property whether actual or imaginary is no doubt one of the recognised starting points for a valuation, but it is a mistake to think that it is the only element to be taken into consideration. In the case of residential property to endeavour to arrive at the market value solely on the basis of an hypothetical rent, may work grave injustice to the owner. There are commodities which may possess a value in the market not for the return they give on capital invested but for the advantages and enjoyment which accrue from their possession. Residential property—in the sense of property which a purchaser wishes to acquire for his own residence—is such a commodity. The first question to determine is whether there is a demand and if there is a demand the original cost is the most important element for consideration. It is the duty of legal practitioners attending before the Acquisition Officer to assist him in arriving at a

VALUATION OF RESIDENTIAL PROPERTY

—*contd*

valuation by putting before him all the information and materials at their disposal. In the matter of LAND ACQUISITION ACT In the matter of GOVERNMENT AND SUBHANAND (1909)

I L R 34 Bom 486

VALUATION OF SUIT

See ADMINISTRATION SUIT

I L R 44 Calc 890

See ADOPTION I L R 37 Calc 860

See APPEAL 14 C W N 343

See CIVIL PROCEDURE CODE, 1908,

s 115 I L R 39 All 723

O XXI, s 63 I L R 39 All 72

s 68 I L R 40 All 505

See COURT FEE

See COURT FEES ACT (VII of 1870)

See MADRAS CIVIL COURTS ACT (III of 1873) ss. 12, 13

I L R 39 Mad 447

See MORTGAGE I L R 37 Mad 420

See PLAINT I L R 48 Calc 110

See SUITS VALUATION ACT

—For purpose of Privy Council Appeal

See CIVIL PROCEDURE CODE 1908 s 110

I L R 2 Lah 297

—suit to enforce right to share in joint family property

See CIVIL PROCEDURE CODE, 1908 s 2

I L R 2 Lah 114

—suit for injunction—

See COURT FEES ACT (VII of 1870) s.

7 (iv) (a) I L R 45 Bom 567

1 —Valuation in plaint contested—

Duty of court—to decide correct valuation suit for declaration method of valuation—Suits Valuation Act (VII of 1887) s 11 If the valuation of a suit put in the plaint for the purpose of jurisdiction is contested it is the duty of the court to decide what the correct valuation is. In a suit for a declaration the value of the suit for the purpose of jurisdiction must be the value of the property in respect of which the declaration is sought. MOHINI MOHAY MISSEY v GOVIND CHANDRA RA

5 Pat L J 337

2 —Partition suit—Basis of valuation, for jurisdiction. The value of a suit for partition for the purpose of jurisdiction is the value of the share claimed by the plaintiff and not the value of the whole property of which partition is sought. DUKHI SINGH v HARDWAR SINGH

5 Pat L J 540

3. —Suit to set aside adoption—

Forum—Practice According to a long-standing practice, a suit to set aside an adoption is, for the purpose of jurisdiction, incapable of valuation and it is competent to the plaintiff in such a suit to value the relief claimed, and that valuation determines the forum to decide the suit. *Akemannappa Bhu v Mahomed Hafeez*, I L R 31 Calc 849 commented on *Jan Mahomed Mandal v Masbar Bhu*, I L R 34 Calc 352, referred to. *PRABHU CHANDRA DAS v DWARKA NATH GHOSH* (1910)

I L R 37 Calc 860

VALUATION OF SUIT—*contd.*

4 —Suit for possession of land and mesne profits—Value changed in the course of the suit—Appeal to the District Court heard and entertained at earlier stage on the basis of original valuation—Application for assessment of the mesne profits—Total claim beyond District Court's appellate jurisdiction—Objection as to jurisdiction not taken in District Court—Objection, if may be taken in High Court by way of appeal—Civil Procedure Code (Act V of 1908), s 99—Appeal, if lies—Jurisdiction, objection to, waiver of—Return of memorandum of appeal—Presentation in proper Court out of time—Limitation Act (IX of 1908) s 6—Costs A suit for recovery of land with mesne profits instituted in the Court of a Subordinate Judge was originally valued at Rs 2,100 Rs 1,23 for the land and Rs 375 as the approximate amount of mesne profits for three years antecedent to the suit. The suit was decreed by the Subordinate Judge and the decree affirmed on appeal by the District Judge. Plaintiff thereafter appealed for assessment of mesne profits valuing his claim at Rs 7549. The Subordinate Judge having allowed only Rs 902 the plaintiff appealed to the District Judge valuing his claim in the memorandum of appeal at Rs 2728; his appeal was allowed whilst the defendant a cross appeal against the Subordinate Judge's decree for Rs 902 was dismissed. The defendant appealed to the High Court *inter alia* on the ground that the appeal to the District Judge was incompetent; *Held* that the real value of the suit was Rs 5415 (Rs 1795 and Rs 902 and Rs 2728) and the appeal from the order of the Subordinate Judge lay to the High Court and not to the District Judge. That the defendant was not precluded from raising the question of jurisdiction on appeal by the fact that he had omitted to take exception to the District Judge's jurisdiction in his Court and had himself filed a cross objection. The principle that parties cannot by consent or by stipulation invest a Court with jurisdiction is applicable to cases wherein the jurisdiction is dependent upon the value of the subject matter in controversy. *Merrill v Petty 16 Wallace 338* relied on. Where there is a total want of jurisdiction over the subject matter in controversy the objection cannot be waived. *In re Aymer, 20 Q B D 238*, *Jones v Owen, 5 D & L 669 18 L J Q B 3*, *Mayor of London v Cox L R 2 H L 219* relied on. That an appeal to the High Court lay against the decree made without jurisdiction by the District Judge. Where jurisdiction is usurped by a Court in passing an order against which an appeal would lie if it had been passed with jurisdiction, an appeal against the order cannot be defeated on the ground that the order was made without jurisdiction. *Bandeewars Charan v Lakpat Bhat 14 C W N 724*. That the principle that no appeal lies where the Court has been constituted an arbitrator by the parties had no application to the present case. The High Court directed the memorandum of appeal to the District Judge to be returned for presentation in the High Court, but as the memorandum of appeal was already in the High Court it was ordered that the memorandum be treated as presented in the High Court on that date and it was ordered in the exercise by the High Court of its discretion under s 5, Limitation Act, that the time between the presentation of the appeal in the District Judge's Court and the order for return made by the High

VALUATION OF SUIT—*contd.*

Court be deducted. As the objection to jurisdiction was not raised before the lower Appellate Court, each party was directed to pay his own costs. *Ramji Muska v Ramadon Singh* (1912) 41 C. W. N. 110

5. — Investigation as to amount of value of subject-matter of suit—Competence of Court of first instance to remit investigation of dispute to some other officer—Civil Procedure Code (Act V of 1908), O XLII, s 5—Practice II 5, O XLV of the Code of Civil Procedure does not empower the Court of first instance, to remit the investigation as to amount or value of subject-matter of suit to some other officer, it must be carried out by that Court. *Hanuman Jha v Hanuzi Jha* (1915) . I. L. R. 43 Calc. 225

6. — Suit for declaration of title without consequential relief—Court Fees Act (I of 1870), s 44 II, 17 (iii)—Suits Valuation Act (VII of 1887), s 8—Objection to jurisdiction not taken in first court—Illegal and misconceived practice of valuing suit. The plaintiff (respondent) brought a suit against the appellant for movable and immovable property and by one of whom he claimed to be the adopted son. The property was stated in the plaint to exceed Rs. 60,000 and to be in the hands of the Collector (with the exception of a house worth Rs. 250) at the instance of the appellant, who claimed to be the nearest heir of the deceased. The plaint prayed for a declaration (valued at Rs. 150) of the respondent's title, and for an injunction (valued at Rs. 5) to prevent obstruction by the appellant to the property in the respondent's possession. The appellant denied the adoption, but he made no objection either in his written statement or in his memorandum of appeal to the District or the High Court to the jurisdiction of the First Class Subordinate Judge to try the suit. That Court decided the suit in favour of the respondent. From that decision the appellant appealed both to the District Judge and to the High Court, and the latter appeal stood over until the former had been decided by the District Judge who on the ground that the valuation of the suit was less than Rs. 5,000 reversed the decision of the First Court and made a decree in favour of the appellant, but that decree was reversed on appeal to the High Court by the respondent, and it was held that the appeal lay not to the District Judge but to the High Court which then heard the appellant's appeal from the original decision of the First Class Subordinate Judge and affirmed his decision. By order in Council leave was granted to the appellant for a special appeal to his Majesty in Council, on the hearing of which the appellant raised the contention that the value of the subject-matter of the suit was a sum not exceeding Rs. 5,000 and, therefore the decision of the First Class Subordinate Judge had been without jurisdiction, and the appeal to the High Court was not competent. *Held*, that the value of the subject-matter of the suit exceeded Rs. 5,000 and it was rightly instituted in the Court of the First Class Subordinate Judge in the exercise of his special jurisdiction, and the appeal from his decision properly lay to the High Court. If any part of the Court fee payable and paid was a fixed fee under s 2 of the Court Fees Act the national value of the property could not displace its real value for the purposes of jurisdiction.

VALUATION OF SUIT—*contd.*

The objection of the appellant to the First Class Subordinate Judge not having been raised in his Court could not be made at any subsequent stage of the suit. A practice of valuing a prayer for a declaratory decree at Rs. 150 as being the value on which the fee nearest to Rs. 10 would be leviable deprecated as being illegal and misconceived. It was contrary to the scheme of the Court Fees Act that there should be any valuation of such a suit. *Hachappa Srinao v Sridatta Venkatarao* (1918) . I. L. R. 43 Bom. 507

VALUE OF PROPERTY.

See APPEAL TO PRIVY COUNCIL.

I. L. R. 44 Calc. 119

See VALUATION OF LAND.

See VALUATION OF SUIT

VALUE-PAYABLE POST.

See CIVIL PROCEDURE CODE 1908, s 20

I. L. R. 42 All. 619

See POST OFFICE ACT (VI of 1898), s 63.

Id. Id. . I. L. R. 32 Mad. 322

VARTHAMANAM (OR LETTER).

Not stamped—Unconditional undertaking to pay—Promissory note in admissible in evidence—Evidence Act (I of 1872) s 91—Suit on original liability not maintainable. A *Varthamanam* or letter which says, "Amount of cash borrowed of you by me is Rs. 350. I shall in two weeks' time returning this sum of rupees three hundred and fifty with interest thereon at the rate of Rupee one per cent. per month, get back this letter," amounts to an unconditional undertaking to repay borrowed money and is therefore a promissory note and not merely an offer to borrow or an acknowledgment of indebtedness. *Iharata Puharadi v Vasdevrao Nambedi*, I. L. R. 27 Mad. 1 distinguished. *Tirupathi Goundan v Rama Reddi*, I. L. R. 21 Mad. 49, doubted. When such a document is inadmissible for want of a stamp, to allow a suit as one on "account for money had and received," concerning the real contract of loan which had been reduced to the form of a document would nullify s 91 of the Indian Evidence Act (I of 1872). *Pethi Reddi v Lalayudhanon*, I. L. R. 20 Mad. 94, followed. *Chinnappa Pillai v Muthayyan Chettiar*, 9 Mad. L. T. 287, and *Mallaya v Ramappa*, 21 Mad. L. J. 462, approved. *Ariyakudi v Rajmal* I. L. R. 24 Bom. 360 and *Pai Aitha Das v Sahaj Ram*, 16 I. C. 33 disavowed from. Doctrines of English Courts of Equity are not to be imported into the construction of such a document. *Per BREXEN, J.*—The mere use of the word *varthamanam*, instead of promissory note, will not deprive the document of its real character of promissory note if its terms show that it is such. *MURBU SASTRIAL v VISWANATHA PANDYA, RASANTHABAI* (1913) . I. L. R. 38 Mad. 680

VATAN.

See BOMBAY HEREDITARY OFFICES ACT, (Bom Act III of 1874), s 15.

I. L. R. 44 Bom. 237

See DEKKAN AGRICULTURISTS' RELIEF ACT, s 2, EXPL. (b)

I. L. R. 36 Bom. 151

VATAN—contd

See HEREDITARY OFFICES ACT (BOM III OF 1874)—

s. 2 . I. L. R. 43 Bom. 323

ss. 4, 53. . I. L. R. 41 Bom. 677

s. 11 . I. L. R. 37 Bom. 37

ss. 23, 30, 63 and 61

I. L. R. 41 Bom. 23

See HINDU LAW—HEREDITANCE

I. L. R. 34 Bom. 321

See INAM LANDS I. L. R. 38 Bom. 272

See LIMITATION ACT, 1877, s. 22, 28

I. L. R. 34 Bom. 91

See LIMITATION ACT (IN OF 1908), SCR. I.

ART 152 . I. L. R. 43 Bom. 378

See RES JUDICATA

I. L. R. 37 Bom. 224

See SANAD, CONSTRUCTION OF

I. L. R. 36 Bom. 639

See VATAN DESHMUKHI.

—Mortgage of Vatan lands—

See LIMITATION ACT, 1908 s. 20

I. L. R. 44 Bom. 300

1. ————*Regulation XVI of 1837—Transfer of Property Act (1 of 1882), s. 43—Deshgat Vatan—Mortgage—Subsequent enlargement of the mortgagor's estate—Private property—Mortgagee's claim to hold the property against the mortgagor's heir.* A mortgagee of Deshgat Vatan knew that the property which was mortgaged to him was land appertenant to an hereditary office and inalienable beyond the life time of the incumbent. Subsequently to the mortgage the estate of the mortgagor was enlarged so as to be alienable in the life time of the holder. After the enlargement, the mortgagee having claimed to hold the property against the heir of the mortgagor. *Held*, that the mortgagee took only such estate as the holder of the Vatan property was capable of conveying to the mortgagee at the time of the mortgage and that the mortgagee could not claim to retain the property in virtue of the mortgage after the death of the mortgagor. *GANGABAI v. BASWANT* (1909) I. L. R. 34 Bom. 175

2. ————*Patilki Vatan—Court-sale of the vatan lands in execution of decrees against holder of vatan—Levy of full assessment by Collector—Character of vatan land not changed by the levy—Suit by next holder of vatan within twelve years of the death of his predecessor—Limitation.* The plaintiff's father held the land in dispute as patilki vatan which were sold in 1875 to the defendant at a Court-sale held in execution of a decree. The Collector thereupon levied full assessment on the land and assigned the assessment for remuneration for service. The plaintiff's father died in 1904. In 1909 the plaintiff brought a suit against the defendant to recover possession of the land. The lower Courts dismissed the suit on the grounds that the land had ceased to be vatan and that the suit was brought beyond time. The plaintiff appealed. *Held*, that the land did not lose its character as vatan merely because the Collector levied full assessment and altered the mode of remuneration. *Held*, also, that the plaintiff's suit was in time since on the death of the plaintiff's father in 1903, the plaintiff became

VATAN—contd

entitled to the land as the next holder of the vatan, and the defendant's interest in the land as the vendee of the right, title and interest of the plaintiff's father came to an end. *SHIVRAM NARSINGRAO v. NARAYAN KULKARNI* (1912)

I. L. R. 37 Bom. 81

3. ————*Suit to recover a share in the profits of vatan—Suit for money had and received—Amount of the claim under Rs. 500—Small Cause Court nature—No second appeal.* A suit for the recovery of a share in the profits of a Kulkarni vatan is a suit for money had and received by the defendant for the use of the plaintiff, and the claim being under Rs. 500, it was of a Small Cause nature in respect of which no second appeal lay. *SHIKAJI HARI v. PADHANAJI* (1913) I. L. R. 37 Bom. 700

VATANDAR

See CURATORS ACT, 1841, s. 3, 4, 14

I. L. R. 34 Bom. 115

See HEREDITARY OFFICES ACT, BOMBAY,

ss. 23, 26 I. L. R. 34 Bom. 101

s. 6 . I. L. R. 36 Bom. 420

—mortgage by—

See HEREDITARY OFFICES ACT (BOM III OF 1874), s. 5

I. L. R. 39 Bom. 537

—title against, by adverse possession—

See HEREDITARY OFFICES ACT (BOM ACT III OF 1874), ss. 10 AND 13

I. L. R. 35 Bom. 148

VATANDAR BARBERS

———*A Vatandar Barber has the right to perform services as a barber, on ceremonial occasions. He is entitled to recover customary fees from another barber who has acted in violation of his rights.* *BRAGORI GANT v. BALU BALU* . I. L. R. 44 Bom. 733

VATANDAR JOSHI.

———*Right to officiate at marriages—Yajman—Ceremony in Pancha Lalas Lingayat form—Claim for fees in respect of part of the ceremonial in Hindu form—Ceremony cannot be split up.* The question raised in this appeal was whether the ceremonials observed by Lingayets in marriages are to be regarded as a whole in deciding whether or not the village Gramopadhyas is entitled to perform the ceremony or whether the ceremony can be split up into parts, and if it is found that some part of the ceremonial is similar to the Brahmin ritual the Gramopadhyas can insist upon payment of fees in respect of such part of the ceremonial as may have been performed by an other. *Held*, that, if the ceremony performed was not a Hindu marriage ceremony as a whole the Joshi or Gramopadhyas had no right to demand the fees. *PANGAPPA v. VENKATRAY* (1915) I. L. R. 40 Bom. 112

———*Observance of non Brahminical ceremonies—Yajman himself performing the ceremonies—Right to recover fees.* The defendants were non Brahmin residents of a village. Defendant No. 1's mother having died, he, with the assistance of defendant No. 2, performed over the body certain non Brahminical ceremonies. No fees were paid to the defendant No. 2 and the whole

VATANDAR JOSHI—contd

conduct of ceremonies was with the defendant No 1 himself. The plaintiff, a Vatandar Joshi of the village, having sued to recover damages for loss of his customary fees. *Held* that the plaintiff was not entitled to recover damages as the ceremonies performed were other than Brahmanical ceremonies and there was no ground upon which the plaintiff could lawfully exact the payment of his fees. *Vithal Krishna Joshi v Anant Ramchandra 11 Bom H O R 6 Dinanath Abaji v Sadashiv Hari Madhavi 1 L R 3 Bom 9 Pajavilad Shiroga v Krishnabhat 1 L R 3 Bom 23*, distinguished. **BALA GENUJI v BALWANT LAXMAN (1918) 1 L R 42 Bom 613**

VEHICLE.

See BOMBAY DISTRICT POLICE ACT (BOM IV OF 1890) s 61, CL. (b)
1 L R 41 Bom 464

VENDEE.

— payment by—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss. 60 AND 91
1 L R 38 Mad 310

VENDOR

— liability of—

See VENDOR AND PURCHASER
1 L R 38 Cal. 458
Duty of vendee to protect vendee's title caveat emptor Where in a suit brought by a third party against a vendor and vendee of immovable property, the former admits the claimants title and the suit is decreed upon that admission he cannot in a subsequent suit for the recovery of the purchase money paid to him by the vendee plead that the former suit was wrongly decided. *Per Imam J*—In vernacular conveying the expression *jak adf* means a flawless title. **BHATTA PAK v GANGA PRASAD GOPE 3 Pat L J 258**

VENDOR AND PURCHASER

See AGREEMENT 1 L R 41 All 417
See CONTRACT 1 L R 35 All 325
See CONTRACT ACT 1872 s 65
1 L R 42 All 7
See LEASE 1 L R 42 Bom 103
See REVIEW 1 L R 40 Cal. 140
See SALE OF GOODS
See SALE OF IMMOVABLE PROPERTY
See SPECIFIC PERFORMANCE
1 L R 43 Cal. 990
See TRANSFER OF PROPERTY ACT 1832

— s 41—

ss. 51 to 57

1 L R 43 All 263

— rights of—

See MORTGAGE 1 L R 44 Cal. 542

— vendor's death before completion of sale—

See CONTRACT 1 L R 45 Bom 434

— Sale of property in possession of a third person—Person in possession claiming

VENDOR AND PURCHASER—contd

to be owner—The vendor a benamidar—Negligence The plaintiff purchased a house from a person who had the title deeds of the house made out in his name. The house was in the defendant's possession, who claimed to be its owner and it appeared that the plaintiff's vendor was only a benamidar for the defendant. The plaintiff sued to recover possession of the house from the defendant. *Held* that the plaintiff could not succeed because he omitted to make the inquiries which he was bound to make to perfect his own title and by his own negligence exposed himself to the risk of purchasing property which in reality belonged not to his vendor but to the defendant. **VTANKA PACHARYA v YAMANASANI (1911) 1 L R 35 Bom 269**

— Mortgage—Contract of Sale—

Breach by Vendor—Loss of bargain—Liability of vendor—Transfer of Property Act (IV of 1882) s 55 (1) (g)—Measure of damage The owners of certain immovable property which was under a mortgage entered into a contract for the sale of the property but subsequently declined to complete the sale on the ground of the existence of the mortgage. Thereafter the property was acquired under the land acquisition Act by the Local Government and the compensation paid to the owners including the statutory allowance of 15 per cent far exceeded the contract price. On a suit brought by the purchaser for damages for breach of the contract of sale. *Held* that the vendors were bound to convey the property free from incumbrances and the existence of the mortgage was no defence to the purchaser's action. *Erigill v Fitch L R 4 Q B 659 Day v Singleton (1899) 2 Ch 320 Jones v Gardiner (1902) 1 Ch 195* referred to. *Flureau v Thornhill 2 H Bl 1073 East v Fathergill L R 7 E & I App 158* distinguished. *Sembie* The ruling in *Bosi v Fothergill L R 7 E & I App 158* does not apply to India and there is no exception to s 73 of the Indian Contract Act in the case of sale of immovable property. *Ranchhod v Manmohan Das 1 L R 32 Bom 165*, and *Pitamber Sundarji v Cassabji 1 L R 11 Bom 22* referred to. The measure of damage was the difference between the contract price and the compensation allowed to the vendors excluding however the statutory allowance of 15 per cent, inasmuch as the breach had occurred before the acquisition. **NARICHANDRA SAHA PARAMADIK v KRISHNA BABANA DAS (1911) 1 L R 38 Cal. 458**

— Sale to raise funds for litigation

Transfer whilst vendor was out of possession—Agreement depending on success of litigation—Transfer of undivided share in joint ancestral property—Interest in property, giving right to sue—Vendee and provider of funds made co-plaintiffs The original plaintiffs in the two suits out of which these appeals arose were in one suit the sons and in the other the grandson of the heads and managers of two distinct joint Hindu families owners of an estate in Oudh by whom alienations of the joint ancestral property had been made in favour of the appellants whom they sued in ejectment to set aside those alienations on the ground that the managing members had no power to make them. As they required funds to enable them to prosecute the suits they entered into agreements with a third person (who was made a co-plaintiff in the suits and was now respondent) to the effect

VENDOR AND PURCHASER—contd

that "in the share of each of them in property he will be a co sharer of a one half share and the remaining one half share will belong to us."

He will bear the entire expenses in connexion with the suit, and in case of success he will be entitled to proprietary possession of the above mentioned one half share, or one half of the share which may be decreed which can remain joint or be partitioned by him as he pleases." In the course of the litigation the original plaintiffs compromised the suits with the appellant and withdrew from them leaving the respondents to prosecute them alone. Held (reversing on this point the decision of the Courts in India), that the agreements (which constituted his only right to sue) conferred upon the respondent no present right to the possession of any share in the property in suit. He would only have the right to possession in case of success, and success had not been achieved. Until then he was merely a co owner in a certain undivided share of the property. There was no present grant or assignment to him of any separate share of the property, divided or undivided, and he could not therefore maintain the suit. *Achal Ram v. Kasm Hussain Khan*, I L R 27 All 271, L P 32 I A 113, distinguished. *BASANT SINGH v. MATABIR PRASAD* (1913) I L R 35 All 273

Conveyance by executor—Is beneficial owner—Construction of deed of sale—Inconsistency between recitals and operative part of deed—Omission to state expressly that he was conveying the property sold in his capacity of executor. Held (reversing the appellate decision of the High Court, and restoring that of the first Court), that on the construction of a deed of sale and on the evidence in, and under the circumstances of the case the title vested in an executor passed to the appellants under the deed, by which he together with other vendors purported to convey all his estate right title claim and demand whatsoever in the property sold although he did not expressly state therein that he was conveying the property in his capacity as executor. The plain legal interpretation of the deed should not be allowed to be affected by speculations as to what particular rights existing in the various vendors were present to the minds of some or all of the parties to the conveyance at the date of its execution. The deed stated plainly that whatever right or title the vendors possessed was to go to support the conveyance, and it is a settled rule that the meaning of a deed is to be decided by the language used interpreted in a natural sense. *BIRAJ NOPANI v. PURA SUNDARY DASER* (1914) L R 41 I A 189

I L R 42 Calc 56

OVER RULING

I L R 37 Calc. 382

Conveyance of property by an administratrix—having a beneficial interest therein—No words of limitation in the agreement to convey specifying whether it was qua administratrix or qua beneficial owner—Principle to be applied in ascertaining in what capacity the administratrix acted. Where a person has two estates, one larger and the other smaller, and purports to convey the entire property without any words or limitation, he must be taken to be conveying the highest estate he has; that is to say, if an executor having a one third personal beneficial interest in the estate purports to convey the whole of it without qual-

VENDOR AND PURCHASER—concl.

ification or limitation he must be taken to be conveying in his character as executor and not in that of one having a beneficial interest only in a fraction of the whole estate purported to be conveyed. *In re Fenn & Furze's Contract*, [1894] 2 Ch 101, followed. No distinction can be maintained in principle between actual conveyance and agreements to convey for the purposes of applying this general rule. *GANGARAI v. SONARAI* (1914) I L R 40 Bom 69

Title, proof of—Contract to give a marketable title free from all reasonable doubt—Evidence of discharge of mortgage—Recitals in release—Registration Act (III of 1877). The question in this appeal was whether a vendor had made out "a marketable title free from all reasonable doubt," which he had contracted to do by a written agreement dated 18th October 1913, to sell certain land in Bombay. There had been a mortgage effected on the property, on 26th April 1892, in favour of two joint mortgagees by an agreement of charge duly registered under the Registration Act (III of 1877) and the deposit of the title deeds of the property with the mortgagees. To deduce a good title it became necessary to prove that the mortgage had been discharged. As proof of that fact the vendor produced a certified copy of a release, dated 30th September 1902, which had been executed by only one of the joint mortgagees but which recited the death of the other mortgagee, the fact that his co mortgagee was his sole heir and the redemption of the property from the equitable charge created by the agreement of 26th April 1892. One of the title deeds of the property was not produced by the vendor. Held (reversing the decisions of the Courts in India) that the recitals in the release were not evidence against the joint mortgagee, and that the title contracted for had not been deduced. *SHRINIVAS DAS BAVRI v. VENERBAI* (1916) I L R 41 Bom 300

Sale of specific Land—Vendor Evicted from part—On 16th September 1907 C. D. and his son V. B. the predecessors of defendants 3 to 8 sold to the Plaintiff 79 kanals and 4 marlas of land. The property comprised several plots which formed different Khassra numbers, specified in the sale deed. The price paid was Rs 1000 per kanal. Plaintiff asserted they got possession of 75 kanals, and 4 marlas. Defendants 1 and 2 being the true owners of the rest. Held that under the deed the vendors had sold 79 kanals, 4 marlas and it was the duty of the vendors either to make good the deficiency or to pay damages having regard to s. 53 of the Transfer of Property Act the measure of damages being the price of the land at the time of eviction. *JAI KISHEN DAS ARYA PRITE NIGRA SARDNA* I L R 1 Lah 380

VENDOR AND SUB-VENDOR

Estoppel—Unpaid Vendor—Appropriation—Sale trade, usage of—Pucca delivery orders—Negotiability—Documents of Title—Indian Contract Act (IX of 1872), s. 108—Transfer of Property Act (IV of 1922), s. 137—Damages. A delivery order is recognized as a document of title under s. 108 of the Contract Act and s. 137 of the Transfer of Property Act, and under a delivery order the transferee acquires a title to the goods to

VENDOR AND SUB-VENDOR—contd

which it relates. By the usage of the jute trade in Calcutta, pucca delivery orders are issued only on cash payment, are passed from hand to hand by endorsement and are sold and dealt with in the market as absolutely representing the goods to which they relate. On the 1st March 1903, the defendant company sold to J & Co a principal certain Hessian cloth on the terms that "payments were to be made in cash in exchange for delivery order on sellers and delivery of the goods was to be given and taken ready payment against pucca delivery order." A pucca delivery order was issued on the 2nd March by the defendant company in favour of J & Co's principals or order embodying the term "ready shipment." On the 3rd March J & Co requested the plaintiffs to advance money on the security of the delivery order. The plaintiffs on making enquiries at the mills were informed the delivery order was "all right." On the 4th March J & Co obtained an advance of money from the plaintiffs on the pledge of the delivery order and duly endorsed the delivery order to the plaintiffs. On the same date J & Co handed the defendant company a cheque in payment of the goods comprised in the delivery order. On the 8th March the defendant company presented the cheque for payment, but it was dishonoured. The defendant company thereupon refused to give delivery of the goods to the plaintiffs under the delivery order. The plaintiffs obtained an absolute release of all J & Co's interest in the delivery order, and brought an action against the defendant company for delivery of the goods or their value or damages for conversion. *Held* that the defendant company were estopped from denying that cash had been paid for the goods to which the delivery order related and they could not claim to be entitled to a lien as against the plaintiffs. The defendant company were further estopped from denying that they had appropriated goods of the required quantity and description to the delivery order and that they held these goods for the plaintiffs. *Goodwin v Roberts* L R 1 A C 476 referred to. *ANOLD INDIA JUTE MILLS CO v ONADEMULL* (1910) I L R 38 Cal 127

VENDOR'S LIEN

See TRANSFER OF PROPERTY ACT 1882,
s 55
s 55 (4)

VENDOR'S MARK.

See TRADE MARK I L R 37 Cal 204

VENEREAL DISEASE

See DIVORCE I L R 48 Cal 283

VENUE

See CIVIL PROCEDURE CODE 1908, ss
16-21
See JURISDICTION I L R 41 Cal 305
I L R 43 Cal 942
See RAILWAY COMPANY
I L R 41 All 488
— transfer of, from one Court to
another after decree—
See JURISDICTION I L R 37 Mad 477

VERBAL APPLICATION

See SANCTION FOR PROSECUTION

I L R 40 Cal 423

VERBAL NOTICE

See EJECTMENT I L R 40 Cal 858

VERDICT OF JURY

See CRIMINAL PROCEDURE CODE (ACT
1 OF 1898) ss 297, 303, 304

I L R 38 Mad 585

— by casting lots—

See JURY, TRIAL BY

I L R 40 Cal 693

— Reference to High Court

— Power to question the jury as to their reasons for the verdict—Grounds of reference—Mere disagreement with a verdict not perverse—Interference by High Court when the verdict is not in defiance of the probabilities of the case. It is open to the Judge, when he disagrees with the verdict of the jury and intends to make a reference to the High Court under s 307 of the Criminal Procedure Code to question the jury as to the reasons for their verdict. *Emperor v Ananda Charan Thakur* I L R 26 Cal 629, referred to. It is not in every case of doubt nor in every case in which a view different from that of the jury can be entertained on the evidence that a reference under s 307 of the Code is to be made to the High Court but when the verdict is manifestly wrong. The High Court will not interfere under s 307 in every case of doubt or in every case in which it may with propriety be said that the evidence would have warranted a different view. *Queen v Sham Lagat* 13 B L R 49 19 approved. The High Court refused to interfere where the facts on a reasonable hypothesis, were not inconsistent with the innocence of the accused and the verdict was not in defiance of the probabilities of the case. *EMPEROR v SWARNA MOYEE BISWAS* (1913) I L R 41 Cal 621

— Juror speaking to an outsider without the leave of the Court after their retirement to consider the verdict—Legality of the verdict—Criminal Procedure Code (Act 1 of 1898), s 300. The verdict of the jury is vitiated by the mere fact of one of them having without the leave of the Court and after their retirement to consider the same spoken to or held any communication with a person not a juror. It is not necessary for the Court to enquire into the nature of the subject matter of the conversation or communication. *Rex v Ketteridge* [1915] 1 K B 467, referred to. *BENI MADHAR KUNDU v EMPEROR* (1918) I L R 46 Cal 207

VERIFICATION

See CONSPIRACY TO WAGE WAR

I L R 33 Cal 559

— of plaint—

See EX PARTE DECREES

I L R 43 Cal 1001

See PLAINT

VERNACULAR GOVERNMENT GAZETTE

See REVENUE SALE

I L R 41 Cal 276

VESTED INTEREST.

See MAHOMEDAN LAW—TRUST

I L R 34 Bom. 604

VESTED INTEREST—contd

See TRANSFER OF PROPERTY ACT 1882,
s. 19

See WILL . I. L. R. 43 Bom. 88

VESTED RIGHT.

See LIMITATION I. L. R. 41 Calc. 1125

VESTING ORDER

See UNDISCHARGED BANKRUPT.
I. L. R. 47 Calc. 861

effect of—

See INSOLVENCY I. L. R. 42 Calc. 72

VEXATIOUS CHARGE

See CRIMINAL PROCEDURE CODE (ACT
V OF 1893), s. 250
I. L. R. 37 Bom. 378

VIEW OF PREMISES.

See PRACTICE I. L. R. 35 Bom. 317

VILLAGE.

See MADRAS ESTATES LAND ACT (I OF
1908), s. 8 I. L. R. 39 Mad. 891

change of, from one district to
another—

See RELIGIOUS ENDOWMENTS ACT (XX
OF 1863) . I. L. R. 39 Mad. 849

Proprietors of, who are
—Persons who do not pay land revenue, but only
demi (grazing) charges, if entitled to share on partition
of shamilat land. Persons who merely paid tani
(grazing dues) to the Government and who did not
pay any land revenue assessed on the village
were not proprietors of the village and were not
as such entitled to a share on partition of the
shamilat land of the village. BAGGA v. SALEH
(1915) . 19 C. W. N. 1023

**VILLAGE CHAUKIDARI ACT (BENG. VI OF
1870)**

See CHAUKIDARI ACT

See CHAUKIDARI CHAKRAN LANDS.

Held that the words
otherwise than under a temporary settlement
in the definition of Chaukidari Chakran Lands
refer to a settlement by Government. SRI RAJA
KIRTIBASH BHUPATI MARI CHANDAY MAHAIPATRA
v. SECRETARY OF STATE.
15 C. W. N. 300

s. 1, 43 to 52, 53—

See CHAUKIDARI CHAKRAN LANDS.
I. L. R. 42 Calc. 710

s. 49—

See CHAUKIDARI CHAKRAN LAND
I. L. R. 37 Calc. 593

s. 50—

See CHAUKIDARI CHAKRAN LANDS.
I. L. R. 44 Calc. 841

s. 50, 51—Legal effect of resumption of
chaukidari chakran lands and subsequent transference
thereof to the zamindars, whether in such a case
the zamindar acquires a new title thereto and whether
it is incumbent on the putindar to ask for a fresh
settlement thereof. Where chaukidari chakran

**VILLAGE CHAUKIDARI ACT (BENG. VI OF
1870)—contd.**

ss. 50, 51—contd

land forming part of lands settled in *paisal* was
resumed by Government under the provisions of
the Village Chaukidari Act and was subsequently
transferred to the zamindar who thereupon settled
such lands with the plaintiffs who were third
parties: *Held*, that the zamindar was not com-
petent to make a settlement with the plaintiffs
and that under the grant which the plaintiffs
obtained they had acquired no right as against
the putindars. The putindars were not bound to
take a fresh settlement from the zamindar after
resumption. *Held*, also that the transfer of the
lands by Government, subsequent to resumption,
did not create a new estate in the zamindar, but
the estate thus taken by him was in confirmation
and by way of continuance of his existing estate.
GOCHENDRO MOHAN SIKHA v. RAJENDRA NATH
ROY (1917) . 22 C. W. N. 660

s. 51—

See CHAUKIDARI CHAKRAN LANDS.

I. L. R. 45 Calc. 515, 635

I. L. R. 46 Calc. 173

ss. 52, 53, 59, 60, 61—Determination by
a Commissioner under s. 61—Fraud—Review by sub-
sequent Commissioner—Civil Suit. An order by
Commissioner appointed under s. 58 of the Village
Chaukidari Act determining that certain lands are
chaukidari chakran lands is final and conclusive.
Such orders cannot be reviewed by a second Commis-
sioner even if the previous order was fraudulently
obtained. An order under s. 61 of the Village
Chaukidari Act may be set aside on proof of
fraud or of non compliance with the provisions of
the law, if at all, only in a regular suit by a Civil
Court. SARADINDU NARAIN ROY v. BHESODH
BHARYA MORATA (1913) . 18 C. W. N. 143

s. 60—Enquiry, nature of—Notice, per-
sons entitled to—Notice, absence of, effect of—
Commissioner's report if final and conclusive—
Reg VII of 1822, s. 21. *Held*, that s. 60 of the
Chaukidari Chakran Act (VI of 1870, B. C.) lays
down that in chaukidari chakran enquiries the
procedure shall be in accordance with Reg VII
of 1822 and the absence of notice would render
the proceedings of the Commissioner of no effect
against a person who was entitled to notice and
the Civil Court could interfere, although but for
such defect the order of the Commissioner would
be final and conclusive. SARAT CH. RAY v. SEC-
RETARY OF STATE FOR INDIA (1916)
21 C. W. N. 238

VILLAGE COMMUNITY.

See PROFIT A PREVENIRE

2 Pat. L. J. 323

VILLAGE MAGISTRATE.

Information to—Effect of giving—

See BAILABLE OFFENCE.

I. L. R. 39 Mad. 1006

Power to confine—

See REGULATION XI OF 1816 (MAD)

I. L. R. 44 Mad. 113

VILLAGE POLICE ACT

See BOMBAY VILLAGE POLICE ACT 1867

VILLAGE ROAD.

Held that non joinder of parties in a suit for a declaration of right on a village Road may be fatal. HARAN SHRIER v RAMESH CHANDRA BHATTACHARJEE

25 C. W. N. 249

VINCHUR COURT.

See SPECIAL APPEAL

I. L. R. 38 Bom. 340

VIS MAJOR.

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901), ss 50, 54

I. L. R. 35 Bom. 492

VOIDABLE CONTRACT.

See PRINCIPAL AND AGENT

I. L. R. 37 Calc. 81

See TRUSTS ACT (II OF 1892), s. 83

I. L. R. 43 Bom. 173

VOLUNTARY LIQUIDATION.

See COMPANIES ACT 1913, s. 207

I. L. R. 38 All. 407

— Examination of Directors and Managers—

See COMPANIES ACT 1913, s. 215

I. L. R. 44 Bom. 459

VOLUNTARILY OBSTRUCTING PUBLIC SERVANTS IN THE DISCHARGE OF PUBLIC FUNCTIONS.

See PENAL CODE (ACT XLV OF 1860), s. 186. I. L. R. 37 Calc. 122

VOLUNTARINESS.

See CONFESSION I. L. R. 40 Calc. 873

VOLUNTARY PAYMENT.

See MADRAS IRRIGATION CESS ACT, s. 2.
[I. L. R. 34 Mad. 295]

Suit to recover money paid under decree—Wrongful interference of defendant—“Coercion”—Contract Act (IX of 1872), ss 15, 69, 70, 72 Illus (b)—Civil Procedure Code, 1882, s. 278 et seq.—Claims to attached property—Money paid under compulsion—Money paid under process of decree against third person The appellant (plaintiff) stated in his plaint that he was the proprietor of the Delhi Cotton Mills against which the respondent Bank (defendant) had an unsatisfied decree, that the respondent on 15th August 1902 applied for the attachment of the property and premises of the mills, wrongfully stating that they were the property of the Delhi Cotton Mills Company, attached the property on 20th August 1902, knowing that it belonged to the plaintiff, and dispossessed him, that “he has suffered considerable damage by the said acts of the defendant, and as he was by such acts practically ousted from all the machinery and mills, and could not work them, and the whole of such damage would be very considerable, and part of it most difficult to prove, and it was probable that by objection to such attachment under the Civil Procedure Code a considerable time would elapse before he could obtain an order setting aside the attachment” the plaintiff was compelled to pay the balance due to the defendant under the decree

VOLUNTARY PAYMENT—contd.

against the Delhi Cotton Mills Company, under protest, on 27th August 1902 In a suit brought for a return of the money so paid, and damages for the alleged illegal acts of the defendant, the defence (*inter alia*) was that “the suit as framed would not lie,” and the case was argued on a preliminary issue, the proceedings being of the nature of a demurrer *Held* (reversing the decision of the Courts in India), that the plaintiff was entitled to recover the money so paid as being an involuntary payment produced by coercion, namely, the wrongful interference of the defendant with his full and free enjoyment of his own property *Dulchand v Ram Kishan Singh*, I. L. R. 7 Calc. 618, I. L. R. 1 A 33, followed. The fact that the sale was not inevitable in the present case was not relevant The greater or less probability of a sale taking place did not affect the *ratio decidendi* in that case which is that the payment was made under the force of the execution proceedings, and that in India, as in England, such a payment is regarded by the law as being made under compulsion The procedure provided in the Civil Procedure Code referring to claims to attached property (s. 278 et seq) is merely permissive, being analogous to the procedure by interpleader in England. But the fact that such a procedure is open to him if he chooses to adopt it, in no way interfered with the plaintiff's right to take any other lawful alternative S. 72 of the Contract Act (IX of 1872) is not exhaustive The meaning of the word “coercion” used in that section is not controlled by the definition in s. 15, but is used in its general and ordinary sense The definition in s. 15 is expressly inserted for the special object of applying to s. 14, i. e., to define what is the criterion whether an agreement was made by means of a consent extorted by coercion, and does not control the interpretation of “coercion” when the word is used in other surroundings Ss 69 and 70 of the Contract Act do not refer in any way to remedies against the wrong-doer, and are therefore irrelevant to the question raised in this appeal. KANRAYA LAL v NATIONAL BANK OF INDIA, LTD (1913)

[I. L. R. 40 Calc. 598]

VOTERS.

— list of—

See MUNICIPAL ELECTION

I. L. R. 46 Calc. 122

I. L. R. 39 Calc. 598, 744

— qualifications of—

See MUNICIPAL ELECTION

I. L. R. 45 Calc. 950

I. L. R. 38 Calc. 501

VRITTI.

—Revocation of Purans—Conferring hereditary office and granting lands for performance of office—Grant of lands burdened with the performance of service—Reversionability of lands Where an hereditary office, e.g., of vrutti for the reciting of Purans, is created and bestowed hereditary upon the grantee from generation to generation, and lands are assigned as remuneration therefor, the lands so granted are not reversionable. Where there is an interest in land coupled with a duty, and the grant is not forthcoming, so that its actual terms may be known, it must always be a matter of great difficulty, and no more than a mere conjecture to decide whether the interest

VRITTI—contd

was so coupled with the duty that the latter could confidently be said to have been the sole motive and condition of the former. In such a case the interest in land is reasonable on failure or refusal to perform the duty. In cases of grants burdened with service reasonable for failure or refusal to perform that service, the Court would ordinarily require very strong and conclusive evidence before disturbing the practice which has persisted for a long time. **MADHWACHARYA v SHRIDHAR NARASINGHA** (1913) I L R 37 Bom. 409

—Alienation in special cases under special conditions—Local usage and custom. As a general rule *vritti* are inalienable. They may be alienated in special cases and under special conditions provided that such alienations can be supported by local usage and custom. **Rajaram v Ganesh**, I L R 23 Bom. 131 referred to. **MANJUNATH SUBRAHATY v SHANKAR MANJAYA** (1914) I L R 39 Bom. 26

—Hereditary priest of caste—Right to office—Caste panchas preventing the priest from giving his ministrations—Suit by priest for an injunction—Laches—Civil Court—Jurisdiction. The plaintiff was an hereditary priest of Patidar Gujarathis of Yeola. In 1906 the defendants who were Panch of the caste called upon the plaintiff to distribute the emoluments of the office amongst the members of the priestly family, and on the plaintiff's refusal to do so issued an order to their castemen not to allow the plaintiff to officiate in his *Vritti* and pay perquisites to him. In 1916, the plaintiff having sued for an injunction restraining the defendants from prohibiting plaintiff from officiating. *Held* that an hereditary office of a priest was in the nature of immovable property and therefore, the plaintiff would ordinarily be entitled to an injunction restraining the defendants from interfering with that immovable property. **Ghalebhai Gaurabhaikar v Hargobind Ramji** (1911) 36 Bom 94, relied on. *Held* however that on the facts of the case the plaintiff having acquiesced in the action of the defendant's interfering with his right for over ten years, had debarred himself from getting the preventive relief of injunction. **GIJASHANKAR DAIJI v MURLIDHAR NARAYAN** (1920) I L R 45 Bom 234

VYAVAHARA MAYUKHA

See HINDU LAW—MITAKSHARA

I L R 40 Bom 621

See HINDU LAW—SHRIDHAR

I L R 41 Bom. 618

See HINDU LAW—SUCCESSION

I L R 36 Bom 120

VYAVAHARIKA.

See HINDU LAW—DEBT

14 C. W. N 659

W**WADHWAN CIVIL STATION**

—British India—Bombay Act. *Held* that the Bombay Act V of 1878, s 43—*Bhding*—*Importation—Carrying bhding by rail from Wadhwan Civil Station to Viramgam.* The accused was charged with having imported into the Presidency of Bombay *bhding* (an intoxicating drug), an offence

WADHWAN CIVIL STATION—contd

punishable under s 43 of the Bombay Abkari Act (Bombay Act V of 1878), inasmuch as he carried with him twenty tolas of *bhding* from Wadhwan Civil Station to Viramgam by rail. *Held*, that the Civil Station at Wadhwan was not a part of British India, and the accused was guilty of the offence with which he was charged. **Triccan Panackand v The Bombay Baroda and Central India Railway Company I L R 3 Bom 214** not followed. **Queen Empress v Abdul Latib alias Abdul Rahiman I L R 10 Bom 186**, followed. **EMPEROR v CHIMANTAL** (1912)

I L R 37 Bom 152

WAGERING

—defence of—

See INTERROGATORIES

I L R 37 Bom 347

See PAKKI ADAT TRANSACTIONS

—Defence of wagering in the case of transactions apparently genuine—Necessity for the defendant to prove that both parties entered into the transaction with the intention of treating it as a wager—Tej mandis transactions. The defendant dealt to a large extent in silver with the plaintiffs buying silver for forward delivery and afterwards settling the plaintiffs' claims by selling an equal quantity of silver to the plaintiffs. The plaintiffs sued the defendant for balances due on these transactions and also for moneys due on certain *tej mandis* transactions between the parties that is transactions in which the purchaser buys the option to buy or sell goods at a future date, but the plaintiff afterwards relinquished their claim in respect of the *tej mandis* transactions. *Held* that the Court will not lightly favour gambling defences. In order that a transaction apparently genuine may be set aside as a wagering transaction, it must be shown that it was known to be a wager by both the parties to it who acted upon that knowledge with no intention of treating the transaction as anything but a wager. *Held*, further, the general rule in this country is that "*tej mandis*" transactions must be regarded as wagering transactions, and the onus of proving that they are not such would lie heavily on the party so alleging. **Kearichand v Merwanji**, I Bom L R 263, followed. **JYESTHANI JUGGONATH v TULSIDAS DAMODAR** (1912)

I L R 37 Bom 264

WAGERING CONTRACT

See CONTRACT I L R 43 All 585

22 C W N 625

I L R 33 All 585

See CONTRACT ACT (IX OF 1872), S 30.

See PAKKI ADAT TRANSACTION

I L R 39 Bom I

I L R 45 Bom 386

—Common intention to wager essential—Speculation not equivalent to wagering—Pakki Adat—Contract Act (IX of 1872), s 10—Bombay Act III of 1863, ss 1 and 2. Speculation does not necessarily involve a contract by way of wager, and to constitute such a contract a common intention to wager is essential. Even if one party to a contract were a speculator who never intended to give delivery, and that fact was known to the other party, yet in the absence of any bargain or understanding, express or implied,

WAGERING CONTRACT—*contd.*

that the goods were not to be delivered, that would not convert a contract, otherwise innocent into a wager; nor would the mere fact, that as to the greater part of the goods there was no delivery but an adjustment of claims, vitiate the transaction. *Parkes Adat* dealings are well established as a legitimate mode of conducting commercial business in the Bombay market. *Held* (reversing the decision of the appellate High Court), that the contracts in suit were not wagering contracts. *BHAGWANDAS PARASHAM v. BUNJORJI RUTTONJI* (1917) . . . I. L. R. 42 Bom. 373

— "Gambling" and "Wagering," distinction between—*Calcutta Police Act* (Beng. IV of 1866 as amended by Beng. Act III of 1897), s. 41—*Common gaming house—Instruments of gaming—Cotton-gambling not a game of contest* Betting must always be on an uncertain event, and betting in itself, apart from stakes being laid on a particular game or instrument of gaming in a public place, is not penal. Playing with cards, dice or money is penal if done in a public place. The offence created by the Calcutta Police Act is a purely technical one, and nothing has ever been done on this side of India to include any form of betting or wagering without instruments in the offence, except in the single case of rain-gambling without a machine; and in order to include this, extraordinary legislation has had to be undertaken to make the books and registers in which rain-gambling wagers are entered and all other documents containing evidence of such wagers instruments of gaming. Gaming is playing at any game, sport, pastime or exercise, lawful or unlawful, for money or any other valuable thing which is staked on the result of the game, i.e., which is to be lost or won according to the success or failure of the person who has staked. *Reg. v. Ashton, 1 El. & Bl. 286, Lockwood v. Cooper, (1903) 2 K. B. 428*, referred to. Wagering which includes betting is making a contract on an unascertained event past or future (in which the parties have no pecuniary interest other than that created by the contract) by which the parties are to gain or lose according as the uncertainty is determined one way or the other. *Carroll v. The Carbolic Smoke Ball Co., (1892) 2 Q. B. 481*, referred to. Cotton-gambling is "betting" pure and simple. *Hare Singh v. Jada Nandan Singh, 1 L. R. 31 Cal. 542; 8 C. W. N. 458*, referred to. *RAM PRATAP NEMANI v. EMPEROR* (1912)

I. L. R. 39 Cal. 963

WAGING WAR.

See CONSPIRACY TO WAGE WAR.

I. L. R. 38 Cal. 359

See JURY, RIGHT OF TRIAL BY.

I. L. R. 37 Cal. 467

See PENAL CODE, ss. 107—124A

I. L. R. 34 Bom. 394

See PENAL CODE, ss. 121A, 123

16 C. W. N. 1105

WAIVER.

See BOND

I. L. R. 43 All. 33

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 85 . . . I. L. R. 38 Mad. 835

See CONTRACT ACT, 1872,

s. 53 . . . 2 Pat. L. J. 520

ss. 53 (2), 53 I. L. R. 40 Bom. 570

WAIVER—*contd.*

See CROSS EXAMINATION.

I. L. R. 37 Cal. 236

See EJECTMENT . I. L. R. 45 Cal. 469

See ESTOPPEL.

See INSOLVENCY . I. L. R. 47 Cal. 56

See INTESTATEMENTS.

I. L. R. 35 Bom. 511

See JURY, RIGHT OF TRIAL BY.

I. L. R. 37 Cal. 467

See LANDLORD AND TENANT.

I. L. R. 34 Mad. 161

I. L. R. 37 Cal. 449

I. L. R. 46 Cal. 552, 1079

See LESSOR AND LESSEE.

I. L. R. 38 Mad. 445

See LIMITATION . I. L. R. 38 Mad. 374

See MADRAS CIVIL COURTS ACT (III OF 1873), s. 17 . I. L. R. 38 Mad. 531

See MAHOMEDAN LAW—PRE EMPTION.

I. L. R. 41 Cal. 943

See MORTGAGE . I. L. R. 47 Cal. 770

See NOTICE . I. L. R. 40 Cal. 503

See RESUMPTION . I. L. R. 39 Bom. 279

—Evidence of required—

See SALE . . I. L. R. 43 Cal. 790

—acceptance of rent—

See BOMBAY RENT (WAR RESTRICTIONS)

ACT II OF 1918, ss. 3, 9 AND 12

I. L. R. 45 Bom. 535

—by conduct—

See PRE EMPTION . I. L. R. 1 Lah. 51

—of claim to interest—

See BOND . . I. L. R. 43 All. 23

—of objection to jurisdiction of

Court—

See CIVIL PROCEDURE CODE, 1908, s. 105

I. L. R. 1 Lah. 54

—of notice—

See COMMON CARRIERS.

I. L. R. 38 Cal. 50

—of right of priority in favour of

second mortgagee—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 69 . . I. L. R. 37 All. 474

—on behalf of minor—

See MORTGAGE . I. L. R. 37 Cal. 897

—Ejectment, suit—With claim for rent

whether constitutes waiver. The institution of a

suit in ejectment is an unequivocal declaration

of an intention to determine the tenancy. The

mere fact that after service of notice to quit the

plaintiffs claimed arrears of rent due prior to the

ejectment proceedings does not constitute a waiver

of the notice to quit. But where future rent is

claimed and accepted after the notice to quit has

been served and the ejectment proceedings in-

stituted then the claim and acceptance of future

rent amounts to waiver of the initial step and the

proceedings upon which the right to eject depends.

BRAM WALL ARNAB v. MOHAMMAD HUSSAIN USMAN

2 Pat. L. J. 595

WAIVER—*contd*

Enhancement of rent—Bengal Tenancy Act (VIII of 1885), ss 43 108—Chur lands—Right of Occupancy. A took a lease of a certain Government *khaj mahal* and executed a *kubuliat* in favour of the Collector by which he (A) covenanted not to raise the rents of rayats beyond the amounts mentioned in the settlement *jamaabandi*. The tenants, however, subsequently agreed to pay rent at an enhanced rate on the ground that the fertility of the land had been increased. Upon a suit for arrears of rent at the enhanced rate against the tenants, the defence was that A was bound by the *kubuliat* executed in favour of the Collector, and as such he was not entitled to a decree at the rate claimed. *Held* that, inasmuch as the tenants voluntarily agreed to an enhancement of rent, they deliberately waived the benefit of the said covenant, and they could not impeach the validity of their own agreement on this particular ground. *Zamir Mandal v Gopi Sundari Das*, 1 L R 32 Calc. 483 (note) referred to. Under a 180 of the Bengal Tenancy Act, a rayat holding a *chur* land, but who has not acquired a right of occupancy is liable to pay such rent for his holding as may be agreed on between him and his landlord, irrespective of the provisions of s 43 of the Act. *JAHAN DAR BAKSH MALLIK v RAM LAL HAZRAH* (1910) 1 L R 37 Calc 449

Installment decrees—Default—Installments subsequently paid with interest, accepted—Waiver—Question of law—Second appeal. An installment decree provided that on the failure of the judgment-debtor to pay any installment the decree-holders would be entitled to realize the whole sum with interest at 12 per cent. per annum by the sale of the mortgaged property. Default was made in the payment of one of the installments and an application for execution was made but was dismissed for non prosecution. Subsequently the judgment-debtors by petition put in the sum due on the defaulted installment with interest and also the sum due on the next installment specifying the installments for which the different sums were paid. The decree holder withdrew the money. Several other installments specifying the installment in respect of which each deposit was made were similarly deposited and withdrawn. On an application by the decree-holder for execution of the entire decree with interest at 12 per cent. from the date of the default, crediting the amounts received as merely part payments on account of the decretal debt. *Held*, that the circumstances constituted a waiver of the default and it was no longer open to the decree holder to execute the decree on account of the default. The payments made were payments on account of installments and not part payments of the entire decree. Two useful tests may be applied to determine whether there has been an actual waiver or—(i) whether the payment subsequently accepted may be looked upon as a valuable consideration for the renunciation of the decree-holder's rights, (ii) whether the decree-holder has by his conduct intentionally caused the judgment debtors to believe that he had renounced his right. The question of waiver is a mixed question of law and fact, and the High Court can interfere on this ground in second appeal. *FAHIM KHAN v ABDUL WAHAB SIKDAR* (1910) 15 C W N 10

Waiver, what is. A waiver must be an intentional act with knowledge. A person cannot be barred of his remedy on the ground of waiver unless at the time of the alleged

WAIVER—*contd*

waiver he is shown to have been fully cognizant of his right and of the facts of the case. *BYAMA CHARAN BAISTA v PRASULLA SUNDARI GUPTA* (1913) 19 C W N 882

Jurisdiction—Leave to sue—Letters Patent, 1885 cl 12—*Feloppet* Where the plaintiff in his plaint alleges that portion of the cause of action arises outside the local limits of the Ordinary Original Civil Jurisdiction of this Court and fails to take leave under cl 12 of the Letters Patent the defendant may by appearing and pleading waive the objection to the jurisdiction. Where, however, the plaintiff alleges that the whole cause of action arises within the local limits of the Ordinary Original Civil Jurisdiction thus setting up a complete jurisdiction in the Court, and the defendant is called upon to plead to this and does plead, but it turns out at the trial that the Court had not complete jurisdiction as portion of the cause of action arose within and portion outside the local limits of the Ordinary Original Civil Jurisdiction, the defendant cannot be held bound on the doctrine of estoppel on the ground that he waived the objection of want of jurisdiction. *King v Secretary of State for India*, 1 L R 35 Calc 391, and *Sarkar v Weiner*, 17 T L R 491 referred to. *SHAMA HANTA CHATTERJI AND COMPANY v KUTUBUDDIN HUMARI* (1916) 1 L R 44 Calc. 10

Decree for ejectment—Suit for rent falling due before right to eject accrued, whether constitutes waiver. On the 8th April 1911 the landlords obtained a decree against the tenant for arrears of rent for the years 1314 to 1317 *amsi*. The decree directed that if the arrears were not paid by the 8th May, 1911, the tenant should be ejected. The decree was executed on the 13th July, 1911. On the 30th April, 1911, the landlords also instituted a suit for rent for the year 1318 (*i.e.* September, 1910, to September, 1911) which was payable in advance. The tenant had deposited part of the rent in Court on the 10th April, 1911. On the 29th January, 1912, the tenant instituted the present suit for recovery of possession of the land from which he had been ejected on the ground that the suit instituted on the 30th April, 1911, and the proceedings connected therewith, amounted to a waiver of the landlords' right to eject. *Held*, that the institution of the suit on the 30th April, 1911, coupled with the acceptance of the money deposited for the year 1318 constituted a complete waiver and stopped the landlords from proceeding in ejectment in execution of the decree of the 8th April 1911. *Quære* Whether the tenant having failed to plead waiver in the proceedings in execution of the ejectment decree was entitled to plead it in a separate suit? *MIDNAPORE ZAMINDARI CO., LTD v JOYRAN SANTAL* 1 Pat. L J 183

WAJIB-UL-ARZ

See CIVIL PROCEDURE CODE 1832, ss 584, 585 1 L R 34 All. 579

See CUSTOM (SUCCESSION) 1 L R 1 Lah 294

See EVIDENCE 1 L R 40 All. 58

See GROVE LAND 1 L R 42 All. 634

See HINDU LAW (CUSTOM) 1 L R 22 All. 363

WAJIB-UL-ARZ—contd

See LETTERS PATENT CL 10

I L R 31 All 13

See LANDLORD AND TENANT

I L R 34 All 545

See MAHOMEDAN LAW

See PENSIONS ACT (XXIII OF 1871)

s^o 3, 4 & 8

I L R 33 All 580

See PRE-EMPTION—CUSTOM—RIGHT OF
PRE-EMPTION—WAJIB-UL-ARZ

value of—

See CUSTOM (ADDITION)

I L R 2 Lah 348

See OUDH ESTATES ACT (I OF 1869) ss

8 10

I L R 33 All 552

Contract or custom.—The pre-emptive clause of a waj bul arz ran as follows—*Kos mugadma haq shafa la da r nahin hua aiyanda ko jari rikha haq shafa la ham ko manur ha.*

Held on a construction of the waj bul arz that these words did not denote a record of a custom but merely of a contract to take effect in the future. *Tasaddiq Hussain Khan v Ali Hussain Khan All Weekly Notes (1903) 121 followed.* *Haari Lal v Durga Prasad I L R 3^o All 187*, distinguished. *KASCHAN SINGH v MANI RAM (1910)* I L R 32 All 201

Value of as evidence, as record of traditions. A waj bul arz in a village administration paper prepared by a village official in which are recorded the statements of persons possessing interests in the village relative to existing rights and customs. As such they are of considerable value in the determination of such rights and customs. But statements which merely narrate traditions and purport to give the history of devolution in certain families are not even of the narrators stand in no better position than any other tradition. *MURTAZA HUSSAIN KHAN v MAHOMED YASIN ALI KHAN (1910)*

21 C W N 410

I L R 38 All 552

Authority of as evidence.—Its importance in settlement proceedings.—Presumption as to its correctness and successful impugned though not a document creating a title.—Dispute between proprietors of two adjacent villages as to the ownership of village common lands.—Limitation. The authority of a waj bul arz or record of rights which is described by Sir Henry Maine in his *Village Communities* page 7^o as a detailed statement of all rights in land drawn up periodically by the functionaries employed in settling the claims of the Government to their shares of the rental and as the most important object of the Settlement Operations not second even to the adjustment of Government revenue is universally recognised. *Lali v Murlidhar I L R 28 All 438* I L R 33 I A 9^o referred to. Though a waj bul arz does not create a title it gives rise to a presumption in its support which prevails until its correctness is successfully impugned. In a dispute between the proprietors of two villages *Mourah Darakki and Mourah Sher Ali* of which the former belonged to the plaintiff and the latter to the defendants as to the ownership of village common lands measuring upwards of 7999 acres the plaintiffs contended that these lands belonged

WAJIB-UL-ARZ—contd

to them jointly with the defendants in proprietary right by virtue of the ownership of the two villages, and the defendants maintained that they were the exclusive proprietors. Their Lordships held that the final determination of the case depended on the interpretation to be placed on the waj bul arz in which the final result of the settlement proceedings was recorded; and on that document together with the facts of the case the plaintiff's claim to joint ownership failed. The statements in the other documentary evidence adduced were ambiguous and not immutable. The laches of the plaintiffs in failing to assert their claim after it had been repeatedly and consistently challenged as long ago as 1883 was a circumstance among others very unfavourable for its success apart from the bar of limitation. *DARAS KHAN v GHULAM KASIM KHAN (1918)* I L R 45 Calc 793

WAKFSee CIVIL PROCEDURE CODE 188^o s^o 30
AND 539 I L R 33 All 660See CIVIL PROCEDURE CODE 1908—
s^o 68 I L R 42 All 418s^o 92 I L R 40 Bom 541

I L R 35 All 98 459

I L R 37 All 89

SCH II AND s^o 9^o

I L R 32 All 503

See KHOJA MAHOMEDANS

I L R 36 Bom 214

See LIMITATION ACT 18 7 SCH II ART
123 I L R 33 Bom 111

See MAHOMEDAN LAW—ENDOWMENT

See MAHOMEDAN LAW—WAKF

See MAHOMEDAN LAW—WORSHIP

I L R 35 All 197

See MUSLIMAN WAKF VALIDATING ACT
(VI OF 1913) s^o 3

I L R 39 Bom 563

See SPECIFIC RELIEFS ENDOWMENT

See SPECIFIC RELIEFS ACT (I OF 187^o)
s^o 4^o I L R 32 All 631

See WAKF VALIDITY OF

See WAKF

by dedication or user—

See MAHOMEDAN LAW—ENDOWMENT

I L R 40 Calc 297

See MAHOMEDAN LAW—WAKF

I L R 35 All 68

See WAKF

See WAKF

23 C W N 138

contingent dedication—

See MAHOMEDAN LAW—WAKF

I L R 1 Lah. 317

— delivery of possession whether essential—

See MAHOMEDAN LAW (WAKF)

I L R 43 All 487

— illusory gift to charity—

See MAHOMEDAN LAW—WAKF

24 C W N 308

WAKF—contd

— principle of—

See MAHOMEDAN LAW—ENDOWMENT

I L R 47 Calc 886

— Residue of income retained by settlor, effect of—

See RELIGIOUS ENDOWMENT

6 Pat L J 218

— suit for declaration of—

See CIVIL PROCEDURE CODE (1903) s 11

I. L. R. 38 All. 424

— validity of—

See MAHOMEDAN LAW—WAKF

I L R 42 Calc 933

See RES JUDICATA

I L R 44 Calc 693

— Settlement in perpetuity for aggrandisement of the family, if valid—*Deed of agreement subsequently entered into between mutuals and members of the family regulating payment of allowances to them under such deed of wakf, if enforceable*—*Mussalman Wakf Validating Act (VI of 1913), if a declaratory statute having retrospective effect.* A wakf was created for the maintenance of the members of the family of the settlor "generation after generation" and for the "performance of worldly and religious affairs and of charitable acts". A suit was subsequently brought against the mutuals by some members of the family which was however withdrawn on the execution of a deed of agreement between the parties specifying the amount of monthly allowance payable to each member of the family out of the income of the wakf. The beneficiaries sued to recover arrears of maintenance on the basis of this agreement. *Held*—That the gift to charity being illusory and the chief if not the sole object of the settlor being to create a settlement in perpetuity for the aggrandisement of the family the wakf was invalid according to the decisions of the Judicial Committee. The test to be applied in cases of this character is whether there is a substantial dedication of the property to charitable uses at some period of time or other. *Abdul Fata Mahmood v Razamoy, L. R. 23 I. A. 76 s. c. I. L. R. 22 Calc 619 (1891)*; *Mujibunnissa v Abdul Hakim, L. R. 23 I. A. 15 s. c. I. L. R. 23 All. 223, 5 C. W. N. 177 (1900)* and *Mahomed Monawar Ali v Razia Bibi, L. F. 33 I. A. 86, s. c. I. L. R. 27 All. 329, 9 C. W. N. 675 (1905)*. That the Mussalman Wakf Validating Act, 1913, is not even in terms a purely declaratory statute; in reality it effects a vital alteration in the law and it is not retrospective in operation and wakfs invalid from their inception have not been validated by this legislation. Statutes which are properly of a merely declaratory character have a retrospective effect because if the statute is in its nature declaratory the argument that it must not be so construed as to take away pre-existing rights ceases to be applicable. The nature of the statute must be determined from its provisions and the mere fact that the expression "it is declared" has been used is by no means conclusive as to the true character of the legislation. That the wakf being pronounced to be invalid the entire scheme relating thereto embodied in the agreement must of necessity be of no avail. The assertion of the parties or of their representatives cannot validate

WAKF—contd

illegal wakfs and the Court cannot be utilised for the enforcement of a scheme elaborately devised to carry out a plan of family aggrandisement in contravention of the whole policy of the law. That the agreement provided for a succession of allowances the amount of which could be varied by the family council from generation to generation in favour of unborn persons, and a scheme for family allowances so framed, apart from a scheme of valid wakf is not recognised by Mahomedan law. *Nawab Khajeh Haidarullah Khan v Khajeh Soleman Qader, 24 C. W. N. 18*

— Mahomedan Law—Private trust—*Gift—Essential elements for validity—Power of revocation—General principles—Vested remainder*. In 1902 a Shia Mahomedan by deed conveyed certain immovable property to himself and other trustees for himself for life and after his death for the payment of annuities to his widow and daughter and the balance to certain charities. Further clauses provided that on the death of his widow her annuity was to go to certain other charities and that on the death of his daughter a lump sum was to be given to her son. A further proviso reserved power to the settlor at any time to revoke all or any of the above trusts. In 1903 he revoked the trust, and executed a mortgage of the property. In 1909 he died and receivers of his estate were appointed. His daughter then filed a suit for a declaration, *inter alia*, that the revocation and subsequent mortgage were invalid, and that the original trusts still subsisted. *Held*, that the conveyance in 1902 was in valid. Looked at from the standpoint of the Mahomedan law giver, a private trust would be no more than a private gift *inter vivos* through the medium of the third party, and therefore subject to all the conditions of a valid gift, but *quære*, whether private trusts were known to Mahomedan law. *Bunoo Begum v Mir Abed Ali, I. L. R. 32 Bom. 172, discussed and distinguished. JAINABAT v R. D. SETHNA (1910) I. L. R. 34 Bom. 604*

— Possession—Relations of Mutawalli with beneficiaries—Invalidity of wakf—*Evidence Act (I of 1872) ss 115 and 116—Estoppel—Possessing Trust—Limitation Act (IX of 1908), s. 10—Life estate—Shaffie Mahomedans*. On 16th June 1861 F. a Shaffie Mahomedan lady, executed a deed in the nature of a wakf whereby she settled certain immovable property in trust for her grand daughter M for life and thereafter on her descendants from generation to generation, and in default thereof on the settlor's husband's relatives and their descendants from generation to generation in perpetuity, and in default with an ultimate trust for the education of Mahomedan youths. The settlor's husband was appointed first trustee or Mutawalli, and provision was made in the deed for a due succession of Mutawallis. The first Mutawalli and after his death his executors acting as Mutawallis during the minority of his eldest son S. A., paid the rents and profits to M and after her death to her son M. H. and her daughter A. in equal shares. In 1868 S. A. attained his majority and took over charge as Mutawalli and in or about 1873 handed over charge of the property to the beneficiaries retaining possession of the trust deed. M. H. died in 1892 leaving one son M. A. who in his turn shared the rents with A. until her death in 1901 when he took the whole until he died in 1905 leaving him surviving his mother and two widows. In 1906 the mother and two

WAKF—contd.

widows, being in possession, filed a suit praying for a declaration that the trust deed was void, and that they with certain others were entitled to the property. The trust deed was held to be invalid, and a consent decree was eventually passed to the effect that the property should be divided, subject to a small provision for a certain charitable purpose, in equal shares between the Mutawali on the one hand, and the plaintiffs and others on the other. The present plaintiff, however, who was one of the parties to the above proceedings, proved to have been insane at the time and subsequently having regained his sanity, filed the present suit claiming the same relief as that claimed by the plaintiffs in the suit in 1906, and upon the same ground, namely, that M was entitled absolutely to the settled property. The suit having been dismissed, the plaintiff appealed and the heirs of the original settlor F, were brought on the record under cover of the Administrator General who took out letters of administration to F's estate, and consented to be bound by all proceedings. *Held*, that the trust deed was void as being an attempt to create a perpetuity in the nature of a family settlement under the guise of a wakfnama. *Held*, further, that those claiming under M had obtained possession of the property from the Mutawali in the guise of beneficiaries and on the footing that the wakfnama was a valid document, and thus, under ss 115 and 116 of the Evidence Act (I of 1872) could not be permitted to deny that the person from whom the possession was claimed had a title to such possession when it was handed over. *In re Anderson, (1905) 2 CA 70*, distinguished. *Held*, therefore, that for the purposes of this suit, as between the parties other than the administrator of F's estate, the wakfnama must be considered as a valid document, and thus, when the limitations in favour of M's descendants came to an end on the death of M in 1905, the remainder for the benefit of the settlor's husband and descendants took effect, and the present Mutawali (a direct descendant of the settlor's husband) was entitled to the property both as trustee and as beneficiary. *Held*, finally, that the administrator of F's estate could only claim under a resulting trust in favour of the settlor and as such trust did not in the circumstances fall within the scope of s. 10 of the Limitation Act (IX of 1908) the claim had long been barred. *Eherodmonee Dossie v Dorgamoney Dossie, I L R 4 C 415*, and *Vandarcandas v Sundaras, I L R 21 Bom. 646*, discussed and followed. View expressed in *Cassia Sanyal Jaisankhas v Sir Currimbhoy Ebrahim, I L R 36 Bom 214*, not approved. *Quære*—Whether the principle that Mahomedan law does not recognize life-estates applies to Shafai Mahomedans? *MAHOMED IRRANI v ABDUL LATIF (1912)*

I. L. R. 37 Bom 447

Application to be appointed Mutawali—*District Judge, whether has powers of a Kazi—Petitioner, whether to proceed by application or by suit—Civil Procedure Code (Act V of 1905)* An application was made by a person to the District Judge to be appointed Mutawali of a wakf property but the District Judge refused to deal with the matter on application on the ground that the petitioner's only course was to proceed by suit under s. 92 of the Civil Procedure Code: *Held*, that it may be conceded that the District Judge has the powers of a Kazi but it does not neces-

WAKF—contd

sarily follow that the petitioner is entitled to proceed by application or that the District Judge has no power to relegate her to a suit. *JAMILA KHATUN v ABDUL JALIL MEA (1918)*

23 C. W. N. 138

—*Res Judicata—Defence due to previous decision of High Court as authority—Musliman Wakf Validating Act (VI of 1913), title preamble and s. 3, whether retrospective or prospective only—Privy Council decisions and pronouncements on Indian Legislature* Where there had been a previous adjudication by the High Court on the invalidity of a certain wakf based on legal grounds (in a subsequent suit between the same parties) *Held* that (i) ordinarily that Court should feel bound, not on the principle of *res judicata* but out of the deference which was due to a previous decision of the High Court, to follow that authority, and (ii) that the previous conclusive decision had not been affected by the remedial operation of the Musliman Wakf Validating Act of 1913, which was not retrospective in effect but prospective only. *Pahmunusa Bibi v Shaikh Manik Jan, 19 C W N 76*, approved. It is doubtful whether the Governor General in Council would make a legislative pronouncement that the repeated decisions of the Privy Council were erroneous, though from its knowledge of the requirements of the country the Legislature may think that in future the law should be otherwise administered. *MAHOMED BURKH MAJUMDAR v DEWAT AJMAN REJA (1915)*

I. L. R. 43 Calc 158

—*Mutawali—Right of inheritance—* Though a descendant of the founder of a wakf property has a preferential claim to the office of the Mutawali he does not become Mutawali by right of inheritance but has to be appointed such by the Qadi who may supersede him if he is not so qualified—No right of inheritance attaches to a religious endowment. *ATIMATNESSA BIBI v ABDUL SOBHAN*

I. L. R. 43 Calc 467

—*Suit by mutawali to recover possession of wakf property mortgaged by previous mutawali—Limitation Act (IX of 1905) Art 134—Date from which limitation on to be reckoned—Date of transfer* If date of delivery of possession under the transfer—*Nature of suit within the scope of article—Mutawali, appointment of stranger as—Transfer of wakf property by mutawali, transfer without notice of trust if protected—Registration if sufficient notice of trust created by registered document—Res judicata.* The founder of a wakf appointed his sister and brother and the male descendants of the latter mutawalis in succession after himself. On his death the sister who was the then mutawali and the brother representing themselves to be the secular heirs of their father and the founder joined in executing a mortgage of the wakf property. The mortgage was ultimately foreclosed and possession was delivered by the Court to the Defendant who was the assignee of the mortgage decree. Thereafter on a suit being brought under s. 92, C. P. C., the District Judge removed the sister from the office of mutawali and no one of the founder's family being available appointed the Plaintiff, a stranger. Within 12 years from the delivery of possession by the Court under the mortgage decree the Plaintiff sued the

WAKE—contd]

Defendant to recover the property *Held*—That the appointment of the Plaintiff as *mutawalli* was entirely within the decision of the District Judge as Kazi and in the circumstances of the case it was not without Jurisdiction although the Plaintiff was a stranger *Ismail Araf v. Moola Dawood, L R 43 I A 127 s c I L R 43 Cal 1035, 20 C W N 1118 (1916)*, referred to *Held*, on a consideration of the *wakfnama*—That as there was a substantial dedication of the corpus and income to charitable uses within the test laid down by the Privy Council in *Muhammadan v. Abdul Bahim, L R 23 I A 15 s c 5 C W. N. 177 (1900)*, and *Muta Ramnadan v. Yasa Lervai, L P 44 I A 21 s c I L R 40 Mad 116, 21 C W N 521 (1916)*, the *wakf* was not invalid as being illusory *Held*, further—That in the mortgage suit, the sister of the founder who executed the mortgage was not in the language of a *li*, C. P. C., litigating under the same title as that under which the Plaintiff was litigating for she was sued in her secular capacity, not as trustee, and that suit did not create the bar of *res judicata* *Held per Richardson, J*—That the suit was governed by Art 134 of the Limitation Act and was barred by limitation, having been brought more than 12 years from the date of the mortgage, from which time limitation began to run and not from the date when the Defendant obtained possession of the property *Per SHAMSUL HUDA J*—That the onus to prove that the suit was within time was on the Plaintiff who failed to discharge that onus and show that the mortgage was not followed by possession and in that view of the case the suit was barred by limitation under Art 134 of the Limitation Act *Per RICHARDSON, J*—A suit to which Art 134 applies must be a suit to recover possession. The Plaintiff must be out of possession and the Defendant in possession. The transfers chiefly contemplated are apparently transfers for value in excess of the limited powers of the trustee or mortgagee. In terms the article would apply to a transfer within those powers but in such a case the true defence to a suit to recover possession would be title and not limitation though in some cases limitation might be useful as an alternative defence. The date of the transfer is the date on which the property or the title was transferred by the transferor to the transferee and where the transfer is effected by a registered instrument that date is the date of the instrument. To construe the date of the transfer as the date on which the transfer is followed by possession is to import into the article words which are not there. Where the possession of the trustee is that of a mere manager under a duly constituted trust it is immaterial under the present law whether the transferee takes with or without notice of the trust. Under Art 134 of the present Limitation Act the transferee without notice and the transferor with notice are on the same footing. Where the transferee is a mere manager he is not the ostensible owner nor has the transferee anything corresponding to the English "legal estate" to set off against the prior equity of the beneficial owner: the legal ownership and the prior equity are, generally speaking, both in the beneficiary. The element of hardship in the case of a transferee without notice is mitigated by the system of registration. The *mutawalli* of a *wakf* estate is not the ostensible owner of the estate but a

WAKE—contd]

mere manager and in the case of a public charitable endowment the legal ownership is in the Divine Being or in the charity created in His name. A transfer by a *mutawalli* who assumes to deal with the trust property as if he were the true owner in breach of her duty and in fraud of the trust reposed in him is *ultra vires* and may be avoided by timely proceedings properly taken for the purpose. The vice in the transferee's title whether he takes with or without notice of the trust can only be cured by lapse of time *NARAIN DAS v. KAZI ABDUL RAHIM, 24 C. W. N. 690*

WAKE VALIDATING ACT (VI OF 1913).

If would operate retrospectively The Wakf Validating Act (VI of 1913) has no retrospective effect *RAHIMTUNISA BIBI v. SHAHIN MANIK JAN (1914) 19 C. W. N. 78*

s 3—Act, if operates retrospectively The operation of the Mussalman Wakf Validating Act of 1913 is prospective and not retrospective and it did not affect a previous conclusive decision of the Court declaring a *wakf* to be invalid *MANSUR BETHI MAJUMDAR v. DEWAN ASMOK RAJA (1915) 19 C. W. N. 967*

Mutawalli—Matters connected with wakf being religious matters—Descendant of the founder—Preferential claim to mutawalliship—No right of inheritance—Qadi under the Mahomedan law exercising functions in relation to wakfs—His equivalent in the British Indian system of law—Position of the Subordinate Judge—District Judge, jurisdiction of Though a descendant of the founder of a *wakf* property has a preferential claim to the office of the *mutawalli*, he does not become *mutawalli* by right of inheritance but has to be appointed such by the Qadi who may supersede him if he is not so qualified. No right of inheritance attaches to a religious endowment *Khatiji Sahinwalia v. Abdul Kadir B. Mustafa I L R 37 Cal 263 Sayad Abdula v. Sayad Zam I L R 13 Bom 555, Moolammad Sadiq v. Moolammad Ali, 1 Mac 84 Feb 22, and Shaker Bano v. Aga Mohamed I L R 34 I A 46, I L R 34 Cal 118, followed Shama Chohan v. Aladi Kuber, 3 C W N 158, In re Wazirunnessa Bibi I L R 36 Cal 21, In re Rahma Khatun, I L R 37 Cal 870, Nmasi Chand v. Goolam Hassan, I L R 37 Cal 179, Muhammad v. Syed Ahmed, 1 Bom H O R 18, Jamal v. Jamal, I L R 1 Bom 633, David Sha v. Ismail Sha, I L R 3 Bom 72, Baba v. Nasseruddin, I L R 18 Bom 103, A G v. Abdul Kadir, I L R 18 Bom 401, Kadratulla v. Mohini Mohan, 4 B L R 134, Mahomed v. Ahmed Ehas, I L R 25 Bom 327, Sayad Ali v. Ali Jan, I L R 35 All 98, Muhammad Abdul Majid v. Ahmed Saad, 11 All L J 673, referred to Under the Mahomedan law that Qadi alone was competent to exercise authority in respect of *wakfs* who was so expressly authorized in his letters patent. There was some difference of opinion upon the question whether such express authority was needed where a person was explicitly appointed the Chief Qadi, but even here the balance of opinion of jurists favours the view that power should be expressly conferred on the Chief Qadi to validate the administration of *wakfs* by him. There is also authority to show that the supreme authority in the State, by whom the Qadi*

WAKE VALIDATING ACT (VI OF 1913)— contd.

is appointed, need not be a Mahomedan and although there is some divergence of opinion there is also authority to show that the office of Qadi may be held by a non Muslim by the decision of dispute between non Muslims under Muslim protection. As this is a matter regarding religious usages and institutions within the meaning of s 15 of Regulation IV of 1793, the rights of the parties must be determined with regard to the provisions of the Mahomedan law on the subject. It follows, accordingly, that a Subordinate Judge, who has not been expressly authorised by the Government to exercise functions in connection with the administration of *wakfs*, is not competent to act in that behalf. Whether a District Judge has implied authority to exercise the functions performed by a Qadi under the Mahomedan law is doubtful. In respect of *wakfs* which may be described as trusts created for public purposes of a religious nature within the meaning of sub-s (1) of a 92 of the Civil Procedure Code, 1908, the District Judge may be assumed to have been authorised to discharge the functions of a Qadi. *The real difficulty arises in the case of private wakfs.* It is desirable that the Local Government should, to cover such cases, authorise either District Judges or Subordinate Judges or even Judicial officers of a lower grade, if necessary, to exercise the functions of a Qadi. **ATIMANNESSA BIRI v. ABDUL SOBHAN (1915). I. L. R. 43 Cal. 467**

WAGF.

See **WAKF.**

WAGF-NAMA.

Grantor changing proprietary possession to that of a mutawalli—Appointment of trustees without transfer of ownership—Possession as managers and superintendents to protect waqf property—Injunction by Deputy Commissioner in respect of property out of his jurisdiction—Disqualification of registering officer as having "interest" in objects of endowed property, who has acted in good faith—Defect in procedure—Punjab Court of Wards Act (Punjab Act II of 1903), ss. 11 and 12—Registration Act (III of 1877), ss. 17, 87 and r 174 of rules made under s 69. A Muhammadan landholder, with property partly in Karnal and partly in Muzaffarnagar, on the 25th of August, 1903, executed a waqfnama, or deed of charitable trust dedicating specific property to religious purposes. The terms of the deed were—"I was the lawful owner of the property. I had power in every way to transfer the same. By virtue of the said power I divested myself of the connection of ownership and proprietary possession thereof and placed it in the proprietary possession of God, and changed my temporary possession known as proprietary possession into that of a mutawalli (superintendent)." The grantor resided at Karnal in the Punjab, but finding that the Deputy Commissioner was about to place him and his property under the Court of Wards he went to Muzaffarnagar out of the jurisdiction of the Deputy Commissioner of Karnal, who on the 30th of August, 1908, under ss 11 and 12 of the Court of Wards Act 1903, issued an injunction restraining him from executing any deed of alienation of his property. The waqfnama was not

WAGF-NAMA—contd.

withstanding, on the 1st of September, 1900, registered by the Sub Registrar of Muzaffarnagar. On the 9th of November, 1908, the grantor executed a further document appointing trustees to be superintendents after his death of the charity to which his property had been dedicated under the deed of the 25th of August, 1908. The grantor died on the 26th of December, 1908, and on the 8th of July, 1912, the respondents, who were the trustees, brought a suit against the appellants, the grantor's heirs, who had obtained entry of their names in the Revenue Register, as defendants, alleging that the deceased had duly dedicated his property to the charity and claiming to be the parties named to execute the trust. *Held*, that the waqfnama, inasmuch as it did not purport to transfer to the trustees named in it the ownership of the waqf property but made them merely mutawallis or superintendents for its management and protection, did not require registration under the Registration Act, III of 1877. The injunction issued by the Deputy Commissioner of Karnal under ss 11 and 12 of the Punjab Court of Wards Act (Punjab Act II of 1903) in respect of property which, together with the grantor, was at the date of issue not within his jurisdiction, was held to be invalid and inoperative. The Sub Registrar, who, being a trustee of one of the objects of the waqf nama entitled to the benefit of the trust, had registered the deed, but in so doing had acted in good faith, though "personally connected with and interested in the document" within the meaning of r 174 of the rules made under s 69 of the Registration Act, III of 1877, was held by his action not to have invalidated its registration, as it was a defect in the procedure which s 87 of the Act was intended to remedy. **MUHAMMAD RUSTAM ALI KHAN v. MUSHTAQ HUSAIN I. L. R. 42 All. 609**

WAR.

See **WAGING WAR**

See **CONTRACT WITH ENEMY**

See **TRADING WITH ENEMY**

----- effect of—

See **BILLS OF EXCHANGE**

I. L. R. 46 Cal. 584

See **CONTRACT**. I. L. R. 41 Mad. 225

See **CONTRACT ACT, 1872, s 56**

I. L. R. 40 Bom. 570

See **DEBTOR AND CREDITOR**

I. L. R. 44 Bom. 1

See **SALE OF GOODS**

I. L. R. 40 Bom. 11

I. L. R. 45 Cal. 28

See **TRADING WITH THE ENEMY**

I. L. R. 42 Cal. 1094

----- effect of, on contracts of freightment—

See **C. I. F. CONTRACTS**

[I. L. R. 42 Bom. 473]

----- effect of, on contracts entered into by a manager of an Indian branch of enemy firm prior to war—

See **CONTRACT WITH ENEMY.**

I. L. R. 44 Bom. 631

WARD.

See GUARDIAN AND WARD.

— alienation by natural guardian of minor—Suit to set aside—

See LIMITATION ACT (IX OF 1908), ART 44 . . . I. L. R. 42 Bom. 742

WARNING OF FIRE.

See INSURANCE I. L. R. 41 Calc. 581

WARRANT.

See ARREST, WARRANT TO

See ATTACHMENT.

I. L. R. 40 Calc. 849

See CRIMINAL PROCEDURE CODE—

ss. 53, 56, 110 I. L. R. 33 All. 407

s 75 . . . 2 Pat. L. J. 497

19 C. W. N. 224

See FORM OF WARRANT

See HABEAS CORPUS.

I. L. R. 39 Calc. 164

See WARRANT OF ARREST

— for search of houses—

See CRIMINAL PROCEDURE CODE, s. 163

I. L. R. 38 All. 14

— legality of—

See PENAL CODE (ACT XLV OF 1900),

s 186 . . . I. L. R. 37 Calc. 122

— resistance of execution of—

See PENAL CODE, s 183

1 Pat. L. J. 550

— with alterations—

See MAGISTRATE, JURISDICTION OF.

I. L. R. 39 Calc. 403

— Business—Rescuing from

lawful custody—Warrant against a witness issued in the first instance without recording reasons in writ

107—Legality of warrant and arrest—Penal Code (Act XLV of 1900), s 225 B—Criminal Procedure

Code (Act V of 1898), s. 90, Sch. V, Form VII—Practice The issue of a warrant of arrest by a

Magistrate against a witness in the first instance, drawn up in the terms of Form VII of Sch. V of the Criminal Procedure Code, but without recording

his reasons in writing therefor, as required by s 90 of the Code, is illegal, and a person rescuing the witness arrested on such warrant is not guilty

of an offence under s 225 B of the Penal Code. SUKHESWAR PRAMAN v EMPEROR (1911)

I. L. R. 38 Calc. 789

— Arrest on a warrant

allowing bail without intimating that bail has been allowed, legality of—Lawful custody—Rescue from

custody. An warrant which provided for bail a constable arrested one S without giving him intima-

tion that bail had been allowed, S was then rescued by a number of persons, who assaulted the constable. Held, that the arrest of S was illegal, as

before actually making the arrest the constable should certainly have said, "Can you give the required bail?" That as S was not in lawful

custody, his rescue did not constitute any offence and the persons who rescued S had the right of private defence and as they, under the circum-

stances of the case, had not exceeded that right,

WARRANT—contd

they could not be held guilty of any offence, SHYAMA CHURN MAJUMDAR v. THE KING EMPEROR (1911) . . . 10 C. W. N. 549

— Warrant issued by Civil Court to bailiff—Bailiff, who is—Effect of endorsement by Nazir—Execution by peon beyond time fixed by Nazir but within date when warrant returnable—

Peon's custody, if lawful—Rescuing from such custody, if offence—Indian Penal Code (Act XLV of 1900), s 147—Civil Procedure Code (Act V of 1908),

O XXI, r 25 Where a warrant issued by a Civil Court was addressed "to the bailiff" and made returnable on the 30th August and the

Nazir of the Court endorsed it with a direction to a particular peon to execute it within the 25th

August, and the peon executed it between the 25th and the 30th August: Held, that the fact

that the warrant is addressed to the bailiff shows that it is the person who actually makes the seizure

who is authorized by it, namely, the peon, who thus derived his authority from the Court which issued

the warrant, and not from the Nazir who endorsed it, and the execution of the warrant by the peon

subsequent to the date fixed by the Nazir and prior to that on which it was made returnable by

Court was lawful and the rescuing of property attached from his custody constituted an offence.

PER COX, J.—The term bailiff should not be confined to the Nazir O XXI, r 25 of the Civil Procedure Code shows that the warrant is referred to

the officer entrusted with the execution of process and it is clear from the terms of that section that

that officer is not the Nazir but it is the peon. DHARAM CHAND v QUEEN EMPRESS, I. L. R. 22

Calc. 597, distinguished. SURESH ALI v KING EMPEROR (1913) . . . I. L. R. 40 Calc. 849

. 17 C. W. N. 841

— Validity of warrant—

Warrant, signed but not sealed—Arrest under such warrant—Rescue and escape from lawful custody—

Criminal Procedure Code (Act V of 1898), s 75 (5)—Penal Code (Act XLV of 1900), s 225B. Under

s. 75 of the Criminal Procedure Code, the affixing of the seal of the Court is essential to the validity

of a warrant. An arrest under a warrant duly signed but not sealed is, therefore, illegal: and a

conviction under s 225B of the Penal Code is bad in law. MAHAJAN SURESH v EMPEROR (1914)

I. L. R. 42 Calc. 708

WARRANT CASE.

See CRIMINAL PROCEDURE CODE, 1898,

ss 248, 258, 345

I. L. R. 37 Bom. 369

See SUMMARY TRIAL.

I. L. R. 41 Calc. 743

See WARRANT

— trial of—

See CRIMINAL PROCEDURE CODE (ACT V

OF 1898), s. 256.

I. L. R. 39 Mad. 503

WARRANT OF ARREST.

See CRIMINAL PROCEDURE CODE, s 75

2 Pat. L. J. 487

See PENAL CODE ACT (XLV OF 1900),

s. 225B . . . I. L. R. 38 All. 506

— Whether Magistrate's

signature is necessary—Warrant directed to officer by

WARRANT OF ARREST—*contd.*

official designation and not by name, validity of—
Omission to explain to accused the contents of
warrant, effect of—Code of Criminal Procedure (Act
V of 1898), ss 75, 77, 79, 80, 537 and 551—Penal
Code (Act XLV of 1860), ss. 224, 225 and 353.
 Where the Magistrate issuing a warrant for the arrest of an accused person signed the endorsement on the warrant, directing that if the accused gave bail for Rs 100, he was to be liberated, but only initialled that part of the warrant which directed the arrest of the accused. *Held*, that it was gross carelessness on the part of the Magistrate not to have signed his name in both places, but that the omission to do so was not in itself an illegality which vitiated the arrest. The *Illustration* to s. 537 of the Code of Criminal Procedure, 1898, covers a case in which the illegality of the warrant itself is a fact in issue, and does not relate merely to a case in which the defence to the substantive charge is that the accused have not been properly brought before the Court. A warrant directed in the first place to a police officer by his official designation and without inserting the officer's name is not illegal, but where the officer originally entrusted with the execution of a warrant directs it to another officer s. 79 of the Code requires the name of the latter officer to appear upon the endorsement. *Omission* on the part of an officer executing a warrant to explain to the accused the particulars of the warrant, after showing him the warrant, does not invalidate the arrest. All that s. 80 requires is that the accused shall have a reasonable opportunity of knowing on what charge he is being arrested and before what Court he is to appear, so that he may take steps to arrange for his defence. Where the constable executing a warrant of arrest showed the warrant to the accused and informed him that he would take bail if it was offered, and the accused asserted that no warrant had been issued against him, and the constable thereupon took him into custody. *Held*, that the terms of s. 80 of the Code had been substantially complied with. **BANKEY BEHARY SINGH v KING EMPEROR**. . . 3 Pat. L. J. 493

WARRANT OF ATTACHMENT.

Signature of Sheristadar
and not of Court issuing it, effect of—Evidence (Act
II of 1870), s 114 (c)—Code of Civil Procedure (Act
V of 1908), O XXI, r 24 Where a warrant of attachment was signed, not by the Munsif issuing it, but by the Sheristadar, and did not bear the seal of the Court, and the accused were charged with rioting with the common object of illegally rescuing the attached property. *Held*, (1) that the onus of providing that the Sheristadar had no authority to sign the warrant was on the party contesting the validity of the warrant (in this case the accused), (2) that, in such a case it is not for the prosecution to prove the authority of the officer signing the warrant; (3) that, the provisions of O XXI, r. 24, of the Code of Civil Procedure, 1908, being mandatory, the omission of the Court's seal on the warrant rendered the attachment illegal; (4) that, therefore, the common object charged was not an unlawful common object and consequently the charge of rioting was not sustainable. **AMINDA BAI v KING EMPEROR**

3 Pat. L. J. 636

WARRANT OF ATTORNEY.

— application to file—

See PRACTICE I. L. R. 37 Calc. 833

WARRANT OFFICER.

— of the British Army—

See ARMY ACT (44 & 45 Vic. c 58), ss.
145, 190 . I. L. R. 43 Bom. 368**WARRANTY.**See CONTRACT . I. L. R. 37 Calc 334
15 C. W. N. 981See TRANSFER OF PROPERTY ACT, s 55.
15 C. W. N. 655— sale of goods—Delivery to be given
on arrival of steamer—*l*

See CONTRACT I. L. R. 45 Bom. 1222

— sale and purchase of goods to be
manufactured by a Mill—

See CONTRACT . I. L. R. 44 Bom. 907

WASTE.

— ownership of—

See MIRASI VILLAGE.

I. L. R. 40 Mad. 410

Gift by a life tenant—
Bhag property—Interest taken by widow of Mahom-
medan Bhagdar—Gift by Mahomedan widow for
spiritual benefit of her husband—Intention of widow
to make gift of her husband's property—Danger to
reversion—Receiver, appointment of The gift of a portion of the property of which the donor is a life tenant constitutes waste, unless some necessity can be set up by the person making the alienation. A Mahomedan widow, who according to custom is only a life tenant of the Bhagdari property which belonged to her husband, cannot make gifts of the estate as if she were in the position of a Hindu widow who is entitled to make alienations to secure spiritual benefit to her husband. The fact that a life tenant is anxious to get the lands transferred to the name of another person, does not by itself constitute waste, but it might constitute a danger to the interests of the reversioner which a Court might take into consideration on the question whether his interests should be protected by appointing a Receiver. **AMMED A'MAL v. BAI BIDI** (1919) . . . I. L. R. 44 Bom. 727

WASTE LANDS.See MADRAS SETTLES LAND ACT (I OF
1908), s 8 I. L. R. 28 Mad 891

— ownership of kudevaran—

See LIMITATION ACT (ACT XV OF 1877),
s. 22 . I. L. R. 40 Mad. 722**WASTE LANDS ACT (XXIII OF 1863).**

— s. 18—

Procedure under that
Act—Sale, by Government, of lands under the Act
Error in advertisement of sale—Absence of price
of proclamation ousting jurisdiction of ordinary
Courts and constituting a Special Court—Three
years' limit for claims only applicable to proceedings
before Special Court—Act applied to other lands

WASTE LANDS ACT (XXIII OF 1863)—*contd.***s 18—*contd.***

than those only held by Government. Great weight had always been given by the Judicial Committee to the accuracy of survey maps: they were not conclusive, but in the absence of evidence to the contrary they will be presumed to be accurate. This appeal arose out of a suit by the Maharajah of Tipperah to recover possession of certain plots of land in Sylhet from the Government and from certain Tea Companies who in virtue of leases granted by the Government were in possession of the lands in suit. There were concurrent findings of fact by the Courts in India that the lands in question were *de facto* in the possession of the plaintiff and his predecessors since the beginning of the 19th century, and that the dispossession had taken place within 12 years before suit so as to exclude the plea of limitation, and the Judicial Committee substantially upheld the decision of the High Court in favour of the plaintiff. One plot, however, had been sold by the Government as waste land and the sale was not in any way stopped or interfered with by the Rajah, and more, than three years had elapsed from the date of delivery to the purchaser which was the period provided by s 18 of the Waste Lands Act (XXIII of 1863) after which no claim to any land, or to compensation or damages in respect of any land sold as waste land could be received, and it was contended that the suit was barred by s 18 as to that plot. *Held*, that the Act was one which was drastic in its character and made great invasion on private rights. The defendant who pleaded it must therefore bring the matter strictly within its provisions which clearly pointed to the necessity of proper intimation being given by Government as to the proposed sale and where they had given a misleading notice and had advertised a sale of lands in one district when they were situated in another district, the whole of the sale proceedings failed for want of a proper basis. When a claim was allowed under the Act procedure was provided for the issue of a proclamation which ousted the jurisdiction of the ordinary Courts and constituted a Special Court, and no proof had in this case been given that any proclamation was issued. The provision as to three years in s 18 was clearly applicable to the proceedings before the Special Court and that Court alone. The procedure under the Waste Lands Act is not applicable only to lands belonging to the Government. SECRETARY OF STATE FOR INDIA v BISKANDRA BISKORE MANIKYA (1916)

L. R. 43 I. A. 303
1 L. R. 45 Calc. 328

WATAN

See BOMBAY HEREDITARY OFFICES ACT
(Box III of 1874) ss 23, 34

1 L. R. 40 Bom. 55

See VATAN

WATANDAR

See BOMBAY REVENUE JURISDICTION ACT
(X of 1870) s 4 (a)

1 L. R. 45 Bom. 1141

WATER

See EASEMENT s 15 C. W. N. 259
1 L. R. 42 Calc. 184

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1 L. R. 42 Calc. 489

WATER—*contd.*

See GRANT, CONSTRUCTION OF

1 L. R. 38 Mad. 424

See RIPARIAN RIGHTS

Flowing, right to—

See MADRAS IRRIGATION CESS ACT (MAD
ACT VII OF 1863) s 1 AND PROviso,
ss. 1 AND 2. 1 L. R. 40 Mad. 886

for wet lands—

See MADRAS IRRIGATION CESS ACT (VII
OF 1863), s 1 1 L. R. 38 Mad. 897

proprietary rights in—

See MADRAS IRRIGATION CESS ACT (VII
OF 1863) 1 L. R. 37 Mad. 322

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rights respective flow of—

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1 L. R. 47 Calc. 426

WATER DUTIES.

See NAVIGABLE RIVER

1 L. R. 46 Calc. 380

WATER COURSE.

See MADRAS IRRIGATION WATER CESS
ACT

See RIPARIAN RIGHTS

WATERFLOW.

—Agricultural lands, upper and lower, owners of—Right of upper owner to drain his water naturally on lower land—*Irdion Easements Act (V of 1882) s 7, (a) and (i)*. The ruling in *Mahamahopadhyaya Rangachariar v The Municipal Council of Kumbakonam*, 1 L. R. 29 Mad. 539, distinguished. An owner of upper agricultural land is entitled to let his water flow in its natural course without any obstruction by the owner of the lower land, and the lower owner is not entitled to raise any bund on his land which will have the effect of seriously interfering with the upper owner's cultivation and *Subramaniam Ayyar v Ramachandra Puv*, 1 L. R. 1 Mad. 335, and *Abdul Hakim v Ganesh Puri* 1 I. R. 12 Calc. 323, followed. *Sengara Reddiar v Perumal Reddiar* (1910) Mad. H. A. 545, dissenting from *RAMANWANT v RAST* (1913)

1 L. R. 38 Mad. 149

WATER-PASSAGE.

See DISPUTE CONCERNING EASEMENT

1 L. R. 39 Calc. 560

WATER RATE.

—*Madras Board of Revenue Standing Orders*, Edition 1905 Ch. I, App. of s. D, rr 2 and 3—"Full water rate" meaning 1, The words "full water-rate" in r. 2 of the Standing Orders of the Madras Board of Revenue Ch. I App. I, s. D (Ed. 1900, p. 61), mean full water-

WATER RATE—contd.

rate in respect of wet cultivation and not full water rate in respect of the crop actually raised
SECRETARY OF STATE FOR INDIA v SUBBA ROW OF KURNOOL (1910) . I L. R. 34 Mad. 426

WATER RIGHTS.

See EASEMENTS] I. L. R. 37 Mad. 304

See MADRAS IRRIGATION CESS ACT 1865, s. 1.
 I. L. R. 40 Mad. 888

Surface water—Right of owner of higher land to discharge surface water over adjacent lower land—Inability of the owner of servient tenement to discharge same owing to rise of bed of adjacent stream by silting—His remedy—Dominant owner's right, if affected It is well settled in this country that the owner of higher land is entitled to discharge surface water over adjacent lower land. Where, owing to the silting up of a stream into which the water thus discharged ultimately flowed, the level of the bed of the stream became higher than the adjacent lower land, to the inconvenience of the owners thereof, *Held*, that the increase of burden to the servient owners not being due to anything done by the dominant owners, the latter were still entitled to exercise their rights and it was for the servient owners to take such steps as might be advisable to deal with the difficulties created by the rise in the bed of the stream. **KARISWAR MUKHERJEE v JYOTI KUMAR MUKHERJEE (1917)**
 22 C. W. N. 666

WAY.

See RIGHT OF WAY.

Public way—Public drain when filled up it becomes public way A public drain does not become a public way merely because it is filled up. **RAM CHANDRA SIL v RAMAKHANI DASI (1916)** . 20 C. W. N. 773

Suit for declaration of—Whether it is necessary to locate the exact position or to show whether any definite track was used—Plaintiff to establish the termini from and to which the way runs—Plaintiff to enjoy the right in the way pointed out by owners of servient tenement—If not, the nearest route In a suit for a declaration of the plaintiffs' right of way it is not necessary to locate the exact position in which the way was enjoyed over the compound of the defendants, nor is it necessary to show that any definite marked pathway over the compound was always used. If the plaintiffs establish the termini from which and to which the way runs, the plaintiffs would be entitled to have the right of way and that right would be enjoyed in the way that the owners of the servient tenement point out as being the track over which the way should be enjoyed; and, if not, then the plaintiffs would be entitled to enjoy the way by the nearest route. **LAKSHI KANTA ROY v RAJ CHANDRA SHANA (1918)**
 [22 C. W. N. 822

Held that a suit for a declaration that a pathway is a village pathway, can succeed without proof of special damage. **HARISH CHANDRA SAHA v PRAN NATH CHAKRA-BARTI**
 26 C. W. N. 537

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See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss 421, 233, 537
 I. L. R. 39 Mad. 527

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See BOMBAY CITY MUNICIPAL ACT (BOM. ACT III OF 1888), ss 418, 461, cl. (c).
 I. L. R. 41 Bom. 580

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See EASEMENTS ACT (V OF 1882), s. 13 AND 47 . I. L. R. 45 Bom. 80

See LANDLORD AND TENANT
 I. L. R. 35 All. 292

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sentence of—

See WHIPPING ACT (IV OF 1860) s. 3
 I. L. R. 25 Ecm. 137

WHIPPING ACT (IV OF 1860).

s. 3—*Criminal Procedure Code (Act V of 1898), s. 565—Indian Penal Code (Act XLV of 1860), s. 7—Sentence of whipping only passed on accused—Order to accused to notify his residence—Validity of the order* s. 565 of the Criminal Procedure Code (Act V of 1898) must be strictly construed. The order contemplated by the section can only be made at the time of passing sentence of transportation or imprisonment upon a convict. It cannot be made where the Court, instead of passing that sentence, passes a sentence of whipping. **EMPEROR v FULJI DITTA (1910)**
 I. L. R. 35 Bom. 137

WIDOW.

See BABUANA GRANT .
 I. L. R. 42 Calc. 582

See FRAUD . I. L. R. 36 Bom. 185

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See HINDU LAW—ALIENATION

See HINDU LAW—DEBT
 I. L. R. 39 Bom. 113

See HINDU LAW—GIFT
 I. L. R. 42 Bom. 136

See HINDU LAW—INHERITANCE
 I. L. R. 38 Bom. 183
 I. L. R. 42 Calc. 1179

See HINDU LAW—LEGAL NECESSITY
 I. L. R. 36 Bom. 88

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See HINDU LAW—WIDOW.

HINDU WIDOW'S REMARRIAGE ACT 1856

See HINDU LAW—WILL.
 I. L. R. 37 All. 422
 I. L. R. 35 Bom. 279

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS 141, 144.
 I. L. R. 42 Bom. 714

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 I. L. R. 43 Bom. 66

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- adoption by minor—
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See *HINDU LAW—ADOPTION*
I. L. R. 45 Bom. 1167
- adoption by widow succeeding as heir to unmarried son—
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I. L. R. 44 Bom. 297
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I. L. R. 45 Bom. 459
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See *HINDU LAW—ADOPTION*
I. L. R. 44 Bom. 508
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See *HINDU LAW—ADOPTION*
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- adoption by during life time of son adopted by husband—
See *HINDU LAW—ADOPTION*
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- gift by to daughter—
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1 Pat. L. J. 18

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CONSTRUCTION

1. Bequest to take effect after deaths of testator and his wife—*Legatee surviving testator but predeceasing wife—Vested or contingent interest.* One S executed a will whereby he gave all his property after the death of himself and his wife M to his daughter B and his nephew D. D survived the testator but predeceased M. Held, that D took a vested interest in the property which was transmissible to his sons. *Bhagabati Ram-maya v. Kail. Charan Singh*, I. L. R. 33 Calc. 453 & All. L. J. 433, followed. *Bilaso v. Muxsi Lal* (1911). I. L. R. 33 All. 558

2. Clause for maintenance of daughters—*Succession Act (X of 1865), ss 111, 187—“Uncertain event”—Marriage of daughters—Letter, right of to sue—Succession Act, s 3—“Probate” of will obtained only after institution of suit—Grant of Probate, modified by High Court on appeal.* A Hindu died in 1879, leaving a will whereby (among other things) he made provision for his wives and his daughters who survived him. The clause provided for the daughters was “When they will be married, and if they desire to live in separate houses, the person in whose management my property will be at the time will make separate houses for them in the vicinity of my house from the income of my property. For the maintenance of my daughters I fix an allowance of Rs 600 a year for Srimati Prasanna, and Rs 600 for Srimati Sarat. As long as the daughters will live in the separate houses in this place they will get the fixed allowances respectively, but if the daughters do not live in this place, they will get Rs 10.” The daughters married in 1888 and 1899 respectively, and lived in separate houses. In suits for their allowances it was contended that the bequests to them were given in the “uncertain event” of their marriage, and as that event did not happen until after the death of the testator the bequests were void by reason of s 111 of the Succession Act (X of 1865) and never took effect. Held, on the construction of the above clause, that the payment of maintenance was not contingent on the daughter's marriages, and that therefore s 111 was not applicable. At the time the suits were instituted no letters of administration had been granted but pending the suits the widow obtained from the District Judge a grant of letters of administration with the will annexed. The grant was, on appeal, modified by the High Court by limiting it to the realisation of the main-

WILL—*contd.*CONSTRUCTION—*contd.*

ténance allowance provided by the will for the widow; but before the letters of administration could be recalled and altered, the widow died and the letters were never formally altered. It was contended that the suits could not be maintained with reference to s 187 of the Succession Act which requires that before the right of a legatee can be established "probate of the will shall have been granted." *Held*, that the grant of administration with the will annexed was, within the meaning of s 3 of the Act, a grant of "probate" which was a compliance with the provisions of s 187. The subsequent limitation of the grant was immaterial. So long as the compliance with the section was prior to decree, the fact that it was after the institution of the suits made no difference and the Court was fully competent to deal with the suits. **CHANDRA KISHORE ROY v PRASANNA KIMARI DAS (1910)** . . . I. L. R. 38 Cal. 327
15 C W N. 121

3. ——— Rules for devolution of trust if constitutes a will—*Probate*, if may be granted of an instrument laying down rules for devolution of trust—*Partial probate*, if may be given—*Residuary bequest*, effect of. Where a Mohunt made a will the main body of which simply laid down rules for the devolution of trust property, but there was a clause in the following terms: "the said K shall get and shall be entitled of his own accord to make a gift or sale of any other property that I may earn during my life time . . ." *Held*, that, whether or not there was any such residuary property, there was here a valid testamentary disposition which may be admitted to probate though the main body of the will being a deed merely evidencing a devolution of trust would not by itself be testamentary or admissible to probate. *Held*, further, that in the circumstances probate must be granted of the will as a whole, leaving it open to any party to establish his title by suit to any property in respect of which there may be a declaration of trust ineffectual as a will, and vesting the whole estate in the executor pending determination of title to such property. **BAISNAV CHANAN DASS BAIRAGI v KISHORE DASS MOHANTA (1911)** . . . 15 C W N. 1014

3(a) The term 'Mabk' when used in a will or other document as descriptive of the position which a devise or donee is intended to hold includes full proprietary rights unless there is something in the context or surrounding circumstances to restrict this meaning. **MUSAMMAT SASIMAN CHOWDHURAI v SHIB NARAYAN CHOWDHURY** 26 C W N. 425

4. ——— Will or family arrangement—*Immediate operation*—*Irrevocability*—*Registration*—*Registration Act (III of 1877)*, s 17—*Floodings inconsistency in*—*Costs*—*Successful party deprived of all costs*. A document executed by the owner of an estate on 23rd May 1884, which was plainly intended to be operative immediately and to be final and irrevocable, was held to be a non testamentary instrument, e.g., a family arrangement which as regards immovable property failed of effect because it was not registered as required by s 17 of the Registration Act (III of 1877). The appellants in whose favour the above decision was given having set up a will of a later date had started with the case that the instrument in ques-

WILL—*contd.*CONSTRUCTION—*contd.*

tion was a will, but the will propounded by them being found not proved, they later on attacked the document on the ground stated above. Similar inconsistency appeared in the pleadings of their opponents. *Held*, that in the circumstances the Judicial Committee was not precluded from giving effect to the real character of the instrument, but the appellants were deprived of their costs in all the Courts. **UNRAO SINGH v LACHMAN SINGH (1911)** . . . I. L. R. 33 All. 244
sc 15 C W. N. 497
L R 33 I. A. 104

4(a) ——— Signature—*Proof of*—*Handwriting Expert*. The Propounder of a will should prove to the satisfaction of the court beyond all possible doubt that the will was executed by the alleged Testator. The opinion of a hand writing expert when he was not called as a witness was held inadmissible. **MUSAMMAT PADMA PRIYA DEBYA v DHARMA DAS DEB SARMA** 15 C W. N. 728

5. ——— Bequest dividing self-acquired property—between testator's two sons with gift over to survivor—*Survivorship* whether limited to survivorship during testator's life or extending to period after his death—*Period of distribution*—*Hindu Law*. A Hindu resident of Surat in the Presidency of Bombay made a will dated 20th August 1899 by which after appointing his two sons "executors, heirs and owners" of the whole of his property (which was self acquired) and directing them to divide and take equal shares in it with certain exceptions, gave each of them a half share of his estate not especially disposed of by the will. By clause 9 he made the following bequest, "I have divided between and given to my two sons the whole of my property as mentioned above. But should either of these two sons die without having had (leaving) any male issue the survivor of the said two sons is duly to take the whole of the property appertaining to the share of the deceased son who may have (leave) no male issue (behind him) after undertaking (to defray) the expenses in connection with the maintenance of his widow and marriage of his minor daughter. But under these circumstances the heirs of my deceased son, Surjalal, shall not get any right whatever." The testator died on 4th July 1901 leaving him surviving his two sons. The elder son died on 2nd January 1903 leaving a widow and a daughter. In a suit by the surviving son to enforce the provisions of clause 9 of the will, the High Court held that the period of distribution contemplated by the testator was the period of his death at which time half of his estate became vested in each of his sons absolutely and that clause 9 should be read as if the survivorship there provided was limited to survivorship at the death of the testator. *Held*, (reversing that decision), that the words of clause 9 were not limited to survivorship during the testator's life. But clearly pointed to survivorship whenever it should occur; and that the surviving son was as such survivor entitled to the estate conveyed by the clause subject to the obligation imposed upon him of maintaining his brother's widow and daughter. **CHUNIL PARVATHIBAI v. P. M. SAMBATH CHUNIL (1914)** . . . I. L. R. 38 Bom. 389

6. ——— Direction to carry on testator's business—*Loss suffered in the course of the business*

WILL—*contd*CONSTRUCTION—*contd*

—*Mortgage—Liability of the executor—Testator's assets liable.* One Gordhandas made a will and died leaving him surviving his widow, a daughter and her husband and two grandsons by the daughter. Under the will the testator appointed his widow and the daughter's husband executrix and executor and directed among other things that in order to perpetuate his name his business should be carried on by the executor so long as it could be carried on at a good profit but, should it appear that the trade will suffer so as to destroy his reputation, the executor should stop it. At the time of his death the testator possessed, *inter alia*, a cotton spinning factory. The executor and executrix carried on the business in the testator's name for some time and having found that large liabilities were incurred in the course of the business the factory was mortgaged to J with possession. The mortgage was executed by the testator's widow as owner of the firm of Gordhandas and by her daughter. The fact of the will was denied in the mortgage conveyance. The ladies executed the mortgage by affixing their marks and their names were written by the executor. J sued the mortgagor ladies and the executor to recover the mortgage-debt and obtained a decree. The executor died while the suit was pending. The mortgage property was sold under J's decree and was purchased by him at the court-sale. In the meanwhile the beneficiaries under the will, that is the two grandsons of the testator and the sons of the deceased executor, brought a suit against J for a declaration that the property was not liable to be sold under the defendant's mortgage decree and that the defendant had obtained by his purchase no right as against the plaintiff's rights in the property. *Held*, dismissing the suit, that the mortgage was by one member of the firm with the consent and informal co-operation of the undisclosed partner, the executor, who had the implied authority of the testator to deal with the factory in the ordinary course of business. The mortgage was therefore valid and binding on the executor as principal. *Juggendras Keeka Shah v Ramdas Brijbhokan Das*, 2 Moo I A 487, followed. A mortgage by a trader under a testamentary trust of the testator's property is referable to his implied authority as a trustee and not to his position as executor. *Devitt v Kearney* 13 L R Ir 45, followed. An executor carrying on the trade of his testator under a testamentary trust is liable personally to the trade creditors and is entitled to use as a trader the trade assets of the testator. He does not violate his trust by carrying on the trade in conjunction with his co-executor who is not named as a trade trustee. The trustee though personally liable for the debts which he contracts in the course of his business, has a right to be paid out of the specific assets appropriated for that purpose and the trade creditors are not to be disappointed of payment so far as the assets so appropriated are concerned. *JETHABAI v ONOTA LAL* (1909) . 1 L. R. 34 Bom. 209

7 ———— *Life estate to daughter—Request to daughter's sons—On failure of the bequest the estate to go to the testator's cousins absolutely—No son born to the daughter at the death of the testator—Failure of the bequest to daughter's son—Not a case of intestacy—Operation of the bequest in favour*

WILL—*contd*CONSTRUCTION—*contd*

of the testator's cousins—The intention of the testator to retain his estate in his own family, that is, in the hands of his cousins. A testator in his will provided, *inter alia*, that his daughter should have a life estate of Rs 150 and the rent of a house and in the event of her having a male child or male children, he or they should take the whole estate of the testator on attaining the age of 18 and then bearing a good character. Should the daughter have no male issue, then on her death, the whole of the testator's estate was to go to his cousins absolutely. The daughter having borne no male issue during the life time of the testator, the intended bequest to her male issue failed. *Concandra Mohan Tagore v Jatindra Mohan Tagore*, 9 B L R 377. A question having arisen as to whether the condition of the daughter having a son (at the death of the testator) not being fulfilled, there was a case of intestacy. *Held*, that there was no intestacy. The intention of the testator was to give the whole of his property to his grand son (daughter's son). That intention having failed, the dominant intention of the testator was subject to his daughter's life estate, to retain the estate in his own family, that is to say, in the hands of his cousins. *NARAYAN VEDHUKHANDAS v BAI SARASWATIBAI* (1914)

11 L. R. 38 Bom. 697

8 ———— *Bequest by Hindu testator to widow, daughter, and daughter's daughter—Succession Act (X of 1865), s 111. Where a testator intended that his wife, daughter and daughter's daughter should each have an absolute interest in the property, and so long as anybody descended from himself was in existence his brother's son or the latter's descendants should have no interest in the property and where the provisions of his will ran thus—"If my wife die before, my daughter Gangamoni Debba shall get the property, etc."* *Held*, that under the provisions of s 111 of the Succession Act the daughter takes only a life interest. *Lalla v Jagmohan*, 1 L R 22 Bom 409, *Mahendra Lal v Bakhal Das*, 17 C L J 630, *Tripurari Pal v Jagat Narain Das*, 1 L R 40 Cal. 274, *Sures Chandra Paul v Lalit Mohan Dutta Chowdhuri*, 20 C W. N 463, referred to. *JAGAT BHOY BHATTACHARJEE v TOMTERDDI HOWLADAR* (1916) . 1 L. R. 44 Cal. 181

9 ———— *Gift of life-estate with power of appointment—On failure to appoint estate to test in legatee's heirs, executors and administrators—Construction—Absolute gift—Fes judicata. Testator bequeathed the income of a house to his two sons G B and H B for life, the moiety of the corpus to go to such person as each of his two sons shall by will or deed appoint and in default of appointment to their heirs, executors and administrators. *Held*, that the bequest conveyed an absolute estate in a moiety to each of the sons. G B was declared insolvent in Rangoon and in a suit filed before the Chief Court by the Official Assignee as Assignee of G B's estate for the determination of the effect of the insolvency of G B on the bequest to him and his power of appointment, a consent decree was passed declaring that the Official Assignee was only entitled to a half share in the rents of the house during G B's lifetime, without prejudice to the rights of his appointees or his heirs, executors and administrators. Subsequently G B's adjudication was*

WILL—contd

CONSTRUCTION—contd

annulled *Held*, that the consent decree did not operate as *res judicata* to prevent the High Court construing the bequest **BALTHAZAR v BALTHAZAR** (1917) 21 C W N. 992

10. — Construction of will—Absolute words and limiting words occurring in one sentence—*Intention of the testator* A testator made the following provision in his will "I appoint by this testament my brother Joaquim Serpes as my only and universal heir of all the immovable property which I possess, and which may hereafter in any manner belong to me, with the strict obligation to him not to sell, exchange, or hypothecate it, but only to enjoy the usufruct thereof, and at his death to pass over the same to his male children procreating the same as a patrimony of the house." The question being raised whether upon a proper construction of the will Joaquim was merely a life tenant or whether he took absolutely *Held*, that Joaquim was a mere life-tenant **ROSS D SOUZA v JOSEPH** (1916) 1 L R. 41 Bom 70

11. — Wills by Hindu—fundamental principles common to Hindu and English wills—Court's duty to give effect to intention as expressed, not to add to will—Surrounding circumstances to be looked at as aid to interpretation only—Religious opinion and race, is what way relevant—Liberal construction of native wills, meaning of Contemporaneous deed, referred to in will and interpretation by persons interested if may be referred to—English rules of construction, if inapplicable In construing a will, a Court must consider the surrounding circumstances, the position of the testator, his family relationships, the probability that he would use words in a particular sense and many other things including the race and religious opinions of the testator and influences and aims arising therefrom—but all this solely as an aid to ascertain the meaning of the language used by the particular testator in the particular will. Once the right construction is settled, the duty of the Court is loyally to carry out the intentions as expressed and none other—This duty is universal, and is true alike of wills of every nationality and every religion or rank of life. The Court is in no case justified in adding to testamentary dispositions. If they transgress any legal restrictions they must be disregarded. If any eventuality arises which the will leaves unprovided for, there will be intestacy. This fundamental principle does not clash with the principle that the Court will not necessarily apply English rules of construction to a will of a Hindu living in the present, nor does it clash in any way with what is sometimes called "a liberal interpretation to native wills." This native procedure should be ignorant of the local customs proper to express their intentions or of the legal steps necessary to carry them into effect, is one of the most important of the "surrounding circumstances" which the Court must bear in mind, and it is justified in making, in order to do justice, an express use of these matters to prevent the carrying out of the testator's trust for law. But the intention must be ascertained by the proper construction of the words he has used, and once ascertained, they must not be distorted from it. It is fundamental in our rules a will to look at contemporaneous circumstances referred to in the will which the testator was or seemed to be written with

WILL—contd

CONSTRUCTION—contd

the express intent to render clear his wishes with regard to his succession The interpretation placed on the power by the testator's widows was referred to "for what it was worth." **NARASIMHA APPA ROW v PARTHASARATHY APPA ROW** (1913) 18 C W N. 554

I. L. R. 37 Mad. 199

12. — Republication—Succession Act (X of 1865), ss 105, 153—Codicil—Death of testator within one year—Repair of graves—Charitable bequest—Conditions Elect one of Deacons Communion Service—Gift-over to another charity—Perpetuities The testator died on the 8th July, 1909, leaving as next of kin a nephew and leaving a will dated the 14th April, 1894 and four codicils. The testamentary dispositions included certain charitable and religious bequests. The last two codicils dated the 15th December, 1906 and the 19th December, 1908, respectively, were not deposited according to the provisions of s 105 of the Succession Act, they did not however, purport to revoke the will, but in effect republished the will: *Held*, that in the circumstances the will as modified by the codicils was operative **Hopwood v Hopwood**, 1 H L Cas 723, *In re Moore*, *Long v Moore*, (1907) 1 Ir Rep 315, referred to. A direction that the will shall not have any effect (beyond proving the same) for at least two years from the arrival of the news of the testator's death, operated merely as a postponing clause, and did not invalidate the will. A direction to trustees to look after and keep in proper repairs certain graves and to pay for the expenses of such repairs in perpetuity out of the estate, was not for charitable uses, and was void and inoperative. **HOARE v OSHWAL**, L R 1 E 555, **MILLIK v THE PRESIDENT AND GUARDIANS OF THE LAYMAN** (1911) Jac 150, *In re Faughan Vaughan v Thomas*, L R 33 Ch D 157, *In re Kyrle*, *Bird v Lar*, (1911) 1 Ch 715 referred to. *In re Tyler Tyler v Tyler*, (1911) 3 Ch 251, distinguished. A bequest in favour of the Lower Circular Road Baptist Church was subject to, *inter alia*, the following conditions: (a) that no ordained minister or missionary be ever elected as a deacon of the church, or be allowed to canvass for votes; (b) that at communion two cups, one of fermented one of unfermented, wine should be provided; (c) that the deacons do not introduce any innovation into the practice of the church. In the event of the non-fulfilment of the conditions there was a gift-over in favour of the Haverhill Baptist Church and other charitable and religious institutions. *Held*, that there was nothing illegal or impossible in the conditions, and inasmuch as the conditions had not been fulfilled the gift-over came into operation. *In re Haverhill Baptist Church v Tyler*, (1911) 1 Ch 251, distinguished. An accumulation for a charity for charitable uses, with a gift-over on an event which may be beyond the ordinary limit of perpetuities to another charitable institution. **CHURCH v HOPKINS**, L R 1 E 555, *In re Tyler Tyler v Tyler*, (1911) 3 Ch 251, referred to. *In re Haverhill Baptist Church v Tyler*, (1911) 1 Ch 251, *In re Haverhill Baptist Church v Tyler*, (1911) 3 Ch 251, distinguished. **ADVERTISEMENTS**, **GENERAL OF FROST v HUGHES** (1912)

I. L. R. 40 Cal. 192

WILL—*contd.*CONSTRUCTION—*contd.*

without division, as a *rais*. The other issue of the family of *J B* shall be entitled to get food, raiment and other necessaries out of the monthly allowance (4) When there remains no descendant of the family of *J B* at any time the monthly allowance of Rs 4,000 will be resumed and remain in proprietary possession of the proprietor of the "*raai* the *goddess*." The Court of the Judicial Commissioner held that "*aulad* *primæ facie* meant legitimate issue, and dismissed the suit *Held* (upholding the decision), that the case was not one where a gift is made by will of the corpus of a fund or a life interest in a fund to the "children" of the testator, or of another, as a class. There might be good reason in some such cases for holding that in India the word "children" includes illegitimate children. But here a succession of life interests from generation to generation is intended to be set up, the successor, or 'proprietor,' in each instance being vested with an absolute control of the income subject only to the duty of maintaining the issue (*aulad*) of the family (*khandan*) of the first proprietor *J B*. There was nothing on the face of the codicil to suggest that a meaning should be given to the word "*aulad*" different from its *primæ facie* meaning. To include illegitimate issue would bring into the line of succession not only the testator's illegitimate grand children, but their illegitimate issue from generation to generation. Such a construction would render condition No 4 rather unnecessary and would also defeat the whole purpose and object of the testator in establishing the succession of life interests. Nor was there any reason for extending the meaning of the word '*khandan*' which ordinarily refers to the group of descendants who constitute the family of the proprietor, so as to include illegitimate offspring, who from the necessities of the case cannot share in the family life or its worship or ceremonies. *Held*, also, that the fair result of the evidence was that *J B* did his utmost to become an orthodox Hindu, and to pass as such in the society in which he lived, and that his father from boy's youth upwards aided and encouraged him in those efforts. The testator treated his marriages with the two Chattri ladies as lawful marriages and desired that others should so treat them, and consequently resolved to regard and treat the offspring of those unions as legitimate, and desired that they should be so treated and regarded by others; and that it was in this frame of mind he made the testamentary disposition in dispute. Having regard to all the evidence in the case, and the provisions of the codicil itself the intention of the testator plainly was to treat the marriages of *J B* with the two women of the Chattri caste as valid marriages and the issue of those marriages as legitimate issue. *SHRI BHARADUR v GANGA BAKSHI SINGH* (1913)

I L R 36 ALL 101

14 a). — One P died leaving a will by which he directed that certain legacies should be paid out of a fund of P's 10,000 invested in fixed deposit in the Delhi and London Bank. The Bank advised during P's lifetime advanced certain sums to his daughter on an undertaking by P that he would stand surety for the loan. I was also himself indebted to the Bank. *Held* on a suit by the legatees that the executor of P's will was perfectly justified on being satisfied

WILL—*contd.*CONSTRUCTION—*contd.*

as to the fact of P's relations with the Bank above described in permitting the Bank to realise from the fund in question both the amount of loan to P's daughter and the amount of his own indebtedness. *HERBERT ARCHIBALD POCKOCK v. THE DELHI AND LONDON BANK, LTD.*

I L R 38 ALL 219

15 — Money belonging to a testator but not known to him—Residuary clause not proceeding by—Rule of construction of residuary clause, in a will made in the town of Madras. A testator in the town of Madras after stating in the preliminary clauses the properties moveable and immovable to which he was entitled and which he by subsequent clauses in the will bequeathed to various beneficiaries and legatees, finally made a bequest in the following terms: "the sum which may be left after deducting the above mentioned legacies and such other expenses shall be utilised in my name for pooja and other charities in Vytheewar temple." Unknown to the testator there was a sum of Rs 4,000 lying to his credit with the Registrar of the High Court which after his death was paid to his executor on his application. In this suit by the widow of the testator for administration of the estate. *Held*, that the sum of Rs 4,000 was not disposed of even under the above residuary clause of the will, that the plaintiff was entitled to it as on an intestacy and that the executor was liable to account for the same from the date of the testator's death on the footing of a wilful default. The residuary clause in the form in which it appears in English wills is practically unknown to the ordinary testator in Madras and the rules of construction which have been laid down by English Courts are not applicable. *KUTHALAMMAL v SETHA-PRAKASAROTA MUDALIAR* (1915)

I L R 38 Mad. 1096

16 — Will of Parsi—Devise to two sons in equal shares—Gift over to son of elder son, if he should have one—Failure of male issue to elder son—Provision for adopted son on failure of natural son—Adoption after testator's death and according to Parsi custom three days after death of father—Gift over to grandson on attaining majority—Elder son surviving testator—Succession Act (X of 1865), s 111. A Parsi having two sons P and J made a will in 1866 in the following terms:—Cl 2 stated "The said two sons are proprietors half and half alike and in equal (shares) of my whole estate, outstandings, debts, title and interest, and both the heirs living together are duly to enjoy the balance which may remain after the Sarkar's assessment. In this my testamentary writing I the testator have appointed my two sons as (my) heirs." Cl 5 said that "If the elder son being in a confused state of mind, the management of the estate was entrusted to the younger son J—by his true and pure integrity, and both the heirs are to equally enjoy half and half alike the whole estate with equanimity with my elder son P in such a way as not to injure his (P's) rights. At present my elder son P has no male issue of his body (if) he has only a daughter. Therefore if my elder son P gets a male issue half of the estate is to be made over to him on his attaining his full age." Cl 11, after prohibiting any alienation of the property, continued, "If my son P does not get a son J is to give away his son as P's joint (or adopted son). All the clauses of,

WILL—could

CONSTRUCTION—could

this will are applicable to the said adopted son if a son be born of the body of P he (shall) on attaining (his) full age be the owner of a half share of the whole of the immovable and moveable estate belonging to me all the clauses written in this will are applicable to the said son of (his body)." The testator died on 21st August 1865 leaving his two sons, and J entered upon the management of the estate having obtained probate of the will in 1867. P was twice married but had no son. He died in 1897 leaving a widow and other representatives his heirs according to the Parsi Intestate Succession Act (XXI of 1865) who brought a suit to ascertain the rights and interests of the parties in the estate and for partition, basing their claim on P's right as the owner of one half of the estate from the date of the testator's death. The defendants were J and his son B who was five years old at the death of the testator, and who it was alleged had been, though not in the testator's life time, adopted as the *putak* son of P and, as the defendants contended, succeeded under the will to the half share of the estate which P had enjoyed though on the terms of the will it had never vested in P. *Held*, (affirming the decisions of the Courts below), that the proper interpretation of the will in the events that had happened was that the date of distribution was the death of the testator, at which date one half of the estate vested in P. The destination over to a son who should take upon attaining majority would be using language appropriate to the events of the death of P during the life-time of the testator, and of his having left a son—the situation also being provided for that son not having at that time attained majority. But when P himself survived the testator there were no words in the will sufficient to cut down the right of P to one half of the estate, to a tenancy for life or a less period therein according to the appellant's contention. On the contrary the words employed appeared suitable to the case of the entire estate being on the testator's death, divided into two portions, and of each portion then becoming the absolute property of one of the two sons of the testator. The same result was arrived at by the application of s. 111 of the Indian Succession Act which their Lordships agreed with the Courts below was applicable. **JENANIS DADABHOY v KAKKUSRU KAVASHA** (1914).

I. L. R. 39 Bom 296

18 (a) ——— Demonstrative Legacy.—Where a testator has bequeathed legacies to several grand children named in the will to be paid for the sale proceeds of a certain house after death of daughter and marriage of grand-daughter and it was contested that in as much as there is no specific provision in the *Indian Succession Act* for payment of interest on demonstrative legacies no interest was payable. *Held* that interest is payable on demonstrative legacies even if there is no time for payment fixed and same is payable out of a particular fund and the rate is 4 per cent. **ADMINISTRATOR GENERAL, BENGAL v A D CHRISTIANA** I. L. R. 43 Calo. 201

17 ——— Dedication of property for worship.—*Devotees to divide profits after paying expenses*—*Trust*. A testator who owned two houses left one house to one of his two nephews

WILL—could.

CONSTRUCTION—could

for his own use and as to the other made by his will the following disposition. "In the other dwelling house consisting of three sections of Thakurdwaras including the staircase both the executors aforesaid should reside, put up pilgrims and attend on them jointly and from the income thereof daily perform the usual worship of the gods Mari Dhar, Raj Rajeshri and Mahadeo and the worship on *Basant Panchmi*, *Ram Navmi*, *Janam Ashami*, *Nauratri*, *Shivaratri*, *Dhanurmas* and *Sama* festivals and look after its repairs. After this is done both the executors should make a receipt and disbursement account of the income annually and after deducting the above expenses should divide the profits between them in half and half and should grant receipts and acquittances as between themselves. None of the executors shall in any way be entitled to transfer, mortgage or sell this house, and if they do so it will be utterly null and void." *Held*, that the will created a trust and the only beneficial interest given under the will to the nephews was the right to take the surplus profits, if any, after the worship had been performed and the festivals duly observed. **MURLIDHAR v DWAN CHAND** (1916) I. L. R. 23 All. 214

18 ——— Bequest to a person not named in the will.—*Private directions given by the testator to one of his executors—Evidence as to who was intended to have the benefit of the bequest, admissibility of—Succession Act (X of 1865), ss. 62, 67, 68, 69*. A testator provided by his will as follows:—"In accordance with directions that I am going to give in private to trustee No. 1 out of the trustees appointed by me, my trustees should entrust to Haridas Rs. 5000 that may be received from my life policy and the shares of Tata & Co. also should be transferred to the person whose name will be disclosed by Haridas." In a suit filed by B praying *inter alia*, that Haridas should be ordered to disclose the private directions given by the testator and for declaration that she, B, was the person intended by the testator to have the benefit of the bequest. *Held*, (i) that Haridas was bound to disclose the private directions given him by the testator and that evidence thereof was admissible, (ii) that the second part of the above clause should be read with the first part and that the shares must be transferred to a person whose name was given by the testator to Haridas and that the power conferred on Haridas was therefore, not a general but a special one. **BATKALI SAKALKAR v HARIDAS RAKHUBHADA** (1914).

[I. L. R. 40 Bom. 1

19 ——— Life interest.—*Reversionary trust*—"If then I want"—*I sold estate*. A Parsi *for his wife and children* I gave to his wife for her life and directed that after her decease his executors should hold the house in trust for his son J, for life and in the event of J's death in trust for J's widow (as to part if he so appointed) and for J's issue and in default of such issue and subject to such appointment in trust for the testator's son K "if then living" J died unmarried in the life time of the testator's widow, and of K. *Held*, that upon the death of J the house vested absolutely in K subject to the life interest of the testator's widow. **CAPADIA v CAPADIA** (1918).

I. L. R. 45 I. A. 257

WILL—contd

CONSTRUCTION—contd

20. — Request to brother's widow and on her death to her daughter—*Succession Interest—Absolute estate—Succession Act (X of 1865), s. 111.* Where in a will a legacy was given in the following words "On my death my youngest brother's widow the said Bama Sundari Dohya and when she is dead her daughter my niece Kusum Kamini Debi will get one-fourth share of all the self acquired immoveable properties which I have other than my aforesaid immoveable properties" *Held*, upon a construction of the will, that the effect of the will was to give to Bama Sundari an interest for life in the self acquired properties of the testator with a gift over on her death of an absolute interest to her daughter Kusum Kamini. The gift to Kusum Kamini was not a substitutional gift in the event of her mother Bama Sundari predeceasing the testator, but it was one of successive interests, and s. 111 of the Indian Succession Act had no application to it. *HARENDRA CHANDRA LARICI v. BASANTA KUMAR MOYTA (1918)*

22 C. W. N. 689

21. — "Malek Mukhtyar" for life—*Existence indicated in will of special oral direction—Terms of the trust not ascertained or ascertainable—Power executed in professed compliance with authority given—Parol evidence admissible to prove the trust so as to prevent a fraud—Onus of proof—Undistributed share of the property of an intestate—Indian Limitation Act (IX of 1908), Art. 123.* A Parsee testator by his will made his wife "Malek Mukhtyar" as to all his property during her life, just as the testator was the owner, free from question by any of his other heirs, representatives, relatives and kin-men with directions that she should protect the children, as he had protected them, according to their means, declaring that if any of his children should not act according to her orders, then during her life time the child should not have any claim to any of the testator's property. Cl. 7 of the will provided that "agreeably to what was written above, the wife was, during her life time, to carry on 'Yahvat' (management) in respect of every kind of property and make expenses on suspicious and insuspicious occasions, as the testator had been doing" The clause further provided: "and in her life-time, keeping God and Mehar Davar (the Dispenser of Justice) before her mind, my wife shall duly as I have directed her orally and according to the times (i.e., as circumstances demand) make her will, and all my heirs and the heirs of my heirs, shall duly act agreeably to the same" Cls 8 and 10 of the will provided for interests contingent upon the testator's widow and executrix dying without making a will as mentioned in cl. 7. The testator died in 1872 and thereafter his widow as executrix administered the estate until her death in 1906. By her will she purported to dispose of all property, both her own and what she had received from her husband, and appointed her surviving son her executor. The latter died in 1915 leaving a will whereby he appointed his daughter, the 1st defendant, his executrix. The plaintiff, a daughter of the original testator's son (who predeceased his mother) filed the suit on the 18th of May 1916, praying *inter alia* that the estate of the testator might be administered by the Court and that it might be declared that the

WILL—contd

CONSTRUCTION—contd

testator's widow had no power to make a will disposing of any part of the testator's estate. The 1st defendant contended that the will of the testator's widow was valid and that the plaintiff's claim was barred by limitation. *Held*, (i) that the testator's widow took only a life estate under the will, (ii) that the words "shall duly as I have directed her orally and according to the times (i.e., as circumstances demand)" were not consistent with a general testamentary power but indicated the existence of special directions as to the objects in whose favour the power was to be exercised; (iii) that there being no direct evidence as to the testator's directions the will made by the widow should not be given effect to and that on her death there was an intestacy as regards all the property of the testator, (iv) that, Art. 123 of the Indian Limitation Act applying to every suit where the plaintiff seeks to recover an undistributed share in the estate of an intestate, the suit was not barred by limitation, *Per SCOTT, C. J.* The Court will not try to compel the execution of a trust where the terms of the trust are not ascertained or ascertainable, but, where a power in the nature of a trust has been executed in professed compliance with the authority given, the onus, as it seems to me, of proving that the execution was a fraud on the power should be on those who seek by challenging the execution to get possession of property in the hands of those benefiting by the act of the donee of the power. *HILLERY v. HILLERY, (1902) 2 Ch. 866*, referred to *Mawng Tin Tai v. Ma Tai, L. R. 44 J. A. 42*, followed. *SHIRINDAT v. RATANAL (1918)* L. L. R. 43 Bom. 845

21 (a) — Equitable estoppel—Oudh Estates Act—S by his will bequeathed his taluqdari estate to his great grandson J subject to provision under which J was to select particular villages yielding net incomes of stated amounts and grant them in under proprietary right to S's three grandsons. J made the selection and the grantees accepted. *Held*, this did not constitute a transfer within s. 16 of the Oudh Estates Act and did not require registration and that in any case J had no equitable claim to recover the villages from the grantees after delivery of possession and receipt of rent by the grantor. *LAL JAGADISH BAHADUR SINGH v. MAHARAJ PRASAD* 24 C. W. N. 529

22 — Trust for charitable purposes—Gifts over to another charity—Rule of remoteness—*Feeding of the gifts over—Perpetuity rules against how far applicable—English Law—Res Judicata—Proceedings in prior suit—Issue reserved in decree—Heard and finally decided—Succession Act (X of 1865), ss. 101 and 107—Civil Procedure Code (Act V of 1908) s. 11.* By a will, dated the 14th April 1864, and four codicils the testator provided, *inter alia*, that certain annuities he paid out of his residuary estate and, after the death of the last surviving life tenant, a charitable and religious bequest be created in favour of the Lower Circular Road Baptist Chapel subject to certain conditions contained in cl. 7 of the 2nd codicil. In the event of the said conditions being unfulfilled, it was directed in the said codicil that there would be a gift over in favour of the Howrah and the Lall Bazar Baptist Churches. The testator died on the 8th July 1902, and the last survivor of the

WILL—contd

CONSTRUCTION—contd

annuitants was still alive. In a previous suit, *Administrator General of Bengal v Hughes*, 1 L R 40 Cal 192, for the construction of the said will and codicils and for other reliefs, it was admitted that the Lower Circular Road Baptist Chapel had not complied with the said conditions and I was not in a position to do so, and the Court, on the 16th July 1912, held that the gifts over to the Howrah and the Lall Bazar Baptist Churches were valid and that there was no intestacy, but in the decree the determination of these questions was expressly reserved. The last surviving annuitant having died on the 10th April 1917, a fresh application for the further construction of the said will and codicils was made. On this application it was declared that the gifts over were valid, that there was no intestacy, and that the question could not again be raised. On appeal—*Held*, that the question of the validity of the gifts over to the two Churches could not be said to have been finally decided within the meaning of s 11 of the Code of Civil Procedure so as to prevent the Court considering the point raised in the subsequent suit in respect of s 101 of the Succession Act, and that the decree of 1912 did not finally decide all matters raised in the suit. *Held*, also, that the language of s 101 was clear and unequivocal and applied to all bequests, whether they were of a charitable nature or not. *Held*, also, that the bequests to the Howrah and Lall Bazar Churches would not vest in them until the Lower Circular Road Baptist Chapel had failed to perform the specified conditions, that they were within s 101, and that they were not valid on the ground that the vesting of the funds bequeathed to those Churches might be delayed beyond the lifetime of one or more persons living at the testator's decease. *Held*, also, that as regards the corpus and income of the residuary funds in question after the death of the last surviving annuitant there was an intestacy. *J H JONES v THE ADMINISTRATOR-GENERAL OF BENGAL* (1918)

1 L R. 46 Cal. 485

23. —Cutchi Memons—Mahomedan law—Document in the nature of instructions as to the disposition of property operating as a will under Mahomedan law—Probate—Probate and Administration Act (V of 1881), s 3. A widow of a Cutchi Memon applied for probate of a document in Gujarati as being the last will and testament of her deceased husband, the document according to the official translation being in the following terms:—"May it be known to Bhai Abdullahai as follows:—In the will which you will get made to-morrow and give me, be kind not to forget (to add) my 'Makhatar' as long as I am alive and after me my wife's 'Makhatar'. Whatever costs may be incurred I will pay you. Written by your servant Mahomed Husein Haji." On the other side of the document, were the words "Bhai Abdullahai" "Makhatar". In the document no absolute ownership or full power. The document was unattested but was written by the deceased, and given to his brother in law Abdullahai as a time when the deceased was lying on his death bed suffering from cancer of the tongue and unable to speak properly. The deceased died two days after the date of the document. *Held*, (i) that the document in question was in the nature

WILL—contd.

CONSTRUCTION—contd

of instructions by the deceased to his legal advisers, or to his relative as to the instructions to be given to the legal adviser as to the disposition of his property, (ii) that under the Mahomedan law which governed the execution of wills of Cutchi Memons no attestation was necessary and the document operated as a valid will which might be admitted to probate. *In re Aha Salar*, 7 Bom. L R 658, and *Mahomed Altaf Ali Khan v. Ahmed Baksh*, 25 B R 121, referred to. *SARADAI AMIRAT v. MAHOMED CASSIM* (1918)

1 L R. 43 Bom 641

24. —In a Will the testator provided that after his death his daughter would be *mahk* vested with the power to transfer by sale and gift the entire properties and would enjoy and hold possession of the same down to her son, son's son and so on. The Will next provided that the daughter should live in the testator's ancestral *dhuta*, and perform the *pujas* inaugurated by him, otherwise she would not be entitled to hold possession or transfer any portion of the property. The Will also provided that she would be entitled to transfer the property only if it was unavoidably necessary for the education of her son or if they fell into great calamity. In suit for possession by the sons of the daughter, the Court of first instance held that the Will conferred an absolute estate on the plaintiffs' mother who having left a maiden daughter still living, the plaintiffs have no title to the property. On appeal the Lower Appellate Court held that the questions raised should be decided after taking evidence and remanded the case for trial upon the merits. *Held*, that the words in the earlier part of the Will, without anything to qualify them, would no doubt create an absolute estate and therewith power of alienation expressly given. There is no doubt that if an estate conferred by Will is held to be absolute, the conditions as to the mode of its enjoyment are void. But considering all the terms of the Will it is clear that the provisions made in the earlier part of the Will are qualified by the provisions made in the other parts of it. Three things appear to have been uppermost in the mind of the testator: that his daughter and her sons, etc., should reside in his *dhuta*, that power of alienation should be given only for meeting the education expenses of her son or in case of great calamity and that she should hold subject to performance of *pujas*. She had not an absolute estate. *SURENDEA NATH CHATTERJEE v. SAROJIBANDHU*

26 C. W. N. 893

25. —Request of estate for life—no express disposal of corpus—Prohibition against alienation—Law of perpetuities—"her born of the womb" meaning of Hindu Law—Contingent remainder after woman's estate, effect of—Life estate, whether Hindu can create by will—Adverse possession under doubtful Will, effect of—Legal necessity, proof of by recitals in a conveyance. A will recited that if a daughter or son was born to the testator during his life time such son or daughter "will be the owner" of all the testator's property but if there were no son or daughter his niece S was to take a bequest of a lakh of rupees, and the rest of the movable and immovable property was to remain in the possession of his wife

WILL—*contd*CONSTRUCTION—*contd*

until her death. After her death it was to "remain in the possession" of his niece. The remainder was disposed of in the following words—"if on the death of my wife and my niece there be living a son and a daughter born of the womb of my said brother a daughter then two thirds of the movable property will belong to the son and one third to the daughter. But as regards the immovable property none shall have the least right of alienation. They will, of course, be entitled to enjoy the balance left after payment of rent, etc. *Held* (i) That the Will purported to convey an absolute estate ultimately to the son and daughter of the niece, and the fact that the corpus was not expressly mentioned was not sufficient to justify the interpretation that the corpus did not pass. (ii) That the failure of the bequest of the remainder in favour of the niece a son and daughter on the ground that they were unborn at the testator's death did not make the Will itself invalid. (iii) That the disposition in favour of the niece a son and daughter was a bequest of the remainder to them and was not a mere description of an estate of inheritance in *S*. The words "heirs born of her womb" could not be interpreted to be a description of an estate of ordinary inheritance. (iv) That under the Will there was no interest vested in any person other than the widow in the first place and after her the niece. The Will, therefore, contemplated that the estate should be represented first by the testator's widow and thereafter by his niece. (v) That the estate taken by *S* was an estate, such as a woman ordinarily acquires by inheritance under the Hindu Law which she holds in a completely representative character, but is unable to alienate except in case of legal necessity. (vi) That by the provision against alienation the testator had in his mind the ordinary recognised restriction upon alienation which would apply independently of any provision in the Will, and that he had not in his mind the eventuality of an alienation becoming necessary either for the purpose of providing maintenance for the niece or for the preservation of his estate. Where a mere contingent remainder is created after the woman's estate (as in this case) and not a vested remainder, this is an indication that the estate created was a woman's estate in the technical sense and not merely a life-estate. An estate of the kind that a Hindu widow inherits in the case of an intestacy can be created by a Will. Where such an estate has been created by Will a condition prohibiting alienation absolutely is void for repugnancy. *Obiter dictum*—A Hindu can by Will create an estate for life in the English sense, but his intention to do so must be made clear by the terms of the Will itself without any importation of English ideas. It is doubtful whether, where a person enters into possession of an estate under a Will of uncertain construction, an absolute title can be acquired by adverse possession in the absence of an express claim to hold an absolute estate. Where a conveyance had been executed twenty five years before the institution of the suit, recitals made at or about the time of the conveyance were accepted as proof of the existence of legal necessity. *RAM BANADUR v JAGAT NATH PRASAD*. . . 3 Pat. L. J. 199

26. ——— Gift to wife for life—Direction to wife to make will—"As I have directed her

WILL—*contd*CONSTRUCTION—*contd*

orally"—General power of appointment. A Parsi by his will, after giving to his wife a life interest in his property, directed as follows: "And in her life time, keeping God and Meher Daver (the Dispenser of Justice) before her mind, my wife shall duly, as I have directed her orally, and according to the times, make her will, and all my heirs shall duly act agreeably to the same":—*Held*, that the clause did not mean that the testator's wife could dispose of the estate according to oral directions given by the testator, but according to her own discretion, and accordingly that the wife had a valid general power of appointment. *In re Hellel* (1902) 2 Ch. 885, distinguished. *SHIPINBAI v PATANBAI* (1921)

I L R 43 Bom. 88
I L R 45 Bom. 711
25 C. W. N. 899

27. ——— Construction—Accumulation, provision for—Hindu Law. *P*, in his will gave and devised the rest and residue of his property to *B*, his widow and executrix for life, thereafter to his five sons in equal shares with a direction to make certain payments and for accumulation of the surplus income during the life time of the widow for the benefit of the sons.—*Held*, that the provision for accumulation of the surplus income is not invalid. A direction to accumulate with a gift of the accumulation is not fundamentally bad, it fails only if it offends some independent rule of Hindu Law. *Watkins v Administrator General of Bengal*, 1 I R 47 Cal. 85 (footnote) followed. *In re Poulney, Poulney v Poulney*, (1902) 2 Ch. 531, referred to. *Sundera v Louier* (1941) Cr. d. Pk. 240 distinguished. *RAM LAL SEN v BIDHUTMUKHI DAS* (1919)

Id. I L R 47 Cal. 76

28. ——— Bequest to two brothers, without specification of shares—Tenancy in common. *Held* that a devise of separate property made by a maternal grandfather in favour of two grandsons without specifying what share each was to take has the effect of creating a tenancy in common and not a joint tenancy. *Mankamra Ambar v. Balkrishna Das*, 1 I L R 28 All. 35, dissenting from *Kishori Dubain v. Mandra Dubain*, 1 I P. 33 All. 665, followed. *Jayavar Narain Deo v. Ram Chandra Dutt*, 1 I L R 23 Cal. 670, and *Gordhondas Soonderdas v. Bas Ramcoover*, 1 I L R 26 Bom. 449, referred to. *RAM PIRI v KRISHNA PIRI*. . . I L R 43 All. 600

29. ——— Absolute estate or life interest. A testator by cl. 3 of his Will gave his share in an estate to his wife "on account of her maintenance and other absolute use" and provided that she was to be "at liberty to enjoy the same with powers of alienation by sale, etc." By cl. 4 of the Will he gave his property in general terms to the infant sons of a brother. *Held*—That cl. 3 gave an absolute interest in the property to the testator's wife. *N. VARADA PILLAI v JEEVARATHNAMAL*. . . 24 C. W. N. 348

31. ——— described as such if necessarily so—Construction of document—Will or gift or a mere statement of an intention to adopt. On the question whether a document was a Will or a non testamentary disposition intended to operate de presents. *Held*—That it was not a Will. The only words contained in the document

WILL—*contd.*CONSTRUCTION—*contd.*

which would support its being regarded as a document of a testamentary character were that in some places it styled itself a Will. But calling a document a Will does not make it so, and if it had any legal effect whatever it was of the nature of a transaction *inter vivos*, though it was very doubtful whether it really purported to be anything more than a declaration of an intention to adopt **TIRUOVANA PAI v. PUNAMUNI NADATTI (P. C.)**

25 C. W. N. 511

32. ———— *Gift to idol of property if absolute, or property given to heirs subject to a charge in favour of the idol—Decision to be made upon the Will as a whole and not upon a portion of it—Interpretation of applying decisions construing settlements to construe other settlements* *Held*, upon the construction of a Will, the terms of which raised the issue* whether the property conveyed by the Will was an absolute gift to a certain idol, or whether the same was truly destined to the testator's own heirs under the Will, subject to a charge for the upkeep worship and expenses of the idol, that the provision for the worship, expenses and annual charges of the idol formed a burden upon the estate but that the property depended according to the destination in the Will and subject to that burden. In such cases no fixed and absolute rule can be set up, derived alone from the use of particular terms in one portion of the Will. The question can only be settled by a conspectus of the entire provisions of the Will **Saratani Byrnck v. Sreemulthy Juggal Soonee Dasse, 8 M. I. A. 60 (1859), Ashu Ish Dutt v. Doorga Charan Chatterjee, L. R. 6 I. A. 192 (1879) and Jain Nath Singh v. Phakur Sita Ramji, L. R. 41 I. A. 157 s. c. I. L. R. 39 All. 353 21 C. W. N. 933 (1917), referred to** **PANDE HANUMANT RAM v. MUMMAT SURJA KUNWAR**

25 C. W. N. 931

33. ———— *Bequest dependent on condition—Condition made impossible of fulfilment by testator—Bequest, if can take effect* Where there was a bequest made conditional on the re-excavating of a certain tank by the legatee and the condition became impossible of performance by reason of the testator himself re-excavating the tank; *Held*, that the bequest failed and the legatee could not take anything under the Will. Where the performance of the condition appears to be the motive of the bequest, the impracticability of the performance will be a bar to the claim of the legatee. The bequest, in such cases, does not take effect discharged of the condition **Louthier v. Cavendish, 1 Eden 97, Priestly v. Holygate, 3 K. & J. 286, referred to** **RAJENDRA LAL GHOSH v. MINERALIST DASI**

1 L. R. 48 Cal. 1100

34. ———— *Will, construction of—Legacy on a condition precedent, if takes effect when the condition by reason of subsequent events becomes impossible of performance—Intention of testator, to be the guiding principle* A testator bequeathed a sum of money to some of his relatives asking them to re-excavate a tank with the money and take the surplus. But the testator himself re-excavated the tank before his death. *Held*, that re-excavation of the tank was a condition precedent, i. e., there was no gift intended

WILL—*contd.*CONSTRUCTION—*concl.*

unless the condition was fulfilled. The ascertainment of the testator's intention shown by the Will cannot be varied by events which occur afterwards. That intention must be determined from the terms of the bequest, and where the performance of the condition appears to be the motive of the bequest the impracticability of the performance will be a bar to the claims of the legatee. In such a case the bequest does not take effect, discharged of the condition. **Parley v. Langworthy (1), Gath v. Burton (2), Wedgwood v. Denon (3), and Louthier v. Cavendish (7)** and other cases referred to **RAJENDRA LAL GHOSH v. SRIMATI MINALINI**

25 C. W. N. 378

DEBATTAR.

Debattar created by testator—Shabasis and executors appointed—Compromise in a suit by shabasi against executors—Transfer by shabasis of shabasi right—Suit by executor disputing the validity of the transfer—Limitation—Indian Limitation Act (IX of 1908), Arts 93, 91—Property already debattar if pass by will The testator appointed four persons as shabasis of the debattar created by him and four other persons as executors who were to be the advisors of the shabasis. In a suit brought by one of the shabasis against the executors, a compromise decree was passed in 1899 whereby the shabasis became entitled to appoint succeeding shabasis of their respective shabasi rights by means of will or by any other document. Two of the shabasis took no part in the shabasi. The other two transferred their shabasi rights by two deeds which contained recitals showing that the transfers were for the benefit of the debtors to defendants Nos 1 and 2 who were properly qualified persons. The executors brought the present suit for recovery of possession of the debattar properties and for a declaration that the deeds of transfers of the shabasi right were void and illegal, more than 14 years after the compromise. *Held*, that the suit in so far as it sought to nullify the deed of compromise was barred by Art 93 of the Indian Limitation Act, and (semble) Art 91 governed the suit in so far as it attacked the deeds of transfer. *Held*, also, that possession having been made over by the executors to the shabasis, the executors became *functus officio*. Property which is already debattar does not pass by will to the executor. **MONENDRA NATH BASCH v. GOPI CHANDRA GHOSH (1918)**

22 C. W. N. 560

——— *Construction—Words in a Will, meaning of—"Family"—"Cash"—Decisions interpreting terms in Wills, value of—Rendunry demise—Shabasi, if may be validly permitted to reside in the house provided for the accommodation of widows* A provision permitting the shabasi to reside with his family in a part of a house dedicated to and specially set apart for the accommodation of the widows is a perfectly valid and reasonable provision. The word "family" is elastic and capable of different interpretations, but in the Will under construction there was no reason for extending it to include people other than those existing when the testator died. Where the Will clearly stated that the revenues and rents of stated properties are to be applied in a certain manner, with

WILL—cont'd

DEBATTAR—cont'd

a direction for accumulation of surplus income, and then continued with a provision that out of the income of such fund the *shebast* should have power to celebrate religious ceremonies, the words "such fund" included the added accumulations and was not confined to the original *debutter* fund. The decisions which assign a particular meaning to any woman in a Will only assign that meaning in connection with the terms of the Will and that meaning is always capable of modification and alteration if it be seen that the limited meaning was not intended. *Semble*—The word "cash" in cl 12 of the Will might have a wider meaning than it ordinarily bears. *Held*, on the construction of the Will, that no portion of the estate of the testator was undisposed of, there being valid residuary gifts in favour of specified persons. **GAYENDRO NATH DAS v. SURENDRA NATH DAS** 24 C. W. N 1028

DEMONSTRATIVE LEGACY

Succession Act (1 of 1865), ss 311, 312—Demonstrative legacy—Interest whether payable on a demonstrative legacy—Here no time for payment fixed by will, the time from which interest runs Where a testator had bequeathed legacies to several grand children named in the will to be paid from the sale proceeds of certain house property after the death of a daughter and the marriage of a grand daughter and it was contested that inasmuch as there is no specific provision in the Succession Act for the payment of interest on demonstrative legacies no interest was payable. *Held*, (a) that interest is payable upon demonstrative legacies, and (b) that where there is no time for payment fixed, although the amount is expressly made payable out of a particular fund, the case is governed by the principle laid down in *Lord v Lord*, L. R. 2 Ch App 782 and a 311 of the Succession Act applies. *Held*, also, that the rate of interest is 4 per cent per annum. *Lord v Lord* L. R. 2 Ch App. 782, *Chinnam Rajamannar v. Tadiandanda Ramachandra Rao* I L. R. 29 Mad 135, *Mullins v Smith*, 1 Drew & Sm. 204 and *In re Walford, Kenyon v Walford*, (1912) 1 Ch 219, referred to and followed. **ADMINISTRATOR GENERAL OF BENGAL v A D CHRISTIANA** (1915)

I L. R. 43 Calc 201

EXECUTION

1. *Execution of Will—Proof of capacity of testator to execute Will—Undue influence—Evidence of exercise of such influence—Absence of evidence of any coercion—Question of fact whether property was ancestral or acquired—Concurrent decisions on fact* In this case the question was as to the capacity of a testator to execute a will propounded by the appellants, and it was alleged that they had exercised undue influence over him in the matter of the execution whilst he was admittedly very seriously ill, though the evidence was to the effect that he was in possession of his senses and understood what he was doing when he signed the will. *Held* (reversing the decision of the Chief Court of the Punjab), that, so far as the charge of exercising undue influence was concerned, all that was shown by the respondents who were attacking the will was that there was motive and opportunity for the

WILL—cont'd

EXECUTION—cont'd

exercise of such influence by the appellants, and that some of them in fact benefited by the will to the exclusion of other relatives of equal or nearer degree. Circumstances of that character might suggest suspicion, and would certainly lead the Court to scrutinise with special care the evidence of those propounding the will. But, in order to set it aside, there must be clear evidence that the undue influence was in fact exercised of that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his property. Such evidence was not only lacking in this case, but in the opinion of their Lordships of the Judicial Committee the circumstances attending the making and execution of the will were not reasonably consistent with it. *Held*, also, that, under the circumstances the evidence as to capacity was not displaced by mere proof of serious illness and of general intemperance, and that the appellants had discharged the onus which lay on them of proving that the will was duly executed by the testator while in his proper senses. The question whether property was ancestral or not, was held to be substantially one of fact, and therefore subject to the usual practice of their Lordships not to interfere where two Courts had concurrently found it was not ancestral but self-acquired. **BR SINGH v. LITAM SINGH** (1910)

I L. R. 38 Calc 255

2. *Signature, proof of—Hand writing expert opinion of without examination in Courts if ancestral—Will, proof of* The propounder of a will should prove to the satisfaction of the Court beyond all possible doubt that the will was executed by the alleged testator and that it was executed in accordance with the law and that the testator at the time of execution was in a fit state of mind and body to execute the will and so fully appreciated what he was doing as to the disposition of the property. The opinion of a hand writing expert on a signature when he was not called as a witness and not subjected to cross examination, was inadmissible in evidence. **PADMA PRIYA DEBYA v. DHARMA DAS DEB SARMA** (1911)

15 C. W. N 728

3. *Execution and attestation of will—Proof of genuineness of will—Status of attesting witnesses—Will, natural, reasonable and proper in its terms—Presumption of will being genuine—Grounds of suspicion not valid—Admission of additional evidence by appellate court—Civil Procedure Code (1852) s 563* In the case of a will reasonable, natural, and proper in its terms, it is not in accordance with sound rules of construction to apply to it those canons which demand a rigorous scrutiny of documents of which the opposite can be said, namely, that they are unnatural, unreasonable or tinged with improbity. On the question whether a will made by a Hindu in which he left all his property, movable and immovable, after the death of his widow, to his sister's son (one of the appellants) to the entire exclusion of the respondent (a remote relation), was genuine, as held by the Subordinate Judge, or a forgery, as held by the Court of the Judicial Commissioner, there were concurrent findings of both courts that the testator had been for years at enmity and on the worst of terms with the

WILL—*contd*EXECUTION—*contd*

respondent, but had regarded the appellant with affection and treated him as his son. The will was found to have been duly executed and properly attested by respectable servants in the testator's house whom it was natural to employ for that purpose. *Held*, that the will was in every respect a natural one, and in accordance with the testator's feelings and tenor of life and the presumptions of law were in favour of its being genuine. A comment by the Court of the Judicial Commissioner which regarded the will with suspicion, to the effect that the witnesses might have been of a better class, had no force except upon something on a much higher level than mere suspicion, namely, proof which would thoroughly satisfy the mind of a Court that these persons had committed both forgery and perjury. *Chotey Narain Singh v. Ratan Kher*, 1 L. R. 22 Cal. 519; 1 L. R. 22 I. A. 12, per Lord Watson followed. Another ground of suspicion was that the paper on which the will was written appeared to be old instead of fresh, which was supported by proof that paper was official paper in general use, together with evidence that some other people had been in the habit of having forms which they signed in blank, and forms were produced signed by people other than the testator, and with none of which he had any thing to do. *Held*, that such evidence was inadmissible as being not relevant to the case, and should not have been admitted. *Held*, further, that the course followed by the Court of the Judicial Commissioner during the hearing of the appeal in sending for and (purporting to act under s. 563 of the Civil Procedure Code, 1882) admitting additional evidence (proceedings of the Municipal Board at Lucknow) to discredit one of the witnesses on a particular point, without calling him and affording him an opportunity of making an explanation of the matter, and on the ground that his evidence appeared untrue on that point disbelieving all the rest of his testimony as to the will, was an improper procedure and not in accordance with s. 563 of the Code. Their Lordships declined to conclude, in the absence of his own evidence on the point, that the rest of his testimony, otherwise quite unimpeachable, was perjury. *Jagannath v. Durga Prasad* (1913) 1 L. R. 36 All. 93.

4. — *Held*, that there is a presumption of due execution of a will where there is a proper attestation clause although no evidence of its due execution is forthcoming. *Woolmer v. Mrs. Daly* 1 L. R. 1 Lah. 173.

EXECUTOR

— *Executor acting up adverse title—Estoppel*. An executor under a will who has accepted the office of executor and acted as such is estopped thereby from setting up an adverse title to property disposed of by the will. *Srinivasa Moorthy v. Venkata Varada Ayyangar*, 1 L. R. 29 Mad. 239, followed. Per ARNOLD WHITE, C. J. — The fact that an executor has not taken out probate (at any rate where the law does not require him to do so) is immaterial. Per WALLIS J. — An executor is not at liberty to set up an adverse title to property which has come to his hands as executor any more than a trustee is entitled to set up an adverse title to property which

WILL—*contd*EXECUTOR—*contd*

he has taken possession of as trustee. The plaintiff's position was altered by his looking on and not opposing the first defendant in the steps taken by the latter to get possession of the assets. The fact that an executor has not taken out probate is immaterial. Per MILLER, J. (dissenting). — It is not clear in this case as it was in *Srinivasa Moorthy v. Venkata Varada Ayyangar*, 1 L. R. 29 Mad. 239, that the executor was let into possession under the will nor in this case was the plaintiff induced to alter his position, the principles of estoppel do not therefore apply. *Munisami Chetti v. Maruthamalai* (1910) 1 L. R. 34 Mad. 211.

— *Executor—Powers of*. *Executor in dealing with the estate of his testator*. Ono P. died, leaving a will by which he directed that certain legacies should be paid out of a fund of Rs. 10,000 invested in fixed deposit in the Delhi and London Bank. The Bank had during P's life time advanced certain sums to his daughter on an undertaking by P that he would stand surety for the loan. P was also himself indebted to the Bank. *Held*, on suit by the legatees, that the executor of P's will was perfectly justified, on being satisfied as to the fact of P's relations with the Bank above described in permitting the Bank to realize from the fund in question both the amount of the loan to P's daughter and the amount of his own indebtedness. *10000 : THE DELHI AND LONDON BANK, LD.* (1914).

1 L. R. 35 All. 217

1. — *Civil Procedure Code (Act XII of 1882), s. 103, if applies to probate proceedings—Probate and Administration Act (V of 1833), s. 83—Dismissal of application for probate for default—Executor if may propound will again—Res Judicata—Deliberent costs sufficient remedy against vexatious conduct*. A refusal to admit a will to probate is conclusive of the facts necessary to support the decision. But if probate has been refused not on the merits but merely by reason of the insufficiency of some matter of form or procedure, there is no adjudication that the instrument is not entitled to probate and therefore it may be again propounded. If therefore an application for probate by the executor of a will has been dismissed for default, that fact itself cannot debar an application by any other person claiming an interest under the will and therefore, necessarily also, by the executor himself. An executor presenting an application for probate of a will cannot be regarded as a plaintiff who brings a suit in respect of a cause of action. S. 103 of the Civil Procedure Code (Act XIV of 1882) would therefore be in terms inapplicable to such an application. *Ganesh Jagannath v. Ram Chandan*, 1 L. R. 21 Bom. 563, relied on. *RAMMANI DEBI v. KUMUD BANDHU MOOKHERJEE* (1910) 14 C. W. N. 924.

2. — *Probate, application for—Onus—Testamentary capacity, what is—Probate granted by Trial Court, reversed by Appellate Court—Appellate Court, when should differ from Trial Court's estimate of evidence—Signature, genuineness of proof of—Witnesses of competency, opinion of, value of—Witness, important, but expected to be hostile, how to be examined*. Where there appeared a striking resemblance between the signatures on the will and certain admitted signatures of the alleged testator, but not that

WILL—could

EXECUTOR—could

absolute identity which, in many instances, may furnish indications of deliberate imitation by the careful forger, the High Court agreed with the Trial Court on the evidence in finding that the signatures were genuine. Where, from the evidence, it appeared that the illness of the testator had caused serious anxiety to his relations at least three days before his death and that on the day of his death, his condition was such as to necessitate the attendance of three physicians on five occasions, and the will was alleged to have been executed about two hours before his death. *Held*, that in the circumstances the Court was bound to scrutinise with care and caution the evidence as to his testamentary capacity at the time when he was said to have executed the will. That the burden was upon the propounders of the will to show that the testator had testamentary capacity, i. e., capacity to comprehend the nature and effect of his act, to discharge this burden, it was not enough to show that the testator was conscious when he executed the will or that he was able to maintain an ordinary conversation and to answer familiar and easy questions. It must be shown that he was able to dispose of his property with understanding and reason, that he was able to realise his position, to appreciate his property and to form a judgment with respect to the parties whom he decided to benefit. The opinion of witnesses as to competency is entitled to little regard, unless supported by good reasons founded on facts which warrant them. Where the propounders of a will had reason to suppose that an important witness could not be trusted to tell the truth, they might have asked the Court to summon him with liberty to both parties to cross examine him, if necessary. A Court will not reject a will merely because its terms appear extraordinary against clear evidence of due execution by a competent testator. But where the terms are unusual and the evidence of testamentary capacity doubtful, the vigilance of the Court will be roused and before pronouncing for the will the Court will require to be satisfied beyond all reasonable doubt that the testator was fully cognizant of its contents and in a condition to exercise, and did exercise, thought, judgment and reflection respecting the act he was doing. *Hull v. Kunwar v. Bhargava*, 9 C. W. N. 649, *Sifton v. Hopwood*, 1 F. F. 579, *Marek v. Tyrrell*, 2 *Hagg. Free Rep.* 84, 122, *Dufaur v. Croft*, 3 *Moo. P. C.* 136, and *Harwood v. Baker*, 3 *Moo. P. C.* 282, referred to. The principle that a Court of Appeal should be extremely slow to disagree with the primary Court on a question of appreciation of oral evidence embodies a general rule, but is not of universal application. Where the Trial Court had found in favour of the will, but its decision was vitiated by its failure to test the evidence from the standpoint of the fundamental principle that the testator must be of sound and discerning mind and memory, so as to be capable of making a disposition of his property with sense and judgment, in reference to the situation and amount of such property and to the relative claims of different persons who were or might be the objects of his bounty, the High Court on appeal reversed that decision not so much because it formed a different estimate of the credibility of the witnesses for the propounders, but because it differed in its estimate of the effect of

WILL—could

EXECUTOR—could

their statements on the assumption that they had spoken the truth. This evidence, in the opinion of the High Court, was insufficient to discharge the onus that rested on the applicants for probate. The nature of this onus discussed. *Baker v. Ball* 2 *Moo. P. C.* 317, and *Panton v. Williams*, 2 *Curt.* 539, 2 *Notes of Cases*, Sup. 21, referred to. *SCIL KIMAP BAYEJEE v. APSARI DEBI* (1914)

19 C. W. N. 826

3 ————— Probate—Issue of citations, object of—Citation of infant, effect of—Citation to infant and his mother, a minor—No opposition to grant of probate—Competency of infant for revoking probate—Testator, testamentary capacity of—Onus of proof upon the executor—Probate and Administration Act (V of 1881). Where one J died in 1901, leaving a widow S aged 14 years and a son D aged 2 months and it was alleged that J executed a will on the day previous to his death by which his three brothers G, B and M were appointed successive executors, and on G's application for probate of the will citations were issued on B and M as also upon S and D and there was no opposition and probate was granted to G in 1902, and in 1911, D still an infant, applied through his mother S for the revocation of the probate on the ground that the alleged will had not been executed by his father J, and the District Judge without formally revoking the probate called upon the executor to prove the will in the presence of the objector and held upon the evidence that the original grant should not be revoked. *Held*, that service of notice upon the infant D, and his mother S a minor was no proper service upon them and was useless for the protection of the interest of the infant and as such D was competent to apply for revocation of probate through his mother. The object of the issue of the citation is that all persons whose interests are or may be adversely affected by the decree of the Probate Court shall have notice of the proceedings and an opportunity, should they choose to avail themselves of it, of intervening for the protection of their interests. *Held* that this purpose was not achieved merely by issue of citations to infants and that in the circumstances of the present case, the appointment of an officer of the Court as guardian of the infant would not have afforded him any protection. *Rebelle v. Pebella*, 2 C. W. N. 100, *Shoroshbala v. Anand-moyee*, 12 C. W. N. 6, and *Mortimer on Probate*, p. 533, referred to. A party who is cognizant of the proceedings and might have intervened is bound by their result and cannot be allowed to re-open them. *Kamol Lockan Datta v. Amlentan Mundie*, 1 L. R. 3 Calc. 360, *Brinda Choudhary v. Radhika Choudhary*, 1 L. R. 11 Calc. 492, *Nataraj Inaba v. Brahmamony*, 1 F. R. 18 Calc. 45, *In the goods of Phuggabai Dan*, 1 F. R. 27 Calc. 927, *Durgaghat Debi v. Suvrabati Debi*, 10 C. W. N. 995, 1 F. R. 33 Calc. 1001, *Swell v. Weeks*, 2 *Hill* 224, *Ratcliffe v. Larnes*, 2 *Sc. & Tr.* 486, *Wycherley v. Andrews*, 1 F. R. D. 32, and *Lell v. Armstrong*, 1 *Add.* 372, referred to. *Held* that this rule of law did not apply to the circumstances of the present case. Even in cases where a party has upon notice failed to appear and contest the proceedings, the Court may, for sufficient reason, allow the proceedings to be re-opened. *Young v. Holloway*, (1835) P. 57,

WILL—*contd*EXECUTOR—*contd*

Peters v Tilly, 11 P D 115, and *Ritchie v Maholm*, (1902) 21 F 403, referred to. *Held*, also, that the District Judge ought to have revoked the grant in the first instance and then called upon the executor to prove the will. *Brindaban v Surendar* 10 C L J 253, and *Durganath v Sourabim*, 10 C. L. J. 995 s c 1 L R 33 Cal. 1901, ruled on *Held*, further on the evidence, that the testator had no testamentary capacity at the time when he was alleged to have executed the will. The High Court in this view, revoked the grant on the probate. *Held*, also, that the onus was upon the executor to establish that the deceased had sound and disposing mind at the time when he was said to have executed the will. *Waring v. Waring & Moo P C 305*, referred to. *DWIVY DEB NATH SARMA PURKAYASTHA v GOLOKE NAT SARMA PURKAYASTHA* (1914) 18 C. W. N 747

4 — *Grandfather's daughter's son's son* if has locus standi to contest grant when propounder a stranger to family—*Dayabhaga* law of inheritance—*Sakulyas* and *Samanodakas*, who are—*Mitakshara* principles of application to cases not provided for by *Dayabhaga*—Order that caveator has no locus standi, if applicable—*Civil Procedure Code (Act V of 1908)*, s 115. An application for the probate of a Will was opposed by the daughter's son's son of the grandfather of the testator while the propounder was a perfect stranger to the family. The District Judge held that the caveators had no locus standi. *Held*—That the order of the District Judge was not appealable but could be revised by the High Court under s 115, C P C. That in the circumstances the caveators had some interest in appearing and opposing the application for probate and it should be disposed of in their presence. *Quare*—Whether grandfather's daughter's son's son is an heir under the Hindu law. *RADHA RAMAN CHOWDHURY v GOPAL CHANDRA CHUCKERBUTTY* 24 C. W. N 318

5 — *Legatee long in possession in terms of will* Where a will has been propounded and proved the Probate Court should grant probate even though it should appear that there were no debts due to or by the testator another legatee have been in possession in accordance with the direction of the will for a long time it being absolutely necessary for the legatees to establish their title by proving the will. The Probate Court cannot go into the question whether the legatees have acquired independent title by adverse possession. *ADWAIT CHARAN MONDAL v BHUSINABHONG SIKHAN* . 21 C W N 1129

PROOF

1 — *Will of which probate has not been taken, whether can be proved—Succession Act (X of 1865) s 157—Proper representation of testator's estate, where no probate taken.* *Sarabamangala Debi v Mahendro Nath Nath*, 1 L R 4 Cal 599 is authority for holding that a will of which probate has not been taken may be proved in a proceeding other than a proceeding under the Probate Act. But a will uncovered by a probate or letters of administration cannot prove that any body named therein has title to the estate of the testator. A legal heir of a testator in possession of his general estate can maintain a suit for the benefit of the estate so long as any other claimant

WILL—*contd*PROOF—*contd*

does not establish his right to the same under the will. *Prasanna Chandra Bhattacharya v Krishna Chaitanya Pal*, 1 L R 4 Cal 312, *Choony Lal Loe v Osmond Dube*, 1 L R 30 Cal 1941, referred to. *BASUNTA KUMAR CHUCKERBUTTY v. GOPAL CHUNDER DAS* (1914) 18 C W. N 1126

2 — *Proof of execution and due attestation—Attesting witnesses, turned hostile—Court may find execution proved from other evidence—Proof that testator saw attesting witnesses sign, and latter saw testator sign, if necessary, where will regular on its face—Presumption of due execution* The mere fact that attesting witnesses to a will have repudiated their signature does not in validate the will, if it can be proved by evidence of a reliable character that they have given false testimony. When the evidence of the attesting witnesses is vague, doubtful or even conflicting upon some material point, the Court may take into consideration the circumstances of the case and judge from them collectively whether the requirements of the Statute were complied with. In other words, the Court may, on consideration of the other evidence or of the whole circumstances of the case, come to the conclusion that their recollection is at fault, that their evidence is of a suspicious character or that they are wilfully misleading the Court and accordingly disregard their testimony and pronounce in favour of the will. It is not necessary under the law that affirmative evidence should be forthcoming that the testator did, as a matter of fact, see the attesting witnesses put their signatures or that the attesting witnesses did actually see the testator sign the document. It is enough if the circumstances show that their relative position was such that they might have seen the execution and the attestation respectively. Every presumption will be made in favour of due execution and attestation in the case of a will regular on the face of it and apparently duly executed. *BRAHMADAT TEWARI v CHAUDAN ROBI* (1914) . 20 C W N 192

3 — *Proof—Execution in unusual circumstances—Will not inofficious—Witnesses such as were reasonably to be expected to be available in the circumstances, not to be disbelieved merely because their position socially inferior—Beneficiary under will recited as being testator's adopted son—Caveator, if may question adoption—Judge, if may refuse to frame an issue as to adoption, whilst admitting evidence thereon—Relevancy on the question of genuineness of will—Note of evidence to be given by witness, refusal to produce, if should pre judge fairly—Privilege* A, a Hindu gentleman of means and resident of a place called Sursand, went accompanied by his two wives and some of his servants and dependants to attend the bathing fair at Sonapat on 10th November 1903. Cholera having broken out at the fair it was broken up by Government order, but A, who had been suffering from dysentery and had been made nervous about the state of his health by the outbreak of cholera (it was alleged) executed the disputed will on 15th November 1903 and died at 3 A M. of 16th November 1903. The will was proved by such of the attesting witnesses as were available and other witnesses. The genuineness of the will was challenged *inter alia*, on the ground that the witnesses to the execution were not of a superior position, the will however appeared to be one which a Hindu gentleman in A's position might reasonably

WILL—*contd.*PROOF—*contd.*

and naturally have made and the attesting witnesses were such as one would reasonably expect to be available on the occasion. *Held*, that there being nothing in the case to suggest that the will had been forged or that the witnesses who gave evidence as to the preparation and as to the due execution of the will had committed perjury, the contention that the will should not be accepted as genuine because the witnesses to its execution were not of a superior position was not sound and was contrary to the view of the law as expressed in *Chotey Narasa Singh v. Ratan Koer*, L R 22 I A. 12, 24, and *Jagran Koer v. Koer Durga Parshad*, L R 41 I A. 80, s c 18 C W N 521. That something more than mere suspicion is necessary in such a case to make convincing an argument based on the social position of the witnesses. One of the beneficiaries under the will was C, a boy who, the will recited, had been adopted, according to Hindu rites, by K as his son. The caveators questioned the *factum* of the adoption. *Held*, that the trial Judge was right, upon an application for probate, in declining to frame an issue as to the alleged adoption, though the matter had to be considered as bearing on the question of the genuineness of the will and the caveators were not precluded from questioning the adoption and were rightly allowed to cross examine the propounder's witnesses on that subject and to call evidence to prove that C was not adopted. For the purposes of the propounder's brief a note had been obtained from a witness (subsequently examined at the trial) of the evidence that he could give: *Held*, that the note was privileged from production and the caveators were not entitled to see it, and the Judges should not have allowed their minds to be influenced in considering the evidence by the fact that the note was not produced in Court for the information of the caveators. *CHAND KUNWAR v. HARNANDAN SINGH* (1916). 20 C. W. N. 617

4. — *Proof of genuine*
ness—*Clear and trustworthy evidence of attesting witnesses if to be rejected because appearance of document suspicious*—*Court, if in such a case, may speculate as to what would have been a proper will for the testator*. Proof of the genuineness of a will depended mainly upon the testimony of a doctor who attested on the last page of the will, the signature of the deceased and who deposed that at the time the will was executed, the deceased was perfectly capable of understanding a business transaction. The will on examination showed that the writing on the last page was inconveniently crowded above the signature of the testator, and, on the last page but one, the writing at the foot was so placed as to lend colour to the suggestion that the page had been filled up after the signature had been attached. Upon this the Trial Judge built the theory that the will had been written in blank pages over signatures of the testator previously obtained. *Held*, that the doctor's evidence, if believed and which the Judicial Committee did believe, completely destroyed this theory, and that the High Court was right in pronouncing in favour of the genuineness of the will. That it would be most unsafe and most undesirable, in circumstances such as these, to try to spell out from the peculiar form in which a document written in the vernacular appears, a hypothetical answer to the clear, distinct and trustworthy evi-

WILL—*contd.*PROOF—*contd.*

dence of the doctor who witnessed the will. Where a will has once been made and is apparently in perfect form, and the evidence of the attesting witness is to be trusted, few things can be more dangerous than to attempt to re create the kind of will that the man ought, in the opinion of the Court, to have made. Once the man's mind is free and clear and is capable of disposing of his property, the way in which it is to be disposed of rests with him, and it is not for any Court to try and discover whether a will could not have been made more consonant either with reason or with justice. *ARUVACHELLAN CHETTY v. RAMASWAMI CHETTY* (1916). 20 C. W. N. 673

5. — *Testamentary capacity, proof of*—*Onus—serious illness and general intemperance not sufficient to rebut prima facie case made out by evidence—Undue influence must be proved by evidence—Opportunity to use such influence and benefits derived not enough for rebuttal*. The onus of proving testamentary capacity is on those who propound a Will. In this case they had discharged that evidence by obligation by evidence which went to establish a strong *prima facie* case in favour of the Will. Proof of serious illness and of general intemperance was not enough to displace this evidence. It was shown on the part of those attacking the Will that there was motive and opportunity for the exercise of undue influence by the defendants and that some of them in fact benefited by the Will to the exclusion of other relatives of equal or nearer degree. Circumstances of this character may sometimes suggest suspicion and in the present case would lead the Court to scrutinise with special care the evidence of those who propounded the Will. But in order to set it aside there should have been clear evidence that the undue influence was in fact exercised or that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his properties. *Held* that in this case such evidence was not only lacking but the circumstances attending the making and execution of the Will were not reasonably consistent with it. *BUR SIKH v. UTTAM SIKH*

15 C. W. N. 177

6. — *Will, challenged as forgery*—*Suspicion alone when ground for refusing probate—Presumption against misconduct, operation of—Evidence Act (I of 1872), ss 3, 45, 101, 135—Order in which witness to be tendered—discretion of Counsel and Court's power—Expert, medical examination of to test value of evidence of attending physician—Expert in Bengali language and legal terms, examination of—Document put to witness right of opposing counsel to inspect*. If a party writes or prepares a will under which he takes a benefit, that circumstance in itself ought generally to excite suspicion of the Court and calls upon it to be vigilant in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed and it is judicially satisfied that the paper propounded does express the true will of the deceased. *Larry v. Pullin*, 2 Moo P C. 489, referred to, and the rule in *Tyrrell v. Pointon*, (1894) P. D. 151, explained. *PER JENNINGS, C. J.* The suspicion which by itself would be ground for the Court not pronouncing in favour of an alleged will, must be one

WILL—*contd*PROOF—*contd*,

inherent in the nature of the transaction itself and not the doubt that may arise from a conflict of testimony which becomes apparent on an investigation of the transaction. *Per WOODBURY, J* The rule in *Tyrell v Paslon, (1894) P D 151*, applies to cases where the circumstances of suspicion arise from the nature of the case as put forward by the propounder in which case the propounder must remove the suspicion. Where, however, the alleged suspicion against a will arises from facts which form part of the impugnant's case, then the Court must see whether the facts which are said to give rise to suspicion are proved or whether the propounder's case is proved. The rule, therefore, does not apply where the question is simply which set of witnesses should be believed. In this case the trial Judge having decided against the genuineness of the will on the ground that the evidence of the witnesses whom the propounder had called to support her case was not so unimpeachable, so absolutely trustworthy in itself as by its own merit to dispose of all objections and to allay all doubt and suspicion. *Held per JENKINS, C J*, that the standard of proof required by the Judge was higher than the law (as contained in s 3 of the Indian Evidence Act) prescribes. *Per WOODBURY, J*—A probate case is not singular as regards the application of the general principles of proof as contained in ss 3 and 101 of the Indian Evidence Act. *Per JENKINS, C J*—The Evidence Act, by which in matters of proof the Courts in this country must be guided, has in conformity with the general tendency of the day, adopted the requirements of the prudent man as an appropriate concrete standard by which to measure proof. The Evidence Act is at the same time expressed in terms which allow full effect to be given to circumstances or conditions of probability or improbability, so that where as in this case, forgery comes in question in a civil suit the presumption against misconduct is not without its due weight as a circumstance of improbability, though the standard of proof to the exclusion of all reasonable doubt required in a criminal case may not be applicable. *Cooper v Stode, 6 H L Cas 746, and Deo d Devras v Hason, 10 Moo P C 502, 531*, referred to. This probability gains in strength where the character and position of the individual impugned is, apart from the particular case, above reproach. *In the goods of GORUS SUD DUTT v BISSESSUR DUTT (1911)*

16 C. W. N 265

7 ——— A holograph Will executed in India by a person of Scotch domicile is a valid testamentary document. On such document being propounded the Court declined to admit in evidence a treatise on Scotch Law but accepted the opinion of a writer to the signed attested before a notary *In re the goods of Mac Intyre*

I. L. R. 41 All. 243

8 ——— Will, proof of—*Succession Act (X of 1865) s 50—Evidence Act (I of 1872) s 68—Examination of one attesting witness in Probate Court is sufficient to prove will* Under s 50 of the Indian Succession Act there must be two attesting witnesses to a will but under s 68 of the Evidence Act the will can be proved in the Court of Probate by one of the attesting witnesses. *RAMMOT DAS KOCH v HAROL KOLY KOCHIMI (1917)*

22 C. W. N. 315

WILL—*contd*

REVOCATION

1 ——— Will in s 19 of the Probate and Administration Act, if means original document—Existence of will up to testator's death, if necessary to be proved—Revocation, pleading and proof of—Presumption of destruction of will, when arises—Loss of will, if operates as revocation—Destruction of will when operates as revocation—S 21—"Since the testator's death," scope and effect of—Delay in applying for Letters of Administration with will annexed Where the testator did not appoint an executor and the residuary legatee applied for letters of administration with the will annexed 12 years after the death of the testator and the objector did not plead revocation but set up non execution of the will: *Held*, that the execution of the will in the manner required by law having been proved it lay upon the objector to plead and prove revocation and no such plea having been taken it could not be held that the will was revoked. *Per RAY, J* That the application for letters of administration was not liable to dismissal on the ground that the petitioner did not prove that the will was in existence up to the time of the testator's death. That in s 19 of the Probate and Administration Act the word "will" does not mean the original document but has been obviously used to mean the disposition. When a will is shown to have been in the custody of the testator and is not found at his death the well-known presumption arises that the will has been destroyed by the testator for the purpose of revoking it. This rule of law bears only on revocation when it is an issue in the suit and then the presumption may be rebutted by the facts. The loss of a will does not operate as revocation to establish which destruction of the will by the testator must be shown. In a 24 of the Probate and Administration Act the words "since the testator's death" qualify the word "mailed" and have no reference to the word "lost" or to the succeeding clause of the sentence. The delay in making the application under s 19 was not a material fact in this case. *SARAT CHANDRA BASAK v GOLAP SUNDARI DASIA (1913)*

18 C. W. N. 527

2 ——— Revocation—Will lost—Presumption that it has been revoked how to be applied in India—Finding that will was revoked, based on presumption, upset on second appeal—Proof of will by copy taken from Registrar's office, without objection in the first Court—Objection on appeal that conditions for admission of secondary evidence not fulfilled, if admissible. In view of the habits and conditions of the people of India the rule laid down in *Welch v Phillips, 1 Moo P C 299* that when a will is traced to the possession of the deceased and is not forthcoming at his death the presumption is that he has discharged it must be applied with considerable caution. Where in such circumstances the first Appellate Court held that the will had been revoked or cancelled, but on second appeal the Chief Court held that there was no sufficient evidence of revocation and that the more reasonable presumption was that the will was mislaid or lost or else stolen by one of the defendants after the death of the deceased. *Held* that it was perfectly within the competency of the Chief Court to come to that finding. There was nothing definite to show that deceased who was a very old man and, towards—

WILL—contd.

REVOCATION—contd

the end of his life, imbecile, had any motive to destroy the will or was mentally competent to do so, whilst on the other hand there were circumstances which favoured the view that the will was either mislaid or stolen. *Held*, also, that the first Appellate Court should not have treated a copy of the will taken from the Registrar's office, which was filed and admitted in evidence in the first Court without objection, as inadmissible, on the ground that no sufficient foundation was laid for the admission in the first Court of secondary evidence—as, if such objection had been taken in the first Court, that Court would probably have seen that the deficiency was supplied. **PADMAN v HANWANTA (1915)** 19 C W N 929

3 ———— *Will, revocation of*
—*Locus standi of persons seeking revocation* A person who is entitled to a much greater benefit under a will alleged to have been revoked by another will has *locus standi* as having sufficient interest to oppose grant of probate and to apply for revocation of the probate of the later will on the ground of non service of citation. It is not necessary to obtain probate of the earlier will in order to be competent to apply for revocation of the probate of the later will. **DRAUTADI DASSYA v RAJKUMARI-DASSYA (1917)** 22 C W N 564

4 ———— *Mutual and joint wills*—*Power of survivor of joint will to revoke*—*Survivor can revoke unless he derives some benefit under the will* Where two persons agree to make mutual wills, and one of them dies, the survivor can revoke his will unless he has taken some benefit under the will of the deceased testator. **Stone v Hickins, (1905) P 191**, referred to. **MINAKSHI ANMAL v VISWANATHA AIYAR (1909)** 1 I L R 33 Mad 406

5 ———— *Will in testator's possession*—*Will not forthcoming on testator's death*—*Presumption of revocation* When a person, who is known to have executed a will, and to have had that will in his possession, dies and the will is not found after his death, a presumption arises that he has revoked the will during his life time. **Allan v Morrison (1900) A C 604**, relied on. **Anwar Hossein v Secretary of State for India (1904) 31 Cal 885**, disapproved. **ADITHAN v BAPULAL (1920)** 45 Bom 906

VALIDITY

——— rules for dissolution of a trust if constitute a will—

See WILL (CONSTRUCTION)

15 C W N. 1014

——— what is sufficient for in the case of *cutchi memons*—

See WILL (CONSTRUCTION).

1 I L R 43 Bom 641

1. ———— *Test—Signature on one page out of several pages of a Will* If an instrument is on the face of it a testamentary character, the mere circumstance that the testator calls it irrevocable, does not alter its quality, the principle test as to whether the instrument is a will, is whether the disposition made takes effect during the life time of the executant of the deed or whether it

WILL—contd

VALIDITY—contd

takes effect after his death. **Rammoni v Ram gopal, 12 C B N 942** relied on. **Sita Doer v Deonath, 8 C B N 614** **Chaitanya v Dugal, 9 C B N 1021** distinguished. One signature made with the intention of authenticating the whole instrument is sufficient though a will be contained in several sheets of paper. **SADORE CHANDRA MONDOL v DIGAMBAR MONDOL (1909)**

14 C W N 174

2 ———— *Caveat—Caveators will drawing on propounders agreeing to pay an allowance—Personal liability of executor—Settlement of bonâ fide dispute—Enforcement of agreement if opposed to public policy—Registration* Where on the executors propounding a will the widows of the deceased entered caveat but before the case came on for hearing the parties settled their differences and the caveators withdrew their objections on the executors undertaking *inter alia* to pay them a fixed monthly allowance for performing religious acts, although the will purported to provide for grants of money for purposes only out of the surplus income. *Held* affirming **Doss J** that the agreement having been entered into an order to settle a *bonâ fide* dispute was enforceable, and as the liability which the executors undertook appeared to be a personal one, the fact that the agreement was not registered or that the terms went beyond those of the will were no bar to its enforcement. **SUREJA PRASAD SIKUL v SHYAMA SUNDARI DEBI (1909)** 14 C W N 967

3 ———— *Minor—Capacity to make will—Indian Majority Act (IX of 1875) s 3—Hindu Law* A Hindu minor who has not attained majority as provided in the Indian Majority Act, 1875 is not competent to make a will of his or her property. **BAI GULAB v THAKORBELAL (1912)** 1 I L R 38 Bom 622

4 ———— *Civil Courts jurisdiction to decide Mohammedan Will, of which probate has been granted, invalid—As opposed to Mahomedan law—Revocation of probate, if may be made on such a ground—Decree form of in such suit* The grant of probate of the will of a deceased Mahomedan does not preclude the Civil Court from making a declaration that one or more provisions of the will are inoperative as being opposed to the provisions of Mahomedan law. The Probate Court would have no jurisdiction to revoke the probate on such a ground and it is not one of the just causes set out in s 50 of the Probate and Administration Act. It is for the Probate Court to determine whether the will has been duly executed and it is for the Civil Courts to determine what effect is to be given to the will after probate has been granted. **RENU MITA v SARDHA KHATOON (1918)** 23 C W N 658

5 ———— *Direction to pay fixed deposit to another after death of depositor—Whether a will* A person depositing money with a fund filled in a form provided by the fund whereby he nominated another as the person entitled to receive the money after his death. *Held*, that this amounted to a will and if made in the town of Madras, the nominee could not recover the deposit unless the nomination was duly executed and attested as a will and probate thereof obtained. **Per KENNEDY, J**—The direction created neither a charge nor a trust in favour of the

WILL—contd.

VALIDITY—contd.

nuncupate or a contract on which he could sue *Towers v Hooper* (1859) 23 L. R. Ir 53 and *In re Williams* (1917) 1 Ch. 1, followed. *Florida Marblers v Pinto* (1917) 33 Ll L. J 476, distinguished *NANA TAWKER v BHAWANI DIXIT* (1920) I. L. R. 43 Mad. 728

6. ——— Testator of sound mind when giving instructions for a will—presumption that he was when executing it—Testator must be of sound disposing mind—testator suffering from paralysis—Medical certificate of soundness of mind 26 days after execution of will—whether admissible and relevant—*Indian Evidence Act, I of 1872, s 32 (2)*—letters by testator speaking of his relations with his wife, the sole legatee—whether admissible *Held*, that there is a presumption of due execution of a will where there is a proper attestation clause although no evidence of its due execution is forthcoming *Brahmadat Tewari v Chaudan Deb* (34 Ind. as Cases 636) and Halsbury's Laws of England, Volume XXVIII, page 555, Jarman on Wills, 6th Edition, page 1053, and Abdul Rahim's Law of Undue Influence, Chapter XVI on Wills, referred to. *Held also*, that where a testator is of sound mind when he gives instructions for a will, he must be deemed to be of sound mind when it is executed, even though he is not able to follow its provisions then *Sual Kumar Banerjee v Apurvi Deb* (27 Indian Cases 276, 281), dictum of Lord Maugham in *Perera v Perera* quoted herein, referred to *Held further*, that a medical certificate of testator's soundness of mind made 26 days after the execution of the will is admissible in evidence under section 32 (2) of the Evidence Act and is relevant, but that letters by the testator speaking of his relations with his wife, in whose favour he subsequently made the will, are not admissible. *Held lastly*, that a testator suffering with paralysis even if he has affected his mental capacity to some extent may still be able to execute a will of a simple character *Sayed Ali v Ibad Ali*, (I. L. R. 23 Cal. 1 P. C.) *Sayed Muhammad v Foteck Muhammad*, (I. L. R. 22 Cal. 324, 334 P. C.), and *Bur Singh v Utham Singh* (21 P. R. 1911 P. C), referred to, also Halsbury's Laws of England, Volume XXVIII, page 532 *Tayum miat v Aasha Challa Naiker*, (10 Mo. I. A 429), *Lachho Bhai v Gopi Narain*, (I. L. R. 21 All 472), *Woonach Chandra v Rash Mohini Das*, (I. L. R. 21 Cal. 279) *Pandit Indar Narain v Pandit Onkar Lal*, (20 P. R. 1912), *Mansur Kewani v Chandu Lal* (123 P. R. 1916) and *Raj Bachan Singh v Shatrangji*, (47 Ind. as Cases 953), distinguished *WOOLLEN v Mrs Dale* I. L. R. 1 Cal. 173

7. ——— Execution of—Proof—Story of preparation of draft, suspicious, if ground for refusal probate where execution of executor or clerk—Witnesses present, but not examined by Court from pressure of work and not examined later on through no fault of propounder It is not safe to assume that a case must be a false case if some of the evidence in support of it appears to be doubtful or is clearly untrue There is on some occasions a tendency amongst litigants in India, as elsewhere, to back up a good case by false or exaggerated evidence In this case the Judicial Committee held that the suspicion which attached to the evidence as to the preparation of the draft of the Will sought to be probated, viz, that it

WILL—contd.

VALIDITY—contd.

had not been prepared beforehand but had been made from the Will itself, did not destroy the evidence as to the execution of the Will The Judicial Committee did not consider the non-examination of all the attesting witnesses as destructive of the case of the propounder of the Will, most of them having been present to give their evidence on one or more of the dates fixed for the recording of evidence but were not examined owing to pressure of work in the Court, none appearing to be persons living near the Court and there being nothing to suggest that any of them were intentionally kept out of the witness-box by the propounder *BANKIM BIHARI MAITI v SRIMATI MATANGINI DAS* 24 C. W. N. 628

8. ——— Depriving heirs, proof of—Onus—In a suit by legal heirs of a deceased Hindu for a declaration that a Will propounded by the Defendants as the Will of the deceased was a forgery, the onus lay on the Defendants to prove without reasonable doubt that it was the Will of the deceased *Held*, on the evidence, that the Will in this case had not been satisfactorily proved. *BINDESHI PRASAD v MOHAMMAD BAKSHAKH BIKI* 24 C. W. N. 674

9. ——— standard of proof requisite—Examination of attesting witnesses—Testamentary capacity appellate courts duty in respect of findings of fact. *Held* upon the terms of the Will in question they were not inofficious and unnatural and therefore were not calculated to excite suspicion as to the genuineness of the disposition It is not enough to suggest doubts as to the veracity of a witness The standard of proof to establish a will required by the Indian Statutes is that of a prudent man and not an absolute and conclusive one Also that it was a salutary rule that the findings of fact of the trial judge should not be lightly disregarded When the issue is simple but it is otherwise where the question depends not only on assertions of witnesses but upon surrounding facts and circumstances. *PRASAD KAMAYI DEBIA v. BAIKANTHA NATH CHATTERJEE* 25 C. W. N. 779

10. ——— Hindu testator—Creation of, estates unknown to Hindu law—Involuntary bequests—*Indian Succession Act (X of 1865), s 118* A Hindu made his will whereby he bequeathed his property successively to the three sons of his sister in the following manner In the first place, it was to go to one of the sons absolutely, subject to the condition that, if he died without male issue surviving, it was to go to the second The latter was also given an absolute estate, similarly liable, however, to be defeated if he in his turn died without leaving male issue, in which event the property was to go to the third son subject to a similar condition Obviously the property was devised in favour of charity The first two sons having died without male issue surviving, the third son sued for construction of the will and for a declaration of his right to the property in the event that had happened—*Held*, that although the testator might have defeated the absolute estate which he gave to the first son by a gift over to the second son in accordance with the provisions of s 118 of the Indian Succession Act, he could not attach a condition to the gift over, and thus further restrict the disposition of the estate in a manner unknown to Hindu law

WILL—contd

VALIDITY—contd

by directing that the second son was not to take an absolute estate but what would be, in the language of the English law of real property 'an estate in tail male'. *Held*, further, that the estates which were intended to be created by the testator being thus in fact a succession of estates in tail male the original gift over was bad in its creation and failed absolutely and the first son took an absolute estate, which on his death would go to his daughter as his heiress. A Hindu may create a life estate or successive life estates. But a series of absolute estates defeasible in succession on the happening of an uncertain event cannot be considered as a succession of life-estates. It can only be considered as an attempt to create a state of inheritance which is not recognised by Hindu law. *Bai Dhanlaxmi v Hariprasad Uttamram* (1920) . . . I L R 45 Bom. 1038

11 ——— Execution—Probate—Testamentary capacity—Onus probandi—Attesting witnesses—Hostile animus—Discrediting testimony of adverse witness—Evidence on commission—Duty of commissioner—Effect of improper cross examination not remediable in the Trial Court—Unattested alterations in a will—Presumption of Law—Duty of Trial Court in respect of intervention with questions during examination and cross examination of witnesses—Counsel's duty not to anticipate opinion of Judge—Evidence Act (I of 1872) ss 153 and 154 The onus probandi lies in every case upon the party propounding a will and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator. *Barry v Butlin*, 2 Moo P C 480, referred to. The burden of proof cast upon the propounder is, in general, discharged by proof of capacity and the fact of execution, and when these have been proved, the Court will, under ordinary circumstances, assume from them the knowledge of and assent to the contents of the instrument by the deceased and without requiring further evidence will pronounce for the will. Mere ability to sign one's name does not necessarily imply the possession of the full mental powers requisite for a valid disposition of the property. Nor is it sufficient to show that the testator was conscious when he executed the instrument. It is sufficient that there is enough mental power left to enable the testator clearly to discern and discreetly to judge of all those things which enter into the nature of a rational fair and just testament. *Earl of Sefton v Hopwood* 1 F & J 378, *Morley v Tyrrell* 2 Hag 24, *Burdett v Thompson*, L R 3 P & D 72, *Loughran v Knight*, L R 3 P & D 61, *Horwood v Baker*, 3 Moo P C 232, *Woomesh Chander Bhowra v Pashmohini Dassi* I L R 21 Cal 270, *Pashmohini Dassi v Umesh Chander Bhowra*, I L R 25 Cal 81, *Sual Kumar Banerjee v Aswari Dutt*, 20 C L J 501, 19 C W N 826, *Margate v Winchester's Case* 6 Cole 23, *Combe's Case*, Moo. K B 39, *Parks v Goodfellow*, L J 5 Q B 65, and *Assey v H7*, 2 Add 266, referred to. § 154 of the Evidence Act provides that the Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. There is, in this respect, no distinction in principle between an attesting witness

WILL—contd

VALIDITY—contd

whom a party is obliged to call and any other witness whom he may cite of his own choice; but the Court may, in the exercise of its discretion, be more easily persuaded in the former case than in the latter case. *Bowman v Bowman*, 2 Mood & Rob 501, *Jackson v Thompson*, 1 B & S 745, *Coles v Coles*, L R 1 P & D 71, *Gill v Gill* (1899) P 157, *Jones v Jones* 24 T L R 839, *Price v Manning*, 42 Ch D 372, and *Phillips v Davis*, "Times," 12th December 1907, referred to. Two points must be borne in mind: first that a witness is considered adverse where, in the opinion of the Judge, he bears a hostile animus to the party calling him and not merely when his testimony contradicts his proof, and, secondly, when a witness is treated as hostile and cross-examined by the party calling him, this must be done to discredit the witness altogether and not merely to get rid of part of his testimony. *Coles v Coles*, L R 1 P & D 71, and *Pauliner v Byrne*, 1 F & F 254, referred to. The principles laid down under s 153 of the Indian Evidence Act must be regarded in the examination and cross-examination of witnesses on commission and the commissioner cannot exercise the discretion vested in the Court under s 154 of that Act. The mischief due to improper cross-examination cannot be remedied in the Trial Court. Although, where an instrument requiring attestation is subscribed by several witnesses, it is in general sufficient to call only one of them (Indian Evidence Act, s 68), in the case of wills it is desirable that all capable of being called should be examined to remove all suspicion of fraud. *McCregor v Topham*, 3 H L C 132, *Andrew v Moyley* 12 C B N S 514, and *Hindson v Acreary*, 4 Bur Fc L 116, referred to. Where unattested alterations occur in a will the presumption of law is that such alterations were made after the execution of the will, and in the absence of evidence rebutting the presumption, probate will be granted of the will in the original state, omitting the alterations. *Cooper v Cooper*, 4 Moo P C 419, *Cretcher v Tyler* 7 Moo P C 320, in the goods of *Sylvia* L R 31 & D 26, in the goods of *Adamson* L R 3 P & D 253, and *Pandurang Hari Pandya v Virayak Lakkhu Kase*, 1 L R 16 Bom 652, referred to. The presumption may be rebutted not merely by direct proof but also by internal evidence and by inference drawn from the condition of the will. In the goods of *Hind march* L R 1 P & D 267, in the goods of *Cadge*, L R 1 P & D 543, and in the goods of *Tonge*, 66 L T 60, referred to. The intervention of the trial Judge with questions during the examination and cross-examination of witnesses, misleading counsel and leaving him under the impression that the Court was not prepared to accept the statements made by the witnesses concerned is obviously not a matter which can be set right on appeal, unless indeed it is established that the intervention of the learned Judge with questions with a view to clear up obscurities to fill up lacunae, to supplement deficiencies and generally to elicit the truth exceeded the bounds of even the comprehensive provisions of s 153 of the Indian Evidence Act and so impeded the legitimate work of counsel engaged in the cause as to amount to a mistrial, leading to a failure of justice. But it is manifest that during the

WILL—*concl'd*VALIDITY—*cont'd*

progress of the trial it is not wise for counsel to anticipate the final opinion of the Judge even as to the veracity of a witness, which may have to be judged not solely from his individual statements, but from his testimony taken in conjunction with all the other facts brought out in the course of the litigation. **SURENDRA KRISHNA MONDAL v RANI DASGI, (1920)** I. L. R. 47 Cal. 1043

Where a Will is prepared under circumstances which raise a well grounded suspicion that it does not express the mind of the testator the Court ought not to pronounce in favour of it unless the suspicion is removed, but this suspicion must be one inherent in the transaction itself and not the doubt that may arise from a conflict of testimony which becomes apparent on an investigation of the transaction. **SURESHCHANDR SAKSHI DASGI v HARI DAS GHOSH** 26 C. W. N 113

WILL AND CODICIL.

*Oudh Taluqdari's estate—Assets partly taluk and partly personal property—Codicil raising the amount of legatee's allowance, if should be construed as a textual amendment of the will—Codicil conforming to conditions, fulfilled in the case of the will, which would make it binding on taluqdari properties—Effect—Codicil directing allowance to be paid from 'this date,' is to be construed as a conveyance. Where an Oudh Taluqdari executed a will bequeathing later also a monthly sum of Rs 500 to his widow "from the estate," the said allowance being further made "a charge upon the estate which the person in possession of the taluqa was bound to discharge," and later on executed a codicil but without conforming (as he did in the case of the will) to the conditions which would make it binding on the taluqdari estate, by which he purported to raise the amount payable to the widow from Rs 500 to Rs 1,000 and it appeared that the taluqdari had left other properties which would be bound by wills and other testamentary instruments made with regard to such conditions. Held that the codicil could not be construed as merely textually altering the terms of the will so as to indicate that the increment in the allowance was to be paid from the same source as the bequest in the will no source having in fact been indicated by the codicil. The direction in the codicil that the amount of Rs 1,000 was to be paid to the widow "from this date" should be construed as a wish that the allowance should begin to run at once after death the idea that the donee was creating an annuity during his own life by inter vivos conveyance being opposed to the whole circumstances surrounding the execution of the document. **DEPUTY COMMISSIONER OF KHIRI v RANI BHAI RAJ KORE (1917)***

22 C. W. N 305

WINDING UP.

See COMPANIES ACT (VI OF 1932)—

ss 28, 43, 61 I. L. R. 38 Bom. 557

ss 45 and 68 I. L. R. 42 Bom. 595

ss 61, 125 151 I. L. R. 38 All. 347

See COMPANIES ACT (VII OF 1913).

s 163 I. L. R. 41 All. 563

WINDING UP—*cont'd*.

s 162 I. L. R. 39 All. 334

s 169 I. L. R. 33 All. 641

I. L. R. 35 All. 177

• See COMPANY I. L. R. 47 Cal. 654

I. L. R. 35 All. 539

I. L. R. 39 Bom. 16, 47 331

I. L. R. 40 All. 43

— examination of directors—

See COMPANIES ACT, 1913, s 215

— order passed in—

See CO-OPERATIVE SOCIETIES ACT 1912,

s. 42 I. L. R. 44 Bom. 582

*Sale in execution of decree pending winding up proceedings validity of A sale held in execution of a decree against a Company while the Company is being wound up is in contravention of s 171 of the Companies Act 1913, unless the leave of the court under which the winding up is proceeding has been obtained and is voidable at the instance of the official liquidator. Per CHAMBERLAIN, C J—If the court executing the decree becomes aware of the winding up proceedings before the sale in execution of the decree is confirmed it should refuse to confirm the sale until the leave of the court under which the winding up is proceeding has been obtained. **BALEDO NARAY SINGH v THE UNITED INDIA BANK LIMITED** 2 Pat. L. J. 77*

WINDING UP PETITION

Petitioner a creditor for amount not immediately payable—General financial position of company—Indian Companies Act (VI of 1932), ss 123, 129, 130 and 131—Scheme of arrangement—Practice The definition of "debt" in s. 130 of the Indian Companies Act (VI of 1932) is quite distinct from the meaning of the word "creditor". A creditor is a person to whom money is owed by the Company. Whether he can claim immediate payment of that debt or his right to demand payment is deferred by his agreement with the Company to a future time he still remains a creditor. If the petitioner can satisfy the Court that the Company on a general perusal of its balance sheet cannot pay its debts, in other words, that its assets are not sufficient to satisfy its liabilities, that will enable the Court to order its winding up. If an arrangement can be arrived at between the Company and its creditors it would be desirable that an attempt should be made to give effect to that arrangement.

But any scheme or proposal by the Company to keep itself afloat cannot be discussed with any chance of success unless the winding up order is made. It is only after the winding up order is made that a three fourths majority of the creditors is able to bind the minority. Otherwise any one creditor can come in and upset any arrangement which has appeared satisfactory to the rest of his co-creditors. *In the matter of INDIAN COMPANIES ACT, In the matter of the BOMBAY MANUFACTURING COMPANY and In the matter of RATILAL KARBON DAS (1909)* I. L. R. 34 Bom. 533

WIRE-FENCE

See BOMBAY DISTRICT MUNICIPALITIES

ACT (BOM III OF 1901), s 3, CL. (7).

I. L. R. 41 Bom. 563

WITHDRAWAL OF CASE.

See COMPANY . I. L. R. 43 Calc. 854

WITHDRAWAL OF PARDON.See PARDON . I. L. R. 37 Calc. 845
I. L. R. 42 Calc. 758**WITHDRAWAL OF PROSECUTION**

Consent of Court given without recording reasons—Duty of the Court to give reasons and to examine the grounds of withdrawal stated by Public Prosecutor—Improper exercise of discretion in according consent—Revision—Criminal Procedure Code (Act V of 1903), s. 491 An order according consent under s. 491 of the Criminal Procedure Code is a judicial one, and the reasons therefor should be stated in order to enable the High Court on revision to determine the propriety of the exercise of its discretion by the lower Court. *Umesh Chandra Roy v Satish Chandra Roy*, 22 C. W. N. 69, followed. Where on a commitment under ss. 344 and 366, I. P. C., the Public Prosecutor sought to withdraw the case on the ground of absence of evidence of the use of force by the accused—*Held*, that the Sessions Judge should have, before accepting and acting on the reason stated by the Public Prosecutor, satisfied himself on the point by examining the commitment record. The consent of the Sessions Judge to the withdrawal of the prosecution was *held* to have been improperly accorded when there was evidence of the employment of force on the record sufficient for the consideration of a jury and further when he could have added charges under ss. 497 and 498, I. P. C., on the husband's complaint to the Magistrate, and proceeded with the trial on such charges. *RAJANI KANTA SHARMA v IDRIS THAKUR*, (1921) I. L. R. 48 Calc. 1105

WITHDRAWAL OF RIGHTS:See ACT OF STATE
[I. L. R. 39 Calc. 615]**WITHDRAWAL OF SUIT**See CIVIL PROCEDURE CODE, 1882, s. 373
[I. L. R. 33 Mad. 643]

See CIVIL PROCEDURE CODE, 1908—

O O XXIII, XLI, s. 11
I. L. R. 35 Bom. 261O XXIII, s. 1
See JURISDICTION

I. L. R. 43 Calc. 138

See JURISDICTION OF HIGH COURT
[I. L. R. 44 Calc. 454]See LETTERS PATENT, 1865, CL. 15
[I. L. R. 45 Bom. 377]

See PRACTICE . I. L. R. 41 Calc. 632

See RES JUDICATA.

whether in ability to produce evidence justifies—

See CIVIL PROCEDURE CODE, 1908—

O XXIII, s. 1 6 Pat. L. J. 112

Permission to institute fresh suit—No finding of formal defect—Power of High Court to interfere with order—Code of Civil Procedure (Act V of 1903), s. 115 and O XXIII,

WITHDRAWAL OF SUIT—contd.

r 1. In allowing a suit to be withdrawn with permission to institute a fresh suit it is not sufficient that the trial Court should say or suggest that there is a formal defect, but the existence of such a defect is a condition precedent to the exercise of jurisdiction under O XXIII, r. 1, of the Code of Civil Procedure, 1908. *NATHUNI RAM v. MUSAMMAT SAFO KOKR* . 3 Pat. L. J. 450

Procedure—withdrawal with permission to bring fresh suit on payment of costs—costs of first suit paid after institution of second suit, whether the second suit maintainable Where a plaintiff is allowed to withdraw a suit with permission to bring a fresh suit on payment of the defendant's costs in the first suit, and no limit of time is provided within which such costs are to be paid, the second suit is maintainable even though the costs of the first suit are not paid until after the institution of the second suit. The Court should therefore limit the time. *Semble*, that the second suit would be maintainable even though the period of limitation expired before the institution of the second suit, inasmuch as the first suit would be pending until the costs had been paid. *KULDIP SING v KULDIP CHAUDHURI* 3 Pat. L. J. 63

Grounds for—Code of Civil Procedure (Act V of 1903), O XXIII, r. 1 A suit may only be withdrawn with permission to bring a fresh suit when the Court is satisfied that the suit must fail by reason of some formal defect, or that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit. The "sufficient grounds" contemplated in the second clause of O XXIII, r. 1, of the Code of Civil Procedure, 1908, should be grounds analogous to the ground given in the first clause. It is not sufficient for the Court merely to record a vague opinion that there is a defect which may materially affect the decision. *MAHENDRA RAM v SINGI LAL* 3 Pat. L. J. 561

Duty of court to state reason for allowing withdrawal of suit—Power of High Court to interfere with order of withdrawal passed by Small Cause Court Judge Where a suit has been allowed to be withdrawn by a Small Cause Court, and no reasons have been recorded for permitting such withdrawal, the High Court will set the order aside in the exercise of its powers under s. 107 of the Government of India Act 1915. *LUCHI RAI v RAGHUBER DUBE* 2 Pat. L. J. 682

Suit for redemption—Permission to withdraw on condition fresh suit brought within 2 years The plaintiff filed a suit to redeem a mortgage but not wishing to proceed with the suit he was allowed to withdraw it with permission to bring a fresh suit provided it was brought within 2 years for the date of the order. The new suit was brought eight years after the order for withdrawal of suit. It was dismissed by the lower Courts on the ground that the plaintiffs had not complied with the conditions imposed by the order. On appeal to the High Court *Held*, that the order for withdrawal of suit imposing a limitation of two years was erroneous and it would not affect the plaintiff's right to redeem during the period of limitation allowed by the Limitation Act. *RAMCHANDRA KOLARI v HANMANTA* (1920) . . . I. L. R. 44 Bom. 939

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- See ATTESTATION OF INSTRUMENT
I L R 37 All 350
- See BAR COUNCIL, RESOLUTIONS OF
I L R 40 Calc 898
- See CIVIL PROCEDURE CODE (1908) O
XXI n 27 I L R 38 All 191
- See COMMITMENT I L R 42 Calc 608
- See CRIMINAL PROCEDURE CODE 1893
s 339 I L R 37 All 331
s 478 3 Pat. L J 632
- See DEPOSITION I L R 48 Calc 825
- See DISPUTE CONCERNING LAND
I L R 38 Calc 24
- See EVIDENCE ACT (I of 1872)—
ss 21 15 I L R 34 Bom. 599
ss 118 to 131
s 137 I L R 43 All 97
I L R 40 All 271
- See FACT 15 C W N 717
- See LEGAL INACTIVITIES
I L R 44 Mad 911
- See PATTER SCIT
I L R 48 Calc 631
- See PENAL CODE, s 467
15 C W N 585
- See PERJURY I L R 42 Calc 240
- See POLICE DIARIES 3 Pat. L J 588
- See PRIVATE DEFENCE 3 Pat. L J 418
- See PUBLIC PROSECUTOR
I L R 42 Calc 422
- See WARRANT I L R 38 Calc 789
- Called by Court—CROSS EXAMINATION OF—
See CRIMINAL PROCEDURE CODE ss
435 439 25 C W N 609
- commission to examine—
See CIVIL PROCEDURE CODE (ACT I OF
1908) O XXVI n 1 I L R 42 Bom 136
- counsel accepting Retainer when
likely to be a witness—
See BAR COUNCIL RESOLUTIONS OF
I L R 40 Calc 898
- cross-examination of—
See CHARGE I L R 42 Calc 957
- See CROSS EXAMINATION
I L R 37 Calc 233
- See MAHONEDAN LAW—Gift
I L R 39 All 627
- evidence of deceased—
See EVIDENCE ACT 1872 s 33
I L R 42 All 24
- examination of—
See INSOLVENCY
I L R 8 Calc 1039
- See CRIMINAL PROCEDURE CODE 1893
s 463 I L R 39 Calc 931
- See WILL I L R 47 Calc 1043

WITNESS—contd

- In insolvency proceedings—Costs
of—
See COSTS I L R 46 Calc 793
- privilege of—
See EVIDENCE ACT (I of 1872) s 196
I L R 41 All 123
- prosecution of for contradictory
statements—
See SANCTION FOR PROSECUTION
I L R 37 Calc 618
- questions put to by Court—
See EVIDENCE ACT 1872 s 33
I L R 42 All 237
- right of accused to summon—
See CRIMINAL PROCEDURE CODE ss 244
540 I L R 38 All 13
- statement of—
See PENAL CODE (ACT XLV OF 1860)
s 439 I L R 36 Mad. 216
- suit—whether an attesting—
See EVIDENCE ACT 1872 s 68
1 Pat. L J 129
1. ———— Witness if party to suit—
Witness examined in a suit or proceeding are
not to be considered parties to the suit or proceeding
Emperor v Ghansha Singh I L R 15
All 4 referred to. DEBI LAL v DIJADHAN
GASHAI (1911) 15 C W N 585
2. ———— Attendance of—A servant of the
Munt party was summoned at the plaintiff's
instance to produce certain documents which the
plaintiff mutually would support in a case of
adverse possession of the land in dispute but he
failed or declined to attend and the plaintiff's
application for a warrant to compel attendance
was rejected without good reason. The suit was
dismissed on the ground a non est that
plaintiff was not in possession for 12 years. It was
on second appeal that there should be a hearing
after compelling the witness to attend and pro-
duce the documents. UDESHA NATI CHAND v
THE CHAIRMAN OF THE CALCUTTA CORPORATION
(1911) 16 C W N 116
3. ———— Competency of a person, ac-
cused as witness against another implicated
therein but separately tried—Admission of the
deposition of a witness against a third person is
subject to the Act (I of 1872) s 118
131—Oath Act (I of 1873) s 5—Criminal Pro-
cedure Code Act (I of 1895) s 342 (1). S 3 of
the Oath Act (I of 1873) and s 340 (1) of the
Criminal Procedure Code apply only to the
accused actually under trial at the time. Such
person cannot therefore be sworn as a witness
and a co-accused jointly is a competent wit-
ness for or against the co-accused. But when
several persons are tried separately each one
though implicated in the same offence is a
competent witness at the trial of the other.
Beg v Naayan Sander 5 Bom H C P 1
and Emperor v Derant I L R 23 Bom 213
followed. Banu Singh v Emperor I L R
33 Calc 1353 and Am ta Lal Haara v Em-
peror I L R 40 Calc 957 approved. Queen
Empress v Mona Pura I L R 16 Bom 681

WITNESS—contd.

Yashwantrao Appur v King Emperor, 1 L. R. 23 Mad. 61, and *Queen Empress v Hussein Haqq*, 1 L. R. 23 Bom. 422, referred to. A previous deposition is admissible against the witness on his subsequent trial, unless he has brought himself within the protection of the proviso to s. 132 of the Evidence Act. *King Emperor v Nanda Copol Ray*, 23 C. W. N. 1124, explained and distinguished. *Abani Kumar Mukherjee v Emperor* (1917) 1 L. R. 45 Calc. 720.

4. — Competency of accused as witness.—Withdrawal of prosecution jointly by private civil confuting the prosecution and the court and suspicion.—Inability of the withdrawal and consequent discharge of the accused.—Competency of accused as witness thereafter.—*Criminal Procedure Code* (Act V of 1898), s. 491.—Evidence of co-accused and gambling cases prior to the conspiracy charged.—Statement of an accused 4 months after arrest and removal to a confession.—Admissibility of statement.—*Evidence Act* (I of 1872), ss. 10, 20 and 34.—Conspiracy to cheat.—*Criminal Code* (Act XLV of 1860) ss. 120 B and 120. Where the prosecution against an accused was withdrawn with the consent of the Court, after the opening of the Crown case, by an application purporting to be signed by the Court sub-inspector and a private villi, who was not appointed a public prosecutor by the Governor General in Council or the Local Government but was acting under the direction of the public prosecutor duly appointed for the district and the accused was thereupon discharged under s. 491 (a), removal from the dock and examined as a prosecution witness;—*Held*, that the withdrawal was legal as the Court sub-inspector who was a public prosecutor within s. 491 of the Criminal Procedure Code had signed the petition filed for the purpose. *Abani Kumar Mukherjee v Emperor*, 1 L. R. 45 Calc. 720, applied. Evidence that some of the accused ran cocaine and gambling dens, long before the existence of the conspiracy, which was the sub-set of the charge, was held admissible if a prosecution case being that some of the accused were first thrown together by frequenting or running such dens, and that they continued to meet at such places for the purposes of the conspiracy charge. The evidence of an excise sub-inspector of raids on the dens was admissible as leading up to the admissions made to him. The statement of an accused, made after arrest, and not amounting to a confession, is not admissible in evidence, against a co-accused, either under s. 10 or s. 30 of the Evidence Act, but only against himself. The error does not, however, affect the conviction when no stress was laid on such statement by the Trial and Appellate Courts. *Emperor v Abani Bhushan Chakraborty* 1 L. R. 38 Calc. 169, *Pulla Pehary Das v King Emperor*, 13 C. L. J. 517, followed. *ITAL SINGH v. EMEROR* (1918) 1 L. R. 46 Calc. 700.

5. — enforcing attendance of witnesses.—*mentioned in the list given to the Magistrate and summoned for the trial*—Application made at the last moment after examination of defence witnesses present.—Refusal by the Judge of the application on the ground of delay.—Materiality of the evidence of the absent witness.—Proper course to be followed by the Judge.—*Criminal Procedure Code* (Act V of 1898), s. 391. Where, after the examination of the defence witnesses present had concluded, and the

WITNESS—contd.

case was ready for arguments, an application was made to the Court to enforce the attendance of certain witnesses, whose names had been entered in the list given by the accused to the Committing Magistrate, and who had been summoned but failed to attend, and it further appeared from the petition of appeal to the High Court that their evidence was material; *Held*, that the refusal of the Judge to enforce the attendance of the witnesses, based not on the ground of their evidence being immaterial but of delay in the application, was not justifiable, and that the conviction ought, therefore, to be set aside and a retrial ordered. Steps should be taken by the bench Judge to ensure an early application by the parties with regard to the attendance of their witnesses. *FAT JEDDI v. EMEROR* (1920) 1 L. R. 47 Calc. 758.

6. — Hostile witness.—A witness is considered adverse when in the opinion of the Judge he bears a hostile animus to the party calling him and not merely when his testimony contradicts his proof. When a witness is treated hostile and cross-examined by the party calling him this must be done to discredit the witness altogether and not merely to get rid of part of his testimony. *SURENDRA KRISHNA MONDAL v. SH. PANKAJ DAS* 24 C. W. N. 860.

7. — Where a witness was called by Court, not examined by it but cross-examined by both sides.—Imprecise of procedure discussed. *GANGADHAR GOHA v. FIDELMUND WILLIE LYMON REED* 25 C. W. N. 609.

WOMEN

See PLEADER 1 L. R. 44 Calc. 290

See HINDU LAW—WOMAN'S ESTATE

— beneficiaries under will of a Hindu—

See HINDU LAW—WILL

1 L. R. 1 Lah. 415

1 L. R. 2 Lah. 175

— disqualification of, to perform duties of archaka—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, s. 3

1 L. R. 38 Mad. 850

— right to inherit—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, s. 3

1 L. R. 38 Mad. 850

WORDS AND PHRASES.

— "A large proportion of the landlords"—

See ULTRA VIRES, BENGAL TENANCY ACT, s. 101. 1 L. R. 40 Calc. 123

— "Accused person"—

See CRIMINAL PROCEDURE CODE, ss. 145 and 526. 1 L. R. 34 All. 533

— "Act together"—

See BENGAL TENANCY ACT, s. 188. 1 L. R. 38 Calc. 270

— "Addition to embankment"—

See EMBANKMENT 1 L. R. 38 Calc. 413

WORDS AND PHRASES—*contd*

"Affected"—]

See LAND ACQUISITION

I L R 44 Calc 219

I L R 47 Calc 500

See RECOUPMENT I L R 45 Calc 343

Agabaram—

See MADRAS ESTATES LAND ACT 1908

s 3

I L R 41 Mad 1012

"Aggregate sentences"—

See CODE OF CRIMINAL PROCEDURE 1898,

ss 30 and 403 3 Pat L J 138

"Aggrieved person"—

See PROVINCIAL INSOLVENCY ACT s 30

15 C W N 253

"Agreement" or "memorandum of agreement"—

See STAMP ACT (II of 1899)

S 57 I L R 38 Mad 349

"Agricultural tribe"—

See BUNDELKHAND ALLOCATION OF LAND

ACT (II of 1903) ss 3 4 6 9

I L R 41 All 294

"Agriculturist"—

See CIVIL PROCEDURE CODE 1908

s 60 (c) I L R 41 Bom 475

See DEKKHAN AGRICULTURISTS RELIEF

ACT s 2 I L R 35 Bom 288

I L R 34 Bom 65

"Alienated"—

See BOMBAY LAND REVENUE CODE (BOM

V of 1879)—

S 3 (19) I L R 35 Bom 432

Ss 3 (20) AND 217

I L R 43 Bom 77

"Alienation"—

See BHADANI AND VAWARDANI ACT

(BOM. ACT V of 1862) s 3

I L R 40 Bom 207

"All estate right and title"—

See VENDOR AND PURCHASER

I L R 42 Calc 55

"Alteration of papers"—

See COURT FEE STAMPS

I L R 47 Calc 71

"Ammunition"—

See ARMS ACT s 4

I L R 32 All 152

"Annual net profit"—

See CESS ACT 15 C W N 201

See MINES I L R 38 Calc 322

"Antecedent debt"—

See HINDU LAW—JOINT FAMILY

I L R 41 All 529

"Any accused person"—

See CRIMINAL PROCEDURE CODE, s 110

I L R 35 Bom 401

WORDS AND PHRASES—*contd*

"Any interest therein"—

IMMOVABLE PROPERTY

See LIMITATION ACT 1908 SCH I ART 120

3 Pat L J 522

"Any one individual person"—

See MUNICIPAL ELECTION

I L R 39 Calc 754

"Any person within local limits"—

See SECURITY FOR GOOD BEHAVIOUR,

I L R 46 Calc 215

"Any trustees or trustee"—

See TRUSTS I L R 39, Mad 597

"Apanneeti"—

See HINDU LAW—INHERITANCE,

I L R 48 Calc 643

"Appeal"—

See HIGH COURT ORIGINAL SIDE JURIS-

DICTION OF I L R 37 Calc 714

"Ascertained sum"—

See PROVINCIAL SMALL CAUSE COURT

ACT SCH II ART 31 3 Pat L J 423

"Assets come into his hands"—

See ADMINISTRATION PENDENTE LITE,

I L R 41 Calc 771

"Assets realised"—

See INSOLVENCY PROCEEDINGS

3 Pat L J 456

"At once"—

See COMPLAINT I L R 42 Calc 19

"Attested," meaning of—

See TRANSFER OF PROPERTY ACT (IV of

1857) s 123 I L R 44 Bom 231

"Attesting witness," meaning of—

See TRANSFER OF PROPERTY ACT (IV of

1882) s 69 I L R 44 Bom 405

"Aulad"—

See WILL I L R 38 All 101

"Auras putra-poutradik"—

See BARUANA AND SONIA GRANTS

L R 41 I A 275

"Authorized agent—

See HIGH COURT RULES AND ORDERS

FOR CIVIL COURT CHAP XXI R 1

I L R 41 All 248

"Anyavahanka"—

See HINDU LAW—DEBTS

I L R 43 Bom 612

"Awards"—

See LAND ACQUISITION

I L R 46 Calc 281

"becomes due"—

See LIMITATION ACT IX of 1908 SCH I,

ART 137 I L R 37 All 400

"benefits to arrive out of land"—

See LIMITATION ACT 1908, SCH I ART 120

120 137 141

3 Pat L J 522

WORDS AND PHRASES—*contd*

"betterment"—

See RECOUPMENT

I L R 45 Calc 343

"Bohras"—

See LIBEL I L R 41 All 329

"building"—

See BOMBAY DISTRICT MUNICIPALITIES
ACT (BOM ACT III OF 1901)—

s 3, CL. (7) I L R 41 Bom 563

s 98 I L R 35 Bom 412

"business"—

See EXCESS PROFIT DUTY

I L R 48 Calc 844

See RECEIVER I L R 40 Calc 678

"by means thereof"—

See CHARGES I L R 42 Calc 857

"Calcutta Gazette"—

See SALE FOR ARREARS OF REVENUE

I L R 46 Calc 255

"Capable of instituting suits"—

See LIMITATION L. R. 43 I A 113

"Case"—

See CIVIL PROCEDURE CODE, 1908—

ss 16 AND 115 I L R 42 All 409

s. 115 I L R 40 Bom 58

See CRIMINAL PROCEDURE CODE, s. 193

I L R 37 All 286

"Cause of Action"—

See CIVIL PROCEDURE CODE, 1908 O II

s 2 I L R 38 All 217

See PARTITION I L R 36 Mad. 151

"Caveat emptor"—

See VENDOR 3 Pat L. J 358

"Charitable purposes"—

See BOMBAY CITY MUNICIPAL ACT (BOM
ACT III OF 1888), ss 140 (c) 143 (1)

(a) AND 2 (d) I L R 43 Bom 281

"Child"—

See CRIMINAL PROCEDURE CODE (ACT V
OF 1893) s 483 (1)

I L R 37 Mad. 565

"Christian"—

See CHRISTIAN MARRIAGE ACT (XV OF
1872) ss 3 AND 68.

I L R 40 All 393

"Circumstances and Property"—

See MUNICIPALITY—ASSESSMENT

I L R 41 Calc 168

"Circumstances and Property
within the Municipality"—

See ASSESSMENT I L R. 48 Calc 443

"Claim arising under the mori-

-gaga"—

See CIVIL PROCEDURE CODE 1908,
O XXXIV, s. 14

I L R 41 All 399

WORDS AND PHRASES—*contd*

"Claim of right"—

See TEMPORARY INJUNCTION

I L R 46 Calc 1001

"Claiming under"—

See CIVIL PROCEDURE CODE (ACT V OF
1908) s. 11 I L R 40 Bom 879

"Collector"—

See MAMLATDARS COURTS ACT (BOM II
OF 1906) s 23

I L R 39 Bom 552

"Common carrier"—

See CONTRACT ACT ss 50 AND 65

I L R 40 Bom 529

See RAILWAY COMPANY

I L R 47 Calc 6

"Common gaming house"—

See PUBLIC GAMBLING ACT (III OF 1867)
ss 1 3 I L R 38 All 47

"Company's sicca Rupees"—

See SUIT FOR RENT

I L R 48 Calc 347

"Compelled to answer"—

See FALSE EVIDENCE

I L R 37 Calc 878

"Complaint"—

See CRIMINAL PROCEDURE CODE—

ss 4 195 (1) I L R 35 All 8

ss 4 476 I L R 38 All 32

See SANCTION FOR PROSECUTION

I L R 43 Calc 1152

See WORKMAN'S BREACH OF CONTRACT
ACT (XIII OF 1830) ss 1 AND 2

I L R 41 All 322

"Composition deed"—

See REGISTRATION ACT (III OF 1877)
s 17 CL. (c) I L R 38 Bom 576

"Compromise"—

See COMPROMISE

See CRIMINAL PROCEDURE CODE ss 48,
345 20 C W N 1209

"Conclusive proof"—

See AGRA TENANCY ACT (II OF 1901),
s 9 I L R 34 All 285

"Consideration"—

See DEBTOR OR CREDITOR.

I L R 41 Calc 137

See PENAL CODE (ACT XLV OF 1860),
s. 423 I L R 37 Mad. 47

"Contentious suit"—

See TRANSFER OF PROPERTY ACT (IV OF
1882), s 82 I L R 38 Mad. 450

"Conveyance"—

See OPIUM, ILLEGAL POSSESSION OF

I L R 37 Calc. 24

"Costs to abide the result"—

"Costs to follow the event"—

See COSTS I L R 39 Mad 476

WORDS AND PHRASES—*contd*

"Court"—

See CIVIL PROCEDURE CODE 1908,
O XXI, RR. 89-92

I L R 40 All 425

See CRIMINAL PROCEDURE CODE (ACT V
OF 1898) s. 193

I L R 37 Bom 365

See COURT

See LIMITATION ACT 1877, s. 14

I L R 35 Bom 139

See PARTITION I L R 45 Calc 873

See PRENS ACT (I OF 1905), s. 3 (2)
"Prens"

I L R 39 Mad 1164

See PROFESSIONAL MISCONDUCT

I L R 44 Calc 639

See SANCTION FOR PROSECUTION

I L R 45 Calc 585

"Credible information"—

See CRIMINAL PROCEDURE CODE, s. 54 (1).

I L R 38 All 6

See HABEAS CORPUS

I L R 44 Calc 78

"Criminal case"—

See CRIMINAL PROCEDURE CODE ss 143,
526

I L R 34 All 533

See TRANSFER I L R 41 Calc 719

"Criminal trial"—

See LETTERS PATENT (24 AND 25 VICT
C. 104) s. 15

I L R 39 Mad. 539

"Crops or other products"—

See AGRA TENANCY ACT 1901 ss 74-76

I L R 32 All 458

"Dāsi"—

See HINDU LAW—INHERITANCE

I L R 48 Calc 643

"dāyadāndhapatra"—

See HINDU LAW—INHERITANCE

I L R 48 Calc 643

"date of decree"—

See CIVIL PROCEDURE CODE, 1908
O XLV, R. 7

14 C W N 420

See EXECUTION OF DECREE

I L R 46 Calc. 1032

"dayāda"—

See HINDU LAW—STRIDAY

I L R 36 Bom 424

"debt"—

See CONTRACT ACT (IX OF 1872) s. 25

I L R 40 Mad. 31

See SUCCESSION CERTIFICATE

I L R 42 Calc 10

"debtor and creditor"—

See WARDING UP PETITION

I L R 34 Bom. 533

"debt and liability"—

See CHOTA NAGPUR ENCUMBERED ESTATE
ACT, 1878, s. 2

3 Pat. L. J 156

WORDS AND PHRASES—*contd*

"decision"—

See BENGAL TENANCY ACT, ss. 100-107
18 C W N 604

"decree"—

See APPEAL I L R 41 Calc. 160

See CIVIL PROCEDURE CODE (1908)—

s. 2

I L R 39 All 393

ss 2 104, 148

I L R. 35 All 582

See SECOND APPEAL 3 Pat. L. J 645

"decree-holder"—

See CIVIL PROCEDURE CODE (ACT V OF
1908) (I XVI, R. 89

I L R. 37 Bom. 387

"decree in the suit"—

See DEKKHAN AGRICULTURISTS RELIEF
ACT

I L R. 34 Bom 158

"default"—

See EXECUTION OF DECREE

I L R 38 Calc. 482

"defaulter"—

See MAHARAJA REVENUE RECOVERY ACT,
ss 3, 35.

I L R 33 Mad. 41

See MAHARAJA ESTATES LAND ACT, 1908,
s. 146

I L R 44 Mad. 534

"delay"—

See SANCTION FOR PROSECUTION

I L R 43 Calc 897

"denatured spirit"—

See EXCISE I L R 41 Calc. 694

"deposit" (in art 60 of the
Limitation Act—

See LIMITATION ACT (IX OF 1908),
ART. 59 AND 60

I L R 39 Mad. 1081

"desperate and dangerous"—

See SECURITY FOR GOOD BEHAVIOUR

I L R 46 Calc 215

"destined"—

See TRADING WITH THE ENEMY

I L R 42 Calc 1094

"directly over or indirectly
under"—

See BOMBAY CITY MUNICIPAL ACT
(BOM ACT III OF 1888) s. 231 cl. (a)

I L R. 34 Bom 496

"discharged"—

See CRIMINAL PROCEDURE CODE s. 119

I L R. 35 Bom 401

"Disciple"—

See HINDU LAW—INHERITANCE

I L R. 44 Mad 704

"dishonestly and fraudulently"—

See FORGERY I L R. 38 Calc 75

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"dishonour"—

See BILLS OF EXCHANGE

I L R. 46 Calc. 584

"dispossession"—

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- "distributive"—
See LIMITATION ACT (IX OF 1908),
 ARTS. 123 144. I L R 45 Bom. 519
- "doctrine of feeding the
 estoppel"—
See EXPECTANCIES.
 I L R 39 Mad 554
- "doubt"—
See JURISDICTION OF HIGH COURT
 I L R 44 Calc 595
- "due and reasonable diligence"—
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 I L R 43 Calc 447
- "due diligence"—
See LIMITATION I L R 45 Calc 94
- "dues"—
See PROVINCIAL SMALL CAUSE COURTS
 ACT (IX OF 1887) SCH II ART 13
 I L R 39 Bom 131
- "duly authorised agent"—
See LIMITATION ACT (XV OF 1877) s 20
 I L R 37 Calc 461
- "dwell or carry on business or
 personally work for gain"—
See JURISDICTION I L R 40 Calc 308
- "dwelling house"—
See PARTITION I L R 45 Calc 873
- "effectually and permanently ren-
 dered unfit"—
See EXCISE I L R. 41 Calc 894
- "emigrate"—
See EMIGRATION I L R 37 Calc 27
- "emoluments of an office"—
See PENSIONS ACT (XXIII OF 1871),
 s 4 I L R 38 Mad. 559
- "employed in the business"—
See EXCESS PROFITS DUTY ACT (X OF
 1919) SCH. II R 1
 I L R 45 Bom 881
- "encumbrances"—
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- "enforcing a right"—
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 ss. 141, 143 17 C W N 1132
- "enforcing and maintaining
 right"—
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 ment"—
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 L R. 44 I A 186
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- "es a's"—
See LAND TENURE IN MADRAS.
 L R. 46 I A. 38, 123
- *See* OTHER ESTATES ACT (I OF 1869),
 s 2 3 8 10, 2"
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WORDS AND PHRASES—*contd*

- "equity justice and good cons-
 cience"—
See HINDU LAW (MAINTENANCE).
 I L R 37 Mad. 396
- "error, omission or irregularity"—
See CHARGE. I L R 40 Calc 168
- "excepted business"—
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 1919) I L R 45 Bom 1064
- "excisable article"—
See EXCISE I L R 41 Calc 694
- "existing embankment"—
See EMBANKMENT I L R 40 Calc 825
- "explosive substance"—
See CHARGE I L R 42 Calc. 957
- "Family"—
See HEREDITARY OFFICES ACT (BOM
 III OF 1874) ss 4 53
 I L R 41 Bom 677
- "Filing in court"—
See ARBITRATION I L R 46 Calc. 721
- "Final"—
See MADRAS CITY MUNICIPAL ACT (III
 OF 1904) s 287 (3)
 I L R 38 Mad. 41
- "Finally decided"—
See ESTOPPEL L R 44 I A 213
- *See* RES JUDICATA
 I L R 43 Bom. 568
 I L R 45 Calc 442
- "Final decree"—
See ESTATES LAND ACT (MAD I OF 1908)
 I L R 38 Mad. 429
- "Final order"—
See APPEAL TO PRINCY COUNCIL.
 I L R. 47 Calc 918
- "Fire arms"—
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 I L R. 42 Calc 1153
- "Fixed or guaranteed"—
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- "Food"—
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 OF 1904) BY LAWS 169
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- "Forest Produce"—
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 2 Pat. L. J 323
- "Foreign State"—
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 I L R 47 Calc. 37
- "Fraudulently"—
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- "Full water rate"—
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 I L R 34 Mad. 436
- "Gambling" and "Wagering"—
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- "Gaming"—
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 (MAD III 1889) s 3 (10)
 I L R. 40 Mad. 556
- "Ghosis"—
See BUNDELKHAND ALIENATION OF LAND
 ACT (II OF 1903) ss 3 & 4
 I L R 41 All. 294
- "Good faith"—
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 I L R 45 Bom. 607
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 ss 5^a 191 AND 193
 I L R 36 All. 362
- "Government established by law
 in British India"—
See PRESS ACT I OF 1910—
 ss 3 () 4 () 17, 19 20 22
 I L R 39 Mad. 1085
 s 4 I L R 42 All. 233
- "Grant of a definite share of a
 village"—
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 I L R 44 Bom. 566
- "hatred" or "contempt"—
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 17, 19 20 22
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- "heir next in succession"—
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- "heirs born of the womb"—
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- "Hindu"—
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 15 C. W. N 158
- "holder"—
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 3 109 197
 I L R 36 Bom. 315
- "holder of alienated land"—
See BOMBAY LAND REVENUE CODE (BOM
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 I L R 45 Bom. 898
- "holder of Property"—
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 ACT 18 6 3 Pat L J 156
- "holding"—
See ASSESSMENT EXEMPTION FROM
 I L R 37 Calc. 697
- "holds office"—
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- "immovable property"—
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- "import into Bengal"—
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- "income"—
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 IV SCH II s 3 CL. (5)
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- "injury to the person"—
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- "instrument"—
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- "instrument of partition"—
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- "integral"—
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- "investigation"—
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- "irreparable injury"—
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- "irrigation by percolation"—
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- "jama abadharita and dharjya"—
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- "judgment"—
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 I L R 43 Calc. 857
 I L R 45 Calc. 818
 I L R 47 Calc. 1104
- *See* APPEAL, RIGHT OF
 I L R 44 Calc. 804
- *See* ARBITRATION I L R 34 Bom. 1
- *See* LETTERS PATENT CL. 15
 I L R 44 Bom. 272
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- "Judicial Act"—
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- "Judicial Proceeding"—
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- *See* MAGISTRATE, POWER OF
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- *See* SANCTION FOR PROSECUTION
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- "jurisdiction"—
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 I L R 1 Lah. 472

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- "just cause"—
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- "just debts"—
See HINDU LAW—ALIENTATION
 I L R 40 Cal 288
- "Justice Equity and Good Conscience"—
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- "land"—
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- "landlord"—
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 I L R 36 Bom. 639
- "lawful guardianship"—
See PENAL CODE (ACT XLV OF 1860)
 ss 366 368 I L R 40 All 507
- "legal necessity"—
See HINDU LAW—ALIENATION
 I L R 39 All 485
- *See* HINDU LAW—JOINT FAMILY
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- *See* HINDU LAW—LEGAL NECESSITY
- "legal representative"—
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- "Liquor"—
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- "Machinery"—
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 26 C W N 761
- "mahabat"—
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 I L R 33 All 421
- "mahal"—
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- "mafi hak hakuk"—
See LEASE CONSTRUCTION OF
 I L R 45 Cal 87
- *See* MINERALS L R 44 I A. 246
- "major"—
See INSURANCE I L R 36 Bom 484
- "mahk"—
See HINDU LAW—WILL.
 14 C W N 458
- *See* WILL I L R 35 Bom. 279
- "managing officer"—
See GUJARAT TALUKDAR ACT
 I L R 34 Bom 142
- "maupau"—
See CIVIL PROCEDURE CODE (ACT V OF 1908) s 9 SCH II s 20
 I L R 37 Bom. 442
- "manufacture"—
See EXCISE I L R 41 Cal 694
- "marry"—
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- "matter directly and substantially in issue"—
See CIVIL PROCEDURE CODE (ACT V OF 1908) s 10 I L R 44 Bom. 283
- *See* ENHANCEMENT OF RENT
 I L R 40 Cal 29
- "misapplication"—
See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM III OF 1901) s 42
 I L R 40 Bom. 166
- "misbehaviour"—
See BOMBAY REGULATION (11 OF 1877), s 56 I L R 37 Bom. 354
- "misjoinder includes non joinder"—
See CIVIL PROCEDURE CODE, 1908 s 90
 I L R 33 Mad. 436
- "movable property"—
See PENAL CODE (ACT XLV OF 1860)
 ss 403 and 22 I L R 40 All 119
- "muakhiza"—
See MORTGAGE I L R 34 All 446
- "mutual dealings"—
See SET OFF I L R 45 Bom. 1219
- "new and important matter"—
See CIVIL PROCEDURE CODE 1908 O XLVIII s 1
 I L R 33 All 569
- "newspaper"—
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 I L R 38 Cal 202
- "nij chas"—
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 3 Pat L. J 475
- "nij jote"—
See ORISSA TENANCY ACT 1913
 3 Pat L. J 475

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- "oath"—
See SANCTION FOR PROSECUTION
 I L R 43 Cal 597
- "obtaining"—
See TRADING WITH THE ENEMY
 I L R 40 Mad 34
- "occupant of the place"—
See DACOITY I L R 41 Cal 350
- "occupier"—
See BUSTEE LAND
 I L R 41 Cal 164
- *See* MUNICIPAL ELECTION
 I L R 45 Cal 950
- *See* UNITED PROVINCES MUNICIPALITIES
 ACT (II of 1916) s 24
 I L R 39 All 309
- "offence involving a breach of the
 peace"—
See CRIMINAL PROCEDURE CODE, s 106
 I L R 33 All 771
 I L R 43 Bom 554
- "offices or employments"—
See EXCESS PROFITS DUTY ACT (X of
 1919) I L R 45 Bom 1054
- "Official Gazette"—
See REVENUE SALE L R 45 I A 205
- "oil (other sorts)"—
See BOMBAY CITY MUNICIPAL ACT (III of
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- "opposite party"—
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- "order"—
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- "other sufficient grounds"—
See CIVIL PROCEDURE CODE (ACT V of
 1908) O XXIII n 1 (?)
 I L R 41 Mad 701
- "otherwise transfer"—
See CENTRAL PROVINCES TENANCY ACT,
 1898 3 Pat L J 88
- "oversight"—
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 s 3 (11) I L R 36 Bom 315
- "owner"—
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 15 15 C W N 589
- *See* BUSTEE LAND
 I L R 41 Cal 104
- *See* MADRAS ASSESSMENT OF LAND
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 I L R 39 Mad 1128
- *See* MUNICIPAL ELECTION
 I L R 38 Cal 501
- "parrot"—
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- "partial performance"—
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- "period of limitation prescribed"—
See DEKKHAT AGRICULTURISTS RELIEF
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 I L R 42 Bom 367
- "person"—
See CODE OF CRIMINAL PROCEDURE,
 1898 3 Pat L J 124
- "person aggrieved"—
See PROVINCIAL INSOLVENCY ACT (III of
 1907)—
 ss 22 & 46 I L R 41 All 234
 I L R 39 All 152
 ss 43 (?) & 46 I L R 39 All 171
- "person in authority"—
See PRACTICE I L R 40 Bom 220
- "persons designata"—
See NAIKINS I L R 37 Bom 116
- "persons incertis"—
See WILL
 I L R 39 Cal 87
 15 C W N 945
- "personally interested"—
See CRIMINAL PROCEDURE CODE s 556
 I L R 32 All 635
- "place"—
See BOMBAY PREVENTION OF GAMBLING
 ACT (BOM. II of 1887) s 4 cls (a) (c)
 I L R 37 Bom 651
- *See* PUBLIC GAMBLING ACT 1317 ss 1, 3
 I L R 38 All 47
- "place of public resort"—
See MADRAS CITY POLICE ACT (III of
 1888), s 75 I L R 39 Mad 888
- "plaintiff"—
See LIMITATION ACT (IX of 1908),
 ss 3 & 7 S H I ART 142.
 I L R 40 Bom 564
- "plantation"—
See BENGAL TENANCY ACT s 160
 18 C W N 349
- "positive evidence"—
See CONTENT OF COURT
 I L R 41 Cal 173
- "possession"—
See CHARGE I L R 42 Cal 957
- *See* SHARES I L R 46 Cal 342
- "premises"—
See BOMBAY CITY MUNICIPAL ACT
 (III of 1888) s 305
 I L R 34 Bom 593
- "presentation"—
See REGISTRATION ACT (XVI of 1908),
 ss 31 & 3° 5° 87
 I L R 35 All 34
- "presumption of innocence"—
See CHARGE I L R 42 Cal 957
- "preservation of line of street"—
See BOMBAY CITY MUNICIPAL ACT (III
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 1905), ss 297, 299 301.
 I L R 42 Bom 463

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- "price"—
See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 54 118
 I L R 37 Mad 423
- "proceeding"—
See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 47 I L R 39 All 287
- "process"—
See EXCISE I L R 41 Cal 694
- "produced"—
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 I L R 44 Cal 1002
- "promulgated"—
See PENAL CODE s 183
 I L R 39 Mad 543
- "proper courts"—
See LIMITATION ACT (IX OF 1908) ART 19 EXP II I L R 45 Bom 453
- "property"—
See CIVIL PROCEDURE CODE (ACT V OF 1908) O XL R 4
 I L R 39 Mad 584
See HINDU LAW—REVERSIONER
 I L R 48 Cal 536
See MINOR I L R 48 Cal 802
See PENAL CODE (ACT XLV OF 1860) s 185 I L R 37 All 128
- "property of any ward"—
See UNITED PROVINCES COURT OF WARDS ACT s 48 I L R 36 All 321
- "proprietor"—
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 I L R 35 All 190
- "protected interest"—
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 18 C W N 349
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 I L R 39 Cal 138
- "public charitable and religious purposes"—
See CIVIL PROCEDURE CODE 1882 s 339 I L R 34 All 468
- "public place"—
See MADRAS CITY POLICE ACT (III OF 1885) s 75 I L P 39 Mad 886
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 I L R 40 Mad 556
- "public purpose"—
See PRESUMPTION I L R 39 Bom 279
- "publication"—
See TORT I L P 39 Mad 433
- "punya"—
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- "purchaser"—
See REVENUE SALE LAW, s. 37
 15 C W N 706
- "putra"—
See HINDU LAW—INHERITANCE
 I L R 37 All 804
- "putra putradi"—
See JAGIR I L R 42 Cal 305
 I L R 46 Cal 683
- "railway"—
See RAILWAY PASSENGER
 I L R 44 Cal 279
- "railway administration"—
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 I L R 44 Cal 16
- "raiya"—
See BENGAL TENANCY ACT (VIII OF 1885) ss 103B and 104H
 I L R 46 Cal 90
- "ready goods"—
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- "reasonable suspicion"—
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- "receipt"—
See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXI R. 89 (b)
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- "recognised or authorised to act"—
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 15 C W N 74
- "re-erection"—
See BUILDING I L R 39 Cal 84
- "refused to take"—
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- "relates to the suit" construction of—
See CIVIL PROCEDURE CODE 1882 s 379
 I L R 23 Mad 102
- "religion"—
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- "religious assembly"—
See PENAL CODE (ACT XLV OF 1860) s 294 I L R 34 All 78
- "reside"—
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 I L R 32 All 203
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- "resides"—
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 15 C W N 393
- "Restraint of Princes and Rulers"—
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 I L R 44 Mad 145

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- "rights to sue"—
See CIVIL PROCEDURE CODE (ACT V OF 1908) ss 92 AND 93
 I L R 38 Mad. 1064
- "rikhta"—
See HINDU LAW—STREIDHAN
 I L P 36 Bom 424
- "risk note"—
See CONTRACT I L R 39 All. 419
- "river belonging to Government"—
See MADRAS IRRIGATION CESS ACT (VII OF 1865) I L R 37 Mad 322
- "rolling stock"—
See RAILWAY PASSENGER
 I L R 41 Calc 279
- "Samanodaka"—
See HINDU LAW—INHERITANCE.
 I L R 40 Mad. 654
- "same act or transaction"—
See CIVIL PROCEDURE CODE 1908 O I, s 3 I L R 34 Bom 358
- "same judgment-debtor"—
See CIVIL PROCEDURE CODE, 1882, s. 205
 I L R 33 Mad. 465
- "same transaction"—
See CHANGE I L R 42 Calc 957
- "sanctioned"—
See BOMBAY SURVEY AND SETTLEMENT ACT, s 25 I L R 38 Bom 290
- "santan"—
See HINDU WILL ACT 21 C W N 854
- "sarkhat"—
See LANDLORD AND TENANT
 I L R 41 All. 654
- *See STAMP ACT (II OF 1899) s 12 SCH. 1, ARTS 1 5* I L R 41 All 169
- "seaworthiness"—
See BILL OF LADING
 I L R 38 Mad 941
- "secundum allegata et probata"—
See SPECIFIC RELIEF ACT (I OF 1877) s. 39 I L R 39 Bom 119
- "secured creditor"—
See PROVINCIAL INSOLVENCY ACT (III OF 1907) s. 31 I L R 37 All 383
- "series of acts of transaction"—
See CIVIL PROCEDURE CODE 1908 O I s. 3 I L R 34 Bom. 358
- "shauls"—
See RAILWAY ACT 1890 s 75 SCH. II (m)
 I L R 39 Calc 1029
- "single transaction"—
See POWER-OF-ATTORNEY
 I L R 38 Mad. 184
- "slavery bond"—
See CONTRACT 3 Pat L J 412

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- "sole risk"—
See LOSS OF GOODS
 I L P 46 Calc 56
- "son"—
See HINDU LAW—ADOPTION
 I L R 43 Calc. 944
- "standard rent"—
See BOMBAY RENT (WAR RESTRICTIONS) ACT (BOM II OF 1918) s 2 (f) cls. (a) (c) (d) I L R 45 Bom. 744
- "stating the grounds of its opinion"—
See FORFEITURE I L P 41 Calc. 466
- "stream"—
See MADRAS IRRIGATION CESS ACT, s 2
 I L R 34 Mad. 295
- "street"—
See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1883), s. 303
 I L R 43 Bom. 122
- *See LAND ACQUISITION*
 I L R 44 Calc. 219
- "strict proof"—
See LIMITATION ACT (IX OF 1908), ss. 5, 14 I L R 42 Bom. 295
- *See REVIEW* I L R. 42 Calc. 830
- "subject matter"—
See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII, s. 1
 I L R 42 Bom. 155
- "submission to Court"—
See ARBITRATION I L R 46 Calc 721
- "subsequent transferee"—
See TRANSFER OF PROPERTY ACT (IV OF 1882) s. 53 I L R 39 Bom. 507
- "succeeded by another Magistrate"—
See RIOTING I L R 39 Calc. 781
- "successor"—
See AGRA TENANCY ACT (II OF 1901), s. 159 I L R 33 All. 553
- "sufficient cause"—
See COURT FEES ACT, 1870 ss. 4 6 28
 3 Pat L J 74
- *See LAND ACQUISITION*
 I L R 45 Bom. 725
- *See LIMITATION* I L R 45 Calc. 94
- "suit for land"—
See LETTERS PATENT (AMENDED) OF THE BOMBAY HIGH COURT, CL. 12.
 I L R 37 Bom. 494
- "suit for land or other immoveable property"—
See JURISDICTION I L R. 42 Calc. 942
- "suit or other legal proceeding"—
See PRESIDENCY TOWN INSOLVENCY ACT (III OF 1909), ss. 17, 103, 104
 I L R 35 Bom. 83

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- "Talukdar"—
 See OUDA ESTATES ACT (I OF 1869),
 ss 2, 3, 8, 10, 22
 I L R. 35 All. 391
- "Talukdari Estate"—
 See GUJRATH TALUQDARS' ACT, s 31
 I L R. 34 Bom. 55
- "Talukdari Settlement officer"—
 See GUJRATH TALUQDARS' ACT, ss 23, 29
 I L R. 34 Bom. 142
- "Talukdari Tenure"—
 See GUJRATH TALUQDARS' ACT (Bom.
 Act VI of 1888), s 31
 I L R. 35 Bom. 97
- "Tavazhi"—
 See MALABAR LAW
 I L R. 38 Mad. 48
- "tenant"—
 See BOMBAY RENT (WAR RESTRICTION'S)
 ACT (Bom. II of 1918), s 2 (1), CLS (a),
 (c), (d) . I L R. 45 Bom. 744
- "tenure holder"—
 See BENGAL TENANCY ACT (VIII OF
 1885), ss 103-B and 104 H
 I L R. 46 Calc. 90
- "trade"—
 See RECEIVER I L R. 40 Calc. 678
- "trade-mark"—
 See PENAL CODE (ACT XLV OF 1860),
 ss 478, 482 . I L R. 39 All. 123
- "trading"—
 See TRADING WITH THE ENEMY
 I L R. 42 Calc. 1094
- "tried again"—
 See AUTREFOIS ACQUIT
 I L R. 41 Calc. 1072
- "true value"—
 See RAILWAYS ACT (IX OF 1890), s 75,
 (1), (2) AND (3)
 I L R. 43 Bom. 386
- "unable"—
 See GUJRATH TALUQDARS' ACT (Bom. Act
 VI of 1888 AS AMENDED BY Bom.
 Act II of 1905), ss 29, 29 B (1), (2),
 (3) AND 29 E I L R. 38 Bom. 604
- "unable to maintain itself"—
 See CRIMINAL PROCEDURE CODE (ACT V
 OF 1898), s 453.
 I L R. 39 Mad. 857
- "unlawfully and judiciously"—
 See CHARGE . I L R. 42 Calc. 857
- "until"—
 See CONTRACT FOR SALE
 I L R. 45 Calc. 481
- "up to"—
 See CONTRACT FOR SALE
 I L R. 45 Calc. 491
- "useless or inoperative"—
 See LETTERS OF ADMINISTRATION
 I L R. 40 Calc. 50

WORDS AND PHRASES—*concl'd*

- "using"—
 See PENAL CODE (ACT XLV OF 1860)
 s 471 . I L R. 33 Mad. 392
- "value"—
 See RAILWAYS ACT (IX OF 1890), s 75
 (1), (2) AND (3) I L R. 43 Bom. 386
- "valuable security"—
 See PENAL CODE ACT (XLV OF 1860)
 ss 30, 487 . I L R. 33 All. 430
- "violence"—
 See JURY, TRIAL BY.
 I L R. 40 Calc. 367
- "Wants lands"—
 See GUJRATH TALUQDARS' ACT (Bom. Act
 VI OF 1888), s 31
 I L R. 35 Bom. 97
- "where there has been an appeal
 or review"—
 See LIMITATION ACT, 1908, SCH. I, ART.
 182
 3 Pat. L. J. 119
- "wilful default"—
 See CIVIL PROCEDURE CODE (ACT V OF
 1908), O XL, s. 4
 I L R. 39 Mad. 584
- "withdrawal"—
 See CRIMINAL PROCEDURE CODE, ss 248,
 345 . 20 C W. N 1209
- "without issue"—
 See HINDU LAW—ADOPTION
 I L R. 43 Calc. 944
- "witnesses for the defence"—
 See JURISDICTION OF MAGISTRATE,
 I L R. 39 Calc. 885
- "words which are likely or may
 have a tendency, directly or indirectly,
 whether by inference, suggestion, allusion
 metaphor, implication or otherwise" (in
 s 4, (1))—
 See PRESS ACT (I OF 1910), ss 3 (1),
 4 (1), 17, 19, 20, 22
 I L R. 39 Mad. 1085
- "youthful offender"—
 See REFORMATORY SCHOOLS ACT (VIII
 OF 1897), s 31 I L R. 39 All. 141
- WORK CALCULATED TO DEPRAVE MORALS.
 See OBSCENE PUBLICATION
 I L R. 30 Calc. 377
- WORKMAN.
 See WORKMEN'S BREACH OF CONTRACT
 ACT (XIII OF 1859).
 I L R. 35 All. 61 and 143
 I L R. 41 Mad. 282
- WORKMAN'S BREACH OF CONTRACT ACT
 (XIII OF 1859)
 1. ————— Procedure—
 Special procedure under the Act not applicable to
 ordinary loans between master and workman. Held,
 that the special procedure provided by Act XIII
 of 1859 for the recovery of money advanced in the
 circumstances therein described, is not applicable

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)—*contd*

where money is advanced to a workman, not for the purpose of assisting him to complete a specific piece of work, but as an ordinary loan to be repaid out of the workman's wages. *In the matter of Anusoori Sanyasi* 1 L R 28 Mad 37, referred to. *GIGA v MUHAMMAD AMIN* (1912)

1 L R 35 All 61

2. ————— *Magistrate not competent to take proceedings under, unless moved by the employer* The provisions of Act XIII of 1859 can only be applied at the instance of the employer. A magistrate has no jurisdiction *ex officio* to pass orders under that Act as an alternative to taking action under the Indian Penal Code. *CHENDI v MUHAMMAD ALI* (1913)

1 L R 35 All 143

3. ————— *Bandaman not an artificer, labourer or workman.* A bandaman is not an artificer, labourer or a workman within the meaning of those words in the Workman's Breach of Contract Act (XIII of 1859). *Re ROSARIO QUADROS* (1913)

1 L R 38 Mad 651

4. ————— *Scope of the Act—Act applicable not merely to fraudulent breaches of contract.* The provisions of Act No XIII of 1859 are not applicable merely to fraudulent breaches of contract, but can and must be enforced in respect to any breach of a contract within the scope of the Act. *Emperor v Bakkhar, I L R 40 All 282*, followed. *AZIZ UR RAHMAN v HANSA* (1918)

1 L R 40 All 670

5. ————— *Scope of the Act—"Workman" meaning of—Status of accused, proof of—Duty of complainant to prove—Absence of proof* The accused received an advance of Rs 2,600 and contracted to supply coolies to a rubber estate. Under the contract, he was to receive a commission, of 10 per cent, on the wages of the Kol mantris and coolies and an additional Rs 25 a month, if he contract, he was proceeded against under the Workman's Breach of Contract Act. On a difference of opinion between *SADASIVA AYYAR* and *PHILLIPS, JJ.*, as to whether the accused was a "workman" within the meaning of the Act. *Held*, by *AYLING, J.*, agreeing with *SADASIVA AYYAR, J.*—(i) That the accused was not a "workman" within the meaning of the Act, and (ii) that the word "workman" means a person who engages in manual labour of some kind whether skilled or unskilled. *GUDBY v SUDDE, I L R 7 Mad 100, Colarum v Chengappa, I L R 13 Mad 351, Manubear, In re, 27 M L J 392, and Re Rosario Quadros, I L R 38 Mad 651*, followed. *Rowson v Hanama Mestri, I L R 1 Mad 289* and *High Court Proceedings, dated 13th July 1867, 3 Mad H O P App. XXV*, disapproved. *SCRAM MUMBA v CHAMBA KAIR* (1911)

1 L R 41 Mad 182

6. ————— *Compositor, an artificer—Contract to gradually work out advance from wages, a contract under the Act* A compositor is an artificer if not a workman within Act XIII of 1859. An agreement by which an advance given to an artificer is to be repaid by him by periodical deductions from his wages does not merely create a relation of debtor and creditor but is a contract between master and workman within the meaning of the Act. *SOMANNA v CHELLAPATHI RAO* (1921)

1 L R 44 Mad 53

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)—*contd*

s. 1—

See PENAL CODE, s 211

1 L R 43 Mad 443

— s. 1, 2—*Criminal Procedure Code, s 250—Complaint of employer dismissed—Order for compensation to be paid to workman* It is not competent to a Magistrate when dismissing as groundless a complaint under s. 1 of the Workman's Breach of Contract Act, 1859, to proceed under s. 250 of the Code of Criminal Procedure and order the employer to pay compensation. *JAMIL AHMAD v MUHAMMAD ISHAQ* (1919)

1 L R 41 All 322

— s. 1, 2, 4—*Indefinite contract—Advance of money to workman to be paid off out of wages at employer's option—Slavery—"Contract for term certain or for specified work or otherwise," meaning of—Scope of the Act* Where an advance of money made by an employer to a workman was agreed to be repaid out of the workman's wages not when the borrower chose to pay but when the employer chose to realise it. *Held*, that the contract was indefinite and sanctioned a species of slavery and was not enforceable under the provisions of Act XIII of 1859. *Proceedings, 12th Dec 1873, 7 Mad H C R Pt xix, and Pann Prasad v Durgopal, I L R 3 All 774* followed. The advance was made as a loan and not on account of work contracted to be performed within the meaning of s. 1 of the Act. s. 4 of the Act which purports to bring within its operation "all contracts and agreements whether by deed or written or verbal and whether such contract be for a term certain or for specified work or otherwise" is controlled by s. 1 which provides that the advance should have been made to the workman "on account of any work which he shall have contracted to perform." The Act does not cover breaches of all kinds of contract between (speaking generally) employer and workman. *GONINDA RAJWAR v H J AFKAR* (1910)

15 C W. N. 15

s. 2—

— *Order under—Right of appeal from the order—Proper orders to be made under s. 2* No appeal lies to the Sessions Court from the order of the Magistrate under s. 2 of Act XIII of 1859. The Magistrate while making an order under s. 2 of Act XIII of 1859, cannot make an order of imprisonment in default, but such an order could be made after there has been non-compliance with the order of repayment or carrying out the contract. *ATKUL CHANDRA ROY v KAMAR ALI SIRDAR* (1913)

15 C W. N. 1271

— *Advance given by employer on agreement to work for him for a certain specified period—Breach of agreement* A workman living in Cawnpore took an advance of Rs 10 from his employer and entered into an agreement to work for him for ten months on the understanding that one rupee was to be deducted from his wages each month. *Held*, that such a contract contained nothing repugnant to Act No XIII of 1859 and was capable of being enforced under the provisions of ss. 2 and 3 of that Act. *Lucas v Ramas Singh, Criminal Revision No 235 of 1910*, decided on the 21st July, 1910, followed. *EMPEROR v BAKHTAWAR* (1918)

1 L R 40 All 282

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859)—*concl'd*

s. 2.—*concl'd.*

Summary trial—Offence

—Criminal Procedure Code, s. 200, 4(a) A case under s. 2 of the Workmen's Breach of Contract Act, 1859, is triable summarily under the provisions of s. 200 of the Code of Criminal Procedure *Queen-Empress v. Indrajit*, I. L. R. 11 All. 262, referred to. *Emperor v. Dhondu*, I. L. R. 33 Bom. 22, and *Emperor v. Balu Salvi*, I. L. R. 23 Bom. 25, dissented from. *Pollard v. Mohial*, I. L. R. 4 Mad. 234, and *Queen-Empress v. Kattayan*, I. L. R. 20 Mad. 235, distinguished. *Abdus SAMAD v. YUSUF*. I. L. R. 43 All. 281

—High Court's power to interfere under ss. 435 and 439 of the Criminal Procedure Code (Act V of 1898)—Contract to carry logs of timber for long distances—Contract does not fall under the Act. The High Court has power, under ss. 435 and 439 of the Criminal Procedure Code, 1898, to revise an order passed by a Magistrate directing either return of the advance or specific performance of the contract, under para. 1 of s. 2 of the Workmen's Breach of Contract Act, 1859. The accused entered into an agreement with the complainant engaging to remove 100 logs of timber from a forest to a forest depot, a distance of 22 miles, and received an advance of Rs. 440. The accused having failed to carry out the contract, was tried under s. 2 of the Workmen's Breach of Contract Act, 1859, and was ordered to repay the advance. On application under criminal revisional jurisdiction—*Held*, that the contract in question was not a contract of an artificer, workman or labourer and did not fall within the purview of the Act. *EMPEROR v. DEVAPPA RAMAPPA* (1918)

I. L. R. 43 Bom. 807

—ss. 2, 3—Contract between master and workman containing covenant for compensation for breach of agreement by workman—Operation of Act not thereby excluded. An employer of labour is not precluded from availing himself of the provisions of Act No. XIII of 1859 merely because in the contract of service between himself and his workmen there is a stipulated penalty capable of enforcement by a civil suit, in the event of breach of the contract on the part of the workmen, which penalty has admittedly not been enforced nor payment of the same tendered on the part of the workmen. *Queen-Empress v. Indrajit*, I. L. R. 11 All. 232, referred to. *Emperor v. Muhammad Din*, 22 Indian Cases 712, and *Emperor v. Akuda Bakhsh*, 27 Indian Cases 901, not followed. *EMPEROR v. RAM LAL* (1919)

I. L. R. 41 All. 390

WORSHIP.

turn of—

See TERMS OF WORSHIP.

See USUFRUCTUARY MORTGAGE

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—right to worship a deity according to one's own belief—

See CIVIL PROCEDURE CODE, 1908 s. 9

I. L. R. 44 Bom. 410

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I. L. R. 41 Calc. 57

WORSHIP—*concl'd.*

Worshippers' right of, suit of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92. I. L. R. 40 Mad. 212

WRIST-WATCH BAND

See DESIGN. I. L. R. 45 Calc. 603

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14 C. W. N. 89

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19 C. W. N. 1047

refusing application to file—

See APPEAL. I. L. R. 45 Calc. 818

—filing of, by accused

The practice of filing written statements on behalf of accused persons condemned. *DEPUTY LEGAL REMEMBRANCE v. MATURDHARI SING* (1915)

20 C. W. N. 128

—Practice. Though written statements may be accepted from the accused in accordance with the universal practice in the Courts under the Calcutta High Court, they do not take the place of evidence nor of such examination of the accused as is contemplated by s. 342 of the Code of Criminal Procedure. *Emperor v. Answiya*, (1903) All. W. N. 1, dissented from. *AMRITA LAL HAZRA v. EMPEROR* (1915)

I. L. R. 42 Calc. 957

WRONGFUL ACTS.

See MORTGAGE. I. L. R. 44 Calc. 388

WRONGFUL ATTACHMENT.

See APPEAL. I. L. R. 37 Calc. 426

WRONGFUL CONFINEMENT.

See MISJOINDER OF PARTIES

I. L. R. 42 Calc. 760

See PENAL CODE (ACT XLV OF 1860),
s. 343. I. L. R. 42 Bom. 181

—Detention of suspended police-officer in lock up under an illegal Circular order of the Commissioner of Police, published in the Calcutta Police Gazette—Mistake of fact and not of law—Good faith—Penal Code (Act XLV of 1860) ss. 76, 79 and 312—Remission of orders of acquittal—Criminal Procedure Code (Act V of 1898), ss. 423, 439. Where a Deputy Commissioner of Police sent a head constable, placed under suspension, to the lock up, without malice and in conformity with a Circular order of the Commissioner of Police, published in the Calcutta Police Gazette, the property of the Government of Bengal and the medium of communication of all orders and regulations ordinarily having the sanction of law, issued by the Commissioner, for the guidance of police

WRONGFUL CONFINEMENT—contd.

officers and carried out by them, which Circular order had been consistently followed for 18 months, but was invalid, as not having been approved of by the Bengal Government, under s. 9 of the Calcutta Police Act (Beng. IV of 1868), of which fact, however, the accused Deputy Commissioner was not aware. *Held*, that he was justified in assuming that the said Circular order had received the sanction of the Government of Bengal and that as he, by reason of a mistake of fact and not of law, in good faith believed himself to be bound by law to obey the instructions of the Commissioner of Police, and to be justified by law in sending the head constable to such custody, he was protected by ss 76 and 79 of the Penal Code. The High Court does not, on revision, interfere with an order of acquittal unless such interference is urgently demanded in the interest of public justice. *Faujdar Thakur v. Asai Chowdhury*, I L. R. 42 Calc. 612, referred to PHANATHA NATH BARAI v. P. C. LAHRI, (1920)

I. L. R. 47 Calc. 818

WRONGFUL DISMISSAL.

See DISMISSAL.

See DAMAGES. I. L. R. 46 I. A. 314

—Suit for wrongful dismissal against Crown, if lies—*Dismissal—Government service for commercial undertakings—Agreement of service—Notice in terms of agreement—Payment of wages for period under notice—Crown, power of dismissal of Government servants, civil and military—21 and 22 Vict., c. 106, s. 65* A servant who had received his notice of dismissal and got his wages for the remainder of the term covered by the notice cannot maintain an action for wrongful dismissal. The Crown in the absence of Statutory provisions can dismiss any servant in its civil or military employ exactly as the East India Company could under s. 75 of 3 and 4 Will. IV, Ch. 85, and, therefore a suit for wrongful dismissal at the instance of a dismissed servant does not lie against the Secretary of State for India in Council under s. 65 of 21 & 22 Vict., Ch. 106. KING v. SECRETARY OF STATE FOR INDIA (1908)

15 C. W. N. 488

WRONGFUL POSSESSION.

See SHERIFF. I. L. R. 42 Calc. 244

WRONGFUL RESTRAINT.

See PENAL CODE (ACT XLV OF 1860), ss 341, 109. I. L. R. 43 Bom. 531

WRONGFUL SEIZURE.

See ARREST OF SHIP

I. L. R. 42 Calc. 85

Y**YAJMAN.**

See HINDU LAW—HEREDITARY PRIEST
(I. L. R. 36 Bom. 84)

See VATAHDAR JOOM
(I. L. R. 40 Bom. 112)

YATI.

See HINDU LAW—ADOPTION
I. L. R. 40 Mad. 848

Z**ZAMINDAR.**

See MADRAS ESTATES LAND ACT (I OF 1908), ss 6, SUBS. (6), 8

I. L. R. 39 Mad. 944

—engagement by, with Government—

See MADRAS IRRIGATION CESS ACT (MAD. VII OF 1865), s. 1, PROVISIONS 1 AND 2.
I. L. R. 40 Mad. 888

—grant by—

See MINES AND MINERALS

I. L. R. 47 Calc. 95

—grant by, to his wife and minor son—

See TRANSFER OF PROPERTY ACT (IV. OF 1882), s. 10
I. L. R. 33 Mad. 867

—liability of, for unlawful acts of his servants—

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I. L. R. 38 Calc. 156

—rights of—

See NAVIGABLE RIVER.

I. L. R. 46 Calc. 390

—service to—

See MADRAS REGULATION (XXV OF 1802), s. 4. I. L. R. 38 Mad. 620

ZAMINDAR AND INAMDAR.

—pre-emption as to—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 8
I. L. R. 38 Mad. 608

ZAMINDAR OR MITTADAR.

—right of, to a charge—assignment of Jodi—

See INAMDAR. I. L. R. 40 Mad. 93

ZAMINDARI.

—imparible—

See HINDU LAW—JOINT FAMILY.

I. L. R. 41 Mad. 778

See HINDU LAW—ADOPTION.

I. L. R. 33 Mad. 1105

—sale of—

See EXECUTION OF DECREES

I. L. R. 38 AIL 89

—settled at Permanent Settlement—

See MADRAS IRRIGATION CESS ACT (MAD. VII OF 1865), s. 1, AND PROVISIONS 1 AND 2.
I. L. R. 40 Mad. 888

ZAMINDARI LANDS.

See MADRAS ESTATES LAND ACT (I OF 1908), ss 6, SUBS. (6), 8.
I. L. R. 39 Mad. 944

See MADRAS WATER CESS ACT (VII OF 1865). I. L. R. 39 Mad. 87

ZAMINDARI RIGHTS.

See KUNSTURA, STATE OF.

I. L. R. 39 Calc. 711

ZAMINDARI SALE.

— in execution—Whether entire zamindari or only zamindar's life estates sold—Mixed question of law and fact depending on entire evidence in the case—State of then law as to the zamindar's interest therein, not conclusive—Conduct of parties, important evidence. A question as to whether the entire estate in a zamindari and not only the life interest of the zamindar was sold in execution and brought by the purchaser is a question of mixed law and fact to be determined by the evidence in each case. All that *Abdul Aziz Khan v Appayya-sami Naicker*, 1 L R 27 Mad 131, 142, decided in reference to the above question was that the state of the law as understood at the time of sale, as to the rights of the zamindar in regard to the zamindari, was evidence to be considered along with other evidence in the case; it is not alone conclusive on the question. In determining the question of what the Court intended to sell and the purchaser understood he bought, evidence as to how the parties affected by the transaction themselves viewed it at the time is of much greater value than evidence which may be procurable some twenty years after the transaction took place. On the evidence in the case their Lordships held that the sale which took place in 1830 was of the whole zamindari and that the purchaser bought the whole zamindari in execution. *Veera chandra Aiyar v Marudaga Narayan*, 1 L R 34 Mad 188, referred to. *Veera Soorappa Nayana v Errappa Naidu*, 1 L R 29 Mad. 491, 490, explained. *ALAKHAYA GOUNDER v RAMAYYA NAIDU* (1911) . 1 L R. 37 Mad 22

ZAMINDARS AND RAJAS.

— rights of waters of rivers passing through their lands—

S e MADRAS IRRIGATION CHES Act (VII of 1903) . 1 L R. 37 Mad. 322

ZERAIT.

S e LANDLORD AND TENANT.
1 L R. 38 Calc. 432

ZINA.

See MAHOMEDAN LAW—LEGITIMACY
1 L R. 34 Bom. 111

ZURPESHGI LEASE.

See BENGAL TENANCY ACT, s 5 (5)
15 C. W. N. 345

See LANDLORD AND TENANT
1 L R. 38 Calc. 432

See MORTGAGE . 16 C. W. N. 505

— Occupancy right, raiyat interest acquisition of—Previous possession as raiyat—Subsequent zurpeshgi lease, effect of. The plaintiff's suit was for recovery of possession of land which had been given in zurpeshgi to the defendant for a term of 15 years from 1901 to 1915 F S., the terms of the zurpeshgi being as follows: "It is desired that the said sahib uccadar should take possession of the said land, make proper cultivation himself or get it cultivated by others, grow indigo seeds or any other indigo crop by using the land as his *khass* *crust* or by settling the same with tenants according to his own desire and shall continue appropriating the proceeds thereof till the term of the tica. He shall year by year deduct the said fixed *jaama* in payment of the principal and interest of his zurpeshgi as per account given below and shall pay the remainder, the amount of lessor's rights payable to us, towards the end of the term of the tica on taking receipt therefor from us. He shall conveniently cut and recover the indigo crops grown and standing on any quantity of land in 1915 F S., when the term of the tica pottah comes to an end, and shall pay ten annas rent for 1916 F S. at Rs. 630 per bigha and shall give up possession of the said land. Held, that the zurpeshgi pottah did not create any raiyat interest in the defendant, far less a right of occupancy, and on the expiry of the term of the pottah the plaintiffs were entitled to get *khass* possession. That a raiyat by taking a zurpeshgi lease of land of which he was previously in possession as a raiyat, does not lose his raiyat status or direct himself of his right to acquire a right of occupancy in the land. *LAL BANARAS RANI v MACKENZIE* (1913) . 19 C. W. N. 229

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
8 HASTINGS STREET

LIMITATION ACT (IX OF 1908)—*contd.*

Sch I Arts. 118, 68, s 19—*concl'd*
 116 and not by Art 66 of the Limitation Act for though the suit was in form a suit for money due on a bond it was in substance a suit for compensation for breach of a contract. *Ramdia v Kalla Pershad* L R 12 I A 12, and *Budakhi Gans Shet v Tularamshet* I L R 14 Bom 377 commented on. *DINKAR HARI v CHHAGANLAL NARSDAS* (1913) I L R 38 Bom 177

Sch I Art 118—

See HINDU LAW (CUSTOM)

5 Pat L J 164

Hindu Law—Adoption—Sust questioning the validity of adoption—Limitation—Adoption of an orphan—Entries in Revenue register A suit questioning the validity of an adoption would be time-barred if not brought within six years under Art 118, Sch I of the Limitation Act (IX of 1908). *Srinivas v Hanuman* I L R 24 Bom 269 followed. *Thakur Turbhanan Bahadar Singh v Raja Rameshar Bahad Singh* L R 33 I A 156 and *Umar Khan v Viaz ad din Khan*, L R 32 I A 19 explained and distinguished. The adoption of an orphan is not valid in law. The Collector's Register is purely for the purposes of Government Revenue and its entries are not evidence of title. *SERJIVAS SARJERAY v BALWANT VENKATESH* (1913)

I L R 37 Bom 513

Adoption—Death of adopted son leaving a widow—Adopting mother making a second adoption during widow's life time—Adopted son in possession of the property to the knowledge of the plaintiff—Suit by reversioner of first adopted son to recover property challenging the second adoption brought after six years—Suit barred by limitation One D a holder of Vatan and non Vatan property having died without leaving a son, M his senior widow adopted a son A. A died a minor in 1890 leaving a widow. In 1901 M adopted defendant No 1 as son to D and from the date of his adoption defendant No 1 remained in possession of the whole estate to the knowledge of the plaintiff. In 1904 A's widow died. In 1912 the plaintiff claiming as the reversioner he r of A sued to recover possession of the property challenging the adoption of defendant No 1. Defendant No 1 pleaded limitation and adverse possession. *Held*, that there had been no adverse possession sufficient to bar the plaintiff's suit but it was barred under Art 118 of the Limitation Act, 1908 as it was not brought within six years from Plaintiff's knowledge of defendant No 1's adoption. *Held* also that though the adoption of defendant No 1 might be invalid by Hindu Law and M's power of adoption might have been already exhausted nevertheless the law of limitation would effectively defeat the plaintiff's claim. *Mokesh Narain Mannab v Farook Nakh Motia* I L R 29 I A 30 followed. *Held*, further, that defendant No 1's adoption to D who was not the last male holder affected the plaintiff for the property in dispute was an ancestral estate and that D as well as A were ancestors of the plaintiff. *CHAKRABARTY v KALIANDAPPA* (1917)

I L R 41 Bom 723

Limitation—Sale—Covenant to make good loss in case of vendee being compelled to pay money in excess of sale consideration—

LIMITATION ACT (IX OF 1908)—*contd.*

Sch I, Art 118—*concl'd*

Breach of covenant—Suit against vendors on covenant of indemnity Where vendors are suing their vendors on a covenant of indemnity contained in their sale deed having been obliged to redeem a prior mortgage the vendors are not barred by the limitation runs, not from the date of the sale-deed but from the date when the plaintiffs suffered actual loss by reason of their being compelled to pay off the prior mortgage charge. *Hari Tiwari v Pishunath Tiwari*, I L R 11 All. 27 referred to. *RAN DEVI v HARDWARE LAL* (1918) I L R 40 All. 605

Art 118 and s. 2—*Suit for declaration that an adoption is untrue or invalid—Nearest reversioner's consent to adoption for a bride—No suit by nearest reversioner—Suit by remoter reversioner, more than six years after adoption came to knowledge of the nearest reversioner—Plaintiff born after adoption and before suit barred—Bar of limitation* A suit for a declaration that an alleged adoption is untrue or invalid, instituted by a remoter reversioner more than six years after the adoption came to the knowledge of the nearest reversioner, is barred under art 118 of the Limitation Act. Neither the fact that the nearest reversioner did not himself bring such a suit because he had been bribed to give his consent to the adoption nor the fact that the remoter reversioner who sued was born after the alleged adoption and before the suit became barred under art 118 gives the latter any fresh cause of action or stops time running which had begun to run against the whole body of reversioners from the date of adoption. *VENKATA SRIVATTA v ADENNA* (1921) I L R 44 Mad. 218

Sch. I, Art 119—*Suit for declaration that an adoption was valid—Limitation*, A decree was passed in 1900 on the basis that there was no adoption. In 1901, the adoption of plaintiff was denied by defendant No 1 still the plaintiff did nothing till 1913 when he filed a suit to have it declared that the decree of 1900 was invalid and not binding on him. *Held*, that the plaintiff's adoption having been challenged in 1901, the present suit was barred under art. 119 of the Indian Limitation Act 1908. *Srinivas v Hanuman*, I L R 24 Bom. 269 followed. *BHARMA v BALARAM SAKHARAM* (1918)

I L R 43 Bom 63

Art 120—

See s 6 I L R 1 Lah. 553

See s 10 I L R 39 Bom. 572

See Art 4 I L R 41 Mad. 523

See ART 52 I L R 2 Lah. 376

See ART 91 I L R. 35 All. 149

See Art 109 I L R 27 All. 640

See ANNEKUNTHAPPA 2 Pat J J 342

See ANNEKUNTHAPPA

I L R 47 Calc. 331

See HINDU LAW—JOINT FAMILY—

Pat. L J 497

See HINDU LAW—WIDOW

I L R 2. Lah. 984

I L R 44 Mad. 951

See JOINT PROPERTY

I L R. 39 Mad. 54